

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/ 9503]**

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

**In respect of:-
Farmax India Ltd. (PAN: AADCB1600R)**

In the matter of Farmax India Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("SEBI") had conducted investigation against several Indian companies that had issued Global Depository Receipts ("GDR") in overseas markets. In this regard, on an enquiry with European American Investment Bank ("EURAM Bank") about the loan taken by initial GDR subscribers, it was informed that in respect of GDR issue of Farmax, M/s. Vintage FZE ("Vintage"), now known as Alta Vista International, had availed loan against the GDR proceeds of Farmax. Accordingly, SEBI had investigated the issue of loan taken against the GDR proceeds of Farmax during the issuance of GDR i.e. June 01, 2010 to August 31, 2010 (hereinafter referred to as "Investigation Period ("IP")) to ascertain as to whether:
 - a. GDRs were issued with the intention of defrauding Indian investors
 - b. Shares underlying GDRs were issued with proper consideration and
 - c. Appropriate disclosures with respect to Listing Agreement , if any were made

2. During the investigation, following facts was observed, which was basis the for issuance of SCN;

- a) Farmax issued 4.25 million Global Depository Receipts (hereinafter referred to as “GDRs”) amounting to US\$59.925 million on June 29, 2010 and further issued 0.85 million GDRs amounting to US\$11.985 million on August 14, 2010 under green shoe option. Summary of the GDR issue (in two tranches) as provided by the Noticee is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USmn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds were deposited	Stock exchange on which GDRs are listed
29-6-2010	4.25	59.925	DBS Bank, Mumbai	10,62,50,000	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange
14-8-2010		0.85		11.985			2,12,50,000	
Total		5.10		71.91			12,75,00,000	

- b) On perusal of corporate announcements made by Farmax to Bombay Stock - Exchange (hereinafter referred to as “BSE”) during the period December, 2009 to August, 2010, it was observed that the company had informed BSE on April 27, 2010 that the Board of Directors of the Company at its meeting held on April 27, 2010 had approved issue of GDRs.
- c) Further, on June 29, 2010, Farmax informed BSE that, “... the Company has successfully concluded placement of 4,250,000 Global Depository Receipts at US\$ 14.1 per Global Depository Receipt”.
- d) Prospect Capital Ltd. was the Lead Manager of GDR issue of Farmax.
- e) From the examination of Loan Agreement, Pledge Agreement and ESCROW account statement, investigation established that all 5.10 million GDRs of Farmax (amounting to USD 71.91 million) were subscribed by only one entity, i.e., Vintage.

- f) Investigation also observed that Vintage had availed of loan facility to the extent of USD 71.91 million from EURAM Bank to subscribe to the GDRs of Farmax. The loan amount was same as the GDR size of Farmax.
- g) From examination of KYC documents, investigation observed that Arun Pachariya (AP) was the beneficial owner and Managing Director of Vintage as on June 06, 2007. From Vintage's letter dated December 30, 2010, it was further observed that Mr. Mukesh Chauradiya was its director. Vintage's letter dated April 27, 2011 and February 23, 2012 also show that Mukesh Chauradiya was Authorized Signatory of Vintage.
- h) It was further observed that on the same day of the signing of the Loan Agreement, i.e. May 05, 2010, a Pledge Agreement was also signed between Farmax (as Pledgor) and EURAM Bank (as Bank).
- i) Vintage had entered into Loan agreement with EURAM Bank as per which Vintage would be provided a loan only for the purpose of subscribing to the GDRs of Farmax. The Loan Agreement mentioned that the loan amount "... may only be transferred to EURAM account No.580018 Farmax India Ltd...".

Therefore, investigation observed that subscription of GDRs was done through loan availed by Vintage from EURAM Bank and the security for the Loan Agreement was provided by pledging the proceeds of the GDR issue.

- j) It was also observed that Farmax pledged GDR proceeds even before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription to GDR issue (as mentioned in Loan Agreement). Further, on perusal of the Pledge Agreement and Loan Agreement, investigation observed that bank account in which GDR proceeds were held, was in the name of the Farmax but the amount deposited in the account was not at the disposal of the company as same was kept as collateral even prior to issuance of GDRs for the loan availed by Vintage.
- k) From examination of Farmax's bank account held with EURAM Bank (where GDR proceeds were deposited) and loan account of Vintage (held with EURAM Bank), investigation observed that only after Vintage repaid loan instalments, equal/ less amount of money was transferred from Farmax's

EURAM Bank account to Farmax's India and UAE account on the same day. Thus, investigation concluded that the GDR proceeds were not at the disposal of Farmax.

- l) From the above, investigation concluded the Pledge Agreement allowed Noticee to effectively finance the purchase of its own GDRs since it deposited the GDR proceeds as collateral for the loan extended by EURAM Bank to Vintage which was the sole subscriber to the GDR issue of Noticee. Since the underlying of GDRs i.e., equity shares resulted in an increase of capital of the company without proper consideration, such arrangement was fraudulent in nature. Moreover, the same was not disclosed to the shareholders and investors.
- m) GDR proceeds were deposited in Farmax's account no. 580018 held with EURAM Bank. It was observed during investigation that the account no. 580018 was the same where Farmax showed its GDR proceeds had been deposited. Details of receipt of GDR proceeds in the Farmax.'s bank a/c maintained with EURAM Bank in Austria are as given below:-

Date of credit of funds	Credit amount (USD)
June 28, 2010	59,925,000
August 13, 2010	11,985,000
Total	71,910,000

- n) The details of realization of funds by Farmax out of GDR proceeds of US\$ 71.91 million is tabulated below:

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Aug 25, 2010	225,000
Sept 15, 2010	250,000

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Total	475,000

Date of receipt of funds	Amount of funds received by Farmax in its UAE subsidiary's a/c {Abu Dhabi Commercial Bank (ADCB) and Emirates NBD Bank} (USD)
Sep 01, 2010	1,000,000
Sep 09, 2010	500,000
Sep 09, 2010	1,000,000
Sep 15, 2010	750,000
Sep 21, 2010	1,000,000
Sep 22, 2010	2,000,000
Sep 30, 2010	1,250,000
Oct 05, 2010	3,000,000
Oct 05, 2010	2,500,000
Oct 08, 2010	2,000,000
Sep30, 2011	600,000
Total	15,600,000

