BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO: Order/GR/BM/2022-23/16512-16516]**

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 AND SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

NOTICEE NO.	NOTICEE NAME	PAN
1	***Birla Cotsyn (India) Ltd.***	***AAACJ1362K***
2	***Mr. P.V.R. Murthy***	***ABRPM1271B***
3	***Mr. Yashovardhan Birla***	***AAJPB2505N***
4	***Mr. Y P Trivedi***	***AAFPT3468G***
5	***Mr. Mohandas Adige***	***AARPA3809L***

In the matter of GDR Issue by Birla Cotsyn (India) Ltd.,

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee numbers and collectively as “the Noticees”*, unless the context specifies otherwise*)

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the alleged irregularities in the Global Depository Receipts (herein after referred to as **"GDR"**) Issue by **Birla Cotsyn (India) Ltd.** (hereinafter referred to as **"Company / BCIL"**) during the period from February 15, 2010 to April 15, 2010 (hereinafter referred to as **"Investigation Period"**).

2. BCIL is a company whose shares are listed on the BSE Ltd., (**BSE**) and National Stock Exchange of India Ltd., (**NSE**). The investigations, *prima facie,* revealed that BCIL had issued 9.69 million GDRs (amounting to USD 24.99 million) on March 15, 2010, equivalent to 96,89,00,000 equity shares of Re.1 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**"). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG ("**EURAM Bank"**) by entering into Loan Agreement dated February 23, 2010 with EURAM Bank.

3. It was observed that directors of BCIL in its Board Meeting held on December 21, 2009, had passed Board Resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of BCIL and also for using the funds deposited in the said bank account as security in connection with loans, if any. BCIL had signed a pledge agreement dated February 23, 2010 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. P. V. R. Murthy, Director of BCIL. Vide the said loan agreement, BCIL had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of BCIL, thus securing Vintage FZE's loan.

4. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. It was observed that the Directors of BCIL namely, Mr. P.V.R. Murthy (Noticee No 2), Mr. Yashovardhan Birla (Noticee No 3), Mr. Y.P. Trivedi (Noticee No 4) and Mr. Mohandas Adige (Noticee No 5) had attended the Board Meeting dated December

21, 2009, and passed the aforementioned resolution. Further, Mr. P. V. R. Murthy had executed the Pledge Agreement on behalf of BCIL. It was therefore alleged that the individuals named above had acted as parties to the fraudulent scheme.

5. Investigations also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Investigations further alleged that BCIL did not inform stock exchanges as required under clause 36(7) of Listing Agreement with regard to – i) Pledge Agreement entered into with EURAM Bank for subscription of GDRs, ii) delisting of GDRs on Luxembourg Stock Exchange, and iii) termination of GDR facility by the Global Depository i.e. The Bank of New York Mellon, which was price sensitive information that could have impacted the price of the scrip. Further, it was observed that BCIL did not follow Accounting Standards – 3 and 29 since it did not disclose/ provide for potential liability for pledged GDR proceeds, presented its cash balance pledged with EURAM Bank as free cash and did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds as the same are the items, the knowledge of which might influence the decision of the user of the financial statements.

6. SEBI had, therefore, initiated adjudication proceedings *inter alia* against BCIL (Noticee No.1) 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), 4(2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "PFUTP Regulations") and Section 21 of the Securities Contracts Regulations Act, 1956 (hereinafter referred to as “SCRA, 1956”) read with Clauses 32, 36(7) and 50 of the Listing Agreement. Adjudication proceedings were also initiated against Noticee No. 2 to 5 for alleged violations of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

7. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide order dated January 09, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations alleged to have been committed by the Noticees. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated May 22, 2019. These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notice No. EAD-4/ADJ/BS/AE/OW/-18561,18563, 18564, 18566 and 18567-/1/2018 dated June 29, 2018 (hereinafter referred to as **"SCN"**) was issued by the erstwhile AO to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and Section 23 E of the SCRA read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 4 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act 1992 and/or under section 23E of the SCRA as applicable for the alleged violations specified in the SCNs.

9. The said SCN was served to BCIL (Noticee No. 1), Mr. Yashovardhan Birla (Noticee No. 3), Mr. Y P Trivedi (Noticee No. 4) and Mr. Mohandas Adige (Noticee No. 5). The SCN issued to Mr. P.V.R. Murthy (Noticee No. 2) in 3 different addresses returned undelivered with a remark 'moved'/'absent'. Thereafter, in the

interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, multiple opportunities of personal hearing in terms of Rule 7(d) of the Adjudication Rules were granted to all the Noticees vide hearing notice dated September 5, 2018, December 06, 2018 and April 18, 2022.

