BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO: Order/GR/KG/2019-20/7154-7157]**

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

In respect of:

1. **Nissan Copper Limited (CIN: L36939DN1989PLC000377)**
2. **Mr. Ratanlal Mardia**
3. **Mr. Atul Mardia**
4. **Mr. Praveen Kumar Shah**

In the matter of GDR Issue by Nissan Copper Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularities in the GDR (**Global Depository Receipts**) Issue by **Nissan Copper Limited** (hereinafter referred to as **"Company / NCL"**) during the period from May 05, 2010 to June 05, 2010 (hereinafter referred to as **"Investigation Period"**).

2. NCL is a company whose shares are listed on the BSE Ltd and NSE. The investigations, *prima facie,* revealed that NCL had issued 50,00,000 GDRs (amounting to USD 22.40 million) on May 20, 2010, equivalent to 2,50,00,000 equity shares 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 May 07, 2010 with EURAM Bank. It was observed that directors of NCL in its board meeting held on March 16, 2010, had passed board resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of NCL and also for using the funds deposited in the said bank account as security in connection with loans, if any and also authorized Mr. Ratanlal Mardia to sign, execute, any agreement and other papers(s) from time to time as may be required by the EURAM Bank. NCL had signed a pledge agreement dated May 07, 2010, with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. Ratanlal Mardia, Managing Director of NCL. Vide the said loan agreement, NCL had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of NCL, thus securing Vintage FZE's loan.

3. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. It was observed that the directors of NCL namely, Mr. Atul Mardia and Mr. Praveen Kumar Shah had attended the Board meeting which had approved the board resolution and Mr. Ratanlal Mardia, who had executed the Pledge Agreement, were parties to a fraudulent scheme of issuance GDRs by NCL by way of loan and pledge agreements. It was therefore alleged that the individuals named above had acted as parties to the fraudulent scheme.

4. SEBI had, therefore, initiated adjudication proceedings *inter alia* against NCL 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") and Section 21 of the Securities Contracts Regulations Act, 1956 (hereinafter referred to as "SCRA") read with Clauses 32, 36(7) and 50 of the Listing Agreement. Adjudication proceedings have also been initiated against Mr. Atul Mardia, Mr. Praveen Kumar Shah and Mr. Ratanlal Mardia for the alleged violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

5. **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 June 12, 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 Noticee. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated May 22, 2019.These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

6. **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

Show Cause Notice No. EAD-4/ADJ/BS/HKS/OW/ 18369/4/2018 dated June 28, 2018 (hereinafter referred to as "SCN") was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and Section 23I of the SCRA read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") and Rule 4 of Securities Contracts (Regulation) (procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "SCRA Adjudication Rules") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations and Section 21 of the SCRA read with Clauses 32, 36(7) and 50 of the Listing Agreement.

7. The said SCN sent to the addresses of the Noticees as available on the portal of the Ministry of Corporate Affairs ("MCA") and was served upon one of the Noticees, Mr. Pravin Kumar Shah but returned undelivered in case of the other three Noticees with the postal endorsements "office left" for NCL, "close/ left" for Mr. Ratanlal Mardia and "gone and away/ left" for Mr. Atul Mardia. Thereafter, vide notice of hearin dated December 3, 2018, the Noticees were provided an opportunity of personal hearing on December 17, 2018. Vide the said Notice, it was also intimated that a copy of the SCN has been uploaded on the website of SEBI which can be downloaded and/or physically obtained from the SEBI office. The said hearing Notice was served upon Mr. Praveen Kumar Shah. Delivery by hand was attempted in relation to the other Noticees but returned undelivered with the postal endorsements "office shifted" for

NCL, "consignee shifted" for Mr. Ratanlal Mardia and "consignee shifted" for Mr. Atul Mardia.