- o) Funds were transferred to various entities from Farmax's UAE subsidiary's i.e. Farmax International FZE, account. In this regard, Farmax, vide e-mail dated July 09, 2015, submitted that funds were transferred from its EURAM Bank a/c (where GDR proceeds were deposited) to Farmax International FZE without its knowledge. Farmax further submitted that it was not aware of funds transferred from its Sharjah based subsidiary Farmax International FZE to some other entities.
- p) On examination of the transfer request form for payment of money from Noticee's a/c (maintained with EURAM Bank, where GDR proceeds were deposited), investigation observed that fax no. (+9713553047) on the transfer orders was same as the fax no. from which Vintage sent its request for redemption of loan amount to EURAM Bank. Further, investigation observed that on the top of both documents name "Vintage" appeared. Investigation further observed that USD 2,50,000 which were transferred on September 15, 2010 from Farmax's EURAM Bank a/c to it's Indian account, also originated from Vintage's fax no. (+9713553047).
- q) Investigation therefore concluded that Farmax, in connivance with its associates transferred USD 15.60 million from its EURAM bank account to the account of Farmax International FZE and Vintage colluded with Farmax to divert the funds which caused loss to the Farmax as well as its shareholders

to the extent of USD 15.60 million and the claim of Farmax that it was not aware of such transfers was false.

r) Cancellation of GDRs (conversion into equity shares):

- On perusal of the details of GDR transactions provided by EURAM Bank, it was observed that Vintage had transferred 12,58,000 GDRs to India Focus Cardinal Fund and 3,85,865 GDRs to Clariden Leu AG.
- All GDRs were subscribed by Vintage. GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from August 09, 2010 and continued till December 04, 2012. During the period a total 12,56,000 GDRs (24.63% of total 5.10 million GDRs issued) were converted.
- India Focus Cardinal Fund was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011 and India Focus Cardinal Fund was granted transfer from EURAM Bank to another FII (FPI) Cardinal Capital Partners on July 20, 2011 and was registered as sub account of FII- Cardinal Capital Partners for the period July 20, 2011 to June 19, 2017.
- Highblue Sky Emerging Market Fund was registered as sub account under FII-KBC Aldini Capital Ltd. (June 18, 2010 to October 21, 2012) and thereafter sub account was transferred to FII-Golden Cliff (previously known as Vaibhav Investments Ltd.) for the period October 22, 2012 to February 28, 2017.
- India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold the equity shares (which they received post cancellation of GDRs) in Indian securities market. By October 31, 2012, India Focus Cardinal Fund sold all the shares which it had received post conversion of GDRs, i.e., 3,10,25,000 equity shares.
- Highblue Sky Emerging Market Fund received 3,75,000 equity shares post conversion of 15,000 GDRs. By January 24, 2013 it sold all the shares which it had received post conversion of GDRs.

- s) Sale of equity shares by entities in India: Investigation observed that underlying shares of GDRs were sold to Indian investors (during the period August 12, 2010 to January 23, 2013) by Vintage through sub accounts IFCF and Highblue Sky Emerging Market Fund.
- t) Termination of GDR issue by Global Depository:
- The Depository i.e. The Bank of New York Mellon ('hereinafter referred to as "BNY"), issued Termination Notice to holders of GDRs of Farmax on March 16, 2015. The GDR facility was terminated with effect from June 16, 2015. Out of total 12,75,00,000 underlying shares of GDRs, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold 3,14,00,000 shares before termination of the GDR facility. After termination of the GDR facility, remaining 9,61,00,000 shares (12,75,00,000 – 3,14,00,000) were sold by BNY in India during the period from June 24, 2015 to September 11, 2015. Total 9,61,00,000 shares aggregating to INR 1,71,53,923.49 were sold on BSE and NSE. Shares were sold on BSE and NSE in the name of The Bank of New York Mellon (depository).
 - Total 12,75,00,000 shares of Farmax worth INR 53.48 crore were sold (pre and post termination of GDR scheme) in Indian securities market.
- u) With regard to repayment of loan by Vintage, investigation observed the following:
- Vintage repaid loan amount to EURAM Bank in several instalments aggregating to USD 15,480,200 till October 08, 2010 and thereafter defaulted on the loan payment. Vide letter dated August 14, 2012, EURAM Bank intimated Vintage (now known as Alta Vista International FZE) that Alta Vista International FZE had not settled outstanding loan amount of USD 56.66 million (principal amount USD 56.43 million and interest amount USD 0.23 million), EURAM Bank realized part of the pledged security to cover amount of USD 56.57 million.
 - From Farmax's EURAM Bank statement, investigation observed that on August 13, 2012, EURAM Bank adjusted USD 56.57 million from Farmax's bank account (where GDR proceeds were deposited) towards loan taken by Vintage.

- It was observed from examination of the annual report of Farmax for FYs 2011-13 that NOTICEE had written off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 million were written off by Farmax on account of loan default by Vintage for which security was provided by Farmax.
 - v) Investigation observed that loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, investigation concluded that shares sold by India Focus Cardinal Fund and Highblue Sky Emerging Market Fund are the shares which were issued without proper consideration.
3. In light of the above facts, Adjudication proceedings were initiated against the Noticee for violations as alleged in the SCN.

APPOINTMENT OF ADJUDICATING OFFICER

4. The Adjudicating Officer("AO") was appointed vide order dated May 23, 2017, under section 19 read with Section 15-1 of Securities and Exchange Board of India Act, 1992 ("the Act") and Rule 3 of SEBI AO Rules and SCRA AO Rules to inquire and adjudge under Section 15HA of the SEBI Act and Section 23E of SCRA 1956 (SCRA) to inquire and adjudge the alleged violations of Section 12A(a),(b) and (c) of the SEBI Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of SEBI Prohibition of Fraudulent and Unfair Trade Practices Regulations 2003 ("PFUTP Regulations") and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement by Farmax India Ltd ("Farmax/company/Noticee"). Consequent to transfer of current proceedings, the undersigned has been appointed as AO vide order dated August 13, 2019, to inquire and adjudge the aforementioned alleged violations under Section 15HA of the SEBI Act and Section 23E of SCRA.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Based on the aforesaid facts, SCN dated January 12, 2018, was issued to Farmax India Limited. Following was alleged in the SCN;

- Farmax issued 5.10 million GDRs amounting to USD 71.91 million in June and August, 2010. The entire GDR issue were subscribed by only one entity, i.e., Vintage.
- Vintage took a loan from EURAM Bank through a Loan Agreement dated May 05, 2010 to subscribe to the GDRs of Farmax. Farmax provided security towards the loan obtained by Vintage for subscribing to the GDRs of Farmax, through Pledge Agreement signed between Farmax and EURAM Bank, wherein Farmax pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of Farmax. The information of Pledge Agreement to the extent of USD 71.91 million was not disclosed by Farmax to its shareholders/investors.
- The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank. These agreements enabled Vintage to avail the loan from EURAM for subscribing GDRs of Farmax. The GDR issue would not have subscribed had Farmax not given any such security towards the loan taken by Vintage.
- Farmax made announcement on June 29, 2010 and August 14, 2010 on BSE that it had successfully concluded placement of GDRs and raised money. However, Farmax had signed pledge agreement with EURAM Bank on May 05, 2010 and pledged GDR proceeds as security against loan extended by EURAM Bank to Vintage before issuance of GDRs.
- The arrangement of Pledge Agreement and Loan Agreement resulted in subscription of GDR issues of Farmax which was not disclosed but reported misleading news to the stock exchange which contained information in a distorted manner and might have influenced decision of investors.
- Farmax wrote off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 were written off by Farmax on account of loan default by Vintage. Farmax gave misleading information regarding loan amounting to USD 15.60 million which

was never extended to its UAE subsidiary and later written off it. The information of write off was deliberately concealed from the investors of Farmax. Farmax gave misleading, distorted information to its shareholders and caused loss to its shareholders to the tune of USD 72.20 million.

