

WTM/AB/IVD/ID4/2/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

In respect of:

Noticee no.	Name of the Entity	PAN
1.	Winsome Yarns Ltd.	AAACW1911H
2.	Mr. Satish Bagrodia	ACUPB5163F
3.	Mr. B.M. Khanna	ADBPk4671K
4.	Mr. S.K. Singla	ALPPS9214C
5.	Mr. Ashish Bagrodia	AEIPB4708E
6.	Mr. Manish Bagrodia	ADLPB0308A
7.	Mr. Chandra Mohan	ABOPM0675J
8.	Mr. G.K. Sawhney	ANUPS1501P
9.	Mr. Mukesh Chauradiya	AAVPC0966A
10.	Pan Asia Advisors Ltd. (Lead Manager)	Not available
11.	Golden Cliff	FII reg. no: INMUFD25611 1
12.	Mr. Arun Panchariya	AEVPP6125N
13.	Vintage FZE (now known as Alta Vista International FZE)	Not available
14.	Highblue Sky Emerging Market Fund	AADCK9460G

Noticee no.	Name of the Entity	PAN
15.	Aspire Emerging Fund	AALCA5544M

The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as “the Noticees”.

In the matter of GDR Issue by Winsome Yarns Ltd.

1. Present proceedings have emanated from the show cause notice dated April 11, 2019 (hereinafter referred to as, “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees, alleging violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’) by Winsome Yarns Ltd. (hereinafter referred to as “**the Company**”/ “**Noticee No. 1**”/ “**Winsome**”) and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 15.
2. The aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI conducted an investigation into the Global Depository Receipts (hereinafter referred to as “**GDR**”) issue of Noticee no. 1 for the period March 01, 2011 to April 30, 2011. The focus of investigation was to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures were made by Winsome with respect to its GDRs.
3. The SCN *inter alia* alleges the following:

- 3.1. Winsome issued 1.99 million GDRs amounting to US \$ 13.24 million, on March 29, 2011.
- 3.2. Pan Asia Advisors Limited (Now known as Global Finance & Capital Ltd), (hereinafter referred to as “**Pan Asia**”/ “**Noticee No.10**”) a UK based entity was the Lead Manager of GDR issue of Winsome and Arun Panchariya (hereinafter referred to as “**AP**”/ “**Noticee no. 12**”) was the MD of Noticee no. 10. Local custodian for GDR issue of Winsome was DBS Bank, Mumbai and Bank of New York Mellon (hereinafter referred to as “**BONY**”) was the global depository bank. GDRs were listed on Luxembourg Stock Exchange.
- 3.3. On September 03, 2010, the directors of Winsome, namely Mr. Satish Bagrodia (Noticee no.2) , Mr. B.M. Khanna (Noticee no.3), Mr. S.K. Singla (Noticee no. 4), Mr. Ashish Bagrodia (Noticee no. 5) and Mr. Manish Bagrodia (Noticee no.6), vide a circular resolution dated September 03, 2010 authorized the EURAM Bank to use the Winsome’s GDR proceeds deposited with EURAM Bank as security in connection with loan and also authorized Noticee no. 6 to sign, execute any application, agreement etc. as may be required by the EURAM Bank. Further the said resolution was ratified in Board Meeting of Winsome dated September 22, 2010, wherein directors namely, Noticee no. 2, Noticee no. 4 Noticee no. 5, Noticee no.,6, Notice no. 7 and Noticee no.8, were present.
- 3.4. The issue of GDR of Winsome was subscribed by only one subscriber i.e. Vintage FZE (hereinafter referred to as “**Vintage** / “**Noticee no. 13**”). Mukesh Chauradia (**Noticee no. 9**) was MD and director (subsequently MD also), of Noticee no. 13 and AP was its 100% beneficiary. For subscribing to the GDR issue of Winsome, Noticee no. 13 took a loan of USD 13.24 million from European American Investment Bank AG (hereinafter referred to as “**EURAM Bank**”), which is a bank, under the Loan Agreement dated March 22, 2011 (hereinafter referred to as “**Loan Agreement**”).
- 3.5. On the same day a Pledge Agreement was signed between EURAM Bank and Winsome (hereinafter referred to as “**Pledge Agreement**”) whereby Winsome pledged its GDRs proceeds, as a security for the loan availed by Noticee no. 13

for subscribing to the GDR issue of Winsome. Noticee no. 6 who was MD of Winsome executed the Pledge Agreement, based on the circular resolution and board resolution dated September 03, 2010 and September 22, 2021 respectively.

- 3.6. Winsome pledged its GDR proceeds before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of Winsome.
- 3.7. The SCN also further alleges that Out of total GDR proceeds of USD 13.24 million, an amount of USD 5.57 million was transferred to Winsome's bank account in India, USD 1.31 million was transferred to Winsome FZE and USD 0.37 million was used as GDR issue expenses. From the GDR proceeds, an amount USD 6.05 million was adjusted by EURAM Bank against loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement dated March 22, 2011, since Vintage defaulted on payment of the loan to EURAM Bank. Thus, GDRs worth USD 6.05 million were allotted to Vintage free of cost.
- 3.8. AP connected sub-accounts namely Highblue Sky Emerging Market Fund (hereinafter referred to as "**HBSF**" / "**Noticee no. 14**") and Aspire Emerging Fund (hereinafter referred to as "**Aspire**" / "**Noticee no. 15**") received GDRs, converted them and sold converted shares worth Rs. 69.21 lakh through AP connected FII Golden Cliff (**Noticee no. 11**), in the Indian Securities Market. Further, Noticee no. 15 continues to hold 63,55,403 converted shares.
- 3.9. The scheme of issuance of GDR involving subscription of the GDR issue by obtaining finance from EURAM bank by pledging the GDR proceeds, non-repayment of complete loan availed by Vintage, and monetizing the GDRs through the sale of underlying shares in Indian stock exchanges by converting GDRs, was fraudulent.
- 3.10. The shares sold by Noticee nos. 14 and 15 are the shares which were acquired by Vintage free of cost. Such act of Noticee nos. 14 and 15 in connivance with AP/ AP connected entities resulted in a fraudulent scheme on the other investors in the securities market and both acted as party to fraudulent scheme.

3.11. The Noticees were part of a fraudulent scheme relating to the GDR issue of Winsome.

4. The SCN calls upon Noticee no. 1, to show cause as to why appropriate directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 including the direction to bring back the money to the extent of loan default, amounting to USD 6.05 million should not be issued against it on account of observations mentioned in the SCN. The SCN also calls upon Noticee Nos. 2 to 11 to show cause as to why appropriate directions under sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them on account of observations mentioned in the SCN. Noticee Nos.12 to 15 were called upon to show cause as to why appropriate directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 including the direction for disgorgement of the amount to the extent of sale proceeds of converted shares should not be issued against them on account of observations mentioned in this SCN.
5. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:

Anne xure No.	Details
1.	Copy of email dated July 06, 2015 received from WINSOME
2.	Copy of letter dated July 06, 2015 received from WINSOME
3.	Copy of Corporate Announcements
4.	Pan Asia letter dated February 20, 2012
5.	Copy of Escrow Agreement
6.	Copy of the loan agreement dated March 22, 2011
7.	Copy of KYC document of Vintage FZE
8.	WINSOME Board Resolution dated September 03, 2010
9.	Winsome e-mail dated June 15 2018
10.	Copy of Pledge Agreement dated March 22, 2011
11.	Loan Account statement of Vintage
12.	Escrow account statement of WINSOME
13.	WINSOME letter dated August 07, 2012
14.	NSDL email dated May 23 2018
15.	Custodian e-mail dated May 24, 2018

16.	Administrative Fine Statement available on Dubai Financial Services Authority
17.	AP.s connection with PAN Asia Advisors
18.	AP.s connection with Vintage
19.	AP was the director was the director of India Focus Cardinal Fund
20.	AP' connection with EURAM Bank, Austria
21.	AP was director and president of EURAM Bank Asia Limited
22.	Mr. Mukesh Chauradiya served as Managing Director, Authorized Signatory and director of Vintage
23.	. Mr. Mukesh Chauradiya was director of Ramsai Investment Holdings Private Ltd
24.	Mr. Mukesh Chauradiya was director of Alka India Ltd. from January 31, 2006 to June 01, 2010
25.	Mr. Anant Kailash Chandra Sharma is director of Sai Sant Advisory & Alka India
26.	Mr. Anant Kailash Chandra Sharma is director of HBSF
27.	Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF
28.	Mr. Anant Kailash Chandra Sharma is director of Golden Cliff
29.	Ashish Nanda was a director of ASPIRE
30.	AP's connection with CCP and IFCF
31.	Information available with DIFC website regarding AP's connection with Euram Bank
32.	Copy of the KYC documents of HBSF

Inspection, reply, hearing and written submissions

6. The SCN was served on all Noticees except Noticee nos. 10, 12 and 13. Vide a letter dated May 16, 2019 Noticee nos. 1, 3, 4 and 6 requested for an inspection of documents which was carried out by them on June 20, 2019. Inspection of documents was also carried out by Noticee no. 9 on June 17, 2019. Thereafter several attempts were made to deliver the SCN to Noticee nos. 10, 12 and 13, none of them being successful. Finally, the SCN was served on the Noticee no. 10 vide SEBI letters dated January 24, 2020 and February 26, 2020 and the SCN pertaining to Noticee nos. 12 and 13 was also served upon Noticee no. 10. In compliance with the principles of

natural justice an opportunity of hearing was granted to all Noticees on May 11, 2020 but none of the Noticees appeared for the said hearing. Thereafter, another hearing date was granted on July 31, 2020. However, due to the outbreak of Covid-10 the hearing notices could not be delivered to all Noticees and in view of the same another opportunity of hearing was granted on September 21, 2020. On the schedule date, the Authorized Representative (hereinafter referred to as “AR”) of Noticee no. 5, appeared and sought adjournment of hearing. The AR of Notice nos. 4 and 8 appeared along with the Noticees and made submissions. Based on the request for adjournment made by Noticee no. 5, another opportunity of hearing was granted to the remaining Noticees on November 27, 2020. On the scheduled date of hearing the AR of Noticee nos. 5 and 9 appeared and made submissions. Since Noticee nos. 1 and 15 had sought adjournments of hearing a last and final opportunity of hearing was granted to all remaining Noticees on February 11, 2021. On the scheduled date the AR of Noticee no. 1, 3, 6 and 15 appeared and made submissions and hearing was concluded *qua* these Noticees. Replies were received on various dates from the Noticees, the last reply having been received on May 20, 2021 from Noticee no. 5.

7. The various submissions made by the Noticees vide their aforesaid replies and submissions made during the course of the hearing, are summarised as hereunder:
 - A. Vide a letter dated March 22, 2021 Noticee nos. 1 and 6 have made the following submissions:
 - (a) *Noticee no.1 is the GDR issuer company and Noticee No. 6 has been the Managing Director of Winsome since June 24, 1996. Noticee No. 6 is presently the Chairman and Managing Director of Noticee No. 1.*
 - (b) *As part of the Company’s expansion strategy, in FY 2010-11, the Company decided to set up a 10 Metric Ton Dyeing Unit within the existing premises of its Spinning Unit at Derabassi. In order to raise funds for the same, and to strengthen its working capital position, the Company decided to come out with an issue of GDRs in May 2010. The approval of shareholders in General Meeting was obtained for the GDR issue in June 2010 for a total of 19,94,125 GDRs with underlying 19,94,12,500 equity shares of Rs. 1/- each, with an intention to raise a total sum of USD 1,32,40,990.*

- (c) The Board of the Company, in its meeting held on March 29, 2011 allotted 19,94,125 GDRs representing 1,32,40,990 underlying Equity Shares of Rs.1/- each (Offering at Rs.20/- each) at an offer price of USD 6.64 per GDR. The size of the above said offering, the number of underlying Shares and offer price were based on the buying rate for the US Dollar as on the relevant date as published by Reserve Bank of India and as per the SEBI Guidelines dated November 27, 2008 providing the minimum floor price requirement for GDR and FCCB issue under FDI Scheme.
- (d) As per the procedure set out in the offering circular and as per the Placing Agreement dated March 17, 2011, Pan Asia Advisors Limited, the Placing Agent, in its absolute discretion would have affected the placing of the GDRs and provided the Depository with a list of placements. Winsome was provided with the list of Placees/Beneficial Owners/Holders of the GDRs by the Lead Manager to the GDR issue and the same was submitted to BSE/NSE.
- (e) The Company received the GDR proceeds in the following manner in its bank account in India.

Sr. No	Receipt Date	Bank Name	Account No.	Amount Remitted	Bank Charges	Amount (USD)	Amount (INR)
1	September 12, 2011	Canara Bank	20425	230000.00	280.87	229719.13	10768084
2	September 15, 2011	Canara Bank	20425	690000.00	274.60	689725.40	32855069
3	October 17, 2011	Punjab National Bank	445100UD00001608	380000.00	292.16	379707.84	18442410
4	November 25, 2011	Canara Bank	1625201002865	295000.00	267.81	294732.19	15336390
5	December 20, 2011	Canara Bank	1625201002865	435000.00	260.60	434739.41	23023799

6	January 10, 2012	Canara Bank	1625201002865	1150000. 00	255.00	1149745. 00	61258424
7	January 11, 2012	Canara Bank	1625201002865	1720000. 00		1719745. 00	91749753
8	January 31, 2012	Canara Bank	1625201002865	130509.6 0	255.00	130509.6 0	6971823
9	Februar y 01, 2012	Canara Bank	1625201002865	544490.3 9	262.80	544227.5 9	29333867
10	January 15, 2013	State bank of Patiala	5502396991	381925.0 0	71.00	381854.0 0	20833954
11	Decemb er 06, 2013	Canara Bank	1625201002865	1000000. 00	190.00	999810.0 0	61531903
12	Septemb er 14, 2018	Indusi nd Bank	201000030206	210000	25	209975	15269382
			Total	7166925	2434.8 4	7164490. 16	38,73,74,8 58

- (f) Out of the proceeds of GDR, a further sum of USD 13,14,929 was transferred by the Company to its step-down subsidiary Winsome Yarns FZE, Dubai for purchases, out of this amount, a sum of USD 3,81,925 was remitted to the account of Company being maintained with State Bank of Patiala since the same was not used by the subsidiary.
- (g) The sum of USD 71,66,925 includes the sum of USD 3,81.925 remitted by the subsidiary to the Company's bank accounts in India. Thus, a total of USD 80,99,929 (71,66,925 used by the Company and 9,33,004 utilised by the subsidiary) from the GDR proceeds was utilised. The proceeds of the GDR issue were utilised as under:

Sl. No.	Particulars	Amount (USD)	%
1	GDR Expenses	3,78,865	2.86

2	Brought to India and used for strengthening of Net Working Capital.	71,66,925	54.13
3	Used by subsidiary	9,33,004	7.05
4	Balance remaining invested with Aries Capital Fund Limited	47,62,125#	35.96
	Total	1,32,40,990	

*The Net Asset Value of the investment as on Dec 31, 2019 was USD 48,19,980 as evidenced by the statement of fund performance provided by Aries Capital Fund Limited.

- (h) As can be seen from the above and from the bank statements, the Company has utilised more than 50% of the GDR proceeds in India, 7% in Dubai for purchase of yarn and invested the remaining 36% in funds that earn interest, pending utilisation.
- (i) The Company intended to set up a dyeing unit using the proceeds of the GDR issue as well as using bank finance. Although the GDR issue was carried out with the consent of the lenders, the complete financial closure could not take place for reasons of deteriorated financial position of the Company, caused by the global recession. The banks did not provide final sanctions for setting up the dyeing unit. Hence, the GDR proceeds could not be used for the purpose of setting up the dyeing unit and were invested in funds with a view to earn returns on idle funds pending the approval from the GDR holders for change of use of funds.
- (j) The Company's financial position further deteriorated in 2012 on account of a shift in government policy concerning export of cotton and cotton yarn. In March 2014, the banks attempted a reworking through Corporate Debt Restructuring Scheme, which did not meet the approval of all lenders due to the worsening financial position of the Company. By June 2014, the net worth of the Company had eroded and the Company was referred to the Board for Industrial and Financial Reconstruction under Sick Industrial Companies (Special Provisions) Act, 1985, and is registered as a sick industrial company. Almost all textile mills across the country faced a similar situation and many mills closed down as a result.
- (k) During all this time, the Company was unable to bring the sum of approximately USD 50 lakhs which was deposited in Aries Capital Fund Limited, because this amount was to be used to set up the dyeing unit with matching funds from banks. The Company was advised to obtain the consent / permission from GDR holders for change in use of proceeds so that it could bring the approx. USD 48 lakhs into India and use the same towards augmenting

working capital requirements of the Company and for procurement of certain equipment in the spinning division of the Company.

- (l) Accordingly, in December 2014, the Company contacted Bank of New York, Mellon (“BONY” or “Depository Bank”) the Depository Bank, to take necessary steps to obtain the consent of all GDR holders. However, BONY, vide their email dated January 7, 2015, informed the Company that they had resigned as the Depository Bank and stated that they could not contact the GDR holders or solicit votes for authorization and advised the Company to seek guidance from the Company’s counsel. It is pertinent to note that the Depository Bank alone has all details of the GDR holders and therefore, the Company was unable to contact them directly. Due to the above circumstances, the Company has been unable to obtain the consent/permission of the GDR holders for change in use of GDR issue proceeds and as a result, has been unable to bring the amount of approx. USD 48 Lakhs into India and use the same for reduction in debt and/or working capital requirements.*
- (m) The Company has been advised that BONY has acted in an unreasonable manner and is liable on this account and the Company is taking measures to seek redressal of grievances on this account, including steps to ensure that the remaining sum of approx. USD 48 Lakhs is brought into India*
- (n) During the personal hearing held on February 11, 2021, Noticees sought for stay of the present proceedings until the Writ Petition was heard before the High Court of Bombay, which was denied by the WTM.*
- (o) There has been an inordinate delay in the initiation of adjudication proceedings against the Noticees. The Noticees are faced with extreme hardship in defending themselves against the allegations levied in the SCN on account of the considerable amount of time that has passed between the alleged date of purported violations and the date of the SCN and these proceedings should be quashed since the SCN was issued after a delay of over 7 years.*
- (p) Winsome had never authorized EURAM Bank to create pledge over its GDR proceeds for the purpose of extending any loan by EURAM Bank to Vintage FZE. Noticee No. 1 has no connection to Vintage FZE. As stated in the SCN, Vintage FZE is an entity controlled by the director (Mr. Arun Panchariya, Noticee No. 12) of Pan Asia Advisors Limited, the lead manager of the GDR issue, and Noticee No. 1 was not aware of Vintage FZE’s involvement in the GDR issue until the receipt of the WTM SCN.*
- (q) On a plain reading of the Board Resolution, it is evident that it merely authorizes EURAM Bank to use the GDR proceeds deposited with them as security in connection with loans*

taken by Winsome, if any, as well as to enter into any escrow agreement or similar arrangements. The Board Resolution did not specifically authorize Noticee No.6, to create a pledge over proceeds of Winsome's GDR issue. At best, it authorized EURAM Bank to consider the deposit with them as collateral towards any loans that Winsome may avail from them.

- (r) Further, Noticee No. 6 was not authorised and could not have and did not execute the Pledge Agreement.
- (s) Until the receipt of the WTM SCN, Noticees were unaware of any loan availed by Vintage FZE from EURAM Bank, or the Pledge Agreement that apparently provided a collateral for such loan taken by Vintage FZE.
- (t) The copy of the Pledge Agreement provided by SEBI in Annexures to the SCN does not inspire confidence regarding its credibility for two reasons. Firstly, the Pledge Agreement was verified on March 21, 2011, a day before the document was purported to have been executed i.e. March 22, 2011. Secondly, the Pledge Agreement does not disclose the place of execution and neither SEBI's investigation nor the SCN have brought on record any document to show the place of execution of the Pledge Agreement and/or to show that Noticee No.6 was present at the place of execution.
- (u) The SCN has alleged that the Noticees committed fraud in collusion with EURAM Bank. However, EURAM Bank has not been made party to the SCN. The Noticees neither had any malafide intention nor any fraudulent inclination, but were rather victims of exploitation by Vintage FZE, Pan Asia Advisors Ltd. and Mr. Arun Panchariya. It is suspected that the Pledge Agreement referred to in the SCN is also fraudulently executed by these entities in the name of Noticee No. 1.
- (v) The Noticees could not have apprehended that Vintage FZE was the sole subscriber to Winsome's issue. In this regard, it should be noted that an escrow account for the GDR issue was opened with EURAM Bank, which also acted as the escrow agent and EURAM Bank alone was aware of the details of payments received therein.
- (w) The Noticees have not made any unlawful gain due to the alleged fraudulent scheme.

B. Vide a letter dated March 22, 2021 Noticee no. 3, Mr. B.M. Khanna, has made the following submissions:

- (a) *Noticee, aged 89 years, was the former non-executive independent director of Winsome who retired from that position on June 01, 2013, and is currently not keeping good health. He has never held any executive role in Winsome. Noticee is a respected senior citizen of this country and has an impeccable record of personal integrity and professional respect.*
- (b) *The events to which the SCN pertains to transpired in 2011. However, the present SCN was issued on April 11, 2019, after a delay of more than 7 years. There has been an inordinate delay in the initiation of proceedings against the Noticee.*
- (c) *The Noticee had filed a Settlement Application on September 14, 2020 to settle the proceedings initiated against them under the present SCN and the AO SCN. However, without adequately considering the application seeking condonation of delay, SEBI has, by its letter dated September 21, 2020, returned the Settlement Application stating that it had been filed after more than 180 days from the date of receipt of the two SCNs. In light of above, the Noticee has filed a writ petition in the Hon'ble High Court of Judicature at Bombay on November 04, 2020 challenging the return of the Settlement Application. Noticee has prayed the Hon'ble Court for directions to SEBI to condone the delay (if any) in filing the Settlement Application and consider the same on merits. The Writ Petition is currently pending before the Hon'ble Court and the present proceedings should be kept in abeyance until Writ Petition is disposed of.*
- (d) *On a plain reading of the Board Resolution, it is evident that it merely authorizes EURAM Bank to use the GDR proceeds deposited with them as security in connection with loans taken by Winsome, if any, as well as to enter into any escrow agreement or similar arrangements. The contents of Board Resolution are standard in terms of requirements put forth by banks with regard to opening an escrow account. Nothing is mentioned in the Board Resolution about extending any loan to Vintage FZE, pledge details, amount of loan, purpose of loan, designating any person with authority to execute such pledge document, etc. The Noticee cannot be said to have engaged in any fraudulent scheme involving the Noticee No.1's GDR issue on the basis of such Board Resolution.*
- (e) *Section 372A(2) of the Companies Act, 1956 provides that in order to grant loans, guarantee loans and provide security for loans, a resolution has to be passed at the board meeting of the company with the consent of all the directors present at the meeting. Further, Section 292 of the Companies Act, 1956 provides that the power to make loans can only be exercised at the meeting of the board of directors. Reading these provisions harmoniously, it is apparent that a resolution providing a guarantee for a loan cannot be approved merely by circulation,*

and the same has to be approved in a regular meeting with the consent of all the directors present. It is submitted that passing of a resolution authorising the creation of a pledge would be in the nature of providing a guarantee/security for a loan, and as provided above, such a resolution can only be passed in a regular meeting of the Board of Directors of Winsome.

- (f) The Noticee was a non-executive independent director of Winsome at the time of its GDR issue. In his capacity as a non-executive independent director, Noticee was not involved in the day to day management or affairs of the Company. In the capacity of a non-executive independent director, Noticee used to participate, whenever possible, in the meetings of the Board of Directors of the Company.*
- (g) The allegation of fraud is a grave charge and a fraudulent act cannot be imputed merely based on surmises, probabilities, conjectures and refutable evidence.*
- (h) The Noticee has not made any gains by virtue of the Fraudulent Scheme. It has not been alleged in the SCN that the Noticee has made any purchase or sale of shares of Winsome in an attempt to benefit from the alleged market manipulation caused by the Fraudulent Scheme. Further, there has been no allegation that Noticee or any person related to him have made any unlawful gains or have derived any undue benefit from trading in the scrip of Winsome pursuant to the alleged Fraudulent Scheme.*

C. Vide replies dated August 10, 2020, August 21, 2020 and written submissions dated August 25, 2020 and September 30, 2020 Mr. S.K. Singla (Noticee no. 4) has submitted as follows:

- (a) The Noticee was a Nominee Director on the Board of Winsome during the period June 13, 2000 to October 21, 2016. The Noticee had been nominated by Punjab State Industrial Development Corporation ("PSIDC"), which had invested in shares of the Company. By virtue of the said investment, PSIDC was entitled to nominate Director(s) on the Board of M/s Winsome Yarns Limited.*
- (b) PSIDC is a Public Financial Institution established under section 4A of the Companies Act, 1956 and Notified by the Ministry of Corporate Affairs ("MCA") on October 25, 2005 and is governed by the State Financial Corporations Act, 1951 ("SFC Act"). The liability of a director in a company appointed by a Public Financial Institution is governed under section 41A of SFC Act reproduced herein below:*

*"41A. Protection of action taken by persons appointed under section 27 or section 32A.-
No suit, prosecution or other legal proceeding shall lie against any person appointed as*

director, administrator, managing agent or manager by the Financial Corporation in pursuance of Section 27 or section 32A for anything which is in good faith done or intended to be done by him as such director, administrator, managing agent or manager.”

Thus, the SFC Act, more particularly Section 41A r/w Section 27 or Section 32A provides immunity to directors appointed by Public Financial Institutions for actions intended or done in good faith.

- (c) The Noticee has approved and signed Circular Resolution No. 3/2010 dated September 3, 2010 for Opening a Current Account with Euram Bank at Austria, for the purpose of receiving subscription money in respect of GDR issue of Company with Euram Bank, at Austria in good faith as Nominee Director, and is protected from liability for his actions done in good faith in terms of Section 41A of State Financial Act 1951.*
- (d) Noticee did not ratify the circular resolution 3/10 dated September 03, 2010 as wrongly alleged. The circular resolution was placed in board meeting for Noting/recording only.*
- (e) A plain reading of the Circular Resolution dated September 3, 2010 makes it evident that the same was in no way granting authorization or allowing WYL or its officers to pledge the proceeds of the GDR issue against a loan taken by a third party/Vintage. In order to create a charge over the proceeds of the GDR issue, a specific resolution detailing the borrower's name, nature of loan, amount, loan tenure etc. needs to be passed; furthermore, for a bank to create such a pledge, the board resolution must specifically authorize the same, failing which, the pledge may not be enforceable. The Banks normally take such type of resolutions to protect themselves to have a general set off right against opener of current account to recover charges, temporary overdrafts etc. as a precautionary measure.*
- (f) In acting as a Nominee Director, the Noticee relied upon the documents and records made available to him by the Company, including the Statutory Compliance Certificates given to the board of WYL by Key Managerial Persons (KMP's) confirming that all requirements under existing laws, orders, regulations and all other legal requirements have been complied with by the Company.*
- (g) It is also pertinent to note that the Ministry of Corporate Affairs (“MCA”) has issued circulars clarifying the term Officer in Default as defined in the Companies Act 1956 and the Companies Act, 2013. The Circular dated November 12, 1998 clarifies that prosecution should be primarily against Management Director(s)/ Whole Time director(s)/manager(s) and the Company Secretary, if any and only if the same are absent should prosecution be initiated against ordinary directors. Circular dated July 29, 2011 clarified that extra care should be taken in*

identifying officer in default. The circular dated 02.03.2020 further states “in case lapses are attributable to the decisions taken by the Board or its committees, all care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against the ID’S and NED’s unless sufficient evidence exists to the contrary”. Similarly, circular dated 19.01.2015 states that “DFS hereby confirm that the provisions of section 2 [60]/161 [3] of the company act would not be applicable to the nominee directors of the PSB’s.”

- (h) *In respect of the same set of allegations set out in SCN, the Adjudicating Officer accepted the submissions of the Noticee and in her Order dated July 28, 2020 and exonerated him.*
- D. A letter dated April 30, 2019 has been received from Punjab State Industrial Development Corporation corroborating the facts submitted by Noticee no. 4 in his replies. And submitting that the nomination by PSIDC of Noticee no. 4 to the Board of Winsome was withdrawn on October 21, 2016.
- E. Vide reply dated February 22, 2021 and written submission dated May 20, 2021 Mr. Ashish Bagrodia (Noticee no. 5) has submitted as follows:
- (a) *Noticee No.5 was appointed as a Non-Executive Director of the Company, Winsome Yarns Limited (WYL) on June 13, 2000. Mr. Bagrodia resigned and ceased to be a director on September 16, 2013.*
- (b) *On September 03, 2010, the Board of Directors of WYL passed a circular resolution authorizing the Managing Director of the company to open a bank account with EURAM Bank for the purpose of GDR Issue. The decision was taken in good faith for enhancement of business purposes. The modes and mechanisms of GDR Issuance were not discussed during this meeting. None of the charges, which are today being pressed by SEBI in respect of the GDR Issuance Scheme were discussed / ratified in this meeting. It is noteworthy that Ashish Bagrodia (Noticee No.5) is not the MD or person in-charge as per the instant resolution. It is further to be noted that this resolution forms the basis of charge against other Board of Directors, including Noticee No.5.*
- (c) *On March 11, 2011 The Board of Directors passed a resolution for constitution of GDR Issue Committee which shall comprise of the following directors- i. Mr. Brij Mohan Khanna – Chairman of Committee (Noticee No. 3) ii. Mr. Satish Bagrodia – Member (Noticee No.2) iii. Mr. Manish Bagrodia – Member (Noticee No.3) . Noticee No.5 was not a member of the GDR*

Committee and had no authority or position to take any decision or veto any decision of the GDR Committee of WYL.

- (d) Various board resolutions passed by the Company have also been relied upon. Noticee No.5 was neither the signatory nor the officer in default or the person exercising control in execution of any such document relied upon in the SCN.*
- (e) The alleged Pledge Agreement and other documents viz. Loan Agreement, Escrow Agreement as can be seen from the SCN were not discussed, approved or ratified during the Board Meeting on September 03, 2010 as alleged or otherwise. The contents of the said documents have not been confirmed by the Board Members, except as allegedly by the Managing Director as can be borne out by the document itself.*
- (f) Mr. Ashish Bagrodia being Non-Executive Director was not involved in the day to day affairs of the company and had no role to play in any decision making for the Company.*
- (g) It is a well settled provision of law that a person cannot be made liable simply by the virtue of their designation, but by the function or role played in the concerned event.*
- (h) The resolution dated 3rd September, 2010 authorized the bank to use the GDR proceeds as security in connection with a loan and did not stipulate that the GDR proceeds would be used as a security in connection with a loan taken by another entity. When the resolution dated 3rd September, 2010 was passed, Vintage FZE was nowhere in the picture.*

F. Vide replies dated April 22, 2020, August 18, 2020, and written submissions dated September 25 and 30, 2020 and October 05, 2020 Mr. G.K. Sawhney (Noticee no. 8) has submitted as follows:

- (a) The Noticee was a Nominee Director on the Board of Winsome during the period July 30, 2009 to March 09, 2011. The Noticee had been nominated by Punjab National Bank ("**PNB**").*
- (b) The Noticee submits that PNB is a Public Sector Undertaking and is regulated by Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949 and is governed by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 ("**BCA**"). The Noticee submits that the liability of a director in a company appointed by a Public Sector Bank is governed under section 16A(2)(b) of BCA Act. The BCA Act, more particularly Section 16A(2)(b) provides immunity to directors appointed by Public Sector Banks for actions intended or done in good faith.*

- (c) *Noticee did not ratify the circular resolution 3/10 Dated September 03, 2010 as wrongly alleged. The circular resolution was placed in board meeting for recording purpose as per legal requirement. No new resolution was passed to ratify the circular resolution already passed by circulation of papers. It was placed for Noting/recording only. Neither it was placed for ratification nor it was ratified.*
- (d) *The Noticee's nomination was withdrawn by Punjab National Bank and he ceased director from March 09, 2011. The Noticee submits that the GDR issue and its whole process happened post his resignation and therefore he is not liable for events which took place thereafter.*
- (e) *Notwithstanding the above, a plain reading of the resolution demonstrates that the same was in no way granting authorization or allowing Winsome or its officers to pledge the proceeds of the GDR issue against a loan taken by a third party/Vintage. In order to create a charge over the proceeds of the GDR issue, a specific resolution detailing the borrower's name, nature, amount, purpose, security of loan, etc. needs to be passed and such a resolution was never passed by the Board of Directors or the Shareholders of the Company. The said resolution, was only for the purpose of to open current escrow account with EURAM bank for the purpose of receiving money in respect of GDR issue of the company and not for any other purpose.*
- (f) *Banks normally take such type of resolutions to protect themselves and to have a general set off right against opener of current account to recover charges ,temporary overdrafts etc. as a precautionary measure. Nowhere in the resolution the word pledge, amount of loan USD 13.24 million and/or name of Vintage FZE is mentioned as such it.*
- (g) *The Noticee was not aware of the Pledge Agreement or the Loan granted by EURAM Bank to Vintage since the same allegedly happened when he was not director on the board of company and also this was never brought to the notice of the Board of Directors or the Shareholders of the Company; in fact, the said alleged pledge, being unauthorized, may not be legally enforceable.*
- (h) *The Noticee relied upon the Statutory Compliance Certificates given to the board of Winsome by the Managing Director of company confirming that all compliances with regards to law, orders, regulations and all other legal requirements have been complied with by the Company. Thus, the Noticee acted in good faith and is exempted from being liable for defaults by the Company, if any, under Section 16(2)(b) of BCA.*
- (i) *The Noticee submits that at the relevant time, he was a Nominee Director and not in charge of the Company or part of the decision-making process or the day to day affairs of the Company.*

- (j) Evidently, as a Nominee Director, the Noticee does not fall under the categories as inscribed in Section 5(a) to (f) of the said Companies Act which defines “officer in default”. Furthermore, Section 5(g) applies only when the positions as mentioned in Sections 5(a) to 5(f) are not available in a company which is not the case in the present case. Therefore, the Noticee submits that he cannot be considered to be an Officer in Default and therefore, liable for any wrongful actions of the Company.*
 - (k) Another adjudication proceedings were initiated against the Noticee in respect of the same set of allegations set out in Show Cause Notice dated September 11, 2019. The Adjudicating Officer accepted the submissions of the Noticee and in her Order dated July 28, 2020 exonerated the Noticee.*
- G. Vide reply dated May 03, 2019 Mr. Mukesh Chauradiya (Noticee no. 9) has submitted as follows:**
- (l) He was never the director or Managing Director of Vintage FZE as alleged in the SCN. He has tried to collect documents from Jebel Ali Free Zone Authority (JAFZA) UAE to prove that he was never director or MD, however, the authority has denied him the information without a court order. In a letter dated December 28, 2010 addressed to EURAM Bank, JAFZA has stated that Noticee no. 6 was a manager of Vintage.*
 - (m) He was only an employee of Vintage, the subscriber to the GDR of Winsome. Vintage was fully owned and controlled by AP which is mentioned in the SCN itself.*
 - (n) Under the implementing regulations number 1/92 pursuant to Law No.9 of 1992 of FZE Regulation under which Vintage was registered as a Free Zone Enterprise (FZE) stipulated that FZE was to have a single owner, in this case was AP who was beneficial and legal owner.*
 - (o) AP was initially the sole director, later on his brother replaced him. Noticee No. 9 was never a director or MD. Even in his resident permits his designation is always mentioned as General Manager and not as director/ MD.*
 - (p) Even in letter dated October 1, 2009 written by Vintage to ADCB it can be seen that he was referred as General Manager since September 2005 and the letter was signed by AP himself.*
 - (q) Noticee no. 6 has also submitted copy of his employment card issued by JAFZA where he has been mentioned as an employee not a director or MD of Vintage.*

- (r) From a copy of the visa issued to AP by JAFZA valid from 12.1.2010 to 11.01.2013, it can be seen that AP was the MD of Vintage. The beneficial ownership of Vintage is also owned by AP who owned 99.99% of its shares.*
- (s) The administrative fine statement passed by DSA imposing a fine of USD12,000 on AP also clearly indicates that AP was the licensed director in relation to vintage FZE.*
- (t) Key decision-making powers in Vintage such as availing loans from banks, subscribing to GDRs or other investments and repayment of loans were with the owner and director of vintage FZE which was AP or his brother.*
- (u) On the Loan Agreement dated May 30, 2008 between EURAM Bank and Vintage FZE in the GDR issue of Winsome AP signed as MD of Vintage. Somewhere in 2010 after AP set up EURAM Bank Asia limited in JV with EURAM Bank and got it UAE DIFC license there were concerns with respect to conflict of interest raised by EURAM Bank as AP was also signing, verifying transaction documents as President of EURAM Bank Asia, post which, AP, while continuing as the sole beneficiary owner of Vintage stepped down as director and was replaced by his brother. Also, on account of the above conflict Noticee no. 9 was instructed by AP to sign certain documents. With regard to the specimen signature format dated June 6, 2007 AP's name had been mentioned solely as owner in the second and Noticee no. 9's name appears as one of the persons with signing authority.*
- (v) Noticee no. 9 he did not get any other advantage monetary or otherwise from what has been done by him except for salary received as an employee of Vintage.*
- (w) Noticee no. 9 signed the redemption requests for loan as and when AP generated liquidity.*
- (x) There is a letter that Noticee no. 9 has signed where his designation is wrongly mentioned as directed MD.*
- (y) Noticee no.9 cannot be blamed for fraud on account of certain corporate noncompliance by Winsome and its officials. As an employee of Vintage Noticee no. 9 had no connection with Vintage signing a Loan Agreement and loan for subscribing to GDR of Farmax. He had no role to play in the same and was not instrumental in arranging loans.*
- (z) Noticee no. 9 he was holding one or two shares of Vintage FZE Holdings Private Limited which is normal business practice and nothing sinister can be attributed to him on account of the same. Merely by being on the Board as Nominee Director on Ramsai it does not make Noticee n.9 connected in any sense other than existing relation of employer and employee. He also admits that he was on the board of Alka India Limited as Nominee Director but no adverse inference can be drawn from the same.*

- H. Noticee No. 5 (Arun Panchariya) in his reply dated November 24, 2020 has *inter alia* submitted as under:
- (a) *He is a non-resident Indian for the last more than 20 years and has certifications in finance and has been in the financial service industry in Middle East and Europe and he has never registered with the SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, SEBI cannot be said to have jurisdiction over his business activities or him in personal capacity. Hence the said show cause notice has been issued without jurisdiction and ought to be recalled immediately. The provisions of SEBI Act do not have extra territorial operation, since all alleged acts of commission or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable.*
 - (b) *He had established an independent entity Vintage FZE in the UAE, which is a limited liability company duly incorporated under the relevant laws of the UAE. Vintage was the subscriber to the GDR issue. He had also established Cardinal Capital Partners as a company in Mauritius. Cardinal Capital partners established India Focus Cardinal Fund (IFCF) wherein the capital to the extent of USD 1 only was held by Cardinal Capital. IFCF was licensed to operate a collective investment scheme and pursuant thereto IFCF issued different classes of Shares. He does not have any office or business in India. The activities of Vintage and IFCF and Cardinal Capital were wholly outside India. The subscription of Vintage was a purely commercial arrangement outside India, under the relevant laws and the SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations. These entities are different from him.*
 - (c) *The mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia. All this entity has a distinct and separate legal entity, which has its own management and decision making. He had already resigned from Vintage FZE (Resigned year 2009), IFCF (Resigned year 2010) and Pan Asia (year October 2011) and since then he was not part of its management team.*
 - (d) *The SCN is also very vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years. The Noticees are completely in the dark about what exactly SEBI has*

in mind, as regards the consequences, and are unable to address SEBI on the same. Therefore, the SCNs do not meet the principles of natural justice and need to set aside on this ground alone.

- (e) Assuming there is violation of Section 12 of the Act and PFUTP Regulations, that by itself does not justify to issue Show Cause Notice in his name Arun Panchariya in his personal capacity ignoring the existence of corporate entities and transactions executed by and between with executions of legal and binding agreement in place with obligations to respective jurisdictions.
- (f) SEBI has no such powers to lift the corporate veil and hold him as beneficiary. SEBI is ignoring key roles of Issuing Corporate company and its beneficial nature to execute the same. It is also submitted that the entities whose veil is lifted are not entities incorporated in India and hence the assumption of powers by the SEBI to lift the corporate veil and issue a SCN is beyond the scope of the powers of the SEBI under the SEBI Act.
- (g) Despite conducting the investigations for a long period, SEBI failed to provide original or certified copies of the documents relied upon. Merely photocopies have been provided as annexures and unfortunately the SCNs relies on such legally invalid documents. The SCN issued is exclusively based on the Xerox/Photostat copy of the documents, the original of which are not available with SEBI. Since the allegations in the SCNs are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the Photostat copy of the documents relied upon by the SEBI cannot be and should not be admissible as evidence in the present proceedings. Even Photostat copies of documents have not been certified by any of the authorities from which they have been obtained. Section 35 of the Indian Stamp Act, 1899 provides that document which was not properly stamped shall not be admitted in evidence
- (h) Further, the SCN proceeds on the basis that on account of such alleged connection, he exercised unilateral control over the parties allegedly involved in the 'scheme' purported by the SCN and thereby allegedly upon the alleged 'scheme' itself. In this regard, it is pertinent to note that assuming whilst denying that there was indeed such connection between the entities mentioned in the said SCN and him, the same does not and cannot imply that the decisions of such entities were controlled by him.
- (i) In relation to the Vintage FZE, he had already resigned and was director till 2007. All the decisions of Vintage FZE including loan default was taken on the going circumstances in the best interest of the company by its management. In relation to India Focus, it is alleged that he was one of the directors of India Focus until October 2010. However, the same does not mean

in any manner that he exercised any control over India Focus. At the point of time when he was a director, the investment decisions of India Focus were taken collectively by its Board of Directors and accordingly the orders for the trades would be placed with the brokers. He was neither the whole time director nor the managing director of India Focus. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to him in support of the allegation that they are connected to or controlled by him except showing few connections which totally independent Business relationships. It is respectfully submitted therefore that there is therefore no question of him being illegally or improperly connected to or being in control of the entities.

- (j) The economic interest of the GDRs always remained with EURAM Bank, which gave the loan, held the pledge of the GDRs and issue funds, purchased the GDRs, sold the GDRs to IFCF towards the class of shares held by EURAM Bank, and finally received the distribution proceeds arising out of share sale in India.*
- (k) The SCN fails to bring out the correct facts relating to the GDR issue, and the conversion of GDRs as per RBI Guidelines and sale of shares in the Indian markets as per RBI Guidelines and has wrongly held him as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud though the truth is that Issuer Company of GDR was the beneficiary in first place and EURAM Bank was on the second place who controlled the whole transaction through execution of Pledge and loan agreement separately with both entities.*

I. Noticee No. 15 (Aspire Emerging Fund) in its reply dated April 01, 2021 has *inter alia* submitted as under:

- (a) It holds a Category 1 Global business license issued by the Financial Commission of Mauritius ("FSC") in Mauritius as an expert fund licensed by the FSC pursuant to the Financial Service Act 2007 ("FSA 2007"), the Securities Act 2005 as amended and the Securities (Collective Investment Scheme and Closed end Fund) Regulations 2008.*
- (b) It was registered as a sub – account with Golden Cliff from 14.06.2013 to 28.02.2017. Pertinently from 28.02.2017 it is registered as a Foreign Portfolio Investor ("FPI") with SEBI under the FPI Regulation, 2014.*
- (c) Mr. Ashish Nanda was its Director (i.e. Director of Aspire) (30.11.2012 to 09.07.2014). Mr. Ashish Nanda has been in the financial industry for the last 26 years, of which 22 years have*

been in Dubai, UAE. He is a Chartered Accountant by profession and an experienced entrepreneur with deep expertise in financial products and services. The focus of his career has been in building relationships with corporates and high net worth individuals

- (d) It is purely an investor in the Indian market.*
- (e) It is pertinent to mention that Aspire acquired by the new promoters on 07.02.2013. Pertinently, at the time of acquisition the portfolio consisted majorly of GDRs. It is humbly submitted that post acquisition we have mainly dealt in secondary markets and derivatives.*
- (f) In the SCN it is alleged that Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah ("Mr. Aslam") who was a director at HBSF. Aspire Emerging fund is incorporated in accordance with laws of Mauritius; and appointed Aurisse as Management Company and company secretary, which is also incorporated in accordance with the laws of Mauritius. Pertinently. Mr. Aslam was CEO of Aurisse. As per contractual agreement with Aurisse, two local directors were provided and appointed by Aurisse with Aspire and because of this reason Mr. Aslam was appointed as a director in Aspire and the same was also approved by FSC. It is pertinent to mention that this is very common practice in Mauritius, and Mauritius law allows companies to provide such service. Aspire's business decision are always taken by it and always taken in the best of interest of its investors and common directors don't establish the link between two entities.*
- (g) Further it is alleged in SCN (that Mr. Anant Sharma and Reema Shetty were the Beneficial owner of Golden cliff (FII of Aspire from 14.06.2013 to 28.02.2017). Further, it is alleged that Mr. Anant Sharma and Reema Shetty are connected to Mr. Arun. In this regards, at the outset it is humbly submitted that Golden cliff became FII of Aspire on 14.06.2013 when neither Mr. Anant Sharma nor Reema Shetty were beneficial owner of Golden Cliff. Pertinently Mr. Anant Sharma is the beneficial owner of Golden Cliff from 09.09.2014 till date and Ms. Reema Shetty is the beneficial owner of Golden Cliff only from 12.09.2013 to 09.09.2014.*
- (h) Its major strategy for dealing in GDR is arbitraging between GDR's prices and the underlying share price. Aspire therefore as a regular permissible strategy, purchase GDR's in foreign stock exchange where the same are listed, then cancel the GDR's and converts the same into equity shares and sell the said equity shares in the Indian secondary market when opportunities are available.*
- (i) GDR were acquired by Aspire from Ambrus Value Fund having address at MQ Services Ltd, Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The consideration for said was in the form of subscription i.e. issuance of 10,53,875 units on 25.02.2014 valued at \$ 8,43,793.38*

by us to Ambrus Value Fund. Hence, it is humbly submitted that proper consideration was paid for the acquisition of 1,05,38,750 shares by us.

- (j) Aspire had converted 10,53,875 GDRs into 1,05,38,750 equity shares that could be traded in the Indian Equity Market during the period 14.02.2014 to 15.05.2015 Pertinently out of the 1,05,38,750 converted equity shares Aspire has sold 41,83,347 shares for around Rs 48.30 Lakhs. The reason for selling the shares were to meet with the unit redemption requests and GDR conversion related expenses. Aspire still holds 63,55,403 equity shares of Winsome. It is humbly submitted that incase, Aspire was aware of alleged fraudulent scheme, if any devised by Mr. Arun it would have sold its entire holding but it still holds more than 60% of our converted equity shares.*
- (k) The sale of the shares of Winsome was in the month of April and May 2015 between the price range of Rs 1.04 to Rs 1.20. Pertinently as per the price volume chart of April and May of NSE and BSE the scrip has touched a high of Rs 1.35 at NSE on 09.04.2015 and a low of Rs 0.94 at BSE on 29.05.2015. Hence, it can be clearly stated that Aspire traded within the normal price range. Pertinently the trades have been executed in normal trading sessions and all the statutory obligations had been fulfilled.*
- (l) W.r.t its trading in the scrip of Winsome, Aspire has adequately made disclosure under Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as prescribed by SEBI.*

8. Noticee no. 1 has also submitted that on September 14, 2020, the Noticees filed a settlement application under the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as “**Settlement Regulations**”) with an intention to settle the proceedings initiated by the present SCN. However, SEBI returned the Settlement Application on September 21, 2020 stating that the limitation period within which the Settlement Application is to be filed had expired. On November 04, 2020 the Noticee no. 1 filed a writ petition before the Hon’ble Bombay High Court challenging the return of settlement application, which is pending. The matter came up for hearing before the Hon’ble Bombay High Court on December 18, 2020 wherein the Hon’ble High Court recorded that both the parties had been heard and gave time to SEBI to file a reply in the matter.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

9. I have considered the SCN issued to the Noticees, along with its annexures, and the aforementioned replies filed by the Noticees and the submissions made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCNs.
10. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of 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 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;
- (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 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;
.....

11. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by the Noticees. The Noticees have submitted that the SCN pertains to issuance of GDR by the company in 2011, which is more than eleven years old and the delay in the matter has adversely affected their ability to present an appropriate defense in the matter. The Noticees have relied upon the observations of the Hon'ble SAT in the case of Ashok Shivilal Rupani & Ors vs. SEBI (Appeal no. 417 of 2018), Rakesh Kathotia & Ors vs. SEBI (Order dated May 27, 2019 in Appeal no. 7 of 2016), to contend that there has been inordinate delay in the initiation of the proceedings. In this regard, I note that in the present case, SEBI

investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation prima facie revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such modus operandi was prima facie observed such GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the modus operandi as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information inter alia included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya – Noticee no. 12 herein and his connected entities were found to be involved in most of these cases. One of the connected entity of Noticee no. 12 i.e. Pan Asia Advisors Ltd. (Noticee no. 13 herein) even contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in SEBI Vs. Pan Asia Advisors Ltd. & Anr. (2015) 14 SCC 71 on July 06, 2015. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues

made by 51 Indian Companies during the period 2002 to 2014. Noticee No. 1 was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in December, 2018. I note that after completion of the investigation, the SCN was issued to the Noticees on April 11, 2019. The SCNs could not be delivered to Noticee nos. 10, 12 and 13 and service to these Noticees could be completed only in January 2020. Hearing was granted on May 11, 2020 but none of the Noticees appeared for the said hearing. Thereafter, another hearing date was granted on July 31, 2020. However, due to the outbreak of Covid-10 the hearing notices could not be delivered to all Noticees and in view of the same another opportunity of hearing was granted on September 21, 2020. Thereafter hearings were conducted on September 21, 2020, November 27, 2020 and February 11, 2021. Replies were received on various dates from the Noticees, the last reply having been received on May 20, 2021 from Noticee no. 5. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

“....Based on decision of this Tribunal in case of *HB Stockholdings Ltd. vs. SEBI* (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of *Collector of Central Excise, New Delhi*

vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”

12. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that none of the aforesaid cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators, whereas, in the matter of *Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020)* while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon’ble SAT observed as under:

“.....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.....”

Hence, in view of the aforesaid facts and circumstances of the present case, I find that there is no such delay in the present matter as alleged by the Noticees and the contention of Noticees in this regard is untenable.

13. Further, Noticee no. 12 in his letter dated November 24, 2020, has submitted that merely photocopies have been provided as annexures and the SCN relies on such legally invalid documents. Noticee no. 12 has submitted that since the allegations in the SCNs are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the photocopy of the documents relied upon by the SEBI cannot be and should not be admissible as evidence in the present proceedings. In this regard, I note that Noticee no. 12 has filed a single reply dated November 24, 2020 for 4 matters including the present matter, i.e. in the matters of Texmo Pipes and Products Ltd,

Winsome Yarn Limited, Winsome Textiles Industries Ltd and Aqua Logistic Limited. Hence, I note that his submissions have been generally made without specifying any particular document in this regard. Further, I note that he has not sought inspection of documents in the present matter. I note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators, which have been provided as annexures to the SCN, and I note that Noticee no. 12 has not disputed the contents of these documents. Most of the documents which Noticee no. 12 is contending can't be relied on being photocopies, are those documents to which the entities controlled by Noticee no. 12 were the parties (EURAM Bank/ Vintage). I also note that the Noticee no. 12 has referred to provisions of the Indian Evidence Act, 1872 to contend that for the admissibility of secondary evidence, the conditions in Section 65 of the Indian Evidence Act, 1872 must be fulfilled. In this regard, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in *NSDL Vs. SEBI (2017) 5 SCC 517*. As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. As copies of all the documents relied upon by SEBI in the SCN were already provided to the Noticees as annexures to the SCN and Noticee no. 12 has not disputed the contents of these documents and neither has he sought inspection of these documents, I find that no prejudice has been caused to Noticee no. 12 in defending his interest and contesting the allegation made against him in the SCN. Thus, in view of the above, I find that the contention made by the Noticee no. 12 that the documents submitted as annexures to the SCN should not be admissible as evidence in the present proceedings as they are merely photocopies, is untenable.

14. Noticee nos. 1 and 6 has stated that the present proceedings should be kept in abeyance till the disposal of the writ petition, mentioned at para 8 above, challenging

the return of their Settlement Application by SEBI. In this regard, I note that these Noticees have not produced any order passed by Hon'ble High Court staying the present proceedings. On the contrary, I note that Hon'ble Bombay High Court in its order dated December 18, 2020 in the said Writ Petition No. 8527 of 2020 (Winsome Yarns Ltd. & Ors. Vs. SEBI & Ors) have specifically directed as follows:

“5. It is made clear that at this stage there is no ad-interim order passed in this petition.”

In view of the same, I note that since there is no stay on the present proceedings the same can continue and the present order can be passed. Further, it is noted that Noticee no. 1 and 6 has filed the said writ petition impugning the rejection of their settlement application by SEBI. Assuming the direction sought in the said writ petition are granted by the Hon'ble Court in favour of the petitioners, such a direction can be given effect irrespective of the extant order, as in terms of SEBI (Settlement of Proceedings) Regulations, 2018, the settlement of proceedings can take place at any stage of proceedings sought to be settled

15. The allegations in the SCN and merits of the case are discussed below.

Allegation related to fraudulent scheme of issuance of GDRs of Winsome and furnishing of wrong list of allottees by Winsome

16. I note that Winsome (Noticee No.1) issued 1.99 million GDRs amounting to USD 13.24 million, on March 29, 2011. Summary of the GDR issues of Winsome, as provided by the company is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
29-Mar-2011	1.99 (at USD 6.64 per GDR)	13.24	DBS Bank Ltd.	19,94,12,500	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

17. Vide letter dated July 06, 2015 to SEBI, Winsome provided the list of the GDR allottees which is tabulated below:

Sl. No.	Name of the subscriber	No. of GDRs allotted	Amount in USD
1	ALTG Holdings Ltd	3,25,000	2,158,000
2	Arpico Finance Company Ltd	4,19,625	2,786,310
3	Chromestar Assets Ltd	2,49,500	1,656,680
4	Desert Rose Investments Inc.	3,50,000	2,324,000
5	Walker GMBH	4,00,000	2,656,000
6	Albarma Ltd	2,50,000	1,660,000
	TOTAL	19,94,125	13,240,990

18. SCN alleges that aforesaid list of subscribers, provided by Winsome, is not correct as GDRs of Winsome were subscribed by only one entity i.e. Vintage (Noticee no. 13) by obtaining a loan through a dollar term loan facility of USD 13.24 million through a loan agreement from the EURAM Bank, which Winsome was aware of. SCN alleged that Vintage took a loan from EURAM Bank to subscribe to the GDR issue of Winsome and security for this loan was provided by Winsome by pledging its Bank account held with EURAM Bank wherein proceeds of GDR issue of Winsome were to be deposited. The SCN alleges that Noticee No. 1 had opened a bank account with EURAM Bank (bank account no. 580040) for the purpose of receiving GDR proceeds, and vide a Pledge Agreement dated March 22, 2011 entered into between Noticee no. 1 and EURAM Bank, Noticee no.1 pledged its GDR proceeds in bank account no. 580040 against the loan given by EURAM Bank to Vintage for subscription to GDR issue of Winsome, even before the GDRs were issued. The SCN also alleges that Winsome was aware of the Loan Agreement and that Vintage was the sole subscriber to its GDR issue and that Vintage had subscribed to the GDRs through a loan obtained from EURAM Bank and that this was a fraudulent scheme. The SCN also further alleges that since Vintage defaulted on payment of the loan to EURAM Bank an amount USD 6.05 million was adjusted by EURAM Bank against loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement dated March

22, 2011 and therefore Vintage received allotment of GDRS worth USD 6.05 million free of cost. Further, the SCN alleges that Noticee no. 14 and Aspire Noticee no. 15 received GDRs, converted them and sold converted shares worth Rs. 69.21 lakh through AP connected FII Golden Cliff in the Indian Securities Market.

19. In this regard, Winsome and Noticee nos. 3 and 6 in their replies have stated that Winsome was not aware of the loan agreement nor the pledge agreement. Winsome has also stated that it had never authorized EURAM Bank to create pledge over its GDR proceeds for the purpose of extending any loan by EURAM Bank to Vintage. The Noticees have contended that on a plain reading of the Minutes of the Board meeting of Winsome dated September 22, 2010, it is evident that the circular resolution dated September 03, 2010 merely authorizes EURAM Bank to use the GDR proceeds deposited with them as security in connection with loans taken by Winsome, if any, as well as to enter into any escrow agreement or similar arrangements and that the board resolution did not specifically authorize Noticee No.6, to create a pledge over proceeds of Winsome's GDR issue. It has been submitted that Winsome was unaware of the allegedly fraudulent scheme perpetrated by Noticee No. 12, EURAM Bank and the lead manager of the GDR issue, Noticee no. 10 and Winsome is not associated with Mr. Arun Panchariya or Vintage. It has also been submitted that the allotment of GDRs was done by Pan Asia Advisors Limited and the Depository Bank, i.e. BONY and that Winsome relied upon said list provided by the lead manager and were under a *bona fide* belief that the names of the subscribers to the GDR issue are those set out in the SCN and accordingly, the same was disclosed to the BSE and NSE and provided to SEBI vide Winsome's letter dated July 6, 2015. Further, it has been submitted that an escrow account for the GDR issue was opened with EURAM Bank, which also acted as the escrow agent and Winsome was not aware of the details of payments received therein.
20. In order to examine the above-mentioned allegation against Winsome and its reply to the same, it is necessary to examine the various documents related to the GDR issue

of Winsome. The details of the documents and findings on the same are given below:

- a) Circular Resolution dated September 03, 2019 and Board Resolution dated September 22, 2010

20.1. As per the material available on record and as confirmed by Winsome in its reply to the SCN, a circular resolution dated September 03, 2010 was signed by directors of Winsome, namely, Mr. Satish Bagrodia (Noticee no.2) , Mr. B.M. Khanna (Noticee no.3), Mr. S.K. Singla (Noticee no. 4), Mr. Ashish Bagrodia (Noticee no. 5) and Mr. Manish Bagrodia (Noticee no.6), pertaining to opening of Bank Account with EURAM Bank. Relevant extracts of the resolution are as under:

“RESOLVED THAT a bank account be opened with EURAM Bank (“the Bank”), AG, Palais Esterhazy, Wallnerstrasse 4, A-1010 Vienna, Austria 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. Manish Bagrodia, Managing Director of the Company, be and is hereby authorised

1) 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, and countersigned by Mr. Manish Bagrodia, Managing Director and Mr. K.V. Singhal, General Manager (Legal) & Company Secretary or Mr. Vinod Jaria, Financial Controller of the Company

2) to draw cheques and other documents , and to give instructions from time to time as may be necessary to the said Euram Bank or any branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps to do all such things as may be required from time to time on behalf of the Company,

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.”

20.2. From the wordings of the Circular Resolution, I find that Noticee no. 6 was expressly authorized to sign any agreement as may be required by EURAM Bank and to take all steps as required from time to time on behalf of the company in connection with the bank account which was being opened by Winsome for receiving subscription money

of GDRs. I note that this Circular Resolution was taken note of and confirmed in the Board Meeting on September 22, 2010 in the presence of Noticee no. 2, Noticee no. 4, Noticee no. 5, Noticee no. 6, Noticee no. 7 and Noticee no. 8, directors of Winsome. Thus, a general authorization was granted to Noticee no. 6 by Winsome in relation to the current account opened with EURAM Bank. I note that the Pledge Agreement entered into by Noticee no. 6 with EURAM Bank on behalf of Winsome was in furtherance of the authorization given by the Board Resolution mentioned above, since it was related to proceeds being received in the said account, pertaining to which Noticee no. 6 had been authorized to enter into any agreement. I also note that Winsome has never alleged that Noticee no. 6 has fraudulently entered into the Pledge Agreement on its behalf or taken any steps against Noticee no. 6 for such purported fraud. Therefore, I am unable to accept the submission of Winsome that the Board Minutes or Circular Resolution did not authorize Noticee no. 6 to enter into a Pledge Agreement.

20.3. I note that Winsome has relied upon the order dated November 05, 2019 of the Hon'ble Securities Appellate Tribunal (hereinbefore referred to as "**Hon'ble SAT**") in the matter of *Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)* and *Adesh Jain Vs. SEBI (SAT Appeal No. 217 of 2020)* to contend that the resolution dated September 03, 2010 passed by Winsome cannot be inferred to mean that it was passed to authorize EURAM to utilize the GDR proceeds as security in connection with a loan given to Vintage. In this regard, I note that the Hon'ble SAT while dealing with the interpretation of the board resolution, observed that "*the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself*". Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticees is a possible interpretation. I also that Hon'ble Supreme Court of India vide its judgment and order dated September 21, 2021 passed in Civil Appeal No. 380 of 2020 – SEBI Vs. Adi Cooper and other connected civil appeals, while setting aside the order dated November 05, 2019 passed by Hon'ble SAT in the Adi Cooper matter, held as under:

“.....The Securities Appellate Tribunal was impressed by the fact that although the respondent was party to the resolution, being a whole-time director and member of the Board of Directors of the Company, had only resolved that Company may open an account with the EURAM Bank for the purpose of deposit of GDR proceeds. The resolution does not stipulate that the proceeds would be used as security in connection with the loan taken by another entity. The latter part of this submission is not in consonance with the purport of the resolution passed by the Board on January 30, 2008. Whereas, the SEBI had rightly noted that such resolution facilitated the transaction with Vintage and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through BSE. This aspect has not been reckoned by the Appellate Tribunal. This is a manifest error committed by the Appellate Tribunal.

In light of the above, we have no hesitation in taking the view that the Appellate Tribunal was unduly impressed by only one fact; but ought to have construed the resolution in the manner done by the SEBI and in particular, the inaction of the Board of not disclosing the arrangement to the shareholders or the investors of the securities market through BSE.

As a result, we set aside the impugned judgment and order and instead uphold the view taken by the SEBI vide its decision dated 28.02.2019.....”

I also note that the matter of Adesh Jain (supra) also, SEBI had preferred a Civil Appeal No. 180 of 2021 before Hon'ble Supreme Court of India, which has been disposed of by Hon'ble Supreme Court vide its order dated September 21, 2021 whereby order passed by Hon'ble SAT in Adesh Jain (supra) has been set aside and the parties have been relegated to Hon'ble SAT for consideration of the appeal of Adesh Jain afresh. Further, in the present case, I note that Circular Resolution states that it “*authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any*”. Assuming, for the sake of arguments that authorization to give the monies lying in the Bank account of Winsome as security was in connection with the loan taken by the Winsome only (as contended by the Winsome), then also it is quite irrational and patently wrong that a company would take loan of money by pledging its

money. If Winsome had money to offer as security for loan then in the first place there was no need of to take any loan by Winsome. Despite such patently wrong resolution, the Board of Directors of Winsome did not raise any issue related to whether any loans were proposed to be taken by Winsome from EURAM Bank and the necessity for such a loan in spite of Winsome having GDR proceeds at its disposal. This fact clearly points to the fact that the Circular Resolution was passed by Winsome not to facilitate its own loans but to facilitate the loan taken by Vintage by entering into the Pledge Agreement dated March 22, 2011. I find that a company has to be held responsible for all resolutions passed by the board of directors of the company for actions taken to implement such decisions and the company also reaped the benefit of such GDR issue/subscription money. A company cannot wriggle out of its obligations with respect to resolutions passed by it in its board meetings, agreements entered into by it with banks and transactions made by them pursuant to such agreements, and simply throw the entire obligation and liability of the company and its directors on the Merchant Banker/Lead Manager.

b) Loan Agreement between Vintage and EURAM Bank

20.4. I note that, Vintage had entered into a Loan Agreement dated March 22, 2011 with EURAM Bank relating to a dollar term loan facility of USD 13.24 million for the purpose of subscribing to the GDR issue of Winsome. The Loan Agreement was signed by Mr. Mukesh Chauradiya (Noticee No.9) in the capacity of Managing Director of Vintage. On perusal of copy of the Know Your Customer documents of Vintage for opening an account with EURAM Bank, it was observed that AP was the beneficial owner and Managing Director of Vintage as on June 06, 2007. AP was also the MD of the Lead Manager for the GDR issue, i.e. Noticee no. 10. It was further observed that Alkarni Holding Ltd was the shareholder of Vintage as on December 28, 2010 and as on April 21, 2014. AP was the sole shareholder and director of Alkarni Holding Ltd. For the purpose of availing the loan from EURAM Bank, Vintage opened a loan account (a/c no. 540012-051-3) with EURAM Bank. I note that the following was *inter alia* mentioned

in the Loan agreement:

2 Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 1,994,125 Luxembourg public offering and may only be transferred to EURAM account nr. 580040, WINSOME Yarns Ltd.”

7. Security

6.1. 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:

1) 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.

2) Pledge of the account no. 580040 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.”

20.5. From the above, I find that it was clearly mentioned in the Loan Agreement that Vintage had availed of loan facility to the extent of USD 13.24 million from EURAM Bank to subscribe to the GDRs of Winsome and thus, EURAM Bank granted loan to Vintage specifically for subscription of GDRs of Winsome. The loan agreement clearly provided that account of Winsome held with EURAM Bank, i.e. Account No. 580040, was pledged with EURAM Bank, as security for the loan given by the EURAM Bank to Vintage for subscribing to the GDR issue of Winsome.

a) Pledge Agreement dated March 22, 2011

20.6. I note that Mr. Manish Bagrodia (Noticee No.6), in his capacity as director of Winsome, as authorized by the circular resolution dated September 03, 2010 and confirmed by board resolution dated September 22, 2010, signed a Pledge Agreement dated March 22, 2011 on behalf of Winsome with EURAM Bank. The salient clauses of the Pledge Agreement states as under:

1. Preamble

“By Loan Agreement K210311-002 (hereinafter referred to as the “Loan Agreement”) dated 22 March 2011, the Bank granted a loan (hereinafter referred to as the “Loan”) to Vintage

FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 13,240,990- The pledger has received a copy of the Loan Agreement No. K210311-002 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 USD 13,240,990 existing from time to time at present or hereafter on the securities account(s) no. 580040 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. 580040 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein....

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

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

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

Realisation of the Pledge:

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

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

6.3 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."

20.7. As explained in point a) above, the Circular Resolution dated September 03, 2010 and Board Minutes confirming the same dated September 22, 2010 granted Noticee no. 6 due authorization to enter into the Pledge Agreement on behalf of Noticee no.1. I also note that the Pledge Agreement clearly states that the said agreement was to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower (defined as Vintage therein) towards the EURAM Bank under the Loan Agreement dated March 22, 2010, details of which were also given in the Pledge Agreement. Thus, I find that the Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. Moreover, the preamble of the Pledge Agreement dated March 22, 2010 executed between Winsome and EURAM Bank referred to the Loan Agreement.

21. The Noticees have stated that they were unaware of the Loan Agreement and Pledge Agreement and became aware of the same only when SCN was issued to them (i.e. 2019). As discussed in para 20 above, the wordings of the Circular Resolution and Pledge Agreement indicate that Noticee no. 1 was aware of the scheme by which the GRD proceeds were pledged as security for obtain ing loan for subscribing to the same GDRs. Moreover, I find that there is nothing on record to show that Noticee no.1 has approached any appropriate forum to declare the Pledge Agreement as fraudulent/ null. 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 *non est* before the appropriate forum at the earliest. If Winsome 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 in these proceedings. This shows that the argument related to ignorance of Loan and Pledge Agreement pleaded by Winsome and Noticee nos. 3 and 6 is an afterthought and they were aware of the existence of these agreements since their inception. Moreover, I find from the material made available on record that Winsome, vide letter dated August 07, 2012 which was signed by Noticee No.6 (on the basis of authority given to him by the Board of Directors of Winsome), had instructed the EURAM Bank to transfer the remaining GDRs to Vintage's account with Habisi Bank AG Zurich. In their replies neither Noticee no. 1 or 6 has made any comments related to the said letter. Thus, I find that the Noticees were aware of the Pledge Agreement and Loan Agreement and their argument related to the ignorance of the same is untenable. Further, Winsome in its capacity as a principal to its agent, Noticee no. 6, is responsible for the actions of Noticee no. 6. I also note that the Pledge Agreement was signed between Winsome and EURAM on March 22, 2011, which is just before the date of approval of its Board on March 29, 2011 for the issue and allotment of the GDRs of Winsome. From the timing it is evident that Winsome was aware of the Loan Agreement dated March 22, 2011 entered into between Vintage and EURAM Bank for subscription of GDRs of Winsome.

22. Winsome has also submitted that management of Winsome did not possess expert knowledge relating to GDR issue and relied upon the guidance of Noticee no. 10, AP and his connected entities who were the lead managers to the issue. It is further argued by Winsome that it had received a list of allottees of GDRs from the Lead Manager i.e. Noticee no. 10 and had believed the same to be true and thus forwarded the said list to SEBI. Firstly, as discussed in the previous paras, loan agreement entered into between EURAM Bank and Vintage and pledge agreement entered into between Winsome and EURAM Bank were intrinsically linked to each other wherein the party

taking the loan i.e. Vintage did not provide any security for the loan taken by it rather the security for the loan was provided by Winsome only by pledging its bank account wherein GDR proceeds were to be kept. Therefore, Winsome was aware that there was only one subscriber to its GDR issue. I note that at the time of GDR issue the funds were received into the EURAM Bank account of Winsome only from one person i.e. Noticee no. 13. Therefore, Winsome should have suspected the veracity of the list of subscribers purportedly provided by Noticee no.10, from this very fact. I am unable to accept the submission of the Noticee no.1 that the EURAM Bank account was an escrow account it was operated by Noticee no. 10 (Lead manager). I find that the account no. 580040 of Winsome with EURAM Bank is a retail account, although proceeds of GDR subscription were being deposited in the same. Therefore, it is not acceptable that the account holder did not have access to the said account. The list of subscribers to the GDR issue could also have been sought/cross checked from the Overseas Depository Bank. Being a listed company, Winsome ought to have known the subscribers to its issue. Therefore, I am unable to accept the contention of Winsome that it was unaware of the number of subscribers to its GDR issue. As noted above, Circular Resolution of Winsome dated September 03, 2010 clearly authorized EURAM to use the funds deposited in the Winsome's EURAM bank account as a security in connection with loans, if any. Passing of such a resolution by Winsome wherein it was contemplated to pledge entire funds kept therein for securing the loan taken, if any, without questioning the same also gives rise to a reasonable inference that Winsome was aware of the arrangement wherein the subscriber to the GDR issue had taken a loan in order to subscribe to the GDRs and which was secured by pledging the GDR proceeds. This further points of the fact that Winsome was aware of the scheme to subscribe to the GDRs and submitted wrong list of allotted to SEBI and stock exchanges.

23. From the above, I find that since the Loan Agreement was entered into by Vintage for the purpose of subscribing to the GDRs of Winsome, as detailed in point 20 b) above, and since Vintage was the only subscriber to the GDRs of Winsome as discussed in

para 22 above, thus, I find that the scheme of issuance of GDR of Winsome involved subscription of the GDR issue by obtaining finance from EURAM bank by pledging the GDR proceeds. I note 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. I also note from Winsome's retail bank account statement held with EURAM Bank (where GDR proceeds were deposited) and Vintage's loan account statement that only after Vintage repaid the loan amount, less/equal amount of money was transferred from Winsome's EURAM Bank account to Winsome's bank account in India and various entities. Thus, the transfer of funds from Winsome's EURAM Bank account was dependent on the repayment of the loan by Vintage and I find that though the GDR proceeds were deposited in the bank account of Winsome, the amount deposited in the account was not at the disposal of the Winsome, as the same was kept as collateral for the loans availed by Vintage even prior to issuance of GDRs. Therefore, I find that this was an artificial arrangement for the issuance and subscription of the GDR issue of Winsome and was not for the benefit of the shareholders of Winsome and I note that Winsome did not take any step to safeguard the interest of the company or its shareholders.

24. In this regard, the Hon'ble SAT in *Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)* observed as under:

"9..... The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR....."

25. From the discussions above, I find that Winsome was aware of the artificial scheme to subscribe to the GDRs issued by it, on March 29, 2011. Moreover, I also find that the

existence of such a scheme was concealed by it from the market and its shareholders. On perusal of corporate announcements made by Winsome to Bombay Stock Exchange and National Stock Exchange (hereinafter referred to as “BSE” & “NSE” respectively) during the period May 2010 - June 2011, it was observed that Winsome disclosed to the exchanges on May 10, 2010 that:

“Board of Directors of the Company at its meeting held on May 15, 2010, has approved the following:

1. Issue of GDRs / ADRs / FCCBs / QIP / securities convertible in to equity shares / fully or partly convertible debentures / securities / any other domestic / international offering, subject to approval of shareholders upto Rs. 100 crore....”.

Further, on March 29, 2011, Winsome disclosed to the stock exchanges that:

“the Board of Directors of the Company at its meeting held on March 29, 2011, has allotted 199412500 (Nineteen crores ninety four lacs twelve thousand five hundred) shares of Re. 1/- each in the name of Company's depository, THE BANK OF NEW YORK MELLON against 1994125 GDRs”

26. I agree with the observation in the SCN that Winsome did not inform stock exchange about Circular Resolution dated September 03, 2019, outcome of the Board meeting dated September 22, 2010 or entering into Pledge Agreement/ collateral security in its corporate announcements during the period May 2010 - June 2011. I find that the artificial arrangement of Loan and Pledge agreements, which resulted in the subscription of GDR issues of the company, were not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange which contained information in a distorted manner. Thus, I find that the corporate announcements made by the Winsome were false and misleading and the following material information were suppressed viz. (i). execution of Loan Agreement dated March 22, 2011 by Noticee no. 13 for obtaining loan from EURAM Bank for subscribing the GDR issue of Winsome, (ii) execution of Pledge Agreement dated March 22, 2011 between Winsome and EURAM Bank, for pledging the GDR proceeds to provide security for the loan taken by Noticee no. 13, and (iii) Noticee no. 13 was the only subscriber of 1.99 million GDRs amounting to USD 13.24 million issued by Winsome. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of Winsome. I, thus,

find that the corporate announcements made by Winsome from May 2010 to June 2011 regarding allotment of GDR issues without disclosing the actual scheme of GDR issue had the potential to mislead the investors and/or influence the price of the scrip of Winsome and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the Winsome itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Noticee no. 13 obtained loan for subscribing to the GDR issue of Winsome, and Winsome secured that loan by pledging the GDR proceeds with EURAM Bank and, in this connection, Winsome did not receive GDR proceeds to the extent of USD 6.05 million from EURAM Bank as the Noticee no. 13 defaulted on the repayment of loan as a consequence of which EURAM Bank invoked its pledge on the remaining GDR proceeds of Winsome (discussed in subsequent paras).

27. I also note that it would be appropriate to refer to the Order of the Hon'ble SAT dated October 25, 2016 in *Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)* 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."

28. From the above, I find that by indulging in an artificial scheme in its GDR issue on March 29, 2011 and concealing the same from the market and shareholders, Winsome perpetrated a fraudulent scheme and played its assigned role and this fraudulent scheme would not have been possible without the active participation of the issuer

company. In view of the above, I find that the arrangement of Winsome, in allotting GDR issue to only one entity i.e. Vintage which subscribed to the GDR issue of Winsome by obtaining loan from EURAM Bank and the same was again secured by Winsome by pledging its GDR proceeds, seen along with the misleading corporate announcements made by Winsome during the period May 2010 - June 2011, lead to conclusion that the same were done in a fraudulent manner which had the potential to mislead or induce the investors to sale or purchase of its scrip. Therefore, I find that Noticee No. 1 has violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

Allegation related to non receipt of GDR proceeds by Winsome

29. The SCN states that GDR proceeds of USD 13.24 million were deposited in Winsome's account no. 580013 held with EURAM on March 28, 2011,details of which is given below:-

Source: WINSOME's EURAM Bank a/c statement)

Date of credit of funds	Credit amount (US\$)
28/03/2011	13,240,990.00

30. Details of transfer of GDR proceeds from the account no. 580013, as given in the SCN, are tabulated below:

(Source: WINSOME's EURAM bank a/c statement)

Date of transfer of funds	USD transferred from WINSOME's EURAM Bank a/c	Remarks
09/02/2011	2,500	Escrow Fee GDR Issue
12/04/2011	375,000	Payment to Premier Management Consultancy Ltd
SUB TOTAL (A)	377,500	
09/09/2011	230,000	WINSOME's Bank a/c in India
14/09/2011	690,000	WINSOME's Bank a/c in India
14/10/2011	380,000	WINSOME's Bank a/c in India
23/11/2011	295,000	WINSOME's Bank a/c in India
19/12/2011	435,000	WINSOME's Bank a/c in India
09/01/2012	1,150,000	WINSOME's Bank a/c in India
10/01/2012	1,720,000	WINSOME's Bank a/c in India
30/01/2012	675,000	WINSOME's Bank a/c in India
SUB TOTAL (B)	5,575,000	

21/02/2012	700,000	WINSOME FZE
22/02/2012	615,000	WINSOME FZE
SUB TOTAL (C)	1,315,000	
GRAND TOTAL (A+B+C)	7,267,500	

31. The SCN alleges that out of GDR proceeds of USD 13.24 million, Winsome transferred USD 5.57million to its bank account in India during September -2011- January 2012, USD 1.31 million was transferred to Winsome FZE and USD 0.37 million was used as GDR issue expenses. The SCN alleges that out of the total loan amount of USD 13.24 million, Vintage repaid the loan amount to the extent of USD 7.19 million in installments from April 12, 2011 to February 22, 2012 and thereafter defaulted on loan repayment and on October 09, 2012, as a result, EURAM Bank adjusted GDR proceeds to the extent of USD 6.05 million against the loan account of Vintage, in accordance with terms of loan agreement.
32. The details of repayment of loan by Vintage and transfer of fund by Winsome in its bank account in India, as provided by EURAM Bank, as detailed in the SCN, are tabulated below:

Date of repayment of loan by Vintage	Loan Amount repaid by Vintage (USD)	Date of transfer of USD from WINSOME's EURAM Bank account	Amount (USD) transferred from WINSOME's EURAM Bank	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative amount (USD) transferred from WINSOME's EURAM Bank a/c
12/04/2011	379,000	-	-	379,000	0
09/09/2011	180,000	09/09/2011	*230,000	559,000	230,000
14/09/2011	690,000	14/09/2011	*690,000	1,249,000	920,000
14/10/2011	365,000	14/10/2011	*380,000	1,614,000	1,300,000
23/11/2011	295,000	23/11/2011	*295,000	1,909,000	1,595,000
19/12/2011	435,000	19/12/2011	*435,000	2,344,000	2,030,000
09/01/2012	1,150,000	09/01/2012	*1,150,000	3,494,000	3,180,000
10/01/2012	1,720,000	10/01/2012	*1,720,000	5,214,000	4,900,000
27/01/2012	675,000	30/01/2012	*675,000	5,889,000	5,575,000
21/02/2012	690,000	21/02/2012	#700,000	6,579,000	6,275,000
22/02/2012	615,000	22/02/2012	#615,000	7,194,000	6,890,000

*USD transferred to WINSOME's Indian bank account.

USD transferred to WINSOME FZE

33. Based on the above, the SCN alleges that GDRs to the tune of USD 6.05 million was

issued by Winsome to Vintage without any consideration. The SCN also alleges that Winsome's Annual Report for FY 2012-13, did not mention about the loan default by Vintage and Winsome did not inform the stock exchanges regarding loan default by Vintage and subsequent adjustment of GDR proceeds against such loan default.

34. In response to this Winsome has contended that a total of USD 80,99,929 (71,66,925 used by the Company and 9,33,004 utilized by the subsidiary) from the GDR proceeds has been received in the bank accounts of the company and utilized. The details provided by Winsome is as follows:

Sr. No	Receipt Date	Bank Name	Account No.	Amount Remitted	Bank Charges	Amount (USD)	Amount (INR)
1	September 12, 2011	Canara Bank	20425	230000.00	280.87	229719.13	10768084
2	September 15, 2011	Canara Bank	20425	690000.00	274.60	689725.40	32855069
3	October 17, 2011	Punjab National Bank	445100UD00001608	380000.00	292.16	379707.84	18442410
4	November 25, 2011	Canara Bank	1625201002865	295000.00	267.81	294732.19	15336390
5	December 20, 2011	Canara Bank	1625201002865	435000.00	260.60	434739.41	23023799
6	January 10, 2012	Canara Bank	1625201002865	1150000.00	255.00	1149745.00	61258424
7	January 11, 2012	Canara Bank	1625201002865	1720000.00		1719745.00	91749753

8	January 31, 2012	Canara Bank	1625201002865	130509.60	255.00	130509.60	6971823
9	February 01, 2012	Canara Bank	1625201002865	544490.39	262.80	544227.59	29333867
10	January 15, 2013	State bank of Patiala	5502396991	381925.00	71.00	381854.00	20833954
11	December 06, 2013	Canara Bank	1625201002865	1000000.00	190.00	999810.00	61531903
12	September 14, 2018	Indusind Bank	201000030206	210000	25	209975	15269382

Winsome has submitted that it has utilized more than 50% of the GDR proceeds in India, 7% in Dubai for purchase of yarn and invested the remaining 36% in funds that earn interest, pending utilization and it was unable to bring the sum of approximately USD 4.8 million which was deposited in Aries Capital Fund Limited, because this amount was to be used to set up the dyeing unit at Derabassi, Punjab with matching funds from banks which could not be set up for various reasons. Winsome has also submitted that it was advised to obtain the consent / permission from GDR holders for change in use of proceeds so that it could bring the approx. USD 4.8 million into India and use the same towards augmenting working capital requirements of the company and for procurement of certain equipment in the spinning division of the Company but had failed to do so due to non-cooperation by BONY.

35. In this regard, I note that in the bank statement pertaining to the account no. 580040 of Winsome with EURAM, entry dated October 09, 2012 clearly states "Realisation of pledge in respect of loan no. K210311-002 Alta Vista Intl FZE" and shows a deduction

of USD 6.049 (approx.). I note that Alta Vista International FZE is the present name of Vintage FZE. Therefore, it is obvious that EURAM bank has forfeited an amount of 6.05 million from the GDR proceeds which were deposited in the bank account no. 580040 in order to adjust with the loan default of Vintage FZE. Further, I find that Noticee no.1 has not submitted any documents in support of the claim that USD 4.8 million from its GDR proceeds is purportedly invested in Aries Capital Fund. I also find that from the bank account statements of Winsome's Indian accounts with various banks submitted by it, there are certain remittances in USD subsequent to October 09, 2012, but the narration of the remittance does not indicate the sender or the account from which it has been remitted, making it impossible to say that the said amount was part received as part of the GDR proceeds. Therefore, I am unable to accept the submission of Winsome that the full amount of GDR proceeds is available with it. With respect to the remittances in USD in Winsome's Indian bank accounts subsequent October 09, 2012, I observe that in terms of Section 177(4) (viii) of the Companies Act, 2013, the audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company may look into the correctness of information submitted by the Noticees with respect to whether the USD 6.05 million which was adjusted by EURAM Bank from the GDR proceeds, were thereafter remitted back to Winsome and report the same to the Board of Directors of Winsome for taking appropriate corrective action, if any.

36. I find that from the bank account statement of account no. 580040, of Winsome with EURAM Bank it is evident that on October 09, 2012, EURAM Bank adjusted USD 6.05 million (approx.) from the GDR proceeds in furtherance of the Loan Agreement dated March 22, 2011 (executed between EURAM Bank and Vintage) and Pledge Agreement dated March 22, 2012 (executed between EURAM Bank and Winsome). Further, I note that Winsome failed to inform stock exchanges about the adjustment of GDR proceeds to the extent of USD 6.05 million by EURAM Bank in its corporate announcements made on stock Exchanges (BSE and NSE) during the period from October 09, 2012 (pledge realised by EURAM Bank in respect of loan default of

Vintage). I also find that this effectively indicates that as on October 09, 2012 GDRs worth USD 6.05 million had been allotted to Vintage for free. The Annual Report pertaining to FY 2012-13 of Winsome states as follows:

“Attention is drawn to note no. 2.3 where as stated balance money amounting to USD 6049664 (Rs.3196.48 lacs) out of the GDR issue made by the company in the year 2010-11, is still lying outside India i.e. balance amount against GDR issue of 1994125 nos. made in financial year 2010-11, entitling 199412500 fully paid up equity WINSOME YARNS LIMITED 10 shares of Re.1/- each at Rs.2.97 per share including premium (now 19941250 fully paid up equity shares of Rs.10/- each at Rs. 29.70 including premium). As explained, above stated amount is invested in money market fund outside India, pending utilisation for the purposes the issue was made.”

From the above statement in the Annual Report for FY 2012-13 of Winsome I find that that Winsome had failed to disclose the default by Vintage and adjustment for the same by EURAM Bank from the GDR proceeds of Winsome on October 09, 2012 against the loan taken by Vintage in its Annual Report.

37. I note that Noticees have referred to orders passed by the Hon'ble Supreme Court and Hon'ble SAT to substantiate their arguments on the level of evidence required for establishing serious charges of fraud. Judgment of Hon'ble Supreme Court in *Union of India v. Chaturbhai M. Patel & Co.* (AIR 1976 SC 712) and *A.L.N. Narayanan Chettyar v. Official Assignee* (AIR 1941 PC 93) and *SEBI and Ors. v. Kanhaiyalal Baldevbhai Patel and Ors.* (2017) 15 SCC 1) and judgements of Hon'ble SAT in *KSL & Industries v. Chairman, SEBI* (Appeal No. 9 of 2003 decided on September 30, 2003) have *inter alia* been relied upon by the Noticees to contend that fraud is a serious charge and hence, must be supported by higher degree of proof. In this regard, in the present case, I note that vide the Circular Resolution dated September 03, 2010, Winsome approved the opening of account with EURAM Bank along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. Subsequently, a Pledge Agreement was also entered into between Winsome and EURAM Bank pledging the GDR proceeds in the account opened, as authorized in the Circular Resolution dated September 03, 2010, as security for loan taken by Vintage in order to subscribe to the GDRs of Winsome. The Circular Resolution or Pledge Agreement was not disclosed

to the investors and a wrong disclosure was made to the stock exchanges regarding subscription of GDRs. Moreover, the default of loan by Vintage and consequent adjustment of USD 6.05 million from the GDR proceeds by EURAM Bank in accordance with the Pledge Agreement was also not disclosed to the investors by Winsome. In the *Adi Cooper matter (supra)* the Hon'ble Supreme Court has observed that such resolution facilitated the transaction with Vintage and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through BSE. In my view, this non-disclosure had the potential to 'induce' or to mislead the investors to remain invested or to invest or to divest in the securities of the Company. I note that the evidence available on record in the form of board resolutions, Pledge Agreement, Loan Agreement, disclosure made to the stock exchanges by Winsome, bank statements of Winsome, etc. shows higher degree of probability, of bringing out of inducement or misleading investors to deal or abstain from dealing in the securities of the company and consequential fraud committed. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court and Hon'ble SAT, in the cases, relied upon by the Noticees.

38. From the discussions above, I find that Winsome perpetrated a fraudulent scheme for its GDR issue in which the GDRs of Winsome were subscribed by only one entity i.e. Vintage (Noticee no. 13) by obtaining a loan through a dollar term loan facility of USD 13.24 million through a loan agreement from the EURAM Bank, for which Winsome provided security by pledging its Bank account held with EURAM Bank wherein proceeds of GDR issue of Winsome were to be deposited. I also find that since Vintage defaulted on payment of the loan to EURAM Bank an amount USD 6.05 million was adjusted by EURAM Bank against loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement and therefore Vintage received allotment of GDRs worth USD 6.05 million free of cost. I further find that Winsome caused the investors in the securities market in India to believe that the full consideration for GDRs

had been received by it which was not true and thereby induced the investors in India to deal in securities, and committed fraud on the investors in India and thus violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

Liability of Directors of Noticee no.1

39. The SCN alleges that on September 03, 2010, the directors of Winsome, namely Mr. Satish Bagrodia (Noticee no.2) , Mr. B.M. Khanna (Noticee no.3), Mr. S.K. Singla (Noticee no. 4), Mr. Ashish Bagrodia (Noticee no. 5) and Mr. Manish Bagrodia (Noticee no.6), vide a circular resolution dated September 03, 2010 authorized the EURAM Bank to use the Winsome's GDR proceeds deposited with EURAM Bank as security in connection with loan and also authorized Noticee no. 6 to sign, execute any application, agreement etc. as may be required by the EURAM Bank. Further the said resolution was ratified in Board Meeting of Winsome dated September 22, 2010, wherein directors namely, Noticee no. 2, Noticee no. 4 Noticee no. 5, Noticee no.6, Notice no. 7 and Noticee no.8, were present. The SCN alleges that based on this resolution the GDR proceeds were subsequently used as security against loan to a third party i.e. Vintage FZE which was also the sole subscriber to the GDR issue. Therefore, it has been alleged that these Noticees who were directors of Winsome, who approved the board resolution and were present in the board meeting wherein the board resolution was ratified, acted as a party to the fraudulent scheme of GDR issuance.
40. I note that Noticee nos. 2 and 7 have passed away on March 05, 2019 and December 25, 2019 respectively and their death certificates have been placed on record. In view of the same, the proceedings against Noticee nos. 2 and 7 stand abated. Regarding the said allegation made in the SCN, I find that Hon'ble Supreme Court in its judgment and order in Adi Cooper case (supra) has held that *such resolution* (as the circular resolution dated September 03, 2010) *facilitated the transaction with Vintage*

(subscriber in that case also) *and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through BSE.* Thus, the directors of Winsome who passed the aforesaid board resolution can *prima facie* be termed as party to the fraudulent act of Winsome.

41. I note that Noticees 4 and 8 were both nominee Directors, nominated by PSIDC and PNB, respectively. Both Noticees in their submissions have referred to the protection granted to nominee directors under various Acts governing their employer institutions and MCA Circulars to the same effect. Both Noticees have also made submissions on the merit of the allegation in the SCN stating that the Circular Resolution dated September 03, 2010 cannot be construed to be an authorization for pledging the funds in the EURAM Bank account no. 580040 in favour of Vintage FZE. Further, Noticee nos. 4 and 8 have both submitted that they relied upon the statutory compliance certificate given to the board by Winsome, confirming that all the compliances with regard to law, orders, regulations and all other legal requirements have been complied with by Winsome.
42. From the submission of Noticee no. 8, I note that he was Nominee Director of PNB on the Board of Winsome till March 16, 2011 i.e. before the date of GDR issue (March 29, 2011), he had not attended the Board Meeting held on March 29, 2011 (i.e. last AGM) and was also not a member of any committees. I further note that Noticee No. 8 did not sign the Circular Resolution dated September 3, 2010. He was, however, present in the board meeting of Winsome held on September 22, 2010, in which the Circular Resolution was taken note of and confirmed. The Noticee no. 8 has contended that Circular Resolution was approved on September 03, 2010 itself and in the board meeting dated held on September 22, 2010, the said resolution was only placed for taking note and not for seeking approval. I find merit in the submissions of Noticee no. 8 that Circular Resolution was placed in the board meeting dated September 22, 2010 for taking note of it and not for approval or ratification, as alleged in the SCN. Noticee

no. 8 has not approved impugned circular resolution dated September 03, 2010 and the meeting dated September 22, 2010 wherein Noticee no. 8 was present, said resolution was placed only for taking note and not for ratification. Therefore, allegations made against the Noticee no. 8 in the SCN are not made out.

43. Noticee no. 4 has referred to Section 41A of the State Financial Corporation Act, 1951, which according to submissions also governs PSIDC and states as follows:

"41A-Protection of action taken by persons appointed under Section 27 or Section 32A

No suit/prosecution or other legal proceeding shall lie against any person appointed as Director, Administrator, Managing Agent or Manager by the Financial Corporation in pursuance of Section 27 or Section 32-A for anything which is in good faith done or intended to be done by him as such Director, Administrator, Managing Agent or Manager."

I note that Noticee No. 4 was a Nominee Director of PSIDC on the Board of Winsome from June 13, 2000 to October 21, 2016. Thus, being the nominee director of PSIDC on the board of Winsome, Noticee no. 4 the protection of aforesaid Section was available to Noticee no. 8 for acting as such provided he had acted in good faith. I note that SCN alleges that Noticee no. 8 had signed the Circular Resolution dated September 03, 2010 and was also present in the Board Meeting held on September 22, 2010. Noticee no. 4 has submitted that he relied upon the statutory compliance certificate given to the board by the Winsome, confirming that all the compliances with regard to law, orders, regulations and all other legal requirements have been complied with by the company. The Noticee also submitted that as per banking law and practice, escrow account opened is opened for specific purpose of receiving subscription of GDR's as such amount received can be used only for issuing GDRs and cannot be used for any other purpose. Thus, Noticee no. 4 has been able to demonstrate that he acted in good faith while signing the Circular Resolution dated September 03, 2010. I find that Noticee no. 4 is eligible for protection against legal proceedings, including the present proceedings, under Section 41A of BCA, as quoted above and allegations made in the SCN against the Noticee no. 4 are not made out.

44. I note that Noticee no. 6 who was the Managing Director of Winsome during the relevant period including FY 2011-12 and 2012-13, has mainly adopted the arguments of Noticee no.1. I note that Noticee no. 6 was the signatory to the Circular Resolution dated September 03, 2010 and on the basis of the authority granted vide Circular Resolution dated September 03, 2010, Noticee no.6 signed the Pledge Agreement dated March 22, 2011 on behalf of Winsome with EURAM Bank. I also note that Noticee no. 6 signed a letter dated August 07, 2012 confirming the rights of EURAM Bank to set off the pledge deposit with the outstanding loan amount and interest. I note that the sole purpose of the Pledge Agreement dated March 22, 2011 was to secure the loan taken by Vintage from EURAM Bank for subscribing to the GDR issue of Winsome, as discussed in the previous paras. I find that Noticee no. 6 has been the Managing Director of the company not only at the time of passing of resolution dated September 03, 2010, authorizing opening of bank account with EURAM Bank and pledging the GDR proceeds with EURAM Bank for the loans taken, but also at the time of taking of loan by Vintage (Noticee no. 13) from EURAM Bank and the Pledge Agreement between Winsome and EURAM Bank which he himself signed, securing the loan of Vintage. Further, Noticee no. 6 was also the Managing Director of Winsome at the time of making of wrong disclosures by the Winsome to the stock exchanges regarding subscription of GDRs and also when Winsome concealed the adjustment of USD 6.05 million from the GDR proceeds by EURAM in view of the loan default by Vintage. I also note that Noticee no. 6 was a signatory to the Annual Reports for FY 2011-12 and 2012-13 of Winsome during which period the fraudulent scheme of GDR issue took place Winsome concealed the same in its Annual Reports and he was also the Compliance Officer of Winsome during that time. I further note that Noticee no. 6 was a member of the GDR Issue Committee of Winsome which was formed in the meeting of the Board of Directors of Winsome on March 11, 2011 which was authorized to decide the pricing of GDR issue and do the needful related to offer/ issue/ allotment of GDRs and utilization of its proceeds etc. From all these facts, I find that Noticee no. 6 was aware of the fraudulent scheme of issuance of GDRs of Winsome and played

an active role in the said scheme.

45. I note that Noticee no. 3 and 5, apart from adopting the common submissions of Noticee no. 1 dealt in detail in the previous paras, have both submitted that they were independent non- executive directors of Winsome and not responsible for the day to day running of the Noticee no. 1. Noticee no. 5 has also stated that he was not part of the GDR Issue Committee of Winsome which had been formed by the Board of Directors of Winsome on March 11, 2011 for the specific purpose of looking into the GDR issue of Winsome.
46. In this regard, I find from the Annual Reports of Winsome that both Noticee nos. 3 and 5, were independent directors of Winsome during the FY 2011-12 and FY 2012-13 when the GDR issue of Winsome took place. Noticee no. 3 resigned on June 01, 2013 while Noticee no. 5 resigned on September 16, 2013. I note that Noticee nos. 3 and 5 signed the Circular Resolution dated September 03, 2010 and Noticee no. 5 was also present in the meeting of the Board of Directors of Winsome on September 22, 2010. Neither of these Noticees have placed any material on record to show that they had raised any objection or query regarding the circular resolution which proposed to pledge the entire GDR proceeds for any loan. As discussed in previous paras, the Circular Resolution was an integral part of the fraudulent scheme of issuance of GDRs by Winsome. I further note that Noticee no. 3 was also a member of the GDR Issue Committee of Winsome which was formed in the meeting of the Board of Directors of Winsome on March 11, 2011 which was authorized to decide the pricing of GDR issue and do the needful related to offer/ issue/ allotment of GDRs and utilization of its proceeds etc. I also note that Noticee nos. 3 and 5 were members of the Audit Committee of Winsome during FY 2012-13 attending 5 and 6 meetings (out of 6) of the committee, respectively. I note that the default of loan by Vintage and subsequent adjustment of loan by EURAM Bank from the GDR proceeds resulting in non-remittance of GDR proceeds amounting to USD 6.05 million to Winsome occurred during this financial year. In this regard, Clause 49(II)(D) of the Erstwhile Equity Listing

Agreement which dealt with the role of the Audit Committee of listed companies specified that one of the duties of the Audit Committee is the oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. In terms of the said clause, it was the duty of the Audit Committee of Winsome to examine the financials of Winsome and ensure that the same is reported correctly. As discussed in the previous paras, the non-receipt of USD 6.05 million from the GDR proceeds due to loan default by Vintage was fraudulently not disclosed by Winsome in its Annual Reports or to the stock exchanges. I find that failure to raise any concern regarding the non-receipt of USD 6.05 million, as member of the audit committee as well as the board of directors of Winsome, shows that these directors did not act diligently. I further find that though Noticee nos.3 and 5 were independent directors of Winsome, however they were both signatories to the Circular Resolution dated September 03, 2010 and Noticee nos. 3 was involved in the GDR issue of Winsome and both these Noticees were members of the Audit Committee of Winsome, leading to the conclusion that they were also involved in the fraudulent GDR issue by Winsome. I also note that for the same set of violations as detailed in the present order, adjudication proceedings had also been initiated against Noticee no. 3. I also note that, vide order dated April 28, 2021, Noticee no. 3 was exonerated in the said proceedings, after considering factors under Section 15J of the SEBI Act, 1992. On a perusal of the Adjudication order I note that the said order has not considered that Noticee no. 3 was a member of the Audit Committee and GDR Issue Committee of Winsome.

47. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of N Narayanan v. Adjudicating Officer, SEBI (2013) 12 SCC 152 has observed a *sunder*:

"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."

48. In view of the discussions above, I find that Noticees No. 3, 5 and 6 were part of the fraudulent arrangement which resulted in facilitating the subscription of GDR issue of Winsome wherein Noticee no. 13 obtained loan from EURAM Bank for subscribing the GDR issue of Winsome and, Winsome pledged the GDR proceeds with the EURAM Bank securing the loan taken by Noticee no. 13. Thus, I find that the Noticee nos. 3, 5 and 6 have violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.
49. I note that it has been alleged in the SCN that AP (Noticee no. 12) was key person in structuring the GDR issue of Winsome who devised and structured the GDR issue in connivance with Winsome. It has been alleged that AP connected entities were involved at all stages of the GDR issue of Winsome. AP controlled Pan Asia Advisors Ltd. (Noticee no. 10) was Lead Manager to GDR issue of Winsome. Another entity connected to AP i.e. Vintage FZE (Noticee no. 13), subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which Winsome pledged its GDR proceeds as security. Vintage subsequently defaulted in repayment of balance loan amount of USD 6.05 million accordingly, said amount was adjusted by the EURAM Bank from the GDR proceeds of Winsome, in terms of the pledge agreement between Winsome and EURAM Bank. Resultantly, GDRs to the extent of USD 6.05 million which were issued to Vintage FZE remained with Vintage for free. AP connected FII sub-accounts, namely, HBSF (Noticee no. 14) and ASPIRE (Noticee no. 15), received GDRs and converted those into equity shares and sold converted equity shares of Winsome on Indian stock exchanges. Both HBSF and Aspire were registered as sub-accounts with AP connected FII, namely, Golden Cliff which facilitated HBSF and Aspire in conversion of GDRs and sale of converted equity shares in Indian securities

market for a value of Rs.69.21 lakh through AP connected FII Golden Cliff. Further, Aspire continued to hold 63,55,403 converted shares. SCN alleged that shares sold by HBSF and Aspire are the shares which were acquired by Vintage without any consideration. Thus, it was alleged that Noticee no. 12 devised GDR scheme along with Winsome wherein Winsome misled the Indian investors by concealing the information of entering into Pledge Agreement dated March 22, 2011 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 of Winsome to the tune of USD 6.05 million. Noticee no. 9, who was a long term associate of AP, entered into Loan Agreement as the MD of Noticee n. 13, with EURAM Bank for subscription of GDR issue of Winsome and also opened a loan account (a/c no. 540012-051-3) with EURAM Bank and Vintage defaulted on loan of USD 6.05 million thereafter. The SCN further alleges that Noticee no. 12 and connected entities i.e. Noticee no. 9 to 11, Noticee no. 13, Noticee no. 14, Noticee no. 15, participated in the fraudulent scheme of issuance of GDRs of Winsome, in violation of provision of SEBI Act, 1992 and PFUTP Regulations.

50. Summary of the connection/ association of Noticee no. 12 with Noticees no. 9 to 15 and other associated entities is tabulated below:

Name of entity	Connection/association of AP with entity
Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	AP was director (August 30, 2006 to September 29, 2011) and 100% shareholder (from July 01, 2008 to January 20, 2012) and 90% shareholder as on January 2016.
Vintage FZE (now known as Alta Vista International FZE)	AP was beneficial owner (as on June 06, 2007) and Managing Director (as on June 06, 2007 and May 12, 2010). Alkarni Holdings Limited was sole shareholder of Vintage as on December 28, 2010 and AP was sole director of Alkarni as on April 21, 2014.
India Focus Cardinal Fund ("IFCF")	AP was director from August 22, 2008 to October 28, 2010, Investment Manager (as on July 12, 2010) and 100% shareholder (January 01, 2009 to May 31, 2010) and beneficial owner since August 22, 2008.
EURAM Bank, Austria	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited (incorporated on August 23, 2009, dissolved in December 30, 2013) and he was account officer of EURAM Bank.
EURAM Bank Asia Limited ("EBAL")	AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011.

Name of entity	Connection/association of AP with entity
Mr. Mukesh Chauradiya	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director, Authorized Signatory and director. In Ramsai Investment Holdings Private Limited, Vintage FZE was holding around 99.98% shares through its director AP (for the period 2009-2013). AP was director of Ramsai Investment Holdings Private Ltd. for the period from February 04, 2008 to August 18, 2010. Mr. Mukesh Chauradiya was director of Ramsai Investment Holdings Private Ltd. (first appointment from February 04, 2008 and latest appointment from August 17, 2010 till March 17, 2016). AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (. AP's brother Mr. Satish Ramswaroop Panchariya is director (first appointment on February 01, 2000 and latest appointment as Managing Director since May 11, 2018 till date). AP's brother Mr. Ashok Ramswaroop Panchariya is director in Alka India Limited since April 29, 2005 till date.. Mr. Mukesh Chauradiya was director of Alka India Ltd. from January 31, 2006 to June 01, 2010.
Mr. Anant Kailash Chandra Sharma	AP and Mr. Anant Kailash Chandra Sharma were directors in Sai Sant Advisory (India) Private Limited: AP-August 31, 2007 to October 20, 2010 Anant Kailash Chandra Sharma-December 01, 2009 till March 18, 2016. AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (Anant Kailash Chandra Sharma was additional director in Alka India Limited since December 01, 2009 till April 26, 2018. Mr. Anant Kailash Chandra Sharma has worked with Vintage FZE
Highblue Sky Emerging Market Fund ("HBS")	Mr. Anant Kailash Chandra Sharma is director (since August 11, 2014 till date) and 100% beneficial owner of HBS (since September 09, 2014 till date by virtue of being beneficial owner of Golden Cliff from September 09, 2014 till date which in turn is beneficial owner of HBS since April 21, 2014)). Mr. Anant Kailash Chandra Sharma is connected to AP. Ms. Reema Narayan Shetty was beneficial owner of HBS from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014). Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with EURAM Bank Austria.
Golden Cliff (previously known as Vaibhav Investments Limited)	Mr. Anant Kailash Chandra Sharma is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. Anant Kailash Chandra Sharma is connected to AP. Reema Narayan Shetty was director (from May 16, 2013 till August 01, 2014) and 100% beneficial owner (from September 12, 2013 till September 09, 2014) of Golden Cliff. She is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with EURAM Bank Austria.
Aspire Emerging Fund (Aspire)	Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah who was also a director of HBSF.

The role and allegations against Noticees no. 9 to 15 in the SCN and their replies are discussed below.

51. Role of Pan Asia Advisors Ltd. (Noticee no. 10):

51.1. Noticee no. 10 was the Lead Manager to the issue of GDRS by Winsome. I note that the SCN states that Noticee no. 10, vide letter dated February 25, 2016 provided details of its directorship and its connection with AP to SEBI. On perusal of the same, it was observed that Noticee no. 10 was incorporated on April 24, 2006 and AP was director of Pan Asia during the period August 30, 2006 to September 29, 2011. Vide letter dated February 20, 2012, Pan Asia had submitted that AP held 100% shareholding in the company during the period July 2008 to January 2012, i.e the period when the fraudulent scheme of GDR issue of Winsome took place.

51.2. I further note that Pan Asia Advisors Ltd. wherein AP was director and 100% shareholder was the Lead Manager which managed the GDR issue of Winsome and procured the subscriber, i.e. Vintage. I also note that Pan Asia supplied the wrong list of 6 subscribers to the GDR issue to Winsome which was thereafter wrongly disclosed by Winsome to SEBI. I also note that in reality AP controlled Vintage was sole subscriber to GDR issue which subscribed to GDR issue by entering into Loan Agreement with EURAM Bank and defaulted in repayment of balance loan amount of USD 6.05 million as a result of which the GDR proceeds were forfeited by EURAM Bank. From the fact that AP controlled Noticee no. 10, being its 100% shareholder and director and the fact that Noticee no. 10 was the Lead Manager managing the placement of the GDRs wherein it only procured another AP connected entity as the sole subscriber and the whole scheme of subscription was fraudulent, as discussed in the previous paras, I find that Noticee no. 10 was also in connivance with AP and AP connected entities and played an active role in fraudulent scheme of GDR issue of Winsome. In the order dated October 25, 2016 in Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013), the Hon'ble SAT has examined the role of a lead manager

in a GDR issue and observed as follows:

“Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.”

51.3. In view of the facts narrated above and the observations of the Hon'ble SAT, I find that Noticee no. 10 has violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

52 Role of Vintage FZE (Noticee no. 13)

52.1. Noticee no. 13 was the sole subscriber to the GDRs issued by Winsome. The SCN states that on perusal of copy of the Know Your Customer documents of Vintage for opening an account with EURAM Bank, it was observed that AP was the beneficial owner and Managing Director of Vintage as on June 06, 2007. It was further observed that Alkarni Holding Ltd was the shareholder of Vintage as on December 28, 2010 and as on April 21, 2014 and AP was the sole shareholder and director of Alkarni Holding Ltd. Thus, I note that AP is beneficial owner of Vintage which was the sole subscriber of GDR issue of Winsome and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 13.24 million. As discussed in the previous paras of this order, Winsome pledged its GDR proceeds as security against the loan availed by Vintage. I also note that Vintage repaid loan to the tune of USD 7.19 million and defaulted on the loan repayment thereafter and the outstanding loan amount of USD 6.05 million was adjusted by EURAM Bank from Winsome's GDR proceeds deposited in its EURAM Bank account. Thus, I find that Noticee no. 13 received allotment of

GDRs of Winsome worth USD 6.05 million without payment of any consideration. HBSF and Aspire received GDRs, converted them and sold converted shares worth Rs.69.21 lakh through AP connected FII Golden Cliff. Hence, I find that Noticee no. 13 along with Noticee no. 12 and his connected entities are jointly and severally responsible for the loss of Rs.69.21 lakhs to the shareholders of Winsome. In view of the same, I find that Noticee no. 13 (where Noticee no. 12 was the beneficial owner and Managing Director) also acted as party to fraudulent scheme of GDRs issue of Winsome and violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

53. Role of Mukesh Chauradiya (Noticee no. 9)

53.1. It is alleged in the SCN that Mr. Mukesh Chauradiya was a long term associate of AP. Mr. Mukesh Chauradiya entered into Loan Agreement with EURAM Bank for subscription of GDR issue of Winsome in the capacity of Managing Director of Vintage. Further, Vintage opened a loan account (a/c no. 540012-051-3) with EURAM Bank and Vintage defaulted on loan of USD 6.05 million when Mr. Mukesh Chauradiya was the Managing Director and authorized signatory of Vintage. The SCN also states that Noticee no. 9 was also a director in the company Ramsai Investment Holdings Private Limited, where Noticee no. 13 was holding 99.99% shareholding through its director Noticee no. 12. Hence, it has been alleged that Noticee no. 9 is a close associate of Noticee no. 12.

53.2. Noticee no. 9 vide his reply has submitted that he was the authorized signatory in relation to the Bank account held by Noticee no. 13 with EURAM Bank, Austria. He has submitted that he was never the director or the Managing Director of Noticee no. 13 or held any beneficial interest in Noticee no. 13. Noticee no. 9 has submitted that the loan agreement in relation to Winsome was signed by him for and on behalf of Noticee no. 13 as its Authorised Signatory in relation to its bank account with EURAM Bank. That the agreement was signed by him as per the instruction and direction of

Noticee no. 12, the ultimate owner and beneficiary of Noticee no. 13.

53.3. In this regard, I note that even though Noticee no.9 claims that he has signed the Loan Agreement as per the instructions of Noticee no. 12, as per the Loan Agreement dated March 22, 2011, Noticee no. 9 has signed the same as the Managing Director of Noticee no. 13 for obtaining loan of USD 13.24 million from EURAM Bank for subscribing to the GDR issue of Winsome and therefore, cannot escape any liability for the same as he has been instrumental in signing the Loan Agreement that has facilitated the subscription of GDRs by Noticee no. 13. Therefore, I find that Noticee no. 9 has acted as party to the fraudulent scheme of GDR issue of Winsome in connivance with AP and his connected entities. Further, I also note that Noticee no. 9 has signed the loan agreements for GDR issuance of other listed companies viz: Vikash Metal & Power Ltd. and Rasoya Proteins Ltd., wherein similar fraudulent scheme of GDR issuance was devised by AP. In this regard, I note that from the same transactions related to the fraudulent GDR issue of Winsome on March 29, 2011, adjudication proceedings were also initiated against Noticee no. 9 and penalty was imposed on him. Noticee no. 9 challenged the order of the Adjudicating officer. The Hon'ble SAT, vide its order dated January 07, 2021 in *Mukesh Chauradiya vs. SEBI (Appeal no. 260 of 2020)*, dismissed the appeal observing as follows:

“10. It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed “for managing director” or “on behalf of managing director” etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is “an officer in default” in an organization etc are irrelevant when the

charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.

11. It is also held in the impugned order that the appellant was also a director of Ramsai Investment Holdings P. Ltd. wherein Arun Panchariya was also a director holding 99.98% of shares through Vintage FZE. This clearly demonstrates appellant's strong connection with Panchariya. Appellant's stated lack of awareness relating to details of the loan or other operations of Vintage is clearly feigning ignorance as the appellant has been working at senior level since 2005 and is admittedly signatory to many such agreements. In the instant matter the loan agreement clearly spells out that it is for the purpose of subscribing to the Winsome GDR and the amount of GDR issue and the amount of loan matches indicating that Vintage is going to be the sole subscriber of the GDRs in question. Pledge Agreement was annexed to the loan agreement, as given in the impugned order quoted in para 2 of this Order.

...

13. This Tribunal is fully aware of the modus operandi, as in the impugned matter, used by various entities in the manipulation of several GDR issues by Indian Companies as held in various orders passed by us such as in Pan Asia Advisors Ltd. (another Panchariya entity), Cals Refineries etc."

53.4. In light of the aforementioned order of the Hon'ble SAT, it becomes clear the present matter is not the only matter where Noticee no. 9 has signed loan agreements on behalf of Noticee no. 13. His strong connection with Noticee no. 12 has also been upheld by the Hon'ble SAT in the aforesaid order. Further, from his directorship in various entities controlled by Noticee no. 12 and the fact that he was an authorized signatory for Noticee no. 13, I find that Noticee no. 9 was not merely an employee but was a close associate of Noticee no. 12 and as such Noticee no. 9 was aware of the scheme devised by Noticee no. 12 for various GDR issues and was a party to the fraudulent scheme related to the GDR issue of Winsome and violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003. I also note that Noticee no. 9 has been alleged to be involved in 14 GDR issues involving fraudulent schemes orchestrated by Noticee no. 12 and he has already been debarred in multiples cases for his involvement in fraudulent GDR schemes orchestrated by Noticee no. 12, such as in the matters of Visu International Ltd (Order dated February 20, 2020), Farmax India Ltd (Order dated July 14, 2020) and Zenith Birla (India) Ltd. (Order dated March 30, 2021).

54. Role of Noticee nos. 14 and 15:

54.1. The SCN states that the GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. 1,199,125 GDRs were converted during February 14, 2014 and May 15, 2015. Post cancellation, FII-sub accounts namely 1) HBSF (Noticee no. 14) and Aspire (Noticee no. 15) received total 1,19,91,250 shares on conversion of GDRs. The termination notice of GDR program was given by the depository bank on March 16, 2015 indicating the termination date as June 15, 2015. On termination of GDR program, 79,50,000 shares were sold by Custodian (DBS bank) during July 13 to September 23, 2015. Summary of the equity shares received post cancellation of GDRs, as tabulated in the SCN, is given below:

Sl. No.	Name of the entity	No. of GDR's converted	Quantity of equity shares received
1	HBSF (Noticee no. 14)	1,45,250	14,52,500
2	ASPIRE (Noticee no. 14)	10,53,875	1,05,38,750
	TOTAL	11,99,125	1,19,91,250

54.2. Summary of the registration of FII-sub accounts, as given in the SCN is placed below:

S no.	Name of sub account	Period of registration of Sub-account with FII	Name of FII under which sub account is registered	Period of registration of FII
1	HighBlueSky Emerging Market Fund [formerly KBC Aldini Capital (Mauritius) Ltd.]-HBSF	22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Limited) (Noticee no. 11)	01/03/2011 to 28/02/2017
2	Aspire Emerging Fund- ASPIRE	14/06/2013 to 28/02/2017		

54.3. A summary of sale of shares by Noticee no. 14 received pursuant to cancellation of

GDRs, as given in the SCN is tabulated as follows:

Trade date	Exchange	No. of shares sold	Trade Value (INR)
From 03/12/2014 to 10/12/2014	BSE and NSE	14,52,500	20,90,875.00

It is seen from above that Noticee no. 14 sold entire 14,52,500 shares allotted to it for a value of Rs.20.90 lakhs.

54.4. The SCN alleges the following connection of Noticee no. 14 to AP:

- KYC documents of HBSF obtained from custodian show its registered address at – C/O Aurisse International Ltd, 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius. E-mail address is mentioned as fundadmin@aurisse.com and contact no. is mentioned as +2304640077. In SEBI's records, company has mentioned e-mail id as saleem@aurisse.com. The SCN states that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Limited wherein Mr. Mukesh Chauradiya (Noticee No.9) who is an associate of AP, as detailed in above paragraphs, was director and CFO in 2011. Examination of website of Aurisse International Limited reveals that it shares common address and contact number with HBSF.
- Golden Cliff is 100% shareholder of HBSF since April 21, 2014 and an AP connected entity Mr. Anant Kailash Chandra Sharma is the director of HBSF since August 11, 2014 and he is also the director of Golden Cliff since July 16, 2014. Mr. Anant Kailash Chandra Sharma was the beneficial owner of Golden Cliff since September 09, 2014 till date. Mr. Anant Kailash Chandra Sharma and AP are connected to each other as both were director in Sai Sant Advisory (India) Private Limited during a common period. Mr. Anant Kailash Chandra Sharma was director from December 01, 2009 to March 18, 2016 and AP was director from August 31, 2007 to October 20, 2010. Mr. Anant Kailash Chandra Sharma is also connected to Mr. Mukesh Chauradiya, having served as Additional Director of Alka India Limited (from December 01, 2009 till date) and Mr. Mukesh Chauradiya served as director of Alka India Limited from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Private Limited, Mr. Mukesh Chauradiya and Mr. Anant Kailash Chandra Sharma served as director from August 17, 2010 to March 17, 2016 and from September 01, 2015 to March 18, 2016 respectively. AP was 99.98% shareholder in Ramsai Investment Holdings Private Limited (for the period 2009-2013) and director from February 04, 2008 to August 18, 2010.

- From the period from September 12, 2013 to September 09, 2014 the beneficial owner of Golden Cliff was Ms. Reema Narayan Shetty who was also a director of Golden Cliff from May 16, 2013 to August 01, 2014. Since Golden Cliff was 100% owner of HBSF thus Reema Narayan Shetty was also the 100% beneficial owner of HBSF. Reema Narayan Shetty worked with AP owned entity i.e. India Focus Cardinal Fund (IFCF).

54.5. I note that Noticee no. 14 has not submitted any reply to the SCN. I note that Noticee no. 11 is 100% shareholder of Noticee no. 14 since April 21, 2014 and from the period from September 12, 2013 to September 09, 2014 the beneficial owner of Noticee no. 11 and consequently Noticee no. 14 was Ms. Reema Narayan Shetty who was an employee of an AP owned entity. Mr. Anant Kailash Chandra Sharma, who is connected to AP as well as Noticee no.9, as detailed above, was the beneficial owner of Golden Cliff since September 09, 2014 till date. From the above-mentioned connections between Noticee no. 14 and AP such as beneficial owners of Noticee no. 14 being associates of AP, and the fact that Noticee no. 14 received the equity shares after conversion of GDRs (which were issued without consideration) which it thereafter sold in the Indian market, I find that Noticee no. 14 was also a participant of the fraudulent scheme of issuance of GDRs and their subsequent conversion into equity shares and sale in the Indian securities market.

54.6. A summary of sale of shares by Noticee no. 15 received pursuant to cancellation of GDRs is tabulated as follows:

Trade date	Exchange	No. of shares sold	Trade Value (INR)
From 09/04/2015 to 30/04/2015	BSE and NSE	41,83,347	48,30,161.50

It is seen from above that Noticee no. 15 sold a total of 41,83,347 shares for a value of Rs.48.30 lakhs and continues to hold 63,55,403 equity shares of Winsome. The SCN states that Mr. Ashish Nanda was a director of Noticee no. 15 along with Mr. Aslam Kanowah who was also a director of Noticee no. 14 which as discussed in the

previous paras is an AP connected entity.

54.7. Noticee no. 15 has contended that Mr. Ashish Nanda was its Director (i.e. Director of Aspire) (30.11.2012 to 09.07.2014) along with Mr. Aslam Kanowah ("Mr. Aslam") who was a director of Noticee no. 14 and CEO of Aurisse International Ltd.(Aurisse), the management company of Noticee no. 15. Noticee no. 15 has submitted that as per contractual agreement with Aurisse, two local directors were provided and appointed by Aurisse with Noticee no. 15 and because of this reason Mr. Aslam was appointed as a director in Noticee no. 15. Noticee no. 15 has also submitted that Golden cliff became FII of Aspire on 14.06.2013 when neither Mr. Anant Sharma nor Ms.Reema Shetty were beneficial owner of Golden Cliff. Aspire has also submitted that GDR were acquired by Aspire and consideration was in the form of subscription i.e. issuance of 10,53,875 units on 25.02.2014 valued at USD 8,43,793.38 by it to Ambrus Value Fund.

54.8. I note that although Noticee no. 15 has submitted that it paid consideration for the GDRs of Winsome, however, no documents supporting the said submission has been submitted by Noticee no. 15. I note that although Noticee no. 11 is the FII of Noticee no. 15 from June 14, 2013 while Mr. Anant Sharma and Ms. Reema Shetty became associated with Noticee no. 11 at a later date, however, apart from the said connection I note that the management company of Noticee no. 15, as submitted by this Noticee itself, was Aurisse wherein Noticee no.9 (who is an associate of AP) was CEO in 2011. Therefore, I find that Noticee no. 15 is connected to AP related entities in more ways than one and the said connections, along with the fact that it received GDRs of Winsome and thereafter converted them to equity shares and sold them in the Indian securities market, indicates that Noticee no. 15 was also part of the fraudulent scheme of issuance and conversion of GDRs of Winsome.

54.9. Thus, from the discussion above, I note that on account of loan default by AP connected Vintage, USD 6.05 million were adjusted by EURAM Bank from the GDR proceeds of Winsome, i.e. Vintage received allotment of GDRs worth USD 6.05 million

without paying any consideration for it. Thereafter, AP connected sub-accounts namely Noticee nos. 14 and 15 received GDRs, converted them and sold converted shares worth Rs.69.21 lakh through AP connected FII Golden Cliff, in the Indian securities market. Further, Noticee no. 15 continues to hold 63,55,403 converted shares. I note that the shares sold by Noticee nos. 14 and 15 are the shares which were acquired by Vintage without any consideration. Thus, I find that Noticee nos. 14 and 15 acted as conduit to AP in selling converted equity shares of Winsome and acted as party to the fraudulent scheme and these two Noticees have violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

55. Role of Golden Cliff (Noticee no. 11):

From the above, I note that as an FII, Noticee no. 11 did not make any investment and was registered as an FII only to facilitate the AP connected FII sub-accounts HBSF and Aspire in selling the converted equity shares of Winsome. I also note that as provided in the table at para 50, Noticee no. 11 is also connected to AP. Thus, I find that Noticee no. 11 also connivance with AP/ AP connected entities in fraudulent scheme of GDR issue by Winsome and hence Noticee no. 11 acted as party to fraudulent scheme and thus has violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

56. Role of Arun Panchariya (Noticee no. 12):

56.1. It has been alleged in the SCN that Noticee no. 12 is key person in structuring the GDR issue of Winsome who devised and structured the GDR issue in connivance with Winsome. As discussed in the aforesaid paras with respect to Noticees no. 9, 10 and 13, each of these Noticees were part of the GDR issue and was connected to Noticee no. 12. Noticee no. 12 was the beneficial owner and Managing Director of Noticee no. 13, which was the sole subscriber of GDR issue of Winsome and the subscription was arranged through a loan availed from EURAM Bank to the extent of USD 13.24 million

for which security was provided by Winsome by pledging its GDR proceeds. Noticee no. 10 was the Lead Manager for GDR Issue of Winsome which was wholly owned and managed by Noticee no. 12. Noticee no. 13 defaulted on the repayment of loan to the extent of USD 6.05 million which was adjusted by EURAM Bank from the GDR proceeds of Winsome, effectively implying that Noticee no.13 received GDRs worth USD 6.05 million without paying any consideration. Noticee no. 9, an associate of Noticee no. 12, who had signed the Loan Agreement dated March 22, 2011 on behalf of Noticee no. 13, was the Managing Director of Noticee no. 13, which was a wholly owned entity of Noticee no. 12. Further, Noticee no. 14 and 15 who were also connected to Noticee no.12, had converted GDRs of Winsome and sold the converted equity shares in the Indian securities market for Rs.69.21 lakh.

56.2. I note that Noticee no. 12 has filed a single reply dated November 24, 2020 for 4 matters including the present matter, i.e. in the matters of Texmo Pipes and Products Ltd, Winsome Yarn Limited, Winsome Textiles Industries Ltd and Aqua Logistic Limited. Hence, I note that his submissions have been generally made without making any specific reply to the allegations in the SCN in the present matter. Noticee no. 12 has *inter alia* submitted that the mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia and that all these entities have a distinct and separate legal entity, which has its own management and decision making. Further, that he has already resigned from Noticee no. 13 (Resigned year 2009) and since then he was not part of its management team. However, I note that Noticee no. 12 has not submitted any document/evidence to prove that he has resigned from Noticee no 13 or that he is no longer the beneficial owner of these Noticees. From the material available on record, I find that Noticee no. 12 was the beneficial owner and Managing Director of Noticee no. 13. Therefore, I find the contention of Noticee no. 12 that he is not responsible for the actions of Noticees no. 13, is untenable.

56.3. Noticee no. 12 has also submitted that he is a non-resident Indian for the last more

than 20 years and has never registered with SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, Noticee no. 12 has submitted that the provisions of SEBI Act do not have extra territorial operation *qua* him in his individual or personal capacity, since all alleged acts of commission or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable. In this regard, I note that the Hon'ble Supreme has already dealt with this issue when it came for consideration of the Hon'ble Supreme Court of India in the matter of *Pan Asia* matter (*supra*) wherein the issue was discussed in detail and pertained to submission of Noticee no. 12 himself who was the main Noticee in the matter of *Pan Asia*. The relevant portion of the judgment of Hon'ble Supreme Court is reproduced as under:

“80. It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was genuine creation of GDR and its investments by the foreign investors on the very date when the GDR were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary shareholders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market.....

81.

82. We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company. The contention made on behalf of the respondents that the only authority which can proceed against the issuing company can be only for violation of the FEMA Act or the RBI Act is therefore not appealing to us.....”

In view of the aforesaid judgment, I find that the submissions of the Noticee no. 12 with regard to SEBI not having any jurisdiction is untenable. I also note from the Pledge Agreement dated March 22, 2011 that Noticee no. 12, as the director of EURAM Bank Asia, had verified the signatures of the Pledge Agreement between Winsome and EURAM Bank. Hence, I find that Noticee no. 12 was aware of the Pledge Agreement dated March 22, 2011 being signed between Winsome and EURAM Bank which was to provide security for the loan taken by Noticee no. 13 (where Noticee no. 12 was the beneficial owner and Managing Director) from EURAM Bank. Further, Noticee no. 13 defaulted on repayment of loan to EURAM Bank to the extent of USD 6.05 million, thereby GDR proceeds to that extent were adjusted by EURAM bank. Noticee no. 12 connected FII-sub account i.e. Noticee no. 14 and 15, converted 11,99,125 GDRs and sold 5635847 converted equity shares in the Indian securities market amounting to Rs.69.21 lakhs. Thereby according to the fraudulent scheme perpetrated, Noticee no. 12 arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub accounts which, in turn, sold the converted equity shares in the Indian securities market. Therefore, I find that Noticee no. 12 in connivance with the GDR issuer company devised and structured fraudulent scheme through his connected entities like Noticee no. 13, Noticee no. 10, Noticee no. 9, Noticee no. 11, 14 and 15.

56.4. From the above, I note that Noticee no. 12, appears to be the common thread which runs through Noticee no. 9 to 15 and each stage of the fraudulent transactions which ultimately resulted in the loss of USD 6.05 million to Winsome and its investors. I note that there was an increase in the capital of Winsome through issue of GDRs for which Winsome did not receive commensurate consideration. In the case of *Jindal Cortex Ltd. (supra)* the Hon'ble SAT held that this was an artificial arrangement supported by the company itself which enables the subscription to the GDR. In this case, the beneficiary of this scheme appears to be, in the first stage, Noticee no. 13 who received allotment of 1.99 million GDRs of Winsome but defaulted on the loan taken from EURAM Bank to the extent of USD 6.05 million and based on the Loan Agreement and

Pledge Agreement dated March 22, 2011 the outstanding loan amount was realized from GDR proceeds. I note that Noticee no. 12 was the beneficial owner of Noticee no. 13. Thereafter GDRs were transferred to Noticee nos. 14 and 15, both connected to Noticee no. 12, which sold the converted equity shares worth Rs.69.21 lakh in the Indian market. I note that in the Order of the Hon'ble SAT dated October 25, 2016 in Appeal No. 126 of 2013 (*Pan Asia Advisors Limited vs. SEBI*), the Hon'ble SAT has discussed the role of Noticee no. 12 in six GDR matters wherein the modus operandi adopted was similar. In the said matter the Hon'ble Tribunal has held as follows:

“Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that at every stage of the GDR issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted.”

56.5. As discussed in previous paras, the said scheme of issue of GDRs of Winsome constitutes 'fraud' and I find that Noticee no. 12 connived with Winsome to structure the fraudulent issue of GDRs wherein the shareholders of Winsome suffered a loss to the tune of USD 6.05 million. Therefore, in view of the above, I find that Noticee no. 12 has violated Sections 12A (a) of SEBI Act, 1992 read with Regulation 3(b) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In view of the finding that Noticee no. 13 received GDRs worth USD 6.05 million without any consideration, at the expense of the shareholders of Winsome and thereafter the GDRs after conversion to equity shares were sold by Noticee nos. 14 and 15 through FII Noticee no. 11, for an amount of Rs. 69.21 lakh, I am of the view that this amount is liable to be disgorged from Noticee nos. 12, 13, 14 and 15.

57. I note that the SCN has called upon Noticee no. 1 to show cause as to why suitable directions under Sections 11, 11B and 11(4) of the SEBI Act, 1992 including the

direction to bring back an amount of USD 6.05 million should not be issued against them. I find that GDRs to the extent of USD 6.05 million were issued by Winsome to Noticee no. 13 fraudulently, without any consideration, as discussed in previous paras which has caused loss to the shareholders of Winsome to the tune of USD 6.05 million. Accordingly, I find that it is imperative that Winsome has to bring back the amount of USD 6.05 million to the company. However, as discussed in para 35, Winsome has submitted that certain amounts have been remitted to its Indian bank accounts from the GDR proceeds after 2012 and I find that the the audit committee of the Company may look into the correctness of information submitted by the Noticees and report the same to the Board of Directors of Winsome for taking appropriate corrective action, if any. Having regard to the nature of violations and conduct of Winsome and the directors (Noticees no. 1, 3, 5 and 6), issue of regulatory directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against these Noticees no. are called for in the present matter. Further, the violations committed by the Noticees no. 1 to 15 in planned and structured manner, as noted above, whereby, camouflage of GDR issue was created to mislead the Indian investors. Such acts are prejudicial to the interest of the investors and the securities market. Such acts also call for issue of directions as contemplated under the SEBI Act, 1992.

Directions:

58. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:
- a. Winsome Yarns Ltd. (Noticee no. 1) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.

- b. Winsome Yarns Ltd. (Noticee no. 1) is hereby directed to continue to pursue the measures to bring back the outstanding amount of GDR proceeds as may be arrived at by the Audit Committee, if any, within a period of one year from such identification by the Audit Committee in terms of observation in para 35. Noticees No. 6 and all other directors of Noticee No. 1, shall ensure the compliance of this direction by Noticee No. 1 and Noticee no. 1 shall furnish a Certificate from a Chartered Accountant recognized by ICAI along with necessary documentary evidences, certifying the compliance of this direction to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.
- c. Mr. Manish Bagrodia (Noticee No. 6), is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order.
- d. Mr. B.M. Khanna (Noticee No. 3) and Mr. Ashish Bagrodia (Noticee no. 5) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order.
- e. Vintage FZE (Noticee No. 13) and Mr. Arun Panchariya (Noticee no. 12) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.

- f. Mr. Mukesh Chauradiya (Noticee no. 9), Pan Asia Advisors Ltd. (Noticee no. 10), Golden Cliff (Noticee no. 11), Highblue Sky Emerging Market Fund (Noticee no. 14) and Apire Emerging Fund (Noticee no. 15), are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 year from the date of this order.
- g. Noticee no. 14 and 15 are further directed to disgorge illegal gains of specified in para 54.3 and 54.6 respectively of this order made by way of sale of equity shares (after conversion of GDRs) of Winsome by them along with interest of 12% per annum from the date of sale of those equity shares till the payment of disgorgement amount, within a period of 45 days from the date of this order. Having regard to the close connection and role played, the liability of Noticee no. 12 and 13, as discussed in para 56, shall be joint and several with each of Noticee nos. 14 and 15. In case Noticee no. 12, 13 , 14 and 15 fail to comply with the said direction, SEBI shall be free to recover the said amount from the Noticees under Section 28A of SEBI Act, 1992 and these Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, to the respective Noticees herein at sub-paras (e) and (f) above, whichever is later. This direction is without prejudice to any other action against these Noticees which may be initiated by SEBI.
- h. The amount, as directed to be disgorged in sub-para (g) above, shall be remitted by Noticees no. 12, 13, 14 and 15 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. An intimation regarding the payment of said disgorgement amount directed to be paid herein, shall be sent to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.

- i. Proceedings against Noticee nos. 2 and 7 is disposed of for reasons stated in para 39 of this order.
 - j. Proceedings against Noticee nos. 4 and 8 is disposed of for reasons stated in para 42 and 43 of this order.
59. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticees shall also remain frozen. However, the obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order, however, shall be subject to any other restraint order operating against these entity(ies). Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this order, however, shall be subject to any other restraint order operating against these entity(ies).
60. This Order comes into force with immediate effect.
61. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

62. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

-Sd-

Place: Mumbai

Date: October 26, 2021

ANANTA BARUA

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**