BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/AA/AR/2020-21/8795]

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

In respect of:

Mr. Vipin Sharma
PAN: AIDPS3802K

207, Vardhaman Complex Premises,
Co-Operative So. Ltd,
LBS Marg,
Vikhroli (W),
Mumbai - 400083

In the matter of

Chromatic India Ltd

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation of several Indian companies that had issued Global Depositories Receipts (hereinafter referred to as '**GDRs**') in overseas market with the intention of defrauding Indian investors. Mr. Vipin Sharma (hereinafter referred to as **'the noticee'**) was one of the directors in one such company viz., Chromatic India Ltd (hereinafter referred to as **'the Company' / 'Chromatic'**) that was investigated by SEBI, in connection with its GDR issue, wherein, it was revealed that Chromatic entered into a Pledge Agreement with the European American Investment Bank (hereinafter referred to as **'Euram Bank'**) and fraudulently provided the GDR proceeds as collateral against the loan taken by the sole subscriber of GDR viz. Vintage FZE (hereinafter referred to as '**Vintage'**).

2. The investigation further revealed that the directors of Chromatic including Mr. Vipin Sharma approved the board resolution and authorized the Euram Bank to use the GDR proceeds of Chromatic to be deposited with Euram Bank as security in connection with the loan taken by Vintage for subscription of GDRs. Thus, it is alleged that the noticee was party to the fraudulent scheme pertaining to the GDR issue of Chromatic and has therefore violated the provisions of section 12A (a), (b), (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').

3. In view of the above observations and alleged violations, the adjudication proceedings were initiated against Chromatic and its directors including the noticee. The Adjudication Order ref no: Order/AA/ASR/2020/01-03 with respect to Chromatic and its two other directors was passed on March 31, 2020 imposing a penalty of Rs. 15,40,00,000/- on them for various violations including those pertaining to fraudulent issuance of GDRs. The instant order is being passed w.r.t the noticee, under the provisions of section 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Suresh B. Menon was appointed as the Adjudicating Officer(hereinafter referred to as '**AO**'), vide communique dated November 21, 2017, under section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of section 15 HA of the SEBI Act, the alleged violation of the relevant provisions of the PFUTP Regulations, by the noticee. Pursuant to the transfer of Shri Suresh B. Menon to another department, I was appointed as an AO in the present matter vide communique of appointment of AO dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice ref. A&E/EAD3/SBM-ASR/10861/2018 dated March 28, 2018 (hereinafter referred to as '**SCN'**) was issued to the noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why inquiries should not be initiated and penalties, if any, be not imposed on him under section 15HA of the SEBI Act, for the alleged contravention of the provisions of the PFUTP Regulations, by him. Briefly, the allegations made in the SCN against the noticee is given below

    a) Chromatic issued 4.2 million GDRs and raised USD 35.78 million, on October 22, 2010. It is alleged that Vintage was the only entity to have subscribed to 4.20 million GDRs (amounting to USD 35.78 million) of Chromatic and the subscription amount was paid by obtaining loan from Euram Bank. A Loan agreement was signed between Euram Bank and Vintage for the purpose of subscription of the GDRs of Chromatic.

    b) It is alleged that Chromatic, simultaneously, provided security towards the aforesaid loan obtained by Vintage, through a Pledge agreement signed between Chromatic and Euram Bank, wherein Chromatic pledged entire GDR proceeds against the loan availed by Vintage for subscription of GDRs of Chromatic. The aforesaid Pledge agreement signed between Chromatic and Euram Bank was an integral part of the Loan agreement signed between Euram bank and Vintage. It is alleged that on October 22, 2010, Chromatic made a corporate announcement to Bombay Stock Exchange (BSE) that it had successfully completed placement of 42,00,000 GDRs at USD 8.52 per GDR amounting to USD 35.78 million. However, information regarding signing of Pledge Agreement, which was material information pertaining to the contingent liability to the extent of GDR issue size, was not disclosed to BSE. Therefore, it is alleged that the corporate announcement by Chromatic was to mislead the Indian retail investors that the GDRs of Chromatic were fully subscribed without any liability, whereas, in reality the GDR issue was indirectly funded by Chromatic itself. Therefore, it is alleged that Chromatic did not inform stock exchanges about the aforesaid Pledge agreement entered into between itself and Euram Bank which was a price sensitive information and, therefore, could have a bearing on the price of the scrip of Chromatic. It is thus alleged that Chromatic has violated provisions of section 21 of SCRA read with clause 36(7) of the Listing Agreement.