The said Hearing Notices were served to all the Noticees. As the Hearing Notices returned undelivered from all the available addresses of Mr. P.V.R. Murthy (Noticee No. 2), the Hearing Notice dated December 06, 2018 was served to him by way of affixture on December 7, 2022 and the Hearing Notice dated April 18, 2022 was served vide newspaper publication on May 01, 2022 in the newspapers circulated in all Mumbai Editions viz Hindustan Times, Navbharat Times and Lokmat. It was also mentioned in the said newspaper publications that the Noticee shall collect the Show Cause Notice from the Office of the Adjudicating Officer at Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051 or can download the said SCN from the SEBI website (www.sebi.gov.in) under the head "Enforcement - Unserved Summons/ Notices and Enforcement – Orders" or can obtain the SCN through e-mail. It was further published that if an entity fails to respond to the notice, the proceeding shall be proceeded ex-parte qua them. Despite of the same, it was observed that Noticee No. 2 neither attended the personal hearing nor submitted his reply in the matter.

10. Vide a joint letter dated September 10, 2018 on behalf of BCIL (Noticee No 1) and Mr. Yashovardhan Birla (Noticee No. 3), it was submitted that the company would be filing an application for settlement under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as "**Settlement Regulations**") and hence sought for keeping the SCN in abeyance and adjourning the hearing to a later date.

11. Subsequently, it was observed that Liquidator was appointed for BCIL (Noticee No 1), Birla Cotsyn (India) Ltd. under insolvency and Bankruptcy code. Accordingly, a hearing notice dated April 29, 2022 was sent to the Liquidator, Mr. Anil Goel for hearing on May 11, 2022. Authorized Representative of the Liquidator attended the

said hearing and mentioned that GDR was issued before initiation of the liquidation process and that an order has already been passed by the Liquidator.

12. In reply to Hearing Notice dated April 18, 2022, Mr. Yashovardhan Birla (Noticee No. 3) and Mr. Mohandas Adige (Noticee No 5), vide mail dated April 26, 2022, sought for an adjournment of personal hearing which was granted to them. Accordingly, the hearing was rescheduled on May 11, which was attended by their Authorized Representatives (AR). Noticee No.3 filed his reply in the matter vide letter date May 14, 2022 and mail dated May 16, 2022. Noticee No. 5 filed his reply on May 10, 2022 and the AR of the Noticee No. 5 reiterated the same in the hearing dated May 11, 2022.

    AR of Mr. Y.P. Trivedi (Noticee No 4) attended the hearing scheduled on April 29, 2022 and submitted the reply vide mails dated April 25, 2022 and April 29, 2022.

The summary of the replies submitted by Noticee 3, 4 and 5 are as under:

13. Mr. Yashovardhan Birla (Noticee No. 3) vide his replies dated May 14, 2022 and May 16, 2022, submitted the following:
    a) *He was the Non- Executive & Non Independent Director of the Company from May 16, 1995 till December 29, 2012 and his role was limited to attending the Board meetings and he was not involved in day to day affairs.*
    b) *He never signed any agreement with any of the entities involved in the alleged fraud and only attended the Board meeting dated December 21, 2009 which authorized one of the directors viz. Mr P V R Murthy and Mr. Tushar Dey, Company Secretary to sign, execute, any application, agreement etc which may be required by EURAM Bank.*
    c) *The GDR issue was made bonafide for the legitimate purposes in the ordinary course of business by the company and in the best interests of the company and its shareholders.*
    d) *It may be pertinent to note that out of the two authorized persons for the GDR issue, Mr. P V R Murthy was having vast experience in the field of finance*

especially fund raising, both in India & abroad, since he has worked with various reputed Merchant Bankers over the last 20-25 years and was part of the Board of Directors of BCIL. Mr. PVR Murthy was the only nodal point for the GDR issue and Mr. Birla had no role to play in the process of the issue.

e) *Mr. P.V.R. Murthy and Mr. Tushar Dey never informed them that they had entered into pledge agreements with EURAM Bank and that the fraud carried out by Mr. P.V.R. Murthy cannot be saddled on the company and its other directors without any evidence of connivance of the company and its other directors with Mr. P.V.R. Murthy.*

f) *He was not a signatory to the agreement and cannot be held responsible for the same. He was never aware of the nuances and details of the said agreements, as he was never privy to it. When the Resolution was passed it was not evident that it was fraudulent.*

g) *The proceedings against him were initiated after an inordinate delay of eight long years. It is highly unreasonable for SEBI to expect him to keep all the documents pertaining to the transaction intact after such a long time.*

14. Mr. Y.P. Trivedi (Noticee No 4) vide his replies dated April 25, 2022 and April 29, 2022, submitted the following:

a) *He was a Non-executive and Independent Director for a very brief period.*

b) *At the time of his directorship and even till date he doesn't know what GDR is.*

c) *As an Non executive Independent Director, he had no role in the management of the company.*

d) *He had not signed any management paper during his brief directorship in the company. Someone in the management might have forged his signature.*

15. Mr. Mohandas Adige (Noticee No 5) vide his reply dated May 10, 2022, submitted the following:

a) *Copy of the investigation report has not been furnished with the Notice.*

b) *He was an Independent and Non-Executive Director of BCIL and was appointed on Board as the Non-Executive Independent Director of BCIL on October 24, 2008 and resigned from the same on August 29, 2013. Being a*

Non-Executive Independent Director, he was not involved in the day to day affairs or decision making of BCIL.

c) *He has already undergone the period of debarment imposed by the Ld. Whole Time Member (WTM) of SEBI.*

d) *He was not involved in the Pledge agreement by BCIL.*

e) *He has not made any gains or derived unfair advantage as a result of falsely alleged violations.*

16. Mr. P.V.R. Murthy (Noticee No. 2) had failed to attend the personal hearing and to file his written submissions, I therefore proceed on the basis of available material with respect to the Noticee No. 2.

17. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

CONSIDERATION OF ISSUES

18. I have carefully examined the allegations against the Noticees and their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are :

    I. Whether the Noticees in light of their role in GDR issues of BCIL, have been responsible for fraudulent issues of GDRs and, as a consequence whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement, as applicable?

    II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, as applicable?

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

OBSERVATIONS AND FINDINGS

19. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, SCRA and Listing agreement alleged to have been violated by the 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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

….

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

….

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

….

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

……

Section 21 of SCRA 1956

[*Conditions for listing*.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.]

Clause 36 (7) of Listing Agreement:

"The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information…….,

The above information should be made public immediately."

Clause 50 of the Listing Agreement:

"The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time."

Clause 32 of Listing Agreement:

"The Company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3."

20. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by Noticee No.3 that the proceedings were initiated after an inordinate delay of eight long years and it is highly unreasonable for SEBI to expect him to keep all the documents pertaining to the transaction intact after such a long time. In this regard, I note that in the present case, 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 was prima facie observed, such GDR issues made before the year 2009 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. Such information inter alia included 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. These information were 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. 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 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. BCIL (Noticee No. 1) was one such GDR issuer where such modus operandi was also observed and the investigation was completed in March, 2017. I note that after completion of the investigation, the SCN was issued to the Noticees on June 29, 2018. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unreasonable delay in the matter, as contended by the aforesaid Noticee No.3.

21. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In **Ravi Mohan & Ors. v. SEBI** and other connected appeals decided on August

27, 2013, the Hon'ble SAT while referring to its own decision in **HB Stockholdings Ltd. v. SEBI** (Appeal no. 114 of 2012 decided on August 27, 2003) (which has also been relied upon by the Noticees) and decision of Hon'ble Supreme Court in **Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)** reported in 2003 (158) ELT 129 (S.C.), held as under:

> *"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."*

22. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. In the matter of **Jindal Cotex Ltd. and others Vs. SEBI** (Appeal No. 376 of 2019 decided on 05.02.2020) 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 (Supra) and Cals Refineries Limited (Supra) etc……………."*

23. In view of the above, and considering the facts and circumstances, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticee No. 3,

so the contentions of the Noticee in this regard are without merits. Further, delay in initiating the proceedings itself should not be a ground for discharging the Noticee.

24. Further, I note that Mr. Mohandas Adige (Noticee No 5) has contended that certain documents sought for have not been furnished/given to him. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticee along with the SCN. I find that it satisfies the requirement of principles of natural justice. Further, I note that the relevant findings of the investigation report have been provided for and captured in the SCN that have been issued to the Noticee. The documents provided with the SCN are as follows:

a)	BCIL letter dated June 08, 2015
b)	Vintage Loan Agreement dated February 23, 2010 with EURAM Bank
c)	Company's resolution in its meeting on December 21, 2009
d)	Minutes of board meeting of BCIL dated December 21 , 2009
e)	Pledge Agreement dated February 23, 2010 between BCIL and EURAM Bank
f)	Escrow account statement
g)	BCIL's retail bank account statement
h)	Vintage's loan account statement
i)	Corporate Announcements of BCIL
j)	Extracts of Annual report FY 2009-10 (pg 25) and 2010-11 (pg 23)
k)	Extracts of Annual report FY 2009-10 (pg 36 & 50) and 2010-11 (pg 36 & 49)
l)	Corporate Announcements

25. Therefore, the contention of the Noticee No.5 that SEBI has not provided complete documents is untenable. I find that the Noticees were provided with all the relevant documents as relied upon in the SCN, as mentioned above. I also note that Noticee No 5 has filed detailed reply dated May 10, 2022, to the SCN. I, further, note that the copies of some of the documents relied upon, were obtained by SEBI during

investigation, through overseas regulators. The contents of these documents have been corroborated from various other documents and transactions, which have been provided as annexures to the SCN, as mentioned above. Thus, I note that no prejudice has been caused to Noticee no. 5 in defending his interest and contesting the allegation made against him in the SCN. In this regard, it would be appropriate to refer to the Order of Hon'ble SAT dated February 12, 2020 in **Shruti Vora vs. SEBI (Appeal No. 28 of 2020)** wherein, it was observed that:

"19. The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

26. I note that the contention raised by Mr. Mohandas Adige (Noticee No 5) is squarely covered by the decision of the Hon'ble SAT, in the aforesaid case. Thus, in view of the above, I note that the contention made by Mr. Mohandas Adige (Noticee No 5) that SEBI has failed to provide all documents on which it has relied upon is untenable.