- The loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, shares sold by IFCF and Highblue Sky Emerging Market Fund (hereinafter also referred to as “Highblue”) (who were allotted shares subsequent to conversion of GDRs of Farmax) were the shares which were issued without proper consideration. Since the underlying of GDRs i.e., equity shares, resulted in an increase of capital of Farmax without proper consideration, such arrangement was fraudulent in nature.
- Payment of USD 56.57 million which was written off by Farmax as Farmax had pledged GDR proceeds against this loan. Thus, Farmax devised GDR scheme, wherein Farmax 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 and caused loss to the shareholders by writing off USD 72.20 million.
- Farmax furnished wrong information to SEBI by providing false list of GDR subscribers.
- The corporate announcements dated June 29, 2010 and August 14, 2010 made by Farmax to BSE reported misleading news which contained information in a distorted manner and might have influenced decision of investors.
- Vintage was the sole subscriber of GDR issue of Farmax and Vintage subscribed to the GDR issue by taking a loan from EURAM Bank to the extent of USD 71.91 million and the security for the said loan was the GDR proceeds of Noticee. Vintage repaid loan to the tune of USD 15.48 million and defaulted on the loan thereafter. Outstanding loan amount of USD 56.57 million was adjusted by EURAM Bank from Farmax’s EURAM Bank Account. On account of default by Vintage, USD 56.60 were written off by Farmax. Highblue and IFCF, received

GDRs, converted them and sold converted shares worth INR 51.77 crore pre termination of the GDR program, on Indian stock exchanges. Post termination of GDR facility shares worth INR 1.71 crore were sold.

- Therefore, it was concluded that shares sold by IFCF and Highblue and shares sold by BNY, the Depository Bank, post termination of GDR facility were the shares which were issued without proper consideration as Vintage defaulted on loan repayment.
- Prospect was Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of Farmax.

6. The aforesaid SCN was duly served upon the Noticee on January 30, 2018 and the same was further acknowledged by the Noticee vide its letter dated March 03, 2018, wherein the Noticee made written submissions to the SCN after seeking two extensions vide letters dated February 03, 2018 and February 24, 2018. The contentions of the Noticee in a nutshell are as follows;

- *GDR issue was done by following all the regulations; we have issued GDR for a consideration as per the process. However we are unaware of this pledge agreement which funded the GDR until we got a mail from Euram. We believed the GDR Issue as amount was credited to our Escrow Account.*
- *We have given all the disclosures as required by the Listing Agreement during the GDR issue. we never concealed any information that was known by us.*
- *In SEBI notice, it was mentioned that the promoters shareholding was 30.58% i.e 14205000 shares before GDR and it got reduced after GDR, but the fact is our shareholding percentage came down due to newly allotted shares for GDR issue but the number of shares which we were holding were remain the same before and after GDR. The number of shares were increased due to split in shares each share was split into 5 shares which means our 14205000 shares became $14205000 \times 5 = 71\,025\,000$ shares. From the above explanation it is clear that the promoters have not increased or decreased their shareholding during the GDR process,*

promoters have lost so much of money due to the fall in share price they have not sold even single share in the market which proves their commitment toward the company.

- The company has followed all the regulations of listing agreement and informed both ASE and BSE about the outcome of the Board meeting. The courier slip has been already submitted to SEBI, which is also confirmed by SEBI. However SEBI say that ASE has confirmed that it has not received the copy which means they may have not properly checked the records. The same information has been displayed on BSE, so there is no reason for us to keep the outcome a secret from ASE. We have not benefitted anything monetarily or other ways from this outcome. We have followed utmost integrity in following all the rules of listing Agreement.*
- The promoters have not sold or brought single share in the above window and are no way benefitted by the stock split news. It was only done on the advice of Sanjay Aggarwal for the purpose of GDR Issue.*
- we are nowhere aware of the pledge agreement as we don't know Vintage FZE and Arun Pancharia until they are introduced to us by Euram Bank. We also got the List of GDR Subscribers from Prospect Capital Ltd which is a big name; we believed their list and informed the same to Stock Exchanges and SEBI. We believed that the entire Issue was taking place as per the rules and regulation prescribed by SEBI and other authorities, we never got a doubt as Mr. Sanjay Aggarwal who is a professional with vast experience was involved in the issue and is taking care of all the necessary regulatory disclosures, we expected to get the money from Euram Bank as the GDR issue was successful as intimated by Sanjay Aggarwal and Jalaj Batra to us. It is later when Euram Bank intimated us about the pledge agreement we got to know about this fraud.*
- As per pledge agreement drafted on May 5, 2010, the amount of loan issued was 71.10 million but our GDR issue initial size was 55 Million approx later on we opted for green shoe option on advice of Sanjay Aggarwal. So how could Arun Pancharia know the exact amount of GDR going to be issued even before the issue took place, this clearly shows that*

Mr. Arun Pancharyia has clearly planned the entire fraud along with Euram Bank. According to SEBI analysis it clearly shows that Arun Pancharia has bought the GDR's with Loan obtained from Euram Bank and has sold the GDR converting them into equity shares on Indian Stock Exchanges there by earning huge money.

- As per the investigation carried by SEBI it clearly confirms that the Arun Panchariya is the Main culprit behind this GDR fraud, he is the Managing Director of Vintaze FZE and President of Euram Bank Asia Ltd at the time of GDR issue it clearly shows the conflict of interest and also proves that Euram Bank was also involved in this fraud and cheated Indian Investors. From SEBI investigation it is clearly evident that Mr .Mukesh Chouradiya signed the loan agreement on behalf of Vintage FZE with Euram Bank in case Rasoya proteins Ltd GDR on 14111 Feb, 2011 as per SEBI Annex -12, which again proves that Arun Panchariya is corroborated with Euram Bank or else how could the change in Managing Director of Vintage FZE happen without intimation to the parties involved.*
- Banks or Financial Institutions around the world follow more or less the same process in Loan recovery, in the first instance the bank gives notices to borrowers and guarantors to pay the amount ·Or else will initiate recovery process by selling off their assets. But in our case the EURAM Bank has not sent any notice informing the loan default by Vintage FZE or has never issued a notice stating action will be taken against us if the loan amount is not paid. Without following the process, Euram Bank simply mailed us that the GDR amount has been confiscated to recover the dues by Vintage FZE. This mail was sent only after our follow up with Euram Bank to stop unauthorized transfers from our bank account and to transfer GDR amount to our Indian account.*
- We have signed tripartite agreement as suggested by Sanjay Aggarwal as a process of GDR Issue; this was also confirm1ed by Sanjay Aggarwal in the deposition given to SEBI. This tripartite agreement was later converted into pledge agreement by Arun Pancharia and his associates.*