c) Chromatic executed the Pledge agreement with Euram, wherein Chromatic had pledged entire GDR proceeds of USD 35.78 million as collateral against the loan taken by Vintage. It is alleged that the aforesaid Pledge agreement was an integral part of Loan agreement entered between Vintage and Euram (wherein Euram extended a loan of USD 35.78 million to Vintage for subscription of GDRs of Chromatic). Therefore, prima-facie, it was these two agreements that enabled Vintage to avail the loan from Euram for subscription of GDRs. Therefore, it is alleged that the GDR issue would not have been subscribed had Chromatic not given any such security towards the loan taken by Euram.

d) It is alleged that the Directors of Chromatic including Mr. Vipin Sharma, approved the board resolution and authorized the Euram Bank to use the GDR proceeds of Chromatic to be deposited with Euram Bank as security in connection with loan taken by Vintage for subscription of GDRs Chromatic. Thereby, it is alleged that Mr. Vipin Sharma along with the company and its other directors have violated section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulation.

e) The respective violations alleged to have been committed by the Noticee are tabulated below:

Name of the Noticee (Noticee no.)	Provisions allegedly violated	Penal Provisions
Mr. Vipin Sharma	*Section 12A(a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations*	*Section 15HA of SEBI Act*

6. The SCN for the noticee was sent to the address of Chromatic, as the noticee was one of the directors of Chromatic. In response to the SCN, Chromatic filed a common reply dated July 19, 2018, which was on behalf of the noticee also. Pursuant to my appointment as AO in the matter, hearing notices dated July 17, 2019 was sent to the noticee, informing him about the appointment of new AO in the matter and also granting him an opportunity of personal hearing on August 27, 2019. As no response was received from the noticee to the aforesaid hearing notice, vide our letter dated October 01, 2019, the noticee was once again granted an opportunity to appear for the hearing on October 18, 2020. In response to the said letter, the noticee, vide his letter dated November 07, 2019 submitted the following:

    a) *From your letter dated 01 /10/2019, I have for the first time came to know that Adjudication Proceedings in the above matter were initiated against M/s Chromatic India Ltd, Mr. Vinod Kumar Kaushik and Mr. Ajay Sethi (referred to as "the Noticees"}. and a common Show Casue Notice dated 28/03/2018 was issued to the Noticees, I further came to know that vide Letters dated 19/07/2018 and 23/08/2019, Common Submissions were made by ail the Noticees in the matter.*

    b) *I wish to mention that I was completely unaware of initiation of the-Adjudication proceedings in the above matter and I did not receive any Show Cause Notice from your goodselves. However, from the Para 4 of the Minutes of the hearing dated 18/10/2019, which I received from M/s. Chromatic India Limited on 04/11/2019, 1 have come to know that* *your goodselves had directed M/s Chromatic India limited and Mr. Vinod Kumar Kaushik to intimate me and Mr. Ajay Sethi that the hearing for them had also been scheduled on 11/11/2019 at 3pm.*

c) *In this connection I wish to mention that in the Show Cause Notice dated 28/03/2018, a copy of Investigation Report is said to be annexed. However, from M/s Chromatic India Limited, I have not received the copy of the said' Investigation Report. I, therefore, request you to please forward me a copy of the said Investigation Report and any Annexures annexed thereto at the earliest so that I can submit my Reply to your Show Cause Notice.*

d) *I further request you to allow me to inspect the documents relied by you in the Show Cause Notice and the Investigation Report annexed thereto. Since, the hearing has been fixed on 11/11/2019 and I have yet to submit my Reply to the Show Cause Notice dated 28/03/2018 on receipt of the copy of investigation Report and other documents annexed thereto, I request to adjourn the hearing and allow me one month's time from the date of Inspection granted to me. My request is bonafide as I was totally unaware of the Adjudication proceedings initiated in the above matter.*

7. Thereafter, vide letter dated December 09, 2019, the noticee was provided with copies of the SCN and annexures. An opportunity for inspection of documents was given to the Noticee on January 15, 2020. The Authorized representatives of the noticee carried out inspection of documents on behalf of the noticee on January 15, 2020.

8. Pursuant to the inspection, the noticee submitted a letter dated February 03, 2020 and requested for certain documents which were not provided to him. One of the documents requested by the noticee was the copy of internal notings of SEBI, related to the matter. Therefore, the noticee was informed vide email dated

February 13, 2020 that the internal notings were not relied upon for issuing the SCN and therefore the same couldn't be provided. However, rest of the documents requested by the noticee viz. Copy of a complaint and SEBI Interim Order dated June 16, 2016 were provided to the noticee vide the aforesaid email, and the submission of the noticee in this regard that aforesaid documents were not provided to him is incorrect. Further, the noticee was advised to make additional submissions if any by March 04, 2020 and was also given an opportunity of hearing for March 04, 2020. The noticee, vide letter dated March 02, 2020 submitted his response to the SCN and also availed the opportunity of hearing on March 04, 2020. Briefly, the submissions made by the noticee vide letter dated March 02, 2020, and during the course of hearing are given below:

a) *I, for the first time, received a copy of captioned Show Cause Notice (SCN) dated 28-03- 2018 from M/s Chromatic India Limited (Chromatic) through e-mail dated 06-11-2019 sent at 3.20 PM. In the said SCN my address has been shown as under 207, Vardhman Complex Premises, Co-operative So. Ltd, LBS Marg, Vikhroli (W), Mumbai -400083*
b) *The address given in the captioned SCN was of Chromatic. I had resigned as Director of Chromatic w.e.f. 29-09-2010. Chromatic had filed Form 32 on 22-10-2010 wherein my address given by Chromatic is as under*
c) *The Hon'ble Securities Appellate Tribunal in its Order dated 06-02-2020 in Appeal no. 58 of 2020 captioned as Vipin Sharma Vs. SEBI, has been pleased to record as under.*

   "We find that the appellant was a Director in the company and had resigned on September 29, 2010 and the same was communicated to the Registrar of Companies on October 22, 2010. The residential address of the appellant which is reflected in Form 32 before the Registrar of Companies indicates as under

On the other hand, the show cause notice was sent to the appellant was sent to the corporate address of the company at 501, Maker Chamber V, 221, Nariman Point, Mumbai-400021. Para 5

The fact that the appellant had resigned on September 29, 2010 has not been denied by the respondent in their reply. Consequently, it is clear case where the appellant was not served with the show cause notice. In the absence of the service of the show cause notice the entire proceedings are vitiated."

d) *Chromatic sent me a copy of letter of Adjudicating Officer bearing Ref. No. SEBI/ EAD- 1 /AA-ASR/25992/ 2019 dated 01-10-2019 on 04-11-2019 along with Minutes of Hearing conducted in the captioned Adjudication Proceedings held on 18-10-2019 wherein the Noticees i.e. Chromatic and Mr. Vinod Kumar Kaushik were directed to intimate me and Mr. Ajay Sethi that the hearing for them has been scheduled on 11-11-2019 at 3.P.M. Annexed Hereto and marked as Annexure A - 4 is the copy of email dated 04-11- 2019 sent by Chromatic enclosing therewith the letter dated 01-10-2019 sent by your good self along with Minutes of Hearing conducted in the Adjudication Proceedings against Chromatic and Vinod Kumar Kaushik in the matter of Chromatic India Limited Under SEBI (Procedure For Holding Inquiry and Imposing penalties by Adjudicating Officer) Rules 1995.*

e) *Based on documents provided to me as contained in CD vide your letter dated 10.01.2020, I am submitting my reply to SCN dated 28-03-2017 as under.*

f) *At the outset I deny all and singular allegations and adverse observations against me in the SCN and nothing contained in the SCN as against me shall be deemed to be admitted by me for the lack of traverse. I say and submit that the allegations as against me in the SCN are generic and vague in nature and any of such allegations made as against me do not establish that I had contravened the* *provisions of Sec 12 A (a),(b), (c) of SEBI Act, 1992 read with Regulations 3(a),(b), (c), (d) and 4 (1) of SEBI (PFUTP) Regulations, 2003.*

g) *I say and submit that the allegations made in the SCN as against me are not in consonance with the principles laid down by the Hon'ble Supreme Court in the case of Gorkha Security Services V. Govt, of NCLT of Delhi & Ors. The Hon'ble Supreme Court has held that "the fundamental purpose behind serving of a Show cause notice is to make the Noticee understand the precise case set up against him which he has to meet. This would require statement of imputations dealing with the alleged breaches and defaults he has committed, so he gets an opportunity to rebut the same."*