<u>Issue I:</u> Whether the Noticees in light of their role in GDR issues of BCIL, have been responsible for fraudulent issues of GDRs and, as a consequence whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement, as applicable?

27. From the material available on record, I note that BCIL had issued 9.69 million GDRs (amounting to USD 24.99 million) on March 15, 2010, equivalent to 96,89,00,000 equity shares of Rs.1 each. Summary of the aforesaid GDRs issued by BCIL as submitted by BCIL vide its letter dated June 08, 2015, 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
15 March, 2010	9.69 (at USD 2.58 each GDR)	24.99	HSBC Bank	96,89,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

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

29. Investigations observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "Vintage") had obtained a loan of USD 24.99 million by entering into a Loan Agreement dated February 23, 2010 with

EURAM Bank to subscribe to the GDRs of BCIL. The aforesaid Loan Agreement was signed by Mr. Arun Panchariya in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

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

   USD 24,997,6200.00

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

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

   To provide funding enabling Vintage FZE to take down GDR issue of 9,689,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580015, Birla Cotsyn (India) Limited.

   *(*The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of BCIL. *580015* is the client account number of BCIL. Exactly, the amount of USD *24,997,6200.00* was credited to the escrow account of BCIL with Euram Bank on the same date of loan being debited to the account of Vintage i.e., March 12, 2010 (Explanation supplied).

<u>6.Security</u>

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

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

- *Pledge of the account no. 580015 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.*

30. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 24.99 million from EURAM Bank to subscribe to the GDRs of BCIL.

31. From the certified true copy of BCIL's Board Resolution dated December 21, 2009 provided by EURAM Bank, and copy of minutes of the Board Meeting of BCIL held on the same date provided by BCIL to SEBI, it is observed that the following resolution was *inter alia* passed in the said meeting–

> "*RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."*
>
> *"RESOLVED FURTHER THAT Shri P.V.R. Murthy, Director and Shri Tushar Dey, Company Secretary, of the Company 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 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]

32. From the aforesaid minutes of the Board Meeting it is observed that the Board of Directors of BCIL had jointly and severally authorized, *Shri P.V.R. Murthy and Shri Tushar Dey* to sign, execute, any application, agreement and other paper(s) from

time to time as may be required by EURAM Bank. For this purpose, Shri P.V.R. Murthy / Shri Tushar Dey were *inter alia* authorized to carry and use the seal of BCIL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

33. From the copy of the minutes of the meeting, it is observed that the directors namely Mr. P.V.R. Murthy (Noticee No 2), Mr. Yashovardhan Birla (Noticee No 3), Mr. Y.P. Trivedi (Noticee No 4) and Mr. Mohandas Adige (Noticee No 5) had attended the Board meeting dated December 21, 2009 and approved the aforementioned resolutions. The aforesaid fact of opening of account with EURAM Bank for such purposes as stated in the Board Resolution and reproduced above has also been admitted by BCIL in its submissions.

34. I note that subsequently BCIL has admittedly entered into a Pledge Agreement with EURAM Bank on February 23, 2010. The said Pledge Agreement was signed by Mr. P.V.R. Murthy on behalf of BCIL, in the capacity of Director of BCIL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

1. <u>Preamble</u>

By loan agreement K23022010-005 (hereinafter referred to as the "Loan Agreement") dated 23 February 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 24,997,620.00. The Pledgor has received a copy of the Loan Agreement No. K23022010-005 and acknowledges and agrees to its terms and conditions."

2. <u>Pledge</u>

*2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **<u>Borrower</u>** towards the bank under the*

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

*2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 24,997,620.00 existing from time to time at present or hereafter on the **securities account(s) no. 580015** 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. 580015 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."

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

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

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

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

35. I note that the Pledge Agreement refers to the Loan Agreement dated February 23, 2010 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 24,997,620.00, and it is stated that the Pledgor i.e. BCIL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, BCIL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge

Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

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

Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated February 23, 2010. Further, I also note that Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

36. 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 24,997,620.00 to subscribe to the GDRs of BCIL. 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 24,997,620.00 on March 12, 2010 and the same was then transferred to the escrow account (No. AT341934005800150029) of BCIL on the same date. 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 BCIL comprising 9.69 million GDRs amounting to USD 24.99 million, was subscribed by only one entity, i.e. Vintage. I further note that the amount was transferred to BCIL's retail account (No. AT301934005800150101) held with EURAM Bank on the same day i.e. March 12, 2010, and that BCIL's account was pledged with EURAM Bank under the Pledge Agreement.

37. It is observed from Vintage's loan account statement with EURAM Bank that the Vintage repaid the entire loan amount in several installments. Details of repayment of loan by Vintage as provided by EURAM Bank as well as subsequent transfer of fund by BCIL are tabulated below:-

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from BCIL's EURAM Bank a/c to 1)BCIL's bank a/c in India (USD), 2) BCIL's UAE subsidiary's bank a/c and 3) Other entities
06/07/2010	145,700	142,050
27/07/2010	765,000	762,410
28/07/2010	9,000	12,038
01/09/2010	150,000	150,000
20/09/2010	300,500	300,000
18/01/2011	2,000,000	2,000,000
31/01/2011	1,800,000	1,800,000
03/02/2011	2,000,000	2,000,000
18/03/2011	2,000,000	2,000,000
03/05/2011		11,506
10/05/2011		233,000
11/05/2011		13,507
12/05/2011	1,500,000	
13/05/2011		1,500,000
26/07/2011	1.500,000	1,500,000
27/07/2011	1,700,000	1,700,000
02/08/2011	400,000	400,000
16/08/2011	3,500,000	3,500,000
18/08/2011	2,000,000	2,000,000
22/08/2011	2,000,000	2,000,000
23/08/2011	1,500,000	1,500,000
25/08/2011	1,000,000	1,000,000
26/08/2011	727,420	772,313
Total	**24,997,620**	**25,296,823**

38. From the details of fund transfer stated immediately above, I observe that only after Vintage repaid loan instalments to EURAM Bank, that BCIL 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 BCIL. Therefore, it is evident that the amount transferred from BCIL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

39. I further note that as and when, loan repayments were made by Vintage, BCIL used to transfer funds from its EURAM Bank account to 1) BCIL's bank account in India, 2) BCIL's UAE based subsidiary's bank account, and 3) various entities. In view of the above, I note that every transfer from BCIL's account is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from BCIL's EURAM account was dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

40. In this regard, it is appropriate to 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]

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

42. I also note that with regards to the subscription of GDR issues of certain other listed Indian companies through the aforesaid *modus operandi* viz. involving

arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("**SAT**") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of **Pan Asia Advisors Limited vs. SEBI** had observed:

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

43. In the present matter, I note that the GDR subscription amount of USD 24.99 million was not available to BCIL for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on March 15, 2010, a partial amount of USD 142,050/- could be made available to the company only on July 06, 2010 i.e. after a period of around four months. The last instalment towards amount of USD 24.99 million along with accrued interest was available to BCIL only in August 26, 2011 when the loan was fully repaid by Vintage to EURAM Bank. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred by BCIL.

44. As discussed above and as per the disclosure made by BCIL to stock exchange during investigation period that the BCIL suppressed the material and price sensitive information from the stock exchange by not informing the following viz. (i). execution of pledge agreement dated January 11, 2010 by BCIL in favor of EURAM Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated January 11, 2010 by Vintage for obtaining loan from the EURAM bank for subscribing the GDR issue of BCIL and (iii) Vintage was the only subscriber of GDR issued by BCIL. I find that the corporate announcements made by BCIL on March 16, 2010 stating that it had 'allotted 968,900,000 GDRs', might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas BCIL had itself facilitated subscription of its

GDR issue through the back end arrangement wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of BCIL and BCIL secured that loan by pledging the GDR proceeds with the Euram Bank.

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

> "*if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities".*
>
> I note that the Hon'ble Supreme Court in the same judgment, has also observed that "*that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation....".*

46. The aforementioned act of BCIL resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in *Pan Asia Advisors Limited vs. SEBI* cited above wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

> *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud,*

irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."

47. In view of the above, I note that the scheme of arrangement of BCIL, 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 BCIL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by BCIL during the period December 2009 - March 2010 stating that the GDR was issued and allotted, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to the conclusion that the same were done in a fraudulent manner. Thus, in view of the foregoing, I hold that BCIL 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), (2)(f), (k), (r) of PFUTP Regulations, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

<u>Alleged Violation of Section 21 of SCRA, 1956 read with Clauses 32 and 50 of Listing Agreement:</u>

48. Further, I note that BCIL in its Annual Report for Financial Year (FY) 2009-10 and 2010-11 had stated that:

"*company follows the Accounting Standards issued by the Institution of Chartered Accountants of India and Company (Accounting Standards) Rules, 2006. The company has not adopted a treatment different from that prescribed in any Accounting Standards, in the preparation of financial statements."*

49. However, in the Annual Report for the aforesaid FY 2009-10 and 2010-11, BCIL showed cash balance of Rs.119.02 Crores as on March 31, 2010 and Rs.102.11 crore as on March 31, 2011 and included the same as Cash and Cash equivalents (CCE) for the purpose of Cash Flow Statement required to be prepared in accordance with Accounting Standard 3. Further, in the “schedules forming part of the balance sheet for FY 2009-10 and FY 2010-11, BCIL showed bank balance with EURAM Bank under heading cash and bank balances as Rs.112.84 crore for FY 2009-10 and Rs.71.77 crore (includes the interest earned on GDR proceeds) for FY 2010-11. However, on perusal of Vintage’s loan account statement, BCIL’s EURAM Bank retail bank account statement and Pledge Agreement it was observed that BCIL had pledged its GDR proceeds of USD 24.99 million with EURAM Bank against the loan availed by the Vintage and as on March 31, 2010 and March 31, 2011, Vintage repaid loan amounting to only USD 0.00 and USD 9.17 million respectively. Therefore, loan of USD 24.99 million (approximately Rs.112.84 crore, at RBI exchange rate of Rs. 45.14 per USD on 31/03/2010) and of USD 15.82 million (approximately Rs.70.64 crore, at RBI exchange rate of Rs.44.65 per USD on 31/03/2011) was outstanding as on March 31, 2010 and March 31, 2011 respectively. Therefore, the balance lying in BCIL's EURAM Bank account was not free cash and cash equivalent as per AS-3. In view of the above, I hold that BCIL has not complied with AS-3 by considering the amount lying in the EURAM Bank account as CCE.

50. I also observe that BCIL had pledged its GDR proceeds of USD 24.99 million against the loan availed by Vintage for subscription of GDRs issued by BCIL. BCIL utilized its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on BCIL for the amount of loan outstanding to be paid by Vintage i.e., approximately USD 24.99 million as on March 31, 2010 and USD 15.82 million as on March 31, 2011. Further, the contingent liability was backed by the balances in the EURAM Bank account of BCIL as the GDR proceeds were kept with EURAM Bank. In the event of default of repayment of loan by Vintage which was a contingent event, the liability would have crystallized and BCIL would have had to repay the loan of Vintage by foregoing the amount of balance held with the Euram Bank. Therefore, a contingent liability to the extent of USD 24.99 million (Rs.

112.70 crore) as on March 31, 2010 and USD 15.82 million (Rs. 70.64 crore) as on March 31, 2011 was required to be disclosed by BCIL. From the examination of the Annual Report of BCIL for FY 2009-10 and 2010-11, I observe that BCIL did not disclose the aforesaid as a contingent liability as on March 31, 2020 and March 31, 2011 in its Annual Report as required in terms of 'Accounting Standard 29'. Further, I note that BCIL (in its financial statement for the Financial Year 2010-11) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements.

51. In view of the above, I note that BCIL has not complied with Accounting Standard 1, 3 and 29, and therefore BCIL have violated section 21 of SCRA, 1956 read with clause 32 and 50 of the Listing Agreement.

52. Further, I note that GDRs were listed on Luxembourg Stock Exchange (LUX) w.e.f. March 16, 2010 and delisted w.e.f. April 03, 2014. On perusal of the corporate announcements made by BCIL on stock exchanges during April 2014, it was observed that BCIL did not inform stock exchanges about delisting of GDRs on LUX which was price sensitive information and could have impacted the price of the scrip and thereby I held that BCIL violated section 21 of SCRA, 1956 read with clause 36(7) of Listing Agreement.

53. I further note that the Directors of BCIL in board meeting held on December 21, 2009 authorized the EURAM Bank to use the BClL's GDR proceeds deposited with EURAM Bank as security in connection with loan and authorized the director, Mr. P.V.R. Murthy (Noticee No. 2) to sign any application, agreement etc. as may be required by the EURAM Bank. Subsequently, Noticee no. 2 executed the Pledge

Agreement (i.e. BCIL pledged its GDR proceeds deposited with EURAM Bank against the loan availed by Vintage for subscription of GDRs of BCIL).

54. However, I note from the submission of the Liquidator of BCIL (Noticee No. 1) during hearing, that vide Public Announcement dated October 14, 2019, the NCLT has ordered the commencement of liquidation of BCIL on September 24, 2019 under Section 33 of the IBC. In terms of Section 14(4) of the IBC, the order of the moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process, however, where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. Therefore, in view of the order dated September 24, 2019 of the NCLT, the moratorium declared under Section 14 of the IBC, has ceased to have effect and accordingly, BCIL has been ordered to be liquidated. Further, I note that, as per available record, no prior leave was obtained from the Ld. NCLT for continuing with the adjudication proceeding under the SEBI Act. In view of the above, I hold that the present proceedings initiated against Noticee No. 1 vide SCN dated June 29, 2018, stands disposed of.

55. Further, I note that Noticees 3, 4 and 5 have submitted that their role as an independent director was very limited and restricted. Further, they have submitted that they were not involved in the day to day management and affairs of BCIL. Further, that they did not have any kind of material/pecuniary relationship as director with BCIL, its promoters, directors, Senior Management or its holding company, its subsidiaries or associates which may affect his independence as a director. They also submitted that they only attended the Board Meeting of the Company and that there is nothing in the SCN that alleged that the alleged activities carried out by BCIL were approved in the Board Meetings. It is also submitted by the aforesaid Noticees that except for making allegation with respect to attending

the Board Meeting of the Company, nothing specific has been attributed to them in the SCN in terms of as to how they were involved in the day to day activities or that the alleged activities had they approval or they were aware of it etc. Further, that no separate role has been attributed to them in the Notice and the only allegation levied against them is that they had "attended the said board meeting" dated December 21, 2009 in which BCIL had authorized Mr. P.V.R. Murthy, Director and Mr. Tushar Dey, Company Secretary of the company to carry our necessary formalities for opening and operating the Bank account with EURAM Bank. The Board had given authority to Mr. P.V.R. Murthy and Mr. Tushar Dey to create the security if and when so required and that this established that it was Mr. P.V.R. Murthy's decision to enter into a pledge agreement and hence they deny that they have violated any provisions of the PFUTP Regulations, 2003.

56. I note that the Noticees No. 3, 4 and 5 have contended that they were independent non-executive directors of BCIL, they were not involved in the day to day activities of the company and that Mr. P.V.R. Murthy and Mr. Tushar Dey never informed them that they had entered into pledge agreements with EURAM Bank and that the fraud carried out by Mr. P.V.R. Murthy cannot be saddled on the company and its other directors without any evidence of connivance of the company and its other directors with Mr. P.V.R. Murthy. In this regard, I note that the Board of directors play a key role in balancing the interests of managements and shareholders and the independent directors are expected to, inter alia, ensure fairness and transparency in dealings of the Company. Where an act or omission occurs through board processes, then such non-executive directors can be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticee No. 3, 4 and 5 had attended the board meeting dated December 21, 2009 of the Company wherein resolution was passed for opening a bank account with EURAM Bank and authorizing EURAM Bank to use the GDR proceeds as security against loan, if any. Thus, Noticee No. 3, 4 and 5 were aware of authorization for pledge as the board resolution dated December 21, 2009 clearly mentioned 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,…" and the Noticees 3, 4 and 5 did not raise any question as to whether any loan had been taken or proposed to be taken by the Company as the resolution authorised pledging of the funds kept in the bank account of the Company as a security in connections with loans, if any. On the contrary, the Board had authorized the opening of bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. Further, by the same resolution, the Board had authorized Mr. P.V.R. Murthy (Noticee no. 2) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the EURAM Bank. Thus, I find that Mr. P.V.R. Murthy had acted in furtherance of the resolution passed by the Board and the Noticees who participated in the Board Meeting where such resolution was passed, cannot escape their liability for such resolution by contending that there was no collusion between them and Mr. P.V.R. Murthy. Further, I observe that neither the Company nor the Noticees who are now contending that the fraud was carried out by Mr. P.V.R. Murthy, have filed any complaint against Mr. P.V.R. Murthy and nor have they taken any action against Mr. P.V.R. Murthy for the alleged fraud.

57. Further, from the submissions made to Whole Time Member, SEBI during the 11B proceedings, it is noted that Noticee No. 3 was the Co-Chairman of BCIL during the period when the GDRs were issued. Also, from the website of BCIL, I note that the Company is promoted by the Yash Birla Group, of which the Noticee no. 3 was the Chairman. From the said submission during 11B proceedings, it is further noted that Noticee No. 5 was Member of the Audit Committee and Chairman in 2011-12.

As per the Companies Act 2013, the functions of the Audit Committee are as follows-

Section 177 (4)-

…

(iii) examination of the financial statement and the auditors' report thereon;

…

(viii) monitoring the end use of funds raised through public offers and related matters.

58. In view of the same, it is noted that they had the added responsibility to monitor the end use of the funds that were raised by issue of the GDRs and also ensuring their transfer to the accounts of the company in India. However, as mentioned in the preceding paragraphs, GDR was issued on March 15, 2010 to raise funds for general corporate purpose and long term working capital requirements (including cost of setting up foreign subsidiaries) but the GDR proceeds were transferred to BCIL India account only between July 2010 and August 2011 in parts i.e. after one and a half years from the date of issuance, depending on the repayment of loan by Vintage. In view of the same, I note that above Noticees failed to perform due diligence and discharge their duties and responsibilities properly.

59. Hence, in view of the aforementioned facts, I find that the above contentions of the Noticees No. 3, 4 and 5 are untenable.

60. Further, I note that Noticee No. 4 has contended that he had not signed any management paper and someone in the management might have forged his signature. In this regard, from a perusal of copy of resolution on record, I note that the same is certified true copy of the resolution passed by the Board of Directors of BCIL on December 21, 2009 printed on the letter head of the company and signed by Noticee No. 4 among others, whereby the Board of Directors of BCIL had jointly and severally authorized, *Shri P.V.R. Murthy and Shri Tushar Dey* to sign, execute, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. Thus, I find no merit in the aforesaid contentions of Noticee No. 4.

61. I note that Noticee No. 3 has contended that the GDR issue was made *bona fide* for the legitimate purposes in the ordinary course of business by the company and

in the best interests of the company and its shareholders. In this regard, I note that the elaborate scheme of fraud that this present proceeding is dealing with, has already been detailed in the preceding paragraphs in this order, which is not being disputed by any of the Noticees. A ‘mala fide’ or a ‘fraudulent intent’ (as in the present case) can only be inferred from the actions and omissions of an entity in a given case. I note that the Noticee 2 to 5, who approved the board resolution and authorized Mr. P.V.R. Murthy for executing the Pledge Agreement on the basis of resolution, acted as party to the fraudulent scheme. Therefore, I hold that Noticee 2 to 5 had no separate mind other than that of the management of BCIL and had actually participated in the said fraudulent scheme. Therefore, I hold that no separate ‘mala fide’ or fraudulent intent of a juristic person need to be proved when from the overt acts of the Noticees, its participation in the fraudulent scheme is evident and apparent beyond any ambiguity.

62. In view of the above, it is established from the above role of the directors of BCIL namely 1) Mr. P.V.R. Murthy, 2) Mr. Yashovardhan Birla, 3) Mr. Y.P. Trivedi and 4) Mr. Mohandas Adige, who approved the board resolution and director Mr. P.V.R. Murthy who executed the Pledge Agreement on the basis of resolution, acted as party to the fraudulent scheme. Accordingly, I hold that the directors namely 1) Mr. P.V.R. Murthy, 2) Mr. Yashovardhan Birla, 3) Mr. Y.P. Trivedi and 4) Mr. Mohandas Adige (i.e. Noticee no. 2 to 5) have violated section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

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

63. The Hon’ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that:

> “*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such*

violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

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

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

65. I find that Mr. P. V. R. Murthy (Noticee No. 2) had signed the Pledge Agreement dated February 23, 2010 for and on behalf of BCIL (Noticee No. 1) and the seal of BCIL is also affixed thereon. Vide this pledge agreement, Euram Bank was authorized to use the funds of BCIL as security in connection with loan obtained by Vintage (subscriber of GDR issue of BCIL) from the Euram Bank. As such, Noticee No. 2 was not only part of the fraudulent arrangement of BCIL but also played an active role in executing the pledge agreement dated February 23, 2010 which actually facilitated the subscription of GDR issue of BCIL.

66. The Noticee No. 2, 3, 4 and 5 had participated in the Board meeting of BCIL on December 21, 2009 wherein approvals were made to, among other, authorizing the Euram bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by BCIL (Noticee No. 1) in which the Noticee No. 2 has signed and executed the pledge agreement dated February 23, 2010 on behalf of

the Noticee No.1. Further, the Noticees No. 2, 3, 4 and 5 had continued to be on the board of Directors of BCIL during the entire process of issue of GDRs. Thus, the Noticees No. 2, 3, 4 and 5 were part of the fraudulent scheme and arrangement of the Noticee No.1 in facilitating the subscription of its own GDR. Thus, Noticee No. 1 violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement and Noticee 2 to 5 had acted as party to the fraudulent arrangement, and have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003

67. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement by BCIL and the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the other Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, which reads as below:

SEBI Act, 1992

"Penalty for fraudulent and unfair trade practices.

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

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

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

As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in *T. Barai vs. Henry Ah Hoe and Ors*. (07.12.1982 - SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

SCRA

"Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."*

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

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

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

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

(c) the repetitive nature of the default.

69. 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 Noticees.

70. I note that Noticee No. 5 have submitted that he has already undergone the period of debarment imposed by the Ld. Whole Time Member (WTM) of SEBI. In this regard, I note that proceedings under Section 11B and adjudication proceedings are different and can be parallely initiated. In this regard, I note that the Hon'ble SAT, in its order dated April 21, 2017 in the matter of ***Sunita Gupta vs. SEBI***, has held as follows:

> *"6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."*

71. From the documents made available, it is noted that no prior default by the Noticees is on record. In the present case, I note that BCIL had issued 9.689 million GDRs worth USD 24.99 million to Vintage on March 15, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered between Vintage and EURAM Bank, and Pledge Agreement entered between BAL and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on February 23, 2010, and that the Pledge Agreement was an integral part of Loan Agreement. It is observed that the GDR issue would not have been subscribed had BCIL not given such security towards the loan taken by Vintage. Such facilitation of the GDR issue and its subscription was not known to the public and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent and Noticees No. 2 to 5 have acted as party to the fraud and have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

ORDER

72. 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 and Section 23J of SCRA, 1956, 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, and Section 23I read with Rule 5 of SCR Adjudication Rules, hereby impose the following penalty on the Noticees –

Entity	Violation	Penal Provisions	Penalty (Rs.)
Mr. P.V.R. Murthy, Noticee No. 2	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 Lakh Only)**
Mr. Yashovardhan Birla, Noticee No. 3	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.10,00,000/- (Rupees Ten Lakh Only)**
Mr. Y P Trivedi, Noticee No. 4	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.10,00,000/- (Rupees Ten Lakh Only)**
Mr. Mohandas Adige, Noticee No. 5	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.10,00,000/- (Rupees Ten Lakh Only)**

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

ENFORCEMENT Orders Orders of AO PAY NOW

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

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	
5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is made:	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

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

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

Place: Mumbai **G Ramar**

Date: May 25, 2022 **Adjudicating Officer**