8. Mr. Praveen Kumar Shah alone appeared for hearing on December 17, 2018 in person for himself. He submitted a written reply of even date and reiterated the contents of the same during the hearing. It has been *inter alia* submitted by Mr. Praveen Kumar Shah:

   a. He was appointed in the year 2007-2008 as an independent Director of the company and had no vested interest in the company and was not aware of the day to day affairs of the company. He had not held any share of the company nor did he receive any remuneration from the company.

   b. He was not a party to any correspondence with EURAM Bank or any other entity in connection to the issue of the GDRs by the company. He was not an authorized signatory of the company for any commercial or regulatory purpose and his signature appearing in the list of signatories in Schedule I of the Escrow Agreement Dated May 7, 2010, entered into between NCL and EURAM was either put ignorantly or fraudulently.

   c. He was not aware of the GDR issue by NCL and knows nothing about it.

   d. He had resigned from the company in 2015 and does not have any records of the company in his possession and hence could not comment on the transactions entered into by the company.

   e. He was not aware of the loan agreement between Vintage and EURAM and the pledge agreement between EURAM and the company.

   f. Although he had attended the Board meetings of the company "*as usual course as attend by independent directors. I say that even I am not higher educated and not in position to say any thing except as I had attended some board meetings*."

g. He does not have records of the company in his possession and therefore could not sya if he had signed any board resolution of the company.
h. He had no knowledge of the corporate announcements made by the company to the stock exchanges and if anything was concealed in such announcements.
i. Only the whole time Directors of the company knew about the Annual report, Agreements entered into by the company, compliance with accounting standards etc. and him being an independent Director did not know anything about it.
j. He has not made any gains from the company.
k. In view of the above, he may be discharged from the present proceedings.

9. After transfer of the proceedings to the undersigned, another opportunity of personal hearing was granted to the Noticees on December 11, 2019, vide letter dated December 2, 2019. The said letter was served upon Mr. Praveen Kumar Shah who appeared in person on the said date and reiterated the submissions already made vide his reply dated December 17, 2018. The said letter could not be served upon the other Noticees and were returned undelivered with the endorsements "left" for Mr. Atul Mardia, "left" for Mr. Ratan Mardia and "closed" for NCL. Thereafter vide public notice dated January 29, 2020 (published on February 5, 2020), published in national and vernacular dailies having circulation in the region where the last known address of the Noticees were located, the Noticees (NCL, Mr, Atul Mardia and Mr. Ratanlal Mardia) were *inter alia* provided the last and final opportunity of personal hearing on February 11, 2020. The Noticees did not turn up for the hearing nor did they respond the said notice of hearing in any manner.

CONSIDERATION OF ISSUES

10. At the outset, I find it necessary to settle a preliminary issue. Neither the SCN nor the hearing notices could be delivered upon the three Noticees other than Mr. Praveen Kumar Shah and as such they were not represented during the hearing before me. I find that all possible steps have been taken to bring the SCN and the hearing notices to the knowledge of said Noticees, including sending the same by post, affixture by hand and publication in regional and national newspapers. Therefore, I conclude that all the process of service of the SCN and the hearing notices as specified under Rule 7 of the SEBI (Adjudication) Rules, 1995 and concomitant provisions under SCRA (adjudication) Rules, 2005 have been exhausted and therefore the principles of natural justice has been complied with qua the said Noticees. I now proceed to deal the case on merits.

11. I have carefully examined the allegations against the Noticees, reply of Mr. Praveen Kumar Shah to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are :

I. Whether the Noticee No. 1/NCL 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 and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement?

II. Whether the Noticees No. 2, 3 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?

III. Does the violations, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA?

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

OBSERVATIONS AND FINDINGS

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

Section 21 of SCRA 1956

[*Conditions for listing*.

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

Clause 36 (7) of Listing Agreement:

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

....

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

The above information should be made public immediately."

Clause 50 of the Listing Agreement:

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

Clause 32 of Listing Agreement:

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

Issue I : **Whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP**

Regulations and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement.?

13. From the material available on record, I note that NCL had issued 50,00,000 GDRs (amounting to USD 22.40 million) on May 20, 2010, equivalent to 2,50,00,000 equity shares of Rs.10 each. Summary of the aforesaid GDRs issued by NCL as received from the local custodian HSBC vide e-mail dated March 19, 2018, is tabulated below.

GDR issue date	**No. of GDRs issued (mn.)**	**Capital raised (USD mn.)**	**Local custodian**	**No. of equity shares underlying GDRs**	**Global Depository pository Bank**	**Lead Manager**	**Bank where GDR proceeds deposited**	**GDRs listed on**
20-May-2010	5 (at USD 4.48per GDR)	22.40	HSBC, Mumbai	25,000,000	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

14. As per the email dated March 20, 2017 received from BSE, NCL had submitted to BSE the details of allottees of its GDR, which is reproduced as under:

Sl. No.	Name of the subscriber	No. of GDRs	No. of Shares	Value (USD)
1	The Bank of New York Mellon	50,00,000	250,00,000	2,24,00,000

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

16. 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 10.38 million by entering into a Loan Agreement dated May 7, 2010 with EURAM Bank to subscribe to the GDRs of NCL. The aforesaid Loan Agreement was signed by Mr. Arun Panchariya in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

> *Nature and purpose of facility- To provide funding enabling Vintage FZE to take down GDR issue of 5,000,000 Luxembourg public offering and may only be transferred to Euram account nr. 580019, Nissan Copper Limited."*

> *"….it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*

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

Pledge of the account no. 580019 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."

17. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 22.40 million from EURAM Bank to subscribe to the GDRs of NCL.

18. It is also noted that NCL vide its Board Resolution dated March 16, 2010, had resolved to open a bank account with Euram Bank for the purpose of receiving subscription money in respect of the GDR issue of NCL and to authorize the Euram bank to use the funds so deposited in the aforesaid bank account as security in connection with loans if any and authorized Mr. Ratanlal Mardia, Managing Director of the company to sign, execute, any application, agreement etc. as may be required by the Bank. The relevant portion of the Board resolution reads as under:

"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 Mr. Ratanlal Mardia, 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."

19. From the aforesaid minutes of the board meeting it is observed that the Board of Directors of NCL had authorized, *Shri Ratanlal Mardia,* Managing Director of the NCL, to sign, execute, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. For this purpose, Shri Ratanlal Mardia was *inter alia* authorized to carry and use the seal of NCL. 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.

20. Since the copy of the minutes of the meeting was not provided by NCL, it is observed from the Annual Report of NCL for FY 2009-10, that 19 board meetings of NCL were held in the

FY 2009-10 and two directors namely 1) Mr. Atul Mardia and 2) Mr. Praveen Kumar Shah had attended all the 19 board meetings of NCL held in financial year (FY) 2009-10. Therefore, it is observed that two directors namely Mr. Atul Mardia and Mr. Praveen Kumar Shah had attended the aforesaid NCL's board meeting held on March 16, 2010 and authorized EURAM Bank to use the GDR proceeds in connection with loan, if any, and also authorized Mr. Ratanlal Mardia to sign, execute, any agreement and other papers(s) from time to time as may be required by the EURAM Bank.

21. I note that NCL had also entered into a Pledge Agreement with EURAM Bank on May 07, 2010 itself. The said Pledge Agreement was signed by Mr. Ratanlal Mardia on behalf of NCL, in the capacity of Managing Director of the company. The salient Clauses of the Pledge Agreement are *inter alia* as under:

> *"By loan agreement K070510-002 (hereinafter referred to as the "Loan Agreement") dated 07 May 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 22,400,000.-. The Pledgor has received a copy of the Loan Agreement No. K070510-002 and acknowledges and agrees to its terms and conditions."*
>
> ***"2. Pledge***
>
> *2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited*

as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of USD 25,400,000 existing from time to time at present or hereafter on the securities account(s) no. 580019 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. 580019 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 deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

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

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

"6. Realization 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 transaction, 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."

I note that the Pledge Agreement refers to the Loan Agreement dated May 7, 2010, between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 22,400,000, and it is stated that the Pledgor i.e. NCL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, NCL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge

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

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

Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated May 7, 2010. Further, I also note that Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

22. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 22,400,000 to subscribe to the GDRs of NCL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that after availing the said loan, Vintage transferred an amount of USD 22,400,000 to the account (No. 05800190012) of NCL on May 19, 2010. 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 NCL comprising 50,00,000 GDRs amounting to USD 22.40 million, was subscribed by only one entity, i.e. Vintage, and not by The Bank of New York Mellon as intimated by NCL to BSE vide its Board Resolution dated May 20, 2010. I further note that the amount was transferred to NCL's retail account (no. 580019) held with EURAM Bank on the same day i.e. December 2, 2010, and that account was pledged with EURAM Bank under the Pledge Agreement.

23. The transfer of the proceeds from Vintage's account to that of NCL is clearly visible from the account statement dated May 19, 2020 which can reasonably be presumed to have been known by NCL and its directors/ key managerial personnel as well. The said statement of account was

directly addressed to NCL. Therefore, it was evident from the fund transfer details itself that NCL ought to have known that the GDR proceeds were being received from only one entity, viz. Vintage.

24. It is observed from Vintage's loan account statement with EURAM Bank that the Vintage repaid the entire loan amount in several installments from September 22, 2010 to May 03, 2011. Details of repayment of loan by Vintage as provided by EURAM Bank as well as transfer of fund by NCL to its UAE based subsidiary and/or NCL's Indian bank account are tabulated below:-

Date of repayment of loan by Vintage	**Amount repaid by Vintage (USD)**	**Date of transfer by NCL**	**Amount transferred from NCL's EURAM Bank a/c to NCL's Indian bank account/ UAE subsidiary's bank a/c with BANK OF BARODA(USD)**
22.09.2010	5,02,700.00	23.09.2010	5,00,000.00
28.09.2010	7,50,000.00	28.09.2010	7,50,000.00
12.10.2010	5,00,000.00	12.10.2010	5,00,000.00
02.11.2010	25,00,000.00	02.11.2010	25,00,000.00
22.11.2010	20,00,000.00	22.11.2010	20,00,000.00
24.11.2010	10,00,000.00	24.11.2010	10,00,000.00
29.11.2010	15,00,000.00	29.11.2010	15,00,000.00
15.12.2010	15,00,000.00	15.12.2010	15,00,000.00
17.12.1010	20,00,000.00	17.12.2010	20,00,000.00

22.12.2010	30,00,000.00	22.12.2010	30,00,000.00
29.12.2010	20,00,000.00	29.12.2010	20,00,000.00
23.03.2011	4,00,000.00	23.03.2011	4,00,000.00
31.03.2011	45,00,000.00	01.04.2011	45,00,000.00
03.05.2011	2,47,300.00	04.05.2011	3,85,531.89
Total	**2,24,00,000.00**		**2,25,35,531.89**

25. From the above table, it can be seen that only after Vintage repaid loan installments, NCL transferred GDR proceeds to the extent of loan amount repaid by Vintage either to its Indian bank account or its UAE subsidiary's bank account (i.e. NCME FZE). Therefore, it is evident that the amount transferred from NCL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

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

27. I observe that the said pledge agreement was signed by Shri Ratanlal Mardia in his capacity as the Managing Director of NCL. From the Board resolution dated March 16, 2010, it is clearly evident that Shri Ratanlal Mardia was authorized to carry out all such acts which may be necessary for dealing in the said accounts maintained with EURAM Bank. In the said resolution the bank was authorized to use the GDR subscription monies inter alia "*as security in connection*

with loans if any..". Therefore, it is inferred from these facts that Shri Ratanlal Mardia did have the requisite authorization from NCL to enter into the said pledge agreement which related to the subscription to its GDR issue. Therefore, the signing of the said pledge agreement by Shri Ratanlal Mardia is deemed to be an act done by NCL (the principal) through its agent (Shri Ratanlal Mardia). Further, the GDR proceeds received by NCL was gradually transferred to its Dubai based wholly owned subsidiary, NCME FZE (incorporated on April 08, 2010 just before the GDR issue) within September 2010 and May 2011. From the details of the company available on th portal of the Ministry of Corporate Affairs, I observe that Shri Ratanlal Mardia has been a director of NCL since July 30, 1991 till date (including the said period when the GDR proceeds were being transferred from the Euram bank account of NCL to its Dubai based subsidiary and Indian bank accounts).

28. Therefore, the entire trail of funds from the bank account of Vintage to that of NCL and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and NCL with respect to the subscription of the said GDR issue of NCL. In this regard, it is appropriate to refer to the Hon'ble SAT Order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

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

29. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by NCL 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 NCL's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement

30. I note that as and when, loan repayments were made by Vintage, NCL used to transfer funds from its EURAM Bank account largely to the account of NCME FZE and a minor portion to its bank accounts maintained in India. In view of the above, I note that every transfer from NCL to its UAE based subsidiary and Indian bank accounts is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from NCL's EURAM account was dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

31. 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."*

32. In the present matter, I note that the GDR subscription amount of USD 22.40 million was not available to NCL 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 May 20, 2010, a partial amount of USD 500,000/- could be made available to the company only on September 23, 2010 i.e. after a period of four months (after Vintage had repaid an amount of 5,02,700 USD to EURAM Bank on September 22, 2010). The last instalment towards amount of USD 22.40 million along with accrued interest was available to NCL only in May 3, 2011 when the loan was fully repaid by Vintage to EURAM Bank. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred NCL. The company has not responded to numerous requests of SEBI for information/ documents despite several publications in national and vernacular dailies and did not reply to the SCN and/ or hearing notices.

33. Moreover, it is noted that NCL had provided incorrect information to BSE vide its Board resolution dated May 20, 2010, wherein it had stated that the GDR issue was subscribed by the Bank of New York, Mellon. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. I also note that the Pledge Agreement which was specifically signed by the authorized representative of NCL makes reference to Vintage. The same also clearly shows that NCL was aware that the subscriber to the GDR issue was Vintage. Such actions also indicate *mala fide* intention on the Noticee's part.

34. As discussed above, false and misleading corporate announcements were made by NCL and it also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated May 7, 2010 by NCL 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 May 7, 2010 by Vintage for obtaining loan from the Euram bank for subscribing the GDR issue of NCL and (iii) Vintage was the only subscriber of GDR issued by NCL. I find that all these three events were price sensitive information and

could have impacted the scrip price of NCL. I find that the corporate announcements made by NCL on May 20, 2010 stating that '*successfully concluded placement of 5,000,000 Global Depository Receipts at US$ 4.48 per Global Depository Receipt (Representing 25,000,000 Equity Shares of Rs. 10/- each)"*, might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas NCL had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue and it was NCL itself which had secured that loan by pledging the GDR proceeds with the Euram Bank. Thus, I hold that NCL has violated 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. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI** has also observed that that:

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

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

35. The aforementioned act of NCL 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."*

36. In view of the above, I note that the scheme of arrangement of NCL, 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 NCL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by it on May 20, 2010 stating that the GDR was issued and allotted, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to 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. Thus, NCL has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k),

(r) of PFUTP Regulations, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

37. It is observed during the investigation that GDRs were listed on Luxembourg Stock Exchange (LuxSE) w.e.f. May 21, 2010 and delisted w.e.f. May 04, 2015. However, on perusal of the corporate announcements made by NCL to stock exchange for the month of May 2015 it was observed that NCL did not inform stock exchanges about delisting of GDRs on LuxSE which was a price sensitive information and could have impacted the price of the scrip. Hence, it is held that NCL had failed to comply with Clause 36 (7) of Listing Agreement and thereby violated the provisions of Section 21 of SCRA,1956 read with Cause 36 (7) of the Listing Agreement.

38. On September 15, 2015 Global Depository i.e. The Bank of New York Mellon ('BNY'), issued termination notice to the holders of GDRs of NCL. (Copy of the Termination Notice as available on BNY website is placed at Annexure-14). It is observed that GDR program has been terminated on December 15, 2015.

39. HSBC Bank, the custodian of the GDR issue, vide email dated March 19, 2018 provided the cancellation details. It was observed that the cancellation of GDRs started from July 07, 2010 and GDR and continued till December 15, 2015. Summary of the cancellation of the GDRs is tabulated below:-

Date of credit of converted equity shares	No. of GDRs converted	No. of outstanding GDRs	No. of equity shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
		50,00,000		Original Issue Demat Credit
07-Jul-10	5,00,000	45,00,000	25,00,000	INDIA FOCUS CARDINAL FUND (IFCF)
13-Jul-10	2,50,000	42,50,000	12,50,000	IFCF
20-Aug-10	2,50,000	40,00,000	12,50,000	IFCF
25-Aug-10	2,50,000	37,50,000	12,50,000	IFCF
27-Sep-10	3,00,000	34,50,000	15,00,000	IFCF
29-Sep-10			-	Stock split from Rs.10 to Rs.1
24-Nov-10	5,00,000	29,50,000	2,50,00,000	ALBULA INVESTMENT FUND LTD (“ALBULA’)
04-Oct-11			-	Consolidation of share from Rs.1 to Rs. 10
28-Jan-13	6,20,000	23,30,000	31,00,000	AVATAR INDIA OPPORTUNITIES FUND (‘AVATAR’)
15-Dec-15	23,30,000	0	1,16,50,000	Shares lying with Custodian in the demat account of Overseas Depository Bank pursuant to termination of GDR program on December 15, 2015

40. Cancellation data provided by custodian HSBC Bank shows that 23,30,000 GDRs are outstanding on the date of termination of GDRs (i.e. December 15, 2015). Corporate announcements made by NCL to stock exchanges during the period September to December 2015 were examined and it was observed that NCL did not inform stock exchanges about termination of GDR facility which was a price sensitive information and could have impacted the price of the scrip and thereby NCL failed to comply with Clause 36(7) of Listing Agreement and thereby violated the provisions of Section 21 of SCRA, 1956 read with Clause 36(7) of Listing Agreement.

41. Accounting Standard -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."*

42. I note NCL in its Annual Report for financial year 2010-11 stated as follows in the notes forming part of the accounts:

"The financial statements have been prepared in accordance with the Generally Accepted Accounting Principles in India, Accounting Standards issued by the Institute of Chartered Accountants of India…"

43. It was observed from the Annual Report for FY 2010-11 that NCL showed cash and cash equivalent ("CCE") as Rs.28.77 crore on March 31, 2011. However on perusal of Vintage's loan account statement, NCL's retail bank account statement with EURAM Bank and Pledge Agreement, it was observed that NCL had pledged its GDR proceeds of USD 22.40 million with EURAM Bank against the loan availed by the Vintage. As on March 31, 2011, Vintage repaid loan amounting to USD 22.15 million, therefore loan of USD 0.25 million (approximately Rs.1.10 crore, at RBI exchange rate of Rs.44.65 per USD on 31/03/2011) was outstanding. Hence, an amount to the extent of Rs.1.10 crore lying in NCL's EURAM Bank account was not free cash as per AS-3 as on March 31, 2011. In view of the above, it is held that NCL has not complied with AS-3 by considering the amount lying in the EURAM Bank account as CCE.

44. Clause 32 of the Listing Agreement provides that:

"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" .

Hence, as observed above NCL by not complying with AS-3 has allegedly violated the provisions of Clause 32 of the Listing Agreement.

45. AS 29 – 'Provisions, Contingent liabilities and Contingent Assets' inter-alia reads as follows:

"*10.4 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 recognized 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."

46. As observed in the preceding paragraphs, NCL had pledged its GDR proceeds of USD 22.40 million against the loan availed by Vintage for subscription of GDRs. As on March 31, 2011, Vintage repaid loan to the extent of USD 22.15 million and an amount of USD 0.25 million (approximately Rs.1.10 crore, at RBI exchange rate of Rs.44.65 per USD on 31/03/2011) was outstanding. In the Instant matter, NCL could utilize its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on NCL for an amount of USD 0.25 million (approximately Rs.1.10 crore) on March 31, 2011 (i.e. date of balance sheet) in the event of default of repayment of loan by Vintage which is of contingent liability in nature. Therefore, a contingent liability to the extent of Rs.1.10 crore was required to be disclosed by NCL in its financial statements for the FY 2010-11. From the examination of the Annual Report of NCL for FY 2010-11, it was observed that NCL did not disclose the aforementioned amount. Therefore, it is alleged that NCL has not complied with AS-29 by not disclosing the

amount of USD 0.25 million (approximately Rs.1.10 crore) lying in deposit account as contingent liability in its financial statements for the FY ended March 2011.

47. 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 Selection 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."

48. From the above, it is observed that AS-1 provides that an enterprise shall consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. It is observed that NCL (in its financial statements for FY 2010-11) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as it presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements.

49. Clause 50 of the Listing Agreement provides that *"The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time."* Therefore, I conclude that NCL has violated the provisions of Clause 50 of the Listing Agreement.

50. In view of the forgoing and aforesaid conduct and findings of the investigation, I find that;

a. M/s. Nissan Copper Limited **(Noticee no. 1)** 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 SEBI PFUTP Regulations, 2003 and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement.

b. Directors of Nissan Copper Limited namely Mr. Ratanlal Mardia, Mr. Atul Mardia and Praveen Kumar Shah **(Noticee nos. 2 to 4)** who had approved the company to stand as a guarantee for the loan availed by Vintafe from Euram Bank by pledging its GDR proceeds, were parties to the fraudulent arrangement of the Company and 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.

***Issue II* : Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA?**

51. 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.*"

52. 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."

53. I find that Mr. Ratanlal Mardia (Noticee No. 2) had signed the Pledge Agreement dated May 7, 2010 for and on behalf of NCL and the seal of NCL is also affixed thereon. Vide this pledge agreement, Euram Bank was authorized to use the funds of NCL as security in connection with loan obtained by Vintage (subscriber of GDR issue of NCL) from the Euram Bank. As such, the Noticee No. 2, being the Managing Director of NCL, was not only part of the fraudulent arrangement of NCL but also played an active role in executing the pledge agreement dated May 7, 2010 which actually facilitated the subscription of GDR issue of NCL.

54. The Noticees No. 3 and 4 had participated in the Board meeting of NCL on March 16, 2010 wherein approvals were made to, among other, authorizing the Euram bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by the Company (Noticee No. 1) in which the Noticee No. 2 has signed and executed the aforesaid pledge agreement. Further, the Noticees No. 3 and 4 had continued to be on the board of Directors of NCL during the entire process of issue of GDRs, receipt of such proceeds etc. Thus, the Noticees No. 3, and 4 were part of the fraudulent scheme and arrangement of the Noticee No.1 in facilitating the subscription of its own GDR.

55. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement by NCL

and the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the other Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, which reads as below –

SEBI Act, 1992

"Penalty for fraudulent and unfair trade practices.

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

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

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

It was amended to read as "[*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*]

As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in *T.*

Barai vs. Henry Ah Hoe and Ors. (07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

SCRA

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

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

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

56. 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.

57. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. From the documents made available,

it is noted that no prior default by the Noticee is on record. In the present case, I note that NCL had issued 50,00,000 GDRs worth USD 22.4 million to Vintage on May 20, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered between Vintage and EURAM Bank, and Pledge Agreement entered between NCL and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on May 7, 2010, and that the Pledge Agreement was an integral part of Loan Agreement. It is observed that the GDR issue would not have been subscribed had NCL not given such security towards the loan taken by Vintage. Such facilitation of the GDR issue and its subscription was not known to the public and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent. Thus, NCL is observed to have acted in a fraudulent manner and has violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement.

ORDER

58. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules and Section 23-I of the SCRA read with Rule 5 of the SCRA (Adjudication) Rules, hereby impose the following penalty on the Noticees:

Entity	**Violation**	**Penal Provisions**	**Penalty (Rs.)**

Nissan Copper Limited (Noticee No. 1)	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	Section 15HA of the SEBI Act, 1992	Rs. 10,00,00,000/-
	Section 21 of SCRA, 1956 read with Clauses 36(7) of Listing Agreement *(1 instance)*	Section 23E of the SCRA, 1956	Rs. 5,00,000/-
	Section 21 of SCRA, 1956 read with Clauses 32 and 50 of Listing Agreement *(1 instance)* Section 21 of SCRA, 1956 read with Clause 50 of Listing Agreement *(1 instance)*	Section 23E of the SCRA, 1956	Rs. 10,00,000/-
	Total		**Rs. 10,15,00,000/- (Rupees Ten Crore and Fifteen Lacs)**
Mr. Ratanlal Mardia	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		**Rs. 20,00,000/- (Rupees Twenty Lacs)**

(Managing Director of NCL) Noticee No. 2	with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	
Mr. Atul Mardia (Director of NCL) Noticee No. 3	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs. 10,00,000/- (Rupees Ten Lacs)**
Mr. Praveen Kumar Shah (Director of NCL) Noticee No. 4	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs. 5,00,000/- (Rupees Five Lacs)**

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

ENFORCEMENT Orders Orders of AO PAY NOW

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

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

61. 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

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

Place: Mumbai **G. Ramar**

Date: March 4, 2020 **Adjudicating Officer**