h) *I say and submit that the allegations made in the SCN as against me are unfounded , unsubstantiated, baseless and devoid of any material documents which substantiate that I had made violation of Sec 12 A (a) ,(b), (c) of SEBI Act, 1992 read with Regulations 3(a),(b), (c), (d) and 4 (1) of SEBI (PFUTP) Regulations, 2003. I say and submit that the adjudication proceedings initiated qua me deserve to be dropped due to delay and latches in serving SCN to me and initiation of such proceedings qua me is in violation of the Principles of Natural Justice. The material dates and events collated from the SCN dated 28-03-2018 read with Investigation Report dated 23-03-2017 are as follows:-*

i) *The Period under Investigation was 1-10-2010 to 31-10-2010. However, the Investigation Report is dated 23-03-2017. The Order Communicating Appointment of Adjudicating officer by General Manager SEBI is dated 21-11-2017. The captioned SCN is 28-03-2018. However the said SCN was wrongly addressed at then Chromatic's registered office to me at 207, Vardhman Complex Premises Co-operative So. Ltd, LBS Marg, Vikhroli (W), Mumbai -*

400083 which was never received by me. For the first time I received a copy of said SCN dated 28-03-2018 on 6-11-2019 from Chromatic.

j) Thus SEBI had conducted Investigation after more than 6 and half years from the issue of GDRs by chromatic and SCN was issued after about one year from the date of Investigation Report. I was served a copy of the said SCN on 04-11-2019 i.e. after about twenty months from the date of said SCN.

k) Hence the Adjudication Proceedings should be dropped as it is barred by Limitation. I rely on the following Judgments:

i) Corporation Bank and Another Vs Navin J. Shah (2000) 2 Supreme court cases 628 Para 12

ii) Rajender Singh and others Vs. Santa Singh and Others (1973) 2 Supreme court cases 705

iii) Ashok Shivlal Rupani & Anr. Vs. SEBI Appeal no. 417 of 2018

*l) The above 3 judgements have been relied by Hon*ble Securities Appellate Tribunal in its Judgement dated 05-12-2019 in Appeal no. 75 of 2019 captioned as Anil Kumar NandKumar Harchandani and other vs. The Adjudicating officer SEBI.*

m) I say and submit that in Para 3 of the captioned SCN it is alleged that Noticee 1 i.e. Chromatic issued 4.2 million GDRs and raised USD 35.78 million on 22-10-2010. It is further alleged that Vintage FZE was the only entity to have subscribed 4.2 million GDR amounting to Rs. 35.78 million of Noticee 1 and the subscription amount was paid by obtaining Loan from European American Investment Bank AG. (EURAM). Loan Agreement was signed between EURAM and Vintage for the purpose of the subscription of the GDR of Noticee. Since I had resigned as Director of Chromatic w.e.f 29-09-2010, I am not aware of the said GDR issue made by Chromatic on 22-10-2010 and payment of Subscription amount by obtaining loan from EURAM *and execution of Loan Agreement between EURAM and Vintage for the purpose of subscription of the GDR of Noticee.*

n) *I say and submit that the allegations made in Para 4, 5, 6, 8 and 9 of the captioned SCN dated 28-03-2018 do not concern to me. Hence I am not dealing with same. I say and submit that in Para 7 of the captioned SCN it is alleged that the Directors of Noticee I viz. Mr. Vinod Kumar Kaushik Noticee no 2, Mr. Vipin Sharma Noticee no 3 and Mr. Ajay Sethi Noticee 4 approved the Board Resolution and authorised the EURAM bank to use the GDR proceeds of Noticee 1 to be deposited with EURAM Bank as security in connection with the loan taken by Vintage for subscription of GDR.*

o) *I have been provided a copy of purported Minutes of the Meeting of the Board of Directors of Chromatic India Limited purportedly held on 3-08-2010. In the said Minutes I have been shown as present. I categorically state that I had neither received Notice of the said Board Meeting nor I had attended the said Board meeting. Hence the allegation made in para 7 of SCN that I had approved the Board resolution and authorised the EURAM bank to use the GDR proceeds of Noticee 1 to be deposited with EURAM bank are unsustainable qua me. Hence I earnestly request your good self to drop the proceedings initiated against me as it has caused tremendous mental agony to me.*

p) *I say and submit that I have been provided with a purported certified true copy of the resolution passed at the purported meeting of BOD of chromatic India Limited held on 13-08-2010. I categorically state that I had not certified any such resolution passed at the Board Meeting purportedly held on 13-08-2010. My signature on the said purported true copy of the resolution is forged. I request you to send the said purported Certified True Copy of the resolution to any Govt, approved Forensic Laboratory for Signature Verification. I rely and refer para 23 of Order dated 15-01-2018 passed by Whole Time Member ,SEBI in* *the matter of trading in the shares of Gemstone Investments Ltd which is reproduce below*

"Para 23. In the interest of justice, SEBI had acceded the request of the Noticee and decided to get the signatures verification done from International Forensic Services (hereinafter referred to as "IFS"), Pune registered with the Government of India and Government of Maharashtra, IFS vide email dated October 30, 2017 had stated that it provides a signature verification services under sec 45 of Indian Evidence Act. SEBI vide letter dated November 15, 2017 submitted the relevant documents required for signature verification to IFS. IFS in its acknowledgement receipts stated that the signature verification report pursuant to signature verification could be made available to SEBI by December 22, 2017."

q) *With reference to para 10 of SCN I say and submit that detailed findings and allegations pertaining to issuance of GDR by Noticee 1 , Pledge Agreement, Loan Agreement, and other manipulating and fraudulent act of the Noticees as mentioned in the Investigation Report do not concern to me as I was not party to the alleged resolution passed in the Board Meeting of Chromatic purportedly held on 13-08-2010 nor I am aware of issuance of GDRs by noticee 1 , execution of Pledge Agreement, Loan Agreement, and other manipulative and fraudulent acts committed by other Noticees as I had resigned as Director of Chromatic w.e.f 29-09-2010.*

r) *I say and submit that I was appointed as an Additional Director of Chromatic w.e.f 07-09- 2009. I was however not appointed as regular Director at Annual General Meeting held by Chromatic 29-09-2009. Hence as per section 161 (1) of Companies Act, 2013, I ceased to hold office as Director of Chromatic w.e.f. 30-09-2009. However, I was not aware that I had ceased to hold office as Director of Chromatic* *w.e.f. 30-09-2009 by operation of law and hence continued to attend Board Meetings of Chromatic.*

s) *I had submitted my Resignation Letter dated 04-09-2010 to chromatic through Registered Post 23-09-2010. However Chromatic at its Annual General Meeting held on 20-09-2010, in gross violation of provisions of section 161(1) of Companies Act, 2013, appointed me as regular director. The Appellant than again sent another letter of resignation dated 29-09-2010 which was taken on record by chromatic and form 32 was filed with the Registrar Of Companies, Maharashtra, Mumbai.*

t) *I say and submit that as an Independent Director I had attended only two Board Meetings of Chromatic in the Financial year 2010-11 i.e. on 29-05-2010 and 15-06-2010.As an Independent Director, I was not involved in the management of day to day affairs of chromatic. As an Independent Director of Chromatic, I exercised due care and diligence in performing my duties honestly and with utmost sincerity. I have clean and meticulous record and have never been penalised for any violation of statutory laws rules and regulations.*

u) *I also refer to Judgement dated 05-11-2019 passed by Hon'ble Securities Appellate Tribunal in Appeal no. 124 of 2019 in the matter of Adi Cooper Vs. SEBI Para 10 of the said order is reproduce below. "Para 10 A perusal of the aforesaid provisions clearly indicates that the appellant Adi Cooper was neither directly or indirectly involved in any fraudulent activity nor employed any scheme to defraud any shareholder or investor. The WTM committed a manifest error in holding that the appellant Adi cooper cannot be absolved of the consequences of the resolution of January 30, 2008 even though he was not present in the time when the issuance of GDR and execution of the loan and pledge agreements. We are of the opinion that the resolution of January 30, 2008 does not indicate any resolution or* *execution of the loan or the pledge agreement and, thus, holding the appellant that he was actively involved in the manipulation of the market through this fraudulent scheme is patently erroneous and farfetched. In the light of the aforesaid, we are of the opinion that the order of the WTM debarring the appellant Adi Cooper from accessing the securities market for two years cannot be sustained."*

v) I therefore request your good self to kindly drop the adjudication proceedings against me as, I have not made any violation of Sec 12 A (a) ,(b), (c) of SEBI Act, 1992 read with Regulations 3(a),(b), (c), (d) and 4 (1) of SEBI (PFUTP) Regulations, 2003.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges levelled against the noticee, his replies and the documents / material available on record. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations, alleged to have been violated by the noticee, as below:

   - ***SEBI Act***

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

   12A. No person shall directly or indirectly—

   (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

   (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

- ***PFUTP Regulations***

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.

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.*

10. The issue w.r.t the role of other directors of Chromatic in the fraudulent issuance of GDRs by Chromatic has been already decided by me vide Adjudication Order dated March 31, 2020. The role of Vipin Sharma, the noticee herein is discussed in the following paragraphs.

11. Chromatic was incorporated on 21 August 1987, and it became a public limited company in the year 1994 and is listed on both BSE and NSE. Chromatic issued 42,00,000 GDRs worth US$ 35.784 million (approximately Rupees 159 crore) on October 22, 2010. Details of the GDR issue of the Company are summarized in the table given below:

GDR issue date	No. of GDRs issued (million	Capital raised (US$ million	No. of equity shares underlying GDRs	Lead Manager	Bank where GDR proceeds deposited
22-Oct- 2010	4.20	35.784	3,78,00,000 (9 share each for 1 GDR)	Prospect Capital Ltd., London	EURAM Bank, Austria

12. Thus, Chromatic had issued 4.2 million GDRs (amounting to US$ 35.784 million) on October 22, 2010. Investigations revealed that Vintage was the only entity to have subscribed to these 4.2 million GDRs of Chromatic by depositing US$ 35.78 million as subscription amount in the account of Chromatic maintained with Euram Bank.

13. Vintage had entered into a ‘Loan Agreement’ dated October 12, 2010 with Euram Bank for availing loan for payment of subscription amount of US$ 35.784 million for GDR issue of Chromatic. A ‘Pledge Agreement’ also dated October 12, 2010 was simultaneously entered into by Chromatic with Euram Bank stating that Chromatic has pledged the GDR proceeds received from Vintage as collateral against the loan taken by Vintage for the subscription of GDRs. Pursuant to the Loan Agreement signed between Vintage and Euram Bank and the corresponding Pledge Agreement signed between Chromatic with Euram bank, Vintage opened a loan account (a/c no. 540012-046-7) with Euram Bank on October 12, 2010 and Chromatic opened a retail account (a/c no. 580029)

with Euram Bank. Investigation revealed that the Loan Agreement dated October 12, 2010 was signed between Vintage as a borrower and Euram Bank as the lender bank.

14. With respect to the security for the loan availed by Vintage, the loan agreement states that*"....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 deemed by the Bank".*

15. On perusal of the terms of the abovementioned Loan Agreement, it is observed that Vintage (who was the sole subscriber to the GDR issue of Chromatic) had availed a loan facility to the extent of US$ 35.78 million in its bank account no: 540012 from EURAM Bank to subscribe to the GDR issue of Chromatic on the basis of collateral provided by Chromatic in the form of GDR proceeds deposited in its bank account no: 580029. From the copy of Know Your Customer documents (signed on June 06, 2007) of Vintage, available with Euram Bank, it is seen that Mr. Arun Panchariya was the beneficial owner and the Managing Director of Vintage as on June 06, 2007.

16. As mentioned above, a Pledge Agreement was also entered into between Chromatic and Euram bank. The Pledge Agreement was signed by Mr. Vinod Kumar Kaushik on behalf of Chromatic, who was its whole-time director at that point of time.

17. From the perusal of the terms of the Loan Agreement and Pledge Agreement, it is clearly established that Vintage availed a loan of US$ 35.78 million from Euram Bank to subscribe to the entire GDR issue of Chromatic. Simultaneously, Chromatic provided US$ 35.78 received as GDR proceeds from Vintage, as collateral to Euram Bank as security against the loan taken by Vintage for subscribing to the GDR issue. Thus, the Pledge Agreement was executed only to secure the obligations of the borrower i.e., Vintage, which was granted a loan for USD 35.78 million by the Euram Bank. As a result of the signing of the Pledge

Agreement by Mr. Vinod Kumar Kaushik on behalf of Chromatic, the GDR proceeds of US$ 35.78 million were not available to Chromatic for business purposes. The utilization of GDR proceeds by Chromatic was dependent to the repayment of loan by a third party, viz, Vintage.

18. Therefore, it was concluded that this entire arrangement of the issuance of GDRs and signing of Pledge Agreement and Loan Agreement for the issuance of GDRs, which was concealed by Chromatic from the investors and stock exchanges was fraudulent and a penalty of 10,00,00,000/- was imposed on Chromatic vide Adjudication Order dated March 31, 2020 for the aforesaid violation.

19. The Board of Chromatic had passed a Resolution in its Meeting on August 13, 2010, wherein *inter alia*, a decision was taken to open an account with Euram Bank for the purpose of receiving subscription money in respect of GDR issue of the Company. Relevant extracts of the Board Resolution are as under:

> *"RESOLVED THAT a bank account be opened with Euram Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.*
>
> *……RESOLVED FURTHER THAT Mr. Vinod Kumar Kaushik, Whole Time Director of the Company, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.."*
>
> *…………………………………..*
>
> *……RESOLVED FURTHER THAT the bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required."*

20. On a perusal of the aforesaid Board Resolution, it is observed that the said Resolution was approved by the Board of Chromatic on August 13, 2010 for *inter*

alia, opening of a bank account with Euram Bank for the purpose of receiving subscription money in respect of the GDR issue of Chromatic. According to the Resolution, Mr. Vinod Kumar Kaushik was authorized to sign, execute any application, agreement, etc. as may be required by the Euram Bank. Accordingly, Chromatic opened bank account no. 580029 in its name in Euram Bank. It was further resolved by the Board to authorize the Euram Bank to use the funds so deposited in the said bank account as security in connection with loans, if any. A comprehensive reading of the above said Board Resolution indicates that a decision was taken as on August 13, 2010, about the proposed issuance of GDR and at that very stage to open a bank account with Euram Bank. Further, the Board had also contemplated on the date of passing of the said Resolution itself, that the funds/proceeds of the proposed GDR to be received in their Euram Bank account would be used as a security for loans. As the aforesaid resolution clearly mentions that Chromatic signed a Pledge Agreement with the Euram Bank, it becomes clear that it was this Board Resolution dated August 13, 2010 which enabled Mr. Vinod Kumar Kaushik, on behalf of Chromatic, to enter into the Pledge Agreement with Euram Bank and also the execution of Pledge Agreement and Loan Agreement by Euram Bank.

21. Also, it becomes evident that it was this Board Resolution which enabled Euram Bank to accept the GDR proceeds of Chromatic as pledged securities against the Loan taken by Vintage. Further, this Board Resolution enabled Mr. Vinod Kumar Kaushik to sign the Pledge Agreement. Therefore, passing of such a Resolution by the Board (which includes the noticee) involving the future use of the GDR proceeds as security against a loan indicates that the signatories of the Board Resolution (including the noticee) were aware that Chromatic had no intention to utilize the GDR proceeds immediately for the objects for which the GDR were to be issued. In this regard, I note that the information with regard to the aforesaid Board Resolution, particularly keeping the GDR proceeds as security, was not disclosed to the shareholders although Chromatic along with its directors, who were the signatories of the Board resolution were aware of the

fact that concealment of such an important disclosure would mislead the investors.

22. The aforesaid resolution, approved by the directors of Chromatic including the noticee, authorized the Euram Bank to use the GDR proceeds of Chromatic to be deposited with Euram Bank as security in connection with loan taken by Vintage for subscription of GDRs, which has already been found to be part of the fraudulent arrangement vide order dated March 31, 2020.

23. The primary contention of the noticee w.r.t the allegation made against him is that his signature on the Board Resolution dated August 13, 2010 was forged and that he had not attended the meeting on the said date. However, the noticee has not submitted any supporting document in this regard. Forging of signature is one the most serious act of fraud and may cause great harm to the person whose signature has been forged by imposing huge liabilities on such person. I note that the alleged violation pertains to the year 2010. However, the noticee has not presented any evidence in support of his submission w.r.t. his signatures being forged, till date. Therefore, I am unable to accept the above submission of the noticee in the absence of documentary evidence to support his claim.

24. In this regard, I place my reliance on the Order of the SAT in SEBI vs. Kalidas Dutta; Appeal No. 262 of 2016 (dated January 23, 2018), wherein the following directions were issued in respect of fraudulent appointment of one as a director without his knowledge/consent:

> *"…this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015..."*

25. I further note that as per the submission of the noticee himself, he submitted his resignation as the independent director of Chromatic for the first time by registered post on September 23, 2010. As a member of the Board, his signatures are as much important as that of other directors. The noticee acted in

a manner detrimental to the shareholders of Chromatic by signing such Board resolution. In this regard, I note that the primary role of the independent directors is to ensure fairness and transparency in dealings of the Company. The directors of a company maintain a balance between the interest of the shareholders and management. Where an act or omission occurs through board processes, then such independent directors can also be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act in the best interest of the company. Based on the documents available on record, I note that the noticee had attended the board meeting on August 13, 2010 of the Company wherein resolution was passed for opening a bank account with Euram Bank and granting wide authorities to Euram Bank and Vinod Kumar by authorizing Euram Bank and Vinod Kumar Kaushik to execute such agreements which allow use the GDR proceeds as security against loan. The noticee was aware of authorization for pledge agreement as the board resolution dated August 13, 2010 clearly mentioned that

> "*Mr. Vinod Kumar Kaushik, Whole Time Director of the Company, be and is hereby authorized to sign, execute any application, agreement escrow agreement, documents, 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…*
>
> *.......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,...".*

In view of the above, it is concluded that the noticee is liable for the violations alleged in the SCN. I, further, note that the provisions of Companies Act, 1956 do not draw any distinction between director and independent director, in respect of their liability for the fraud committed by the Company, provided the same has been done with their knowledge and consent, whether express or implied.

26. In view of the fraudulent acts detailed in the previous paragraphs, I conclude that the noticee, having signed the Board Resolution dated August 13, 2010, and not having taken any steps to inform the investors of the Company about such fraud, violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations. Therefore, the noticee is liable for penalty under section 15HA of the SEBI Act for their aforementioned violations of PFUTP Regulations.

27. I observe that the noticee, in its submission, has also relied upon the findings of the Hon'ble Supreme Court in the matter of Gorkha Security Services vs Government (NCT of Delhi) and others (herein after referred to as '**case of Gorkha Security'**) to support their claim that the SCN in the instant case fails to set out the particular penalty sought to be imposed and hence the same is not compliant with the principles of natural justice. In this regard, I find that the judgment of the Hon'ble Supreme Court in the case of Gorkha Security being distinguishable on several counts is not applicable to the present case. The decision in Gorkha Security pertained to blacklisting of a contractor by a government agency, which results into depriving the contractor from entering into any public contracts, thus violating the fundamental rights of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas the present SCN has been issued for breach of statutory provisions. Also, the SCN has already stated the provisions of law under which the penalty shall be imposed. In my view, the judgment of the Hon'ble Supreme Court, in the case of Gorkha Security, cited by the noticee, and the law laid down therein does not absolve the Noticee from the alleged violations. The principles of natural justice including notice regarding the penalty has also been followed in the instant case.

28. The provision of section 15HA of the SEBI Act are mentioned below:

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

29. While determining the quantum of penalty under section 15HA of the SEBI Act, it is important to consider the relevant factors as stipulated in section 15J of the SEBI Act which reads as under: -

> ***Factors to be taken into account by the adjudicating officer.***
> ***15J.*** *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> ***(a)*** *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> ***(b)*** *the amount of loss caused to an investor or group of investors as a result of the default;*
> ***(c)*** *the repetitive nature of the default.*

30. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the investigation department of SEBI has not quantified the profit/loss for the violations committed by the noticee in the said matter. However, I note that the fraudulent GDR issue was possible only because of the Board Resolution dated August 13, 2010 in which noticee was one of the signatories. I have considered the fact that the role of the noticee is also different from the other directors of Chromatic, as explained in the earlier paragraphs. I note that more than 10 years have passed since the fraudulent issue of GDRs by Chromatic.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.

3,00,000/- (Rupees Three lakh) on the noticee under section 15HA of the SEBI Act.

32. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the noticee. The noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the noticee may contact the support at portalhelp@sebi.gov.in.

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

34. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the noticee viz. Mr. Vipin Sharma and also to the Securities and Exchange Board of India.

Date: August 28, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER