EFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO: Order/GR/PU/2022-23/16567-16572]**

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 CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO "SCRA") AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Noticee No.	Noticee Name	PAN
1.	Rainbow Papers Ltd.,	AAACR5415K
2.	Shri. Ajay Goenka	AAZPG8113B
3.	Shri. Radheshyam Goenka	AANPG4258P
4.	Ms. Sangeeta Goenka	AADPG0153F
5.	Shri. Arun Panchariya	AEVPP6125N
6.	Shri. Mukesh Chauradiya	AAVPC0966A

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

(The aforesaid entities are hereinafter individually referred to by their respective names/ Notice numbers. and collectively as "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 **"GDRs"**) issued by Rainbow Papers Ltd., (hereinafter referred to as **"Company" /"RPL"**) during the period from January 01, 2010 to February 28, 2010 (hereinafter referred to as **"Investigation Period"**).

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

3. Further, on examination of Annual Report of RPL for FY 2009-10, 2010-11, 2011-12, it was observed that the Board Meetings of RPL was held in the FY 2009-10 and three Directors namely Shri. Ajay Goenka (Noticee No.2), Shri. Radheshyam Goenka, (Noticee No.3) and Ms. Sangeeta Goenka (Noticee No.4) had attended

the Board Meeting of RPL held on November 27, 2009. It was also observed that the aforesaid directors had passed Board Resolution inter alia authorizing Shri Ajay Goenka (Noticee No. 2), Director of the Company for opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of RPL and also for using the funds deposited in the said bank account as security in connection with loans, if any.

4. It was observed that the subscription amount was paid by Vintage by obtaining a loan from EURAM Bank by entering into a Loan Agreement dated January 11, 2010 with EURAM Bank. Thereafter, it was observed that Shri. Ajay Goenka (Noticee No.2) had signed and executed the Pledge Agreement dated January 11, 2010 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage for subscribing to GDRs of RPL, thus securing Vintage's loan. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent as the company itself were providing funds for the subscription of GDRs to Vintage and the individuals named above i.e. the Directors of RPL had acted as parties to the fraudulent scheme.

5. In addition, on a perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, during investigation it was also observed that Mr. Arun Panchariya (Noticee No.5) had signed the Loan Agreement dated January 11, 2010 on behalf of Vintage in the capacity of its Managing Director. It was further observed that for the said loan, Mr. Mukesh Chauradiya (Noticee No.6) was the authorized signatory for the loan redemption

letters on behalf of Vintage and also signed the letter for the extension of loan repayment date as Managing Director of Vintage.

6. It was also observed that on default on loan payment of USD 6.26 million by Vintage the amount was adjusted by EURAM Bank from the GDR proceeds of RPL as it had pledged GDR proceeds against the said loan.

7. Apart from the above, it was also observed that some Foreign Institutional Investors (**FIIs**) connected and controlled by Noticee No.5, namely EURAM Bank and Cardinal Capital Partners made India Focus Cardinal Fund their sub-account. Similarly, Golden Cliff (FII) had also made High Blue Sky Emerging Market Fund its sub-account. They cancelled the GDRs and facilitated the sale of converted shares of RPL.

8. Considering the fact that Vintage was sole subscriber to GDR issue, with Shri Arun Panchariya (Noticee No.5) being the sole beneficial owner of Vintage, which defaulted on loan repayment, it is alleged that converted equity shares sold by the aforesaid FIIs were originally acquired by Vintage free of cost. Thus, it is alleged that Shri Arun Panchariya (Noticee No.5) devised GDR scheme along with RPL 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 RPL to the tune of USD 6.26 million. Therefore, it was alleged that the Noticee No.5 and 6 were also part of the scheme of fraudulent issuance of GDRs.

9. During investigation it was also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Thus, it was alleged that RPL did not inform stock exchanges as required under clause 36(7) Listing Agreement with regard to 1) Pledge Agreement entered into with EURAM Bank for subscription of GDRs; 2) Delisting of GDRs on Luxemburg Stock Exchange; 3) Termination of GDR facility by Global Depository i.e. Bank of New York Mellon, which were material events as well as price sensitive information that could have impacted the price of the scrip. Further, it was also observed that RPL did not follow Accounting Standards 1, 3 and 29 since it did not disclose/provide for potential liability for pledged GDR proceeds in its financial statements, 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.

10. SEBI had, therefore, initiated adjudication proceedings inter alia against Noticee No. 1, Rainbow Papers Ltd., (RPL) under Section 15HA of the Securities and Exchange Board of India act, 1992 and Section 23 E of the SCRA, the alleged violation of Section 12A(a), (b), (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as PFUTP Regulations), Section 21 of SCRA read with Clause 36(7) of Listing Agreement and Section 21 of SCRA read with Clauses 32 and 50 of the Listing Agreement. Adjudication proceedings were also initiated against Noticee No. 2 to 6 i.e. Shri. Ajay Goenka,

Shri. Radheshyam Goenka, Ms. Sangeeta Goenka, Shri. Arun Panchariya and Shri. Mukesh Chauradiya, respectively, 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"**) for acting as party to the fraudulent scheme.

11. **APPOINTMENT OF THE ADJUDICATING OFFICER**

Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide communiqué dated January 23, 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 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

12. Show Cause Notice No. EAD4/ADJ/BS/DS/OW/P/18467/1 and 18464/1,2,3,4,5/2018 dated June 28, 2018 (hereinafter referred to as **“SCN”**) was issued by the erstwhile AO, Shri Biju S. 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.

13. The said SCN issued to RPL , Mr. Ajay Goenka (Noticee No.2) and Ms. Sangeeta Goenka (Noticee No.4), had returned undelivered with the postal remarks “*not known”*, the SCN of Mr. Radheshyam Goenka (Noticee No.3) had returned undelivered with the postal remarks “*unclaimed”*, while the SCN of Mr. Mukesh Chauradiya (Noticee No.6) was duly delivered. Further, Mr. Mukesh Chauradiya had also submitted his reply dated July 11, 2018 in the matter.

14. Thereafter, subsequent to the handing over of the proceedings to the undersigned, the email addresses of the Mr. Ajay Goenka (Noticee No.2), Ms. Sangeeta Goenka (Noticee No.4) and Mr. Arun Panchariya (Noticee No.5) were obtained and the scanned copy of the SCN were mailed to them vide email dated February 03, 2022. However, since no reply was received from the Noticee Nos. 2, 4 and 5 an opportunity of personal hearing was granted to them on April 28, 2022, vide letter

dated April 18, 2022 issued through SPAD. The said Hearing Notices were also duly served on the above mentioned Noticees, vide e-mail dated April 21, 2022.

15. Further, with regard to RPL (Noticee No.1), RPL and Mr. Radheyshyam Goenka, (Noticee No. 3), the SCN was served through Newspaper publication on May 01, 2021 in the Kolkata Edition of Times of India (English) and Rajasthan Patrika (Hindi). Vide the said newspaper publication, an opportunity of personal hearing was also granted to Noticee Nos.1 and 3 on May 11, 2022. Further, the Hearing Notice dated April 18, 2022 for the personal hearing scheduled on April 28, 2022 for Shri Mukesh Chauradiya (Noticee No.6) ,was served through SPAD and was duly delivered.

16. It was observed that RPL and Mr. Arun Panchariya (Noticee no. 5), neither attended the personal hearing nor submitted their reply in the matter. Further, it was also observed that Mr. Mukesh Chauradiya did not attend the said personal hearing. However, subsequently, as requested adjournment of hearing by him vide email dated 16/05/2022, it was granted and final opportunity was given on 25/05/2022. Accordingly, Mr. Mukesh Chauradiya attended the said hearing and reiterated the submission made vide letter dated July 11, 2018. Mr. Ajay Goenka, (Noticee No. 2), vide his e-mail dated April 23, 2022, provided the details of the death of Mr. Radheshyam Goenka (Noticee No.3) and also stated that he will be appearing on behalf of himself, and Sangeeta Goenka (Noticee No.4). Further, vide the said e-mail, he had also sought for an adjournment of the personal hearing. Accordingly, another opportunity of personal hearing was granted to them on May 04, 2022. During the personal hearing, Mr. Ajay Goenka (Noticee No.2) sought for one week's

time to file the reply in the matter on behalf of himself and Ms. Sangeeta Goenka (Noticee No.4), which was granted. Accordingly, the reply in the matter was filed on May 11, 2022.

17. **The summary of the replies submitted by Noticee 2, 4 and 6 are as under:**

Noticee No. 2 and 4 in their joint replies have inter-alia submitted the followings:

a. Mr. Radhe Shyam Goenka (Noticee No. 3) passed away on October 7 ,2010 . A copy of his death certificate was provided;

b. it is denied that the documents like the Pledge Agreement and the certified true copy of the Board Resolution purportedly dated November 27, 2009 were signed by them;

c. the SCN does not demonstrate any personal gains made by the Noticee No. 2 and 4 from dealing in the securities /GDRs. There was no malafide intention on their part to undertake the purported fraudulent arrangement. The Noticee No. 2 and 4 were not aware of the purported execution of the Pledge Agreement and creation of the charge of the proceeds of the GDR.

d. the Noticee No. 2 and 4 were not entitled to any share of profits and had nothing to personally gain from the GDR issue;

e. No loss is suffered by any investor due to the issue of GDR and there is no significant price fluctuation in the shares around the time of corporate announcement

f. The Noticee No. 2 and 4 are not habitual defaulters and are also not technically qualified regarding the provisions of laws concerning the securities market in India or overseas.

Noticee No. 6 (Mukesh Chauradiya) in his replies has inter alia submitted the following:

a. The Implementing Regulations No.1/92 (Pursuant to Law No.9 of 1992) of Free Zone Enterprise in Jebel Ali Free Zone Authority, UAE (JAFZA), under which Vintage FZE was registered, required that there shall be a single owner, and It was Arun Panchariya who was the legal and beneficial owner of Vintage;

b. In the Shareholder's list as on September30, 2009/ 2010/ 2011/ 2012/ 2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held 99% of Equity Shares in the company, so all along Arun Panchariya was the beneficial owner of the company;

c. Arun Panchariya was initially the sole director, subsequently somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE;

d. The copy of the JAFZA Visa of Arun Panchariya for the period January 12, 2010 to January11, 2013 shows his designation to be Managing Director;

e. The Noticee has never been the Director or Managing Director of Vintage FZE, as alleged in the SCN, and that he only held the position of Manager;

f. The copies of the Noticee's resident-permits for the period 14th September 2005 to 9th September 2017 show that his designation/position was General Manager and not Director or Managing Director;

g. The Employment Card issued to the Noticee by JAFZA shows that he has always been an employee of Vintage FZE, and not a Director or Managing Director;

h. The decisions to subscribe to the GDRs issued by Rainbow and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it;

i. The Noticee signed only the loan redemption letters on instruction from Arun Panchariya;

j. The Noticee was not aware of any arrangement that Arun Panchariya may have had with Rainbow in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;

k. He did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya;

l. The Noticee being a nominee director in some of the subsidiaries is true, though the same has nothing to do with the allegations contained in the present matter of GDR issue is concerned;

m. Noticee was not involved in the investigation process and no summon or Investigation report was provided to him, hence he cannot comment upon the veracity of the contents of the show cause notice; and

n. Since the actions took place in Dubai (JAFZA) UAE, SEBI does not have territorial jurisdiction to issue the Show Cause Notice and to act upon it.

18. Both the Noticees No. 1 and 5 had failed to attend the personal hearing and to file their written submissions. I am, therefore, bound to proceed on the basis of available material with respect to the Noticees No. 1 and 5.

19. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs and Hearing Notices 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

20. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of 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 RPL and other Noticees in light of their role in GDRs issued by RPL, have been responsible for fraudulent issues of GDRs and, as a consequence, whether have violated 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 (PFUTP) Regulations 2003, Section 21 of SCRA, 1956, r/w clause 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

Company / RPL (Noticee No. 1)

21. During the course of the proceedings, a search was done on the website of the Ministry of Corporate Affairs (**"MCA"**) to ascertain the present status of the Company. It was observed from the MCA website that the status of the Company (CIN: L21010GJ1986PLC008772) is showing as **"Dissolved".** It is noted from the records that the present SCN in the matter was issued on June 28, 2018. Hence, I note that the Company was dissolved i.e., post initiation of the present adjudication proceedings. Pursuant to a company being dissolved, it will amount to the company closing down completely and will not be able to perform any functions or operations. Thereby, the company ceases to exist. Consequently, the adjudication proceedings initiated against such a company will nullify. Evidently, it would not also be appropriate to determine liability against a company which no longer exists as on date of current proceedings. Hence, the proceedings stand abated without going into the merits of the case. Should the company be revived or restored at any stage, a decision to initiate proceedings may be taken afresh at that stage.

22. In this regard I place reliance on the decision of the Income Tax Appellate Tribunal ('ITAT') in the matter of ***M/s. Anujay Hycare Products (P) Ltd. vs The Income Tax Officer*** *('ITAT Delhi')* Date of Judgement / Order - 06/04/2018, in which ITAT held that *"..... there could not have been any valid assessment order passed against the assessee-company which was not in existence as on the day of passing of the assessment order because it had already been dissolved. The assessment in the case of non-existing entity is thus nullity. Therefore, A.O. had no jurisdiction to pass the order against the non-existing company.......However, as on today, it is an established fact that assessee-company has already been dissolved and its name is struck-off from the Registrar of Companies. Therefore, it is a non-existing Company and as such, A.O. cannot pass the assessment order under section 143(3) of the I.T. Act, 1961 against the assessee-company. The issue is, therefore, covered in favour of the assessee-company by the above judgments of Hon'ble Delhi High Court, relied upon by the Learned Counsel for the Assessee.".*

23. In this context, I would also further like to draw reference to a judgment of the Hon'ble Delhi High Court in the case of ***Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd.***, *ITA NO. 273/2009* dated September 17, 2009 in which it was held that -"*When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act, 1956. In these circumstances, the Tribunal rightly*

held that there could not have been any assessment passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."

24. Therefore, in view of the facts and circumstances noted in the preceding paragraphs and also the fact that the Company is being dissolved. I conclude that the present adjudication proceedings initiated against it vide SCN dated June 28, 2018 cannot be proceeded with.

Radheshyam Goenka (Noticee No. 3)

25. With regards to the Radheshyam Goenka, (Noticee No.3), from the material available on record, I note that the SCN was duly served at his address. Thereafter, Shri Ajay Goenka (Noticee No. 2), vide email dated April 23, 2022, informed about the death of Radheshyam Goenka (Noticee No. 3), by submitting a copy of Death Certificate dated October 12, 2010.

26. In this regard, I note that the Hon'ble Supreme Court's Order in the case of ***Girija Nandini vs. Bijendra Narain Choudhury*** *(AIR 1967 SC 2110)* has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "*actio personalis moritur cum persona"* (personal action dies with the death of the person) would apply, and the said view was subsequently followed by SEBI in the case of *M/s. Sakthi Finance Limited* (Order dated September 14, 2016), wherein Adjudication Proceedings against Late N.

Mahalingam were abated. In the present case, I note from the copy of the Death Certificates dated October 12, 2010, issued by the Ahmedabad Municipal Corporation that the Noticee had passed away on October 7, 2010.

27. Therefore, by relying on the aforementioned Order of Hon'ble Supreme Court, I am of the view that the Adjudication Proceedings initiated against Shri Radheshyam Goenka (Noticee No.3) will not survive and is liable to be abated without going into the merits of the case. Consequently, no penalty is imposed on Shri Radheshyam Goenka (Noticee No.3), who has since deceased and the Adjudication Proceedings shall stand abated.

28. 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 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.

Issue I: Whether the Noticees No. 2, 4, 5 and 6 in light of their role in GDR issues of RPL, have been responsible for fraudulent issues of GDRs and, as a consequence, whether have 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?

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

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

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

31. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**") had obtained a loan of USD 27.02 million by entering into a Loan Agreement dated January 11, 2010, with EURAM Bank to subscribe to the GDRs of RPL. The aforesaid Loan Agreement was signed by the Noticee No.5 in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

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

USD 27,021,601.20.-

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

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

To provide funding enabling Vintage FZE to take down GDR issue of 10,235,455 Luxembourg public offering and may only be transferred to EURAM account nr. 580 011, Rainbow Papers Limited"

6. <u>Security</u>

6.1 In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the

Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

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

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

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

> **"RESOLVED THAT** a bank account be opened with EURAM Bank ("the Bank") or any branch of EURAM Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."

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

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

34. From the aforesaid resolution of the Board Meeting it is observed that the Board of Directors of RPL had authorized, Shri.Ajay Goenka (Noticee No.2), Managing Director, to sign and execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, Shri. Ajay Goenka (Noticee No.2) was inter alia authorized to carry and use the seal of RPL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

35. From the copy of the minutes of the meeting, it is observed that the Noticee 2 to 4 had attended the Board Meeting dated November 27, 2019 and approved the aforementioned resolutions. The aforesaid fact of opening of bank account with

EURAM Bank for such purposes as stated in the Board resolution and reproduced above has not been refuted by any of the Noticee No. 2 and 4.

36. I note from the records made available by EURAM Bank that subsequently RPL had entered into a Pledge Agreement with EURAM Bank on January 11, 2010. The said Pledge Agreement was signed by Shri. Ajay Goenka (Noticee No.2) on behalf of RPL, in the capacity of Managing Director of RPL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

2. Pledge

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

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 27,021,601.20 existing from time to time at present or hereafter on the ***securities account(s) no. 580011*** *held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

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

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

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

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

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

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

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

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

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

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

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

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

…Vintage had instructed EURAM to transfer the said amount of USD 27.02 million from its account to that of RPL and in turn the same RPL account was pledged with EURAM Bank under the Pledge Agreement.

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

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

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

preceding paragraph). Therefore, I note that the amounts transferred from RPL's EURAM account to RPL's other bank accounts were dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

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

43. 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."*

44. In the present matter, I note that the GDR subscription amount of USD 27.02 million was not available to RPL for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on January 27, 2010, a partial amount of USD 8,50,00 could be made available to RPL only on March 19, 2010, i.e. after a period of almost 2 months since the subscription money for the GDR issue was received in the EURAM Bank account of RPL. From the above mentioned table, I note that the dates and amounts of repayment of loan by Vintage to Euram Bank are synchronous with every transfer by Rainbow out of its account held with Euram Bank, which was pledged as security for the loan. Hence, it appears that only when Vintage repaid a sum of money, Rainbow was able to transfer a similar sum to its bank accounts in India and was able to use the same for any other purpose, as the charge on the pledged account was removed to that extent. Therefore, it is apparent that the amount transferred from RPL's Euram Bank Account was dependent on the repayment of the loan by Vintage.

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

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

47. 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".

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

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

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

investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."

49. In view of the above, I note that the scheme of arrangement of RPL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and the same was again secured by the RPL by pledging its GDR proceeds, seen along with the relevant disclosure w.r.t. subscription of GDR, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. During this entire process the Noticee Nos. 2 and 4 were the Directors of RPL, and were in charge of its affairs.

Directors of RPL – Noticee No. 2 and 4

50. It is observed from the reply dated May 09, 2022, submitted by Noticee Nos. 2 and 4, that they were not aware of the purported execution of the Pledge Agreement and creation of the charge of the proceeds of the GDR. Further, they have also denied that the Pledge Agreement and the certified true copy of the Board Resolution dated November 27, 2009 were signed by them. It is also mentioned that the SCN did not demonstrate any personal gains made by the Noticee No. 2 and 4 from dealing in the GDRs/ securities and also no loss is suffered by any

investor due to the issue of GDR and there is no significant price fluctuation in the shares around the time of corporate announcement. Hence, there was no malafide intention on their part to undertake the purported fraudulent arrangement.

51. With regard to the same, I note that, Ajay Goenka was the Chairman and Managing Director and Ms. Sangeeta Goenka was the Executive Director, of RPL. Further, it is observed that Ajay Goenka was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. It is also observed that Ajay Goenka was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company, by way of the said Board Resolution dated November 27, 2009. It is also noted from the copy of the board resolution received from EURAM Bank, that it was infact certified to be true by Ms. Sangeeta Goenka and Mr. Radheshyam Goenka, and furthermore EURAM Bank was authorized to use RPL GDR proceeds deposited with them, as security in connection with any loan. It is further noted that the Pledge Agreement entered into by RPL with EURAM Bank, whereby a deposit account of RPL maintained with EURAM Bank having USD 27.02 million was given as security for all the obligations of Vintage under the Loan Agreement and had been signed by Ajay Goenka.

52. I further note from the contents of the Pledge Agreement dated January 11, 2011 that RPL had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so

as to secure the present and future obligations of Vintage. The Preamble of the Pledge Agreement also expressly states that:

"By loan agreement K110110-011(hereinafter referred to as ***"Loan Agreement"****) dated January 11, 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 27,021,601.20 .The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."* (Emphasis Supplied)

53. From the above preamble to Pledge Agreement, it is clear that RPL was aware of the loan agreement and acknowledged and agreed to its terms and conditions. Further, I also note that the pledge agreement entered into by and between RPL and Euram Bank on January 11, 2010 was signed by Shri Ajay Goenka (Noticee No 2) for RPL. I note that the signature is identical to what is found in the application to open an account / securities account submitted to EURAM for opening Corporate Trust account by RPL.

54. I also note that Noticee No.2 was authorized to use the funds in the EURAM Bank account of RPL and with such authorization he had entered into the Pledge agreement with EURAM Bank, providing securities for the loan obtained by Vintage to subscribe to the GDR issue of RPL. All directors including Noticee No. 2 being director, was part of the board meeting, where the resolution was passed to authorize the Noticee No.2 with broad powers with respect to the GDR issue. Thus, the aforesaid Noticees (2 and 4) were the human agency through which the

aforesaid fraudulent scheme of RPL to finance its own GDR issue was effected. Further, RPL had failed to report all these material events of entering into a pledge agreement, its GDR proceeds not being fully available to it until the repayment of the loan by Vintage, in its annual financial statements. Therefore, the Noticee Nos. 2 and 4 being the Chairman / Managing Director and Executive Director of RPL were in charge of the day to day affairs of the company at the relevant point in time and are also liable for this fraud committed by the company under their watch. Thus, the Noticees' contention of not being aware of the pledge agreement and the creation of charge of the proceeds of the GDR in addition to denying signing the Pledge Agreement and certifying the copy of the Board Resolution dated November 27, 2009, cannot be accepted.

55. It is pertinent to mention Section 27 *of the SEBI Act, 1992* which talks about 'Contravention by Companies', as per the said provision:

"(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention *was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*

(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."

56. As regards that the Noticee's contention that they had neither made any profit nor caused any loss to investors, it would be appropriate to once again 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 *"…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*."

57. Further, the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** *[(2006) 68 SCL 216 (SC)]* held that, *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulations is established and hence the intention*

of the parties committing such violations becomes wholly irrelevant…". In view of the same, the said contention of the Noticees is rejected. Therefore, from the above it is established that Noticee Nos. 2 and 4 have 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.

Directors of Vintage – Noticee No. 5 and 6

58. In the present matter, Vintage was sole subscriber of GDR issue of RPL and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 27.02 million for which security was provided by RPL by pledging its GDR proceeds. The Noticee No.5 had signed the Loan Agreement in capacity of the Managing Director of Vintage. Further, Vintage defaulted in repayment of loan to the extent of USD 6.26 million, thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that Vintage acquired GDRs of RPL to the tune of USD 6.26 million at free of cost. On perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it is observed that the Noticee No.5 is the beneficial owner of Vintage.

59. Further, I note that the Noticee No. 5 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.

60. I find that Noticee no. 5 had aided and abetted the fraudulent scheme of self-financing of the GDR issue of RPL by acting on behalf of Vintage in the capacity of

its Managing Director by executing the loan agreement on behalf of Vintage with EURAM Bank. I note that the Noticee No.5 was the beneficial owner of Vintage FZE in which the Noticee No.6 had served as Managing Director. Therefore, the Noticee No. 5 was connected with the Noticee No.6. The role played by Vintage in the fraudulent scheme has already been brought out in details in the preceding paragraphs. From the above, it is observed that the Noticee No. 6 held key position in Vintage (was Managing Director and authorized signatory of Vintage) and was in the knowledge of Noticee No.5's scheme of subscribing to GDR issues through Loan Agreement and defaulting on repayment of loan in several GDR issues (as the Noticee No. 6 had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan in the capacity of Authorized Signatory)

61. Noticee No. 6 in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The fundamental grounds of defence taken by the Noticee are-

a. He has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;

b. The decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee, had no role to play in it he signed the loan redemption letters and letter for extension of loan repayment on the instructions of Mr. Arun Panchariya;

c. The Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

d. The instant matter is beyond the territorial jurisdiction of SEBI as all the commissions and omissions on the part of the Noticee were done in Dubai (JAFZA).

e. Noticee was not involved in the investigation process and no summon or Investigation report was provided to him, hence he cannot comment upon the veracity of the content of the show cause notice.

62. The Noticee have submitted that a copy of the Investigation Report/ other documents on the basis of which the SCN was issued, was not provided to them despite the request made by them. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticee. Further, on a comparison of the SCN and the Investigation Report, it is observed that the SCN has reproduced the contents of the Investigation Report to a large extent and hence it tantamount to providing the Investigation Report itself.

63. 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: *"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." In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable.

64. For the lack of territorial jurisdiction with SEBI in the instant matter the Hon'ble Supreme Court in its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India v. Pan Asia Advisors Ltd and Another*** *(Civil Appeal No. 10560/2013, AIR 2015 SC 2782)* dealing with the issuance of GDRs by companies and SEBI's territorial jurisdiction therein has noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of ***GVK Industries Officer v. Income Tax Officer*** *(2011) 4 SCC 36*, where it had been held that a law may proceed against

an extra-territorial aspect, in case it had *“got a cause and something in India or related to India and Indians in terms of impact, effect of consequence”.* The Court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of the above-mentioned reasons, the Hon’ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors.

65. Thus, the issue of jurisdiction of SEBI in GDR matters having been settled by the Hon’ble Supreme Court. Hence, this defence of the Noticee No. 6 cannot be accepted.

66. With respect to the defence of the noticee being an employee of Vintage, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. Mukesh Chauradiya signed the loan redemption letters to EURAM for the loan availed for subscription of RPL’s GDR issue as Authorized Signatory of Vintage. A letter dated January 12, 2011 for extension of repayment date of loan by Vintage was also signed by Mukesh Chauradiya as Managing Director of Vintage.

67. It is seen from the letter dated January 12, 2011 addressed to EURAM Bank that the Noticee has represented himself to be the Managing Director/Director of Vintage. Having represented himself as being the Managing Director/Director of Vintage, the Noticee cannot seek relief from the consequences of such

representation by asserting that he was merely an employee. The circumstances indicate that Mukesh Chauradiya (Noticee No. 6) was playing an important role in the affairs of Vintage during the relevant period. In this regard I note that a similar contention had been raised by Mukesh Chauradiya (Noticee No. 6) before the Hon'ble SAT in ***Mukesh Chauradiya vs. SEBI*** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

"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.

68. As held by the Hon'ble SAT, the exact designation of the Noticee No. 6 is not relevant. I note that Noticee No. 6 executed several loan agreements/ signed other documents in various matters involving fraud related to GDR issues where Vintage was involved. In view of this, it can be concluded that Noticee No. 6 held key position in Vintage and cannot plead ignorance of the scheme of manipulation.

69. Therefore, the Noticee No. 6 acted as an aide to the Noticee No.5 and facilitated the fraudulent scheme by executing the Loan Redemption Letters and Extension of date for Loan Repayment Letter addressed to EURAM Bank in capacity of the Managing Director of Vintage.

70. Thus, the Noticees No. 5 and 6 being the sole beneficial owner of Vintage and key managerial personnel respectively, facilitated Vintage in selling the converted equity shares of the company and are squarely responsible for the fraud perpetrated and I hold them to 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?

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

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

72. 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."

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

74. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the Noticee No. 2, 4, 5 and 6 make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below –

SEBI Act, 1992

"Penalty for fraudulent and unfair trade practices.

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

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

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

75. 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.

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

76. 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.

77. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that RPL had misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news

in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. Out of the GDR proceeds of USD 27.02 million, USD 21.04 million was transferred for GDR issue expenses to RPL's bank account in India. Vintage repaid the loan amount to the extent of USD 20.77 million and thereafter defaulted on the remaining loan amount. On account of the loan default by Vintage and the subsequent instruction to EURAM by RPL, EURAM adjusted outstanding loan amount (includes interest on loan amounts) of USD 6.26 million from RPL's GDR proceeds. Hence, GDRs to the tune of USD 6.26 million were issued by RPL to vintage at free of cost and at the cost of other investors of RPL. The said subscription of the GDRs by Vintage was funded by RPL itself, through the Noticees. Therefore, the magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 27.02 million. Also, against Vintage and Noticee Nos. 5 and 6, in past also actions have been taken by SEBI for their involvement in similar fraudulent GDR schemes.

ORDER

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

Noticee	Violation and Penal Provisions	Penalty
Shri. Ajay Goenka (Noticee No. 2) (PAN: AAZPG8113B)	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)**
Ms. Sangeeta Goenka (Noticee No. 4) (PAN: AADPG0153F)	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 Lakhs)**
Mr. Arun Panchariya, Noticee No. 5 (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)**
Mr. Mukesh Chauradiya, Noticee No. 6 [PAN: AAVPC0966A]	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 Lakhs)**

79. The above 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

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

a) Name and PAN of the entity (Noticee):

b) Name of the case / matter:

c) Purpose of Payment: Payment of penalty under AO proceedings

d) Bank Name and Account Number:

e) Transaction Number:

80. 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.

81. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of 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 27, 2022 **Adjudicating Officer**