- From the above point it is clearly evident that the GDR amount was not at the disposal of Farmax, but the Euram Bank has given various reasons other than telling us about the pledge agreement, whenever asked to transfer amount to Indian account. This clearly shows that Farmax was not aware of the Pledge agreement until informed by the Euram Bank. After the completion of GDR Issue we pressurized Sanjay Aggarwal to get the GDR amount to our Indian Account; however he said that it will take a lot of time to complete the formalities to get the amount back to India. On our continuous persuasion by us they sent USD 2.25 Lakhs to Farmax Indian Account, after that we believed them as they have sent amount to our Indian Account and followed their instructions. But Arun Pancharia along with his associates has transferred the amount from our Euram Bank Account to Farmax FZE and from Fannax FZE to other companies owned or operated by Arun Pancharia. When we came to know that 15 Million USD has been transferred from our Account, sensing that something is going wrong we blocked our Farmax Dubai Account and informed Euram Bank about this unauthorized transfers and requested them not to transfer any amount to other entities. If we have not intimated EURAM Bank about this unauthorized transfer, they would have transferred the entire GDR amount to Vintage FZE. As per the bank statement obtained by SEBI from Euram Bank, Vintage has paid loan amounts in different portions to Euram Bank and the equal amount of Farmax GDR amount was released and has been transferred to Farmax International FZE and from there to the companies of Arun Pancharia, all these transactions clearly prove that Arun Pancharia has clearly planned the transactions. In SEBI investigation it is clearly confirmed that we are unaware of these transactions which show that we are in no way associated with Arun Pancharia and his associates.
- Euram Bank has colluded along with Arun Pachariya and cheated Farmax India Limited. Since Euram Bank is also involved in this fraud, how could we believe their investigation? As per their convenience they prepared reports including SEBI Annexure - 13. Mr. M.

Srinivasa Reddy never denied that it was not his signature on Pledge Agreement, he only said that he has not signed the pledge agreement, he was made to sign Tripartite agreement which was later used by Arun Pancharia and Euram Bank to create Pledge Agreement. As per Sanjay Aggarwal statement, it is clearly evident that they have taken signatures from M. Srinivasa Reddy for Tripartite Agreement later they have converted these documents into pledge agreement. It shows that we have not signed for pledge Agreement.

- SEBI investigation has proved that vintage is only single subscriber of our GDR. But Prospect Capital has sent us a list of GDR subscribers, which made us, believe that the GDR has been fully subscribed. From the above it is clearly evident that Farmax is not aware of true subscribers and pledge agreement.*
- Post termination of GDR facility Arun Pancharia and his entities sold Farmax shares worth of 1.71 crores as per SEBI point no. 24.7 page no. 16. Arun Pancharia and his associates sold the GDR's in Indian market and made fortune out of it, whereas promoters of Farmax have not sold a single share this shows the integrity of the promoters of Farmax.*
- Regarding listing of Luxembourg, we have informed the stock exchanges, but later we have not got any official Jetter from Luxembourg informing us about the delisting. So without any official confirmations from LSE how can we intimate stock exchanges? even company was not aware of delisting. As we have no knowledge about the delisting we have not informed the stock exchange about it, it clearly proves that we have not violated any regulations in this regard.*
- As per SEBI investigation it is clearly evident that the shares of Promoters have not increased or decreased due to buying and selling but were increased due to split in shares and the percentage of the shareholding was decreased due to increase in GDR shares. The*

Company has intimated the stock exchange about the board meeting of stock split which can be seen on BSE website and ASE was intimated through courier, the receipt of which was already sent to SEBI earlier.

- In the Annual Report for FY 2010-11, Farmax India Limited (NOTICEE) showed Cash and Cash equivalent at the end of the period as INR 235.59 crore, which included fixed deposit with EURAM Bank. The fixed deposit is made out of the full proceeds of GDR raised during the same FY. The corresponding receipt has been disclosed in the Balance Sheet under subscribed and paid up capital vide Schedule A, Page No. 30 of Annual Report.*
- The cash flow statement has been prepared under indirect method strictly adhering to the guidelines as issued by ICAI under Accounting Standard AS-3. The company, therefore, humbly submits that there is no violation whatsoever of Clause 50 and Clause 32 of listing agreement read with Section 21 of SCRA as alleged.*
- In FY2011-12 we have obtained statement of our GDR Escrow account from EURAM Bank which showed that our account balance was zero. After several enquiries we came to know about the fraud that had happened, VINTAGE FZE availed a loan by pledging our Fixed Deposit with EURAM Bank and defaulted in paying the loan due to which the EURAM Bank has totally adjusted our Fixed Deposit against the loan availed by VINTAGE FZE. We came to know about the above fraud in August 2012, after which we have passed necessary entries in our books of accounts by writing off Fixed Deposit with EURAM Bank and reducing Share Premium Account. As our EURAM Bank Statement is showing ZERO (o) balance in our account, there is no point in disclosing the Contingent Liability or Contingent Asset as per AS29 in our Annual Report for the year 2011-12. But the company has disclosed the above information in our Annual Report for the year 2011-12 under AS-29 .*

- *The Company and its promoters have suffered a huge financial and mental crisis due to GDR fraud, the company has been shut down due to NPA of its loan account with State Bank of India which was as a result of the GDR fiasco. All the assets of the promoters and factory of Farmax India Limited are confiscated by State Bank of India; promoters of the company are left penniless. Instead of penalizing company or its promoters for no wrong done by them we request SEBI to take action against Arun Pancharia and his associates to recover the GDR proceeds and give them to the company, so that the company can repay State Bank of India loan and start its operations again, which will create a lot of employment and will directly increase the wealth of shareholders.*
7. Thereafter, in the interest of principles of natural justice, opportunity of hearing was granted to the Noticee vide HN dated July 17, 2020, to attend virtual hearing (due to ongoing covid-19 situation) in the matter on August 05, 2020. The above HN was digitally sent at info@farmax.co.in and farmax_india@yahoo.com. These were the email ids which were already available on record.
8. The HN bounced back from the email ID info@farmax.co.in. However, the same did not bounce back from the email ID farmax_india@yahoo.com. Thus, the aforesaid HN was deemed to be delivered to the Noticee at farmax_india@yahoo.com. However, on the scheduled day of hearing, the Noticee did not attend the hearing. Thus, this matter is proceeded further on the basis of written submissions made by the Noticee available on record.

CONSIDERATION OF ISSUES

9. I have taken into consideration the facts and circumstances of the case and the material available on record. Issues that arise for consideration in the present case are:
- a) Whether the Noticee has violated the provisions of section 12A(a),(b) and (c) of the SEBI Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of SEBI PFUTP

Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement?

- b) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act and Section 23E of SCRA 1956?
- c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act, 1992, SCRA 1956 and SEBI (PFUTP) Regulations, 2003 which read as under:

SEBI ACT, 1992

“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 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 recognised 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;*
- (d) ”*

Relevant extract of provisions of PFUTP Regulations, 2003

“Regulation 3 - Prohibition of certain dealings in securities

No person shall directly or indirectly:

- (a) buy, sell or otherwise deal in the 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 there under;*
- (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 there under.*

Regulation 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:—

(a).....

(b).....

.....

(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;

(g)...

(h)...

.....

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

(l).....

(m).....

.....

(r) *Planting false or misleading news which may induce sale or purchase of securities;....."*

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.*

Listing Agreement

Clause 36

"...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:

(1)....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to:...,

...The above information should be made public immediately. "

Clause 50:

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

Clause 32

"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."

Accounting Standard ('AS -3 - Cash Flow Statements - inter-alia reads as follows: "Cash comprises cash on hand and demand deposits with bank.

Cash equivalents are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value."

AS 29 - 'Provisions, Contingent liabilities and Contingent Assets' inter-alia reads as follows;

A contingent liability is;

- a) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*
- b) a present obligation that arises from past events but is not recognised because:*
 - i. it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;*
 - ii. a reliable estimate of the amount of the obligation cannot be made.*

"27. A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote."

"68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable :

- a) an estimate of its financial effect, measured under paragraphs 35-45*
- b) an indication of the uncertainties relating to any outflow; and*

- c) the possibility of any reimbursement."

"71. Where any of the information required by paragraph 68 is not disclosed because it is not practicable to do so, that fact should be stated."

Accounting Standard (AS) - 1 - Disclosure of Accounting Policies - deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements. AS - 1 inter alia states the following:

"Considerations in the Select/on of Accounting Policies

16. The primary consideration in the selection of accounting policies by an enterprise is that the financial statements prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date.

17. For this purpose, the major considerations governing the selection and application of accounting policies are:-

a) Prudence

In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realized though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.

b) Substance over Form

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form.

c) Materiality

Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements."

Issue no. I: Whether the Noticee has violated the provisions of section 12A(a),(b) and (c) of the SEBI Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of SEBI PFUTP Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement?

11. From the allegation levelled in the SCN, it is noted that Farmax India Limited i.e. Noticee issued 4.25 million GDRs representing 10,62,50,000 shares of Noticee, amounting to US\$59.925 million on June 29, 2010 and further issued 0.85 million GDRs representing 2,12,50,000 shares of Noticee, amounting to US\$11.985 million on August 14, 2010.
12. GDRs were listed on Luxembourg Stock Exchange (LUX). The said issue of GDR of Noticee involving 5.1 million GDRs representing 12,75,00,000 underlying shares of NOTICEE, was subscribed by only one subscriber i.e., Vintage.
13. Vintage took a loan from EURAM Bank through a Loan Agreement dated May 05, 2010, to subscribe to the GDRs of Farmax. Farmax provided security towards the loan obtained by Vintage for subscribing to the GDRs of Farmax, through Pledge Agreement signed between Farmax and EURAM Bank, wherein Farmax pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of Farmax. The information of Pledge Agreement to the extent of USD 71.91 million was not disclosed by Farmax to its shareholders/investors.
14. Farmax, signed the Pledge Agreement with EURAM Bank. The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank. These agreements enabled Vintage to avail the loan from EURAM for subscribing GDRs of Farmax. The GDR issue would not have subscribed had Farmax not given any such security towards the loan taken by Vintage.

15. On a perusal of copy of Know Your Customer documents of Loan Agreement dated May 05, 2010 of Vintage available with EURAM Bank, it was observed that Arun Panchariya was the beneficial owner of Vintage. Further, it was observed that Mr. Sanjay Aggarwal was owner of La Richesse Advisors Private Limited, which was an Indian advisor to the Farmax for Farmax's GDR issue and also acted as a conduit of Arun Panchariya and Vintage in the instant case through whom monies were routed to Vintage. It was also observed at the time of investigation that Mukesh Chauradiya was Authorized Signatory of Vintage. Therefore, it was noted that AP and Mr. Mukesh Chauradiya were managing affairs of Vintage and they were responsible for all acts and deeds of Vintage. It was therefore alleged that FIL and the individuals named above had acted as parties to the fraudulent scheme of FIL GDR issue.
16. In this regard, it is noted that the Noticee has not denied the existence of the Loan Agreement as well as the Pledge Agreement, both dated May 05, 2010 but has stated that the signature on the Pledge Agreement is forged. It is also noted that the Noticee has stated that MD of the Noticee had signed blank documents and handed over them to Sanjay Aggarwal and Mukesh Chauradiya for the purpose of GDR issue. I find these two arguments contradictory. If the stand of the Noticee is that signed documents which included pledge agreement were handed over by it to Sanjay Aggarwal and Mukesh Chauradiya, then, it is not open for the Noticee to plead that signature of MD of the Noticee on the pledge agreement were forged. It is also noted that, as admitted by the Noticee, handing over signed blank documents implies that the signatory is authorizing whatever purpose these documents will be used for. Thus, it is clear that the Pledge Agreement was executed based on the signed blank papers provided by the Noticee and its MD.
17. Therefore, Noticee cannot question the validity of the same at this stage under current proceedings and the validity of such Pledge Agreement can only be questioned before the appropriate forum. If there is any document which is claimed to be wrongly executed, the law applicable provides appropriate remedy

for rectification of such document in order to declare the same invalid before the appropriate forum. If the Noticee was aggrieved it should have taken the appropriate step in this regard at the earliest opportunity before appropriate forum and no such claim can be entertained under current proceedings.

18. It is also observed that the Noticee has not submitted any proof / evidence under current proceedings in order to establish if any action was taken on part of the Noticee to report forgery of documents as claimed by the Noticee. Thus, the contention of the Noticee can not be accepted under current proceedings.

19. Further, it is noted that in its reply Noticee has submitted that first time it came to know about the pledge agreement on April 12, 2012. In the same reply, the Noticee has also submitted that EURAM Bank had sent two emails dated June 14, 2011 and December 12, 2011 with regard to pledge agreement. Therefore, any reasonable person with ordinary prudence could have enquired and would have known the scope of pledge agreement especially when the plea of the Noticee under current proceedings is that it had never entered into any pledge agreement. These submissions by the Noticee show that ignorance of pledge agreement pleaded by the Noticee is afterthought and they were aware of the existence of pledge agreement since its inception as borne out and further corroborated from the fact that it passed a resolution in its Board of Directors meeting with regard to the same as discussed in succeeding paras of this order. Thus, it is concluded that the Noticee was aware of the Pledge Agreement as on the date of passing of board resolution.

20. In this regard, it is further noted that a resolution was passed by the Board of Directors of the Noticee on January 30, 2010 which resolved to open the EURAM Bank account of the Noticee for purpose of receiving GDR proceeds and authorized EURAM Bank to use the funds deposited in the said bank account as security in connection with loans, if any. Specifically, the said resolution dated January 30, 2010 passed by the board of the Noticee, provided as follows:

“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 arrangement if and when so required.”

21. The resolution clearly shows that it provided for authorisation to use the funds to be deposited in the EURAM bank account, as security in connection with loans, if any. I note that at the time of the Resolution there was no loan which the Noticee had taken from EURAM Bank. The board of the Noticee ought to have questioned the existence of such a loan. I find that there is nothing on the record to suggest that board did raise any question to such resolution. This shows that the Noticee was aware of the Pledge Agreement.
22. The Noticee has also submitted that management of the Noticee and Mr. M. Srinivasa Reddy, MD of the Noticee did not possess expert knowledge relating to GDR issue and relied upon the guidance of other connected entities who were the lead managers, Indian advisor to the issue etc. As noted above, resolution of the board of directors of the Noticee dated January 30, 2010 clearly authorizes EURAM bank to use the funds deposited in the Noticee EURAM bank account as a security in connection with loans, if any. By virtue of this pledge agreement though GDR proceeds were deposited in the overseas bank account of the Noticee, however, the amount deposited in the account was not at the free disposal of the Noticee as same was kept as collateral prior to issuance of GDRs for the loan availed by sole subscriber to GDRs i.e. Vintage.
23. It is further argued by the Noticee that it had received a list of allottees of GDRs from the Lead Manager i.e. Prospect Capital Limited and had believed the same to be true. It is noted that at the time of GDR issue the funds were received into the EURAM Bank account of the Noticee only from one person i.e. Vintage. Therefore, the Noticee should have suspected the veracity of the list of subscribers purportedly provided by Prospect, from this very fact. The list of subscribers to the GDR issue could also have been sought/cross checked from the Overseas Depository Bank. Being a listed company, the Noticee ought to have known the subscribers to its issue and the omissions by the Noticee gives rise to a reasonable inference that Noticee was aware of the whole fraudulent scheme devised by Arun Pachariya and played

its assigned role and this fraudulent scheme would not have been possible without the active participation of the issuer company, the Noticee and its MD. Therefore, the contention of the Noticee that they were unaware of the process of GDR issue, is not tenable.

24. The preamble of the Pledge Agreement dated May 05, 2010 executed between the Noticee and EURAM Bank referred to the Loan Agreement. It is also noted that a perusal of the aforesaid Loan Agreement and Pledge Agreement reveals that EURAM Bank granted loan to vintage specifically for subscription of GDRs of FIL, since the Loan Agreement mentioned the loan amount “... may only be transferred to EURAM account No.580018 Farmax India Ltd...”. This fact has not been denied by the Noticee. The Loan Agreement and Pledge Agreement were part of a scheme where subscription of GDRs of FIL was done through loan availed by vintage from EURAM Bank for which the security was provided by FIL by pledging its GDR proceeds with EURAM Bank.

25. It is noted that the purpose of GDR issue is to raise further capital from overseas market for the company. If the same proceeds are pledged for the purpose of facilitating the subscriber to subscribe to the GDR issue, then the purpose of raising capital itself is defeated. Therefore, I find that this artificial arrangement for the issuance and subscription of the GDR issue of FIL was fraudulent and would not have been possible without the participation of the Noticee.

26. With respect to allegation of transfer of GDR proceeds from FIL's EURAM Bank account to the account of Farmax International FZE, its UAE subsidiary, FIL in its reply has submitted that MD of the Noticee had signed blank TT forms as asked by Sanjay Agarwal and Mukesh Chauradiya believing that they would be used to transfer amount to FIL's Indian bank account but without their knowledge the amount was transferred to a subsidiary of FIL, from where it has been transferred to Arun Pachariya entity accounts.

27. As discussed above, FIL was aware and active participant in the fraudulent scheme devised by Arun Pachariya (AP). The present allegation of transfer of funds to its subsidiary and the explanation furnished

by FIL in its reply has to be seen in that backdrop otherwise a listed company and its MD would not have handed over signed TT slips to third parties without any due diligence and without asking some basic questions regarding the need for blank signed TT forms. FIL has further contended that the transfer forms for the transfer of GDR proceeds from FIL's EURAM Bank account to the account of Farmax International, FZE, its UAE subsidiary originated from the fax number of Vintage and has therefore submitted that the diversion of funds was orchestrated by AP in connivance with Vintage which is an AP entity.

28. In this regard, It is noted that the transfer request of amounts to from FIL's EURAM Bank account to its Indian bank account also originated from the same fax number. In view of this fact, I am inclined to believe that FIL and its MD were both aware of the transfer of funds from FIL's account with EURAM bank where the GDR proceeds were deposited, to the bank account of its UAE subsidiary. The Noticee has not provided any explanation as to why the transfer request pertaining to its Indian Bank account also originated from the Fax Number of Vintage,

29. Moreover, the Noticee has failed to explain how it had no control over the bank account of its own subsidiary and funds were transferred onwards from the bank account of Farmax International, FZE, to various entities which as per SCN were connected to AP. Thus, I find that the diversion of GDR proceeds from the EURAM Bank account no. 580018 of FIL to Farmax International, FZE, and thereafter to other entities could not have been possible without the active participation of the Noticee and its MD and that they were aware of the artificial arrangement for the subscription to GDRS and the diversion of GDR proceeds. This finding further corroborates the earlier finding that the Noticee and its MD were aware and part of the fraudulent scheme devised by AP as mentioned in para 16 above.

30. FIL has submitted that it has made efforts to realise the GDR proceeds including writing to EURAM Bank, making effort to proceed against EURAM Bank, Vintage and AP, etc. in foreign courts as well as filing a First Information Report against them in India. It is observed that FIL has purportedly filed a First Information Report which is being investigated by CID, Telangana, regarding the GDR issue on October

29, 2013, the outcome of which has not been informed even after the passage of more than six years, while a purported legal opinion was taken by FIL from an advocate in June 2013. Even if such a contention is accepted, It is noted that the same cannot be a ground to mitigate the direct involvement of the Noticee, as a GDR issuer, in the fraudulent scheme and diversion of the proceeds of the GDR issue it is noted that from the year 2011 onwards Noticee was well aware that GDR proceeds had not been remitted to its Indian bank account. Moreover, as per FIL's own submission, EURAM Bank informed it about the existence of the Pledge Agreement in April 2012.

31. Thus, delay in initiating legal proceedings in spite of the apparently huge loss suffered by the company, raises doubt about the bonafide of FIL and it appears that issuer companies of several other GDR matters wherein such fraudulent schemes have been investigated have taken a similar defence. The futility of filing a complaint in India whereas the fraud involved overseas party also points to the fact that filing a police complaint by FIL was an eyewash and an afterthought. There is also no reasonable explanation as to why FIL did not pursue the legal proceedings in Austria even after seeking a legal opinion.

32. It is also noted that the corporate announcements made by the FIL were false and misleading and the following material information were also suppressed viz.

- i. execution of Loan Agreement dated May 05, 2010 by Vintage for obtaining loan from EURAM Bank for subscribing the GDR issue of FIL,
- ii. execution of Pledge Agreement dated May 05, 2010 between FIL and from EURAM Bank, for pledging the GDR proceeds to provide security for the loan taken by Vintage, and
- iii. Vintage was the only subscriber of 5.10 million GDR issued by FIL. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of FIL.

33. I, thus, find that the corporate announcements made by FIL on June 29, 2010 and August 14, 2010 regarding allotment of GDR issues had the potential to mislead the investors and/or influence the price of

the scrip of FIL and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the FIL itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Vintage obtained loan from EURAM Bank for subscribing to the GDR issue of FIL, and FIL secured that loan by pledging the GDR proceeds with EURAM Bank and, in this connection, FIL did not receive GDR proceeds to the extent of USD 56.66 million from EURAM Bank as Vintage defaulted on the repayment of loan as a consequence of which EURAM Bank invoked its pledge on the remaining GDR proceeds of FIL.

34. Moreover, the Noticee and its MD also diverted USD 15.60 million to UAE subsidiary of FIL, Farmax International FZE and thereafter to other entities related to AP. I also find that in addition to make misleading disclosures, the Noticee failed to make material disclosures regarding execution of loan agreement and pledge agreement dated May 05, 2010.

35. With regard to the writing off of the pledged amount, Noticee has submitted that it had followed Indian Accounting Standards and based on professional advice it wrote off the GDR amount of 72.2 million as there was no other option. As mentioned earlier, FIL had pledged its GDR proceeds of USD 71.91 million against the loan availed by Vintage. In terms of pledge agreement, FIL could utilize its GDR proceeds only up to the extent of amount repaid by Vintage and there was a possible obligation on FIL for an amount INR 252.82 crore in FY 2010-11 and INR 251.56 crore (kept with EURAM Bank in fixed deposit) on the date of balance sheets i.e. March 31, 2011 and March 31, 2012, respectively, in the event of default of repayment of loan by Vintage which is contingent liability in nature which was subsequently defaulted.

36. From the examination of the Annual Report of FIL for FYs 2010-12, it has been observed that the Noticee has not disclosed the contingent liability for amount kept with EURAM Bank in fixed deposit. I am of the view that the Noticee should have mentioned its contingent liability in the form of the Pledge Agreement dated May 05, 2010 between the Noticee and EURAM Bank. It is noted that in Annual Report for FY 2011-12, FIL mentioned that “...the company had amount of INR 2515.62 mn as fixed deposit as on March 31,

2012 with M/s EURAM Bank....M/s EURAM Bank has adjusted the total balance available in our account against settlement of purported (without prior intimation/ notice to M/s Farmax India Limited) loan taken by Alta Vista International FZE vide letter of realization dated August 14, 2012 from EURAM Bank.....The management is unsure in quantifying the associated cost subject to which an amount of INR 2515.62 mn.”

37. However, this appears to be a post-facto disclosure which has been made by the Noticee after the GDR proceeds have been realized by EURAM Bank and after FIL's shareholders had suffered the loss.

38. From the above, it is noted that the actions of the Noticee were in the furtherance of the fraudulent scheme of issue of GDRs and has 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 dated October 25, 2016 in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI) 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.”

39. Therefore, in light of the foregoing it is concluded that the Noticee, FIL 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.

40. In this regard, it is also observed that parallel 11B proceedings were initiated against the Noticee for similar violations and which have been concluded vide order dated July 14, 2020, wherein the Noticee has been restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of the aforesaid order.

41. Apart from being a party to fraudulent GDR issue, it is also alleged in the SCN that the Noticee had also failed to make disclosures to the Exchange, as detailed below, and thereby violated section 21 of SCRA read with clause 36 of the Listing Agreement.

42. It is observed from the CSSF Luxembourg letter dated December 01, 2015 that GDRs of Farmax which were listed on LUX with effect from June 30, 2010 and got delisted with effect from April 03, 2014. However, it is observed that annual report of Farmax for FY 2014- 15 mentioned that GDRs were listed on LUX. It is further noted that vide email dated February 23, 2017, ASE submitted that Farmax did not inform the stock exchange. It is also observed that Farmax had also not informed BSE/NSE, where securities of the company were listed, about delisting of GDRs on LUX. Thus, it is concluded that the Noticee has violated section 21 of SCRA r/w clause 36(7) of Listing Agreement.

43. From the shareholding pattern, it is observed that promoter shareholding decreased from 56.37% for the quarter ended March 2010 to 28.02% for the quarter ended September 2010. It is further noted that such decrease in shareholding was due to increase in the total no. of shares of the company on account of issuance of GDRs. However, in absolute terms, number of shares held by promoters had increased only due to stock split from Rs.5 to Rs.1 on August 03, 2010. It is also noted that the company had earlier made stock split from Rs.10 to Rs.5 w.e.f. January 27, 2010. However, Noticee had not informed the stock exchanges, where securities of the company were listed, about the board meeting held on July 05, 2010

for fixing record date for stock split. Therefore, it is clear and apparent that by such non-compliance Noticee had violated clause 36(7) of the Listing Agreement.

44. It is observed from the corporate announcements made by Farmax on BSE from May to August 2010 and on NSE during the period August 2010 and ASE's email dated November 09, 2016 that Noticee had not made any disclosure regarding Pledge Agreement to the stock exchange, where securities of the company were listed.

45. It is further alleged in the SCN that no information was submitted by the Noticee to the exchanges, where securities of the company were listed (BSE/ ASE/ NSE) with regard to signing of Pledge Agreement with EURAM Bank and pledging GDR proceeds against the loan availed of by Vintage for subscription of GDRs of FIL.

46. In this regard, on perusal of the corporate announcements made by FIL on BSE from May to August 2010 and on NSE during the period August 2010 evidencing non-disclosure of Pledge Agreement, it is observed that FIL has not made any disclosure regarding entering into Pledge Agreement with EURAM Bank to the exchanges, where securities of the company were listed. This has further been confirmed vide ASE e-mail dated November 09, 2016.

47. In view of the above, it is observed that FIL has not informed stock exchange (BSE/ ASE/ NSE), where securities of the company were listed, with regard to signing of Pledge Agreement with EURAM Bank and pledging GDR proceeds against the loan availed of by Vintage for subscription of GDRs of FIL was a price sensitive information and could have impacted the price of the scrip and performance/ operations of the company. Thus, the Noticee, by not making aforesaid disclosure, violated section 21 of SCRA 1956 r/w clause 36(7) of the Listing Agreement.

48. It has further been alleged in the SCN that the Noticee had also failed to follow Accounting Standards as detailed below, and thereby violated section 21 of SCRA read with clauses 32 and 50 of the Listing Agreement.

49. In this regard, it has been submitted by the Noticee that *"The cash flow statement has been prepared under indirect method strictly adhering to the guidelines as issued by ICAI under Accounting Standard AS-3."*

50. However, it is observed that FIL on pages 29-31 of its Annual Reports for FY 2010-11, stated that ;
".....in the preparation of financial statements, no treatment materially different from the prescribed in accounting standards had been followed....."

In the Annual Report for FY 2010-11, FIL showed cash and cash equivalent at the end of the period as INR 235.59 crore which included fixed deposit with EURAM Bank.

51. It is also observed that as mentioned earlier, FIL had pledged its GDR proceeds of USD 71.91 million against the loan availed of by Vintage. FIL could utilize its GDR proceeds only to the extent of amount repaid by Vintage. Thus, there was an obligation on FIL for an amount INR 252.82 crore in FY 2010-11 and INR 251.56 crore (kept with EURAM Bank in fixed deposit) as on March 31, 2011 and March 31, 2012 respectively. It is further noted that the event of default of repayment of loan by Vintage was in the nature of contingent liability.

52. On perusal of the Annual Report of FIL for FY 2010-11, it has been observed that FIL has not disclosed the contingent liability for amount kept with EURAM Bank in fixed deposit. However, in Annual Report for FY 2011-12 FIL mentioned that;

"...the company had amount of INR 235.59 crore as fixed deposit as on March 31, 2012 with Mis EURAM Bank. M/s. EURAM Bank has adjusted the total balance available in our account against settlement of

purported (without prior intimation/ notice to M/s. Farmax India Limited..."

Therefore, INR 235.59 crore lying in FIL's EURAM Bank account was not free cash as per AS-3 as at March 31, 2012. In view of the above, FIL has not complied with AS-3 by considering the amount lying in the EURAM Bank account as Cash and Cash Equivalents (CCE). Hence, it is held that FIL by not complying with AS-3 has violated the provisions of clauses 50 and 32 of Listing Agreement read with section 21 of SCRA.

Issue no. II: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act and Section 23E of SCRA?

53. 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."

54. Thus, the violation 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 PFUTP Regulations, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement by FIL make it 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.”

55. 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 rigor 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, 1956

“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.”

Issue No. III: If yes, then, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

56. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under;

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, 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.”*

57. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that FIL 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 71.91 million, Vintage subscribed to the GDR issue by taking a loan from EURAM Bank to the extent of USD 71.91 million and the security for the said loan was the GDR proceeds of the Noticee i.e. Farmax. Vintage repaid loan to the tune of USD 15.48 million and defaulted on remaining part of the loan thereafter. Outstanding loan amount of USD 56.57 million was adjusted by EURAM Bank from Farmax's EURAM Bank Account. On account of default by Vintage, Farmax wrote off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). Therefore, Farmax gave misleading information regarding loan amounting to USD 15.60 million which was never extended to its UAE subsidiary and later written off by it. The information of write off was deliberately concealed from the investors of Farmax. Farmax gave misleading, distorted information to its shareholders and caused loss to its shareholders to the tune of USD 72.20 million. Thus, the magnitude of the fraud committed by the Noticee is enormous as is evident from the loss caused to the investors as mentioned above.

58. Therefore, in the Instant matter, FIL could utilize its GDR proceeds only up to the extent of amount repaid by Vintage and there was a possible obligation on FIL for an amount INR 252.82 crore in FY 2010-11 (at RBI exchange rate of 44.65) and INR 251.56 crore in FY 2011-12 (at RBI exchange rate of 51.15) , which was kept with EURAM Bank in fixed deposit) on the date of balance sheets i.e. March 31, 2011 and March 31, 2012, respectively, in the event of default of repayment of loan by Vintage which is contingent liability in nature, which was subsequently defaulted.

59. From the examination of the Annual Report of FIL for FYs 2010-12, it has been observed that the Noticee has not disclosed the contingent liability for amount kept with EURAM Bank in fixed deposit. I am of the view that the Noticee should have mentioned its contingent liability in the form of the Pledge Agreement dated May 05, 2010 between the Noticee and EURAM Bank. It is noted that in Annual Report for FY 2011-12, FIL mentioned that “...the company had amount of INR 2515.62 mn as fixed deposit as on March 31, 2012 with M/s EURAM Bank....M/s EURAM Bank has adjusted the total balance available in our account against settlement of purported (without prior intimation/ notice to M/s Farmax India Limited) loan taken by Alta Vista International FZE vide letter of realization dated August 14, 2012 from EURAM Bank.....The management is unsure in quantifying the associated cost subject to which an amount of INR 2515.62 mn.” However, this appears to be a post-facto disclosure which has been made by the Noticee after the GDR proceeds have been realized by EURAM Bank and after FIL’s shareholders had suffered the loss. Thus, FIL is held to have violated AS-1 as well.

ORDER

60. After taking into consideration all the aforesaid facts / circumstances of the case and factors enumerated in section 15J of the SEBI Act and loss to the investors, an appropriate penalty for violation of alleged provisions of section 12A(a),(b) and (c) of the SEBI Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of SEBI PFUTP Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement, in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, under section 15HA of the SEBI Act and Section 23E of SCRA, is imposed upon the Noticee as mentioned in the table below;

Alleged Violations	Charging section
Section 12A(a),(b) and (c) of the SEBI Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of SEBI PFUTP Regulations	Section 15HA of the SEBI Act, 1992

Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement	Section 23E of SCRA, 1956
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61. The Noticee will be liable to pay the penalty amount as mentioned in the table below;

Name of the Noticee	Penalty Amount (in Rs.)
Farmax India Ltd. (PAN: AADCB1600R)	12,00,00,000/- (Twelve Crore Only)

62. Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action – I [EFD 1-DRA-1] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1.	Case Name	
2.	Name of the Payee	
3.	Date of payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Details in which payment is made	
7.	Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

63. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in
ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
64. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.
65. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: October 29, 2020
PLACE: MUMBAI

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER