QJA/AA/IVD/ID4/24247/2022-23

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of GDR Issue of Texmo Pipes and Products Ltd.

In respect of –

Sr. No.	**Noticee**	**PAN/Other Identifying Number**
1.	Texmo Pipes and Products Ltd.	AACCT9780D
2.	Mr. Sanjay Agrawal, Chairman & Managing Director	ADAPA0132C
3.	Mr. Vijay Prasad Pappu, Director	ASRPP0392H
4.	Mr. Shanti Lal Badera, Director	ABLPB5820D
5.	Mr. Rishabh Kumar Jain, Company Secretary	AHYPJ1203B
6.	Mr. Arun Panchariya	AEVPP6125N
7.	Vintage FZE (now known as Alta Vista International FZE)	*Registered outside India*
8.	Mr. Mukesh Chauradiya	AAVPC0966A

9.	Pan Asia Advisors Ltd.	*Registered outside India*
10.	India Focus Cardinal Fund	AABCI9518D
11.	Highblue Sky Emerging Market Fund (previously known as KBC Aldini Capital Mauritius Ltd.: FII Registration No.: INUEFD237810)	AADCK9460G
12.	Sparrow Asia Diversified Opportunities Fund	AANCS3131Q
13.	Leman Diversified Fund	AABCL8363M
14.	Cardinal Capital Partners	FII Registration No.: INMUFD263211
15.	European American Investment Bank AG	FII Registration No.: INASFD211608
16.	Golden Cliff (previously known asVaibhav Investments Limited)	FII Registration No.: INMUFD256111

(The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees")

BACKGROUND:

1. The present proceedings have emanated from the Show Cause Notice dated April 11, 2019 (hereinafter referred to as, "**SCN**") issued to all the Noticees by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**").

   1.1. The SCN alleges violations of Section 12A(a), (b) & (c) of the 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 the Securities

and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**") by Texmo Pipes and Products Ltd. (hereinafter referred to as "**the Company**"/ "**Noticee No. 1**"/ "**TEXMO**") and

1.2. Violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of the PFUTP Regulations, 2003 by Noticee Nos. 2 to 16.

2. The present matter emanates from an investigation by SEBI into the issuances of Global Depository Receipts (hereinafter be referred to as, "**GDRs**") in overseas markets by Indian companies, allegedly with the intention of defrauding Indian investors. During the course of such investigation, it came to SEBI's knowledge that there were several other GDR issues wherein loan was taken by a foreign entity and the security of the loan was provided by the GDR issuing company by signing a Pledge Agreement. One such company was TEXMO.

3. The focus of the investigation was to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures, if any, were made by TEXMO with respect to GDRs issued by it on April 11, 2011. The period under investigation was the period around which the issuance of GDRs by the Company took place, i.e. March 01, 2011 to April 30, 2011 (hereinafter be referred to as, "**Investigation Period**").

SUMMARY OF SHOW-CAUSE NOTICE - (I) THE SCHEME (II) THE MODUS OPERANDI AND (III) FUND FLOW:

4. Pursuant to the findings of the Investigation Report, a common SCN dated April 11, 2019 was issued to the Noticees. By way of the SCN, all the Noticees were called upon

to show cause as to why suitable directions should not be issued against them under Section 11B read with Sections 11 (1) and 11(4) of the SEBI Act for the violations alleged in the said SCN. including the following:

4.1. The direction to bring back an amount of USD 3.49 million against Noticee No. 1 namely Texmo Pipes and Products Ltd. and

4.2. Direction for disgorgement of Rs. 14.82 crore against Noticees namely: Mr. Arun Panchariya (Noticee No. 6), Vintage FZE (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 10), Highblue Sky Emerging Market (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12), Leman Diversified Fund (Noticee No. 13).

In this regard, the SCN relying on the Investigation Report has alleged that

5. The scheme of issuance of GDRs was fraudulent as Noticee No. 1, the Company, had entered into a Pledge Agreement with the bank, European American Investment Bank AG (hereinafter be referred to as, "**EURAM Bank**") for a loan that had been availed by Vintage FZE (hereinafter be referred to as, "**Vintage**"), also known as Alta Vista International FZE, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 7, Vintage was a party to this fraudulent scheme. Noticee No. 2, Mr. Sanjay Agrawal, Noticee No. 3, Mr. Vijay Prasad Pappu, Noticee No. 4, Mr. ShantiLal Badera who were Directors of Texmo, passed a resolution in the board meeting dated October 28, 2010 authorising EURAM Bank to use the GDR proceeds as security for the loan availed by Vintage. The Noticee No. 5, Mr. Rishabh Kumar Jain, Company Secretary certified the board resolution. Noticee No. 2, Mr. Sanjay Agrawal who was a Chairman & Managing Director in TEXMO, signed the Pledge Agreement with EURAM Bank, whereby the

account holding the GDR proceeds was given as security for the loan availed by Vintage for subscribing to the GDRs of TEXMO. Noticee No. 7, Vintage obtained loan by entering into a Loan Agreement dated March 01, 2011 with Noticee No. 15, EURAM Bank. The Loan Agreement was signed by Noticee No. 8, Mr. Mukesh Chauradiya in the capacity of Managing Director of Vintage for the subscription of GDRs of TEXMO. Noticee No. 6, Mr. Arun Panchariya (hereinafter be referred to as, **"Noticee no. 6"**) was the beneficial owner and Managing Director of Vintage as on June 06, 2007.

6. Pan Asia Advisors Limited (hereinafter referred to as "**Pan Asia"/ "Noticee No.09**"), a United Kingdom based entity was the Lead Manager of the GDR issue of TEXMO and Mr. Arun Panchariya was the Managing Director of Pan Asia. The Local custodian for the said GDR issue was DBS Bank, Mumbai and Bank of New York, Mellon (hereinafter referred to as "**BONY**") was the global depository bank. The GDRs of TEXMO were listed on the Luxembourg Stock Exchange.

7. Noticee No. 10, India Focus Cardinal Fund (hereinafter be referred to as, "**IFCF**") was a sub-account of FII-EURAM Bank and FII-Cardinal Capital Partners (hereinafter be referred to as, "**CCP**"). Noticee No. 11, Highblue Sky Emerging Market Fund (hereinafter be referred to as, "**HBS/HighBlueSky**") (previously known as KBC Aldini (Mauritius) Capital Limited) was registered as a sub-account of FIIs, Golden Cliff (also known as Vaibhav Investment Ltd.) and KBC Aldini Capital Limited. FII sub-accounts IFCF, HBS, Sparrow Asia Diversified Opportunities Fund (hereinafter be referred to as, "**Sparrow**") and Leman Diversified Fund (hereinafter be referred to as, "**Leman**") received GDRs, converted them and sold the equity shares of TEXMO through the Indian stock exchanges. IFCF, HBS, Sparrow, Leman acted as conduits of Mr. Arun Panchariya and his connected entities by converting the GDRs, which had been acquired by Vintage free of cost through the fraudulent scheme, and selling the converted equity shares of TEXMO in the Indian capital market.

8. Noticee No. 14, CCP, Noticee No.15, EURAM Bank, and Noticee No. 16, Golden Cliff previously known as Vaibhav Investments Ltd.) did not make any investments in India except investments made by their subaccounts, namely IFCF, HBS, and Leman. So, the FIIs namely, EURAM Bank, CCP and Golden Cliff acted as conduits of Mr. Arun Panchariya and facilitated IFCF, HBS and Leman to sell the underlying shares of the GDRs in the Indian capital market.

(I) The Scheme

9. The Company came out with the issuance of 6,27,500 GDRs (amounting to US$ 9.99 million) on April 11, 2011. A summary of the said GDR issuance is provided hereunder:

Table No. 1

GDR issue date	**No. of GDRs issued**	**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**
April 11, 2011	6,27,500 (at USD 15.93 each GDR)	9.99	DBS Bank Ltd.	1,25,50,000	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

10. A bank account was opened by TEXMO with EURAM Bank bearing number 580038 to deposit the GDR proceeds. Accordingly, a total of USD 99,96,075 was credited to this account. Vintage was the only one from whom money was received in this account. Therefore, it was concluded by investigation that the GDR issue of TEXMO was subscribed by only one entity i.e., Vintage. Details of receipt of GDR proceeds in the TEXMO's bank a/c maintained with EURAM Bank in Austria are as given below: -

Table No. 2

Date of credit of funds	**Credit amount (US$)**
08/04/2011	99,96,075

11. It was observed during investigation that of the total loan of USD 9.99 million by Vintage, it repaid USD 6.54 million in 10 instalments by March 02, 2012 and thereafter defaulted on the repayment of balance loan amount. TEXMO vide letter dated July 09, 2012 confirmed the rights of EURAM Bank to set off the pledge deposit with the outstanding loan amount and interest. In line with this, it was observed that an amount of USD 3.49 million was adjusted by EURAM Bank against loan account of Vintage. Hence, it was observed that GDRs to the extent of USD 3.49 million were issued without consideration to Vintage, at the cost of shareholders / investors of TEXMO. This is the fraudulent scheme that had been conceived.

(II) The Modus Operandi and Fund Flow:

12. On October 28, 2010, the Board of Directors of TEXMO passed a resolution resolving that a bank account be opened with any branch of EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Also, at the said board meeting, EURAM Bank was authorised to use the GDR proceeds as security against loan availed by Vintage.

13. Vintage entered into a loan agreement dated March 01, 2011 with EURAM Bank for a loan facility of USD 99,96,075 so as to "*provide funding enabling Vintage FZE to take down GDR issue of 6,27,500 Luxembourg public offering and may only be transferred to EURAM account nr.580038, Texmo Pipes and Products Ltd.*"

14. On March 01, 2011, a Pledge Agreement was executed between TEXMO (as Pledgor) and EURAM Bank and the same was signed by Mr. Sanjay Agrawal in the capacity of Chairman and Managing Director on behalf of TEXMO. As per the Pledge Agreement, TEXMO's designated account with EURAM Bank bearing no. 580038 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.

15. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa, and both were executed on same day. The Pledge Agreement made reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of TEXMO.

16. The details of realization of funds by TEXMO out of GDR proceeds of US$ 9.99 million (along with the interest earned on money market instruments) is tabulated below:

Table No. 3

Date of transfer of funds	**Amount of funds transferred from Texmo's EURAM Bank a/c to Tapti Pipes a/c (USD)**	**Amount of funds transferred to other entities (USD)**
08/04/2011	-	2,500 Ecsrow Fee GDR Issue
08/04/2011	-	214.25 Expenses aus: EUR 150,000 Account Opening Fees
04/08/2011	1,00,000	-
10/08/2011	5,00,000	-
24/08/2011	7,28,000	-
26/08/2011	12,00,000	-
21/09/2011	10,00,000	-
27/10/2011	3,00,000	-
07/11/2011	10,15,000	-
23/02/2012	4,05,000	-
01/03/2012	8,00,000	-
02/03/2012	5,00,000	-
TOTAL	**65,48,000**	**-**

It was observed that out of the GDR proceeds of USD 9.99 million, TEXMO had transferred USD 6.54 million (including the interest earned on money market instruments) to Tapti Pipes and Products FZE (hereinafter referred to as, "**Tapti Pipe**").

17. As already stated, the GDR proceeds to the tune of USD 9.99 million were deposited in the Company's bank account bearing number 580038 maintained with EURAM Bank.

Vintage repaid the loan amount to the extent of USD 6.54 million and thereafter defaulted on the loan repayment.

18. As Vintage had defaulted, the outstanding loan amount of USD 3.49 million owed by Vintage to EURAM Bank was adjusted, in conformity with the Pledge Agreement dated March 01, 2011, from the GDR proceeds account of TEXMO.

19. With regard to repayment of loan by Vintage, it was observed that Vintage repaid loan amount of USD 6.54 million in 10 instalments.

The details of repayment of loan by Vintage are tabulated below:

Table No. 4

Date of Loan Amount repaid by Vintage	Loan Amount repaid by Vintage (USD)	Date of Transfer of funds from TEXMO's EURAM Bank a/c to Tapti Pipes	Transfer of funds from TEXMO's EURAM Bank a/c to Tapti Pipes (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from TEXMO's EURAM Bank a/c to Tapti Pipes (USD)
03/08/2011	1,00,000	04/08/2011	1,00,000	1,00,000	1,00,000
09/08/2011	5,00,000	10/08/2011	5,00,000	6,00,000	6,00,000
24/08/2011	7,00,000	24/08/2011	7,28,000	13,00,000	13,28,000
26/08/2011	12,00,000	26/08/2011	12,00,000	25,00,000	25,28,000
21/09/2011	10,00,000	21/09/2011	10,00,000	35,00,000	35,28,000
27/10/2011	3,00,000	27/10/2011	3,00,000	38,00,000	38,28,000
07/11/2011	10,00,000	07/11/2011	10,15,000	48,00,000	48,43,000
23/02/2012	4,00,000	23/02/2012	4,05,000	52,00,000	52,48,000
01/03/2012	8,00,000	01/03/2012	8,00,000	60,00,000	60,48,000
02/03/2012	5,00,000	02/03/2012	5,00,000	**65,00,000**	**65,48,000**

It was observed that only after Vintage repaid loan instalments, on same day or later, equivalent amount of money was transferred from TEXMO's EURAM Bank account to its subsidiary Tapti Pipe's Standard Chartered bank account in UAE. From the above, it is evident that the amount transferred from TEXMO's EURAM Bank account was dependent on the repayment of the loan by Vintage.

20. An amount to the tune of USD 6.54 Million (in 10 instalments) was utilised by Vintage for repayment of the loan taken by it from EURAM Bank, consequent to transfer of funds by TEXMO.

21. All GDRs of the Company were subscribed by Vintage. The said GDRs were later converted into equity shares and these shares were sold in the Indian securities market. The cancellation of GDRs started from August 03, 2011 and continued till July 15, 2014. During the period all the 6, 27,500 GDRs were cancelled and converted into equity shares.

    The summary of the cancellation of the GDRs is tabulated below:

Table No. 5

Date of conversion of GDRs	No. of GDRs converted	No. of remaining GDRs	No. of equity shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
		6,27,500		
3-Aug-11	13,800	613,700	276,000	IFCF
4-Aug-11	28,750	584,950	575,000	IFCF
31-Jan-12	25,000	559,950	500,000	LEMAN
3-Feb-12	26,109	533,841	522,180	SPARROW
5-Mar-12	45,000	488,841	900,000	LEMAN
5-Mar-12	23,458	465,383	469,160	SPARROW
9-Mar-12	48,500	416,883	970,000	HighBlueSky
2-May-12	24,096	392,787	481,920	HighBlueSky
9-May-12	19,875	372,912	397,500	HighBlueSky
30-May-12	13,193	359,719	263,860	HighBlueSky
9-Jul-12	20,000	339,719	400,000	HighBlueSky
17-Jul-12	19,597	320,122	391,940	HighBlueSky
18-Feb-13	48,729	271,393	974,580	HighBlueSky
25-Feb-13	20,000	251,393	400,000	HighBlueSky
19-Mar-13	20,000	231,393	400,000	HighBlueSky
10-Apr-13	35,000	196,393	700,000	HighBlueSky
15-May-13	40,000	156,393	800,000	HighBlueSky
22-May-13	50,000	106,393	1,000,000	HighBlueSky
6-Jun-13	30,000	76,393	600,000	HighBlueSky
11-Jul-13	30,000	46,393	600,000	HighBlueSky
13-Aug-13	12,943	33,450	258,860	HighBlueSky
15-Jul-14	33,450	0	669,000	HighBlueSky
TOTAL	**6,27,500**	**0**	**1,25,50,000**	

22. Post cancellation of GDRs, FII-sub accounts namely IFCF, Leman, Sparrow and HighBlueSky received equity shares of TEXMO.

A summary of the cancellation of the GDRs is provided hereunder:

Table No. 6

Sl. No.	Name of the entity	No. of GDR's converted	Quantity of converted equity shares
1	IFCF	42,550	8,51,000
2	LEMAN	70,000	14,00,000
3	SPARROW	49,567	9,91,340
4	HighBlueSky	4,65,383	93,07,660
TOTAL		**6,27,500**	**1,25,50,000**

23. The Noticees, namely, IFCF, Leman, Sparrow and HighBlueSky sold the equity shares received by them in the Indian securities market. Investigation found that the said sub-accounts were related to Mr. Arun Panchariya, and as such, the GDRs were converted into equity shares and these shares were sold in the Indian securities market.

24. Further, IFCF was registered as sub account of FII - EURAM Bank and FII - CCP. Also, as FIIs, both EURAM Bank and CCP did not make any investment in India, except for the sale of shares in the Indian securities market, pursuant to the conversion of GDRs by IFCF. Similarly, Highblue Sky was registered as a sub account of FIIs, Golden Cliff and KBC Aldini Capital Limited. It was seen that Golden Cliff did not make any investment in India, except for the sale of shares in the Indian securities market, pursuant to the conversion of GDRs by HighBlueSky. These FIIs, namely CCP and Golden Cliff facilitated the sale of the equity shares received by way of fraudulent issue of GDRs.

25. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 2 to 16 have violated the Section 12A (a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. In addition to the above provisions, the Company (Noticee No. 1) has been alleged to have violated Section 12A (a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1), 4(2)(f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

26. **The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:**

Table No. 7

Annexure No.	Details
1.	Copy of letter from Texmo dated June 18, 2015
2.	Corporate Announcements
3.	Copy of Loan Agreement dated March 01, 2011
4.	KYC documents of Vintage
5.	Copy of Certified copy of TEXMO's Board Resolution dated October 28, 2010.
6.	Company Letter dated Nov 16, 2018.
7.	Pledge Agreement dated March 01, 2011.
8.	ESCROW account statement of Texmo
9.	Vintage's Loan account statement
10.	Email dated March 01, 2016 sent by Financial Market Authority (FMA) Austria
11.	TEXMO's EURAM Bank retail account statement
12.	TEXMO letter dated July 09, 2012
13.	EURAM Bank's letter dated September 05, 2012.
14.	Copy of the custodian DBS Bank Ltd.'s email dated September 03, 2015 providing details of cancellation of GDRs.
15.	Copy of certificate of Incorporation of IFCF and CCP
16.	Copy of email dated September 18, 2018 provided by custodian ICICI Bank
17.	Copy of email dated September 11, 2018 provided by HSBC Social Securities Limited
18.	Copy of email dated September 17, 2018 provided by Deutsche Bank
19.	Copy of email dated July 09, 2016
20.	Copy of Administrative Fine Statement available on Dubai Financial Services Authority.
21.	Connection/Association of Mr. Arun Panchariya with other entities
22.	Mr. Arun Panchariya' s connection with Pan Asia Advisors Limited
23.	Mr. Arun Panchariya' s connection with CCP/IFCF
24.	Mr. Arun Panchariya' s connection with ERBAL, EURAM

25.	Mr. Arun Panchariya' s connection with Mukesh Chauradiya 1
26.	Mr. Arun Panchariya' s connection with Mukesh Chauradiya 2
27.	Mr. Arun Panchariya' s connection with Mr. Anant Kailash Chandra Sharma 1
28.	Mr. Arun Panchariya' s connection with Mr. Anant Kailash Chandra Sharma 2
29.	Mr. Arun Panchariya' s connection with Reema Narayan Shetty/HBS
30.	KBC Aldini Capital Ltd. Director details
31.	Mr. Arun Panchariya' s connection with Aspire HBS/Emerging Fund
32.	Details of Investors/Authorised Signatories of LEMAN/SPARROW
33.	Copy of the KYC documents received from ICICI Bank vide email dated November 27, 2015 and information obtained through Google search
34.	Copy of email dated August 04, 2017 & September 28, 2018

INSPECTION AND PERSONAL HEARING

27. Pursuant to the SCN, some of the Noticees filed their replies. Some of the Noticees also sought inspection of documents. Based upon the request of the Noticees, opportunities of inspection of the records/ documents (which were relied upon by SEBI for the purpose of the SCN) were provided to the Noticees. Details with respect to the inspection of documents are furnished hereunder:

Table No. 8

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
1	Texmo Pipes and Products Ltd. ('TEXMO')	June 11, 2019; March 04, 2020	Mr. Anil Shah, Authorised Representative, Juris Matrix LLP
2	Mr. Sanjay Agrawal, Chairman & Managing Director		
3	Mr. Vijay Prasad Pappu, Director		
4	Mr. Shanti Lal Badera, Director		
5	Mr. Rishabh Kumar Jain, Company Secretary		
8	Mr. Mukesh Chauradiya	July 12, 2019	Mr. Mukesh Chauradiya

13	Sparrow Asia Diversified Opportunities Fund (SPARROW)	July 01, 2019; November 17, 2022	Ms. Stuti Shah, J. Sagar Associates on July 01, 2019; Ms. Anjali Dhoot, Associate on November 17, 2022
14	Leman Diversified Fund (LEMAN)		

The details of the personal hearings before the undersigned in the matter are tabulated below

Table No. 9

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
1.	Texmo Pipes and Products Ltd.	August 23, 2022	Mr. Anil Shah, Authorised Representative, Juris Matrix LLP
2.	Mr. Sanjay Agrawal, Chairman & Managing Director		
3.	Mr. Vijay Prasad Pappu, Director		
4.	Mr. Shanti Lal Badera, Director		
5.	Mr. Rishabh Kumar Jain, Company Secretary		
6.	Mr. Arun Panchariya	September 06, 2022	Mr. Sandeep Wadhwan, Advocate
8.	Mr. Mukesh Chauradiya	August 23, 2022	Mr. Mukesh Chauradiya
12.	Sparrow Asia Diversified Opportunities Fund	December 28, 2022	Ms. Anjali Dhoot, Authorised Representative, Rajani Associates
13.	Leman Diversified Fund		
15.	European American Investment Bank AG (EURAM Bank)	August 23, 2022	Mr. Shouryendru Ray, Counsel, Wadhwa Law Offices

28. Noticees Nos. 7, 9, 10, 11, 14 and 16 neither availed the opportunity of personal hearing nor filed any reply in response to the SCN. The details with respect to the service of the SCN and Hearing Notices to these Noticees are provided hereunder:

Table No. 10

Noticee No.	Name of the Noticee	Details
7	Vintage FZE	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: Aah-273, Al Ahmadi House, Jebel Ali Free Zone, Dubai. The same returned undelivered. ➢ Thereafter, SCN was served on the Noticee via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ An opportunity of hearing was granted to the Noticee on October 13, 2020 and April 05, 2022 and notice in this regard was served via email on to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 and September 06, 2022 was served via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner.
9	Pan Asia Advisors Ltd.	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: Minister House, 42 Mincing Lane, London, EC3R 7AE. The same returned undelivered. ➢ Thereafter, SCN was served on the Noticee via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ An opportunity of hearing was granted to the Noticee on October 13, 2020 and April 05, 2022 and notice in this regard was served via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 and September 06, 2022 was served via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner.
10	India Focus Cardinal Fund	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: C/o Cardinal Capital Partners, Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The same returned undelivered. ➢ SCN dated April 11, 2019 was served via email to the address of the liquidator (m.reaz@intnet.mu). ➢ Hearing Notice before the WTM, SEBI intimating about the personal hearing scheduled for October 13, 2020 and April 05, 2022 was served via email to the address of the liquidator. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 was served via email to the address of m.reaz@intnet.mu.

11	Highblue Sky Emerging Market Fund ("HBS")	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: Suite 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius and C/o Aurisse International Ltd, 2nd Floor, Wing A, Cyber Tower 1, Ebene Cybercity, Mauritius. The same returned undelivered. ➢ SCN dated April 11, 2019 was served to Mr. Anant Sharma who is director and 100% beneficial owner of HBS via email to the address of anant@hbs-fund.com. ➢ An opportunity of hearing was granted to the Noticee on October 13, 2020 and April 05, 2022 and notice in this regard was served via email to the address of anant@hbs-fund.com. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 was served via email to the address of anant@hbs-fund.com.
14	Cardinal Capital Partners	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: Suite 501, St. James Court, St Dennis Street, Port Louis, Mauritius. The same returned undelivered. ➢ Thereafter, SCN was served on the Noticee via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ An opportunity of hearing was granted to the Noticee on October 13, 2020 and April 05, 2022 and notice in this regard was served via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 and September 06, 2022 was served via email to Mr. Arun Panchariya (email ID: arun.panchariya@me.com), the beneficial owner.
16	Golden Cliff	➢ SCN dated April 11, 2019 was sent by Speed Post to the said Noticee at the address: Suite 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius and C/o Aurisse International Ltd, 2nd Floor, Wing A, Cyber Tower 1, Ebene Cybercity, Mauritius. The same returned undelivered. ➢ SCN dated April 11, 2019 was served to Mr. Anant Sharma who is director and 100% beneficial owner of Golden Cliff via email to the address of anant@hbs-fund.com. ➢ An opportunity of hearing was granted to the Noticee on October 13, 2020 and April 05, 2022 was served via email to the address of anant@hbs-fund.com. ➢ Hearing Notice for the personal hearing before the undersigned scheduled for August 23, 2022 was served via email to the address of anant@hbs-fund.com.

29. It may be noted that various efforts have been made to serve the SCNs on Noticees Nos. 7, 9, 10, 11, 14 and 16. However, despite the said efforts, the SCN could not be served on the said Noticees. These entities are having overseas address (Dubai, Mauritius and UK) and SCNs sent to them at the address available in available records had returned undelivered. Some of the returned envelops had the remarks by postal authorities that "refused to accept". Following specific efforts were made by SEBI to serve the SCN to these entities:

29.1. Alternative addresses of certain overseas entities were obtained from other agencies like CID Telangana and the SCNs were forwarded by post to those addresses. However, the same returned undelivered.

29.2. It was requested to arrange for delivery of SCN to overseas entities to whom the delivery by post, failed (in respect of certain other GDR matters involving same entities). However, the regulators at UAE and UK have expressed their inability to serve the SCN to overseas entities.

29.3. After having learnt that Mr. Arun Panchariya was an Honorary Consulate General of Liberia stationed in Argentina, the SCN was delivered to him at' the address of the Liberian Consulate on August 28, 2019.

29.4. In the meantime, an address of PAN Asia was obtained from the website of Companies House, UK (equivalent of Registrar of Companies). Accordingly, letter dated January 14, 2020 was issued to Mr.Arun Panchariya (at the address of PAN Asia) with regard to the issue of SCN.

29.5. Since the notices sent to above entities at the address available in available records were returned undelivered, the same were e-mailed to AP, since as detailed above, these entities are closely connected to AP and are effectively owned/controlled by him, as brought out in the following paragraphs while considering the issues involved in the case.

30. The SCN was served on the Noticees. The matter came to be placed before the Whole Time Member (hereinafter referred to as "**WTM**") but it could not be proceeded further

due to internal re-allocation of cases amongst the WTMs of SEBI. Thereafter, the SEBI (Delegation of Statutory and Financial Powers) Order, 2019 (hereinafter referred to as "**DoP**") was amended and sr. no. 19A was inserted in Part A-Delegation of Regulatory Powers and Statutory Functions, Chapter-I: Delegation of Powers and Functions under the Act with effect from July 25, 2022. As per the same, issuing of directions/ orders under Section 11(1), 11(4), 11(4A), 11B(1), 11B(2), 11D or any regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) was delegated *inter alia* to Chief General Managers (CGM) of SEBI. Thereafter, in August 2022, the matter was allocated to the undersigned.

REPLIES AND WRITTEN SUBMISSIONS FROM THE NOTICEES

A summary of the replies as submitted by the Noticees is provided hereunder:

31. ***Reply of Noticee No. 1 (TEXMO), Noticee No. 2 (Mr. Sanjay Agrawal, Chairman & Managing Director) and Noticee No. 3 (Mr. Vijay Prasad Pappu, Director):***

The replies received from the above Noticees are identical, and as such, they have been clubbed together. Noticee 3, Mr. Vijay Prasad Pappu vide letter dated March 08, 2021 has submitted that the submissions made by the Noticee No. 1, Texmo vide their reply dated March 08, 2021 may be considered as his due compliance on reply for the aforesaid SCN. In view of the same, the submissions/ reply filed by Noticee no. 1 to 3, vide letters dated March 08, 2021, are summarised as under:

31.1. The company was incorporated in the year 2008 and the shares of the company are listed at BSE and NSE. The shares have been quoting at around Rs. 31/- on the Exchanges. The paid up capital of the company was Rs. 29,19,50,000/-. Post the GDR issue, the company had made 3 preferential allotments, for Rs. 2,64,00,000/- in the year 2017, for Rs. 3,01,60,000/- in the year 2019 and for Rs.

3,99,62,500/- in the year 2020 recently. There were around 19000 shareholders of the company and the company has around 850 employees, both permanent and on contract basis. The turnover of the company for the year ended 31.03.2020 was Rs. 383.84 Crores and the company has paid Income Tax of Rs. 1.83 Crore for the AY 2020-2021 and Goods and Service Tax of Rs. 56.95 Crores for the AY 2020 2021.

31.2. The matter relates to an issue of GDRs made by the company in the year 2010, i.e., approximately years ago. Notably, the SCN issued under section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 was issued only on April 11, 2019, i.e. after an inordinate delay of 8 years.

31.3. The company had confirmed the names of 4 subscribers vide letter dated June 18, 2015, which information was based on the facts provided to the company by PAN ASIA and the company had relied upon the same since it was not possible to ascertain and verify the facts independently and the company had no reason to disbelieve and doubt the information provided by the Lead Manager. The said list was also provided to the stock exchange on the information received from the Lead Manager and they have relied upon the list which has been practice over the years.

31.4. Since the loan agreement was signed between Vintage and EURAM Bank for subscriptions of GDRs of TEXMO and since Vintage and EURAM Bank are parties to the SCN, the company cannot be held liable for any averments/ declaration/ statements made there in. They submitted that the liability of Vintage and EURAM Bank cannot be saddled on the Company.

31.5. They submitted that on 28.10.2010, an Extra Ordinary General Meeting of Texmo was held. However, no meeting of the Board of Directors was held on 28.10.2010,

as wrongly alleged in the SCN. Noticee No. 4, Mr. Shanti Lal Badera submitted that he was not present. Under the circumstances, the question of signing any pledge agreement and authorizing Euram Bank to use the GDR proceeds can never arise. They further submitted that as Euram Bank has forwarded certain documents, purported to be minutes of the meeting of the Board of Directors of Texmo, the Company reserve their right to cross examine the signatory to the said communication and any other persons in knowledge of the origination of the alleged Board Resolution. In any event they denied that a meeting of the Board of Directors was held on 28.10.2010 and crave to rely on the fact that Texmo had never intimated the Stock Exchange of the proposed Board Meeting as required under the Listing requirements.

31.6. Noticee No. 2, Mr. Sanjay Agrawal, reiterated that in his capacity as Chairman and Managing Director of Texmo, he was neither authorised nor was aware of nor executed alleged Loan or Pledge Agreement and therefore needless to say that the question of mentioning the loan default by Vintage and consequential writing off of the said loan amount and informing stock exchanges did not arise. Further he submitted that several documents were given to him in bulk for signatures by Mr. Arun Panchariya and Mr. Anil Mehta, CEO, PAN Asia Advisors Ltd., Lead Manager in Dubai, UAE. He further submitted that the said documents might have been signed due to oversight while signing Escrow Agreement dated 01.03.2011. Further, he submitted that he reserves his right to cross examine the concerned personnel of Euram Bank and any other persons in knowledge of the origination of the alleged Board Resolution.

31.7. They denied the pledge agreement dated 01.03.2011 between Texmo and Euram. They submitted that surprisingly, the purported Pledge Agreement has made no mention of any authority granted to Mr. Sanjay Agarwal being so authorized by the Company to execute the said Agreement. Further, pages 52 to 62 of Annexure 7

were also not indicative of any resolution of the Board of Directors of the Company granting such authority. The investigation had relied on documents which were devoid of material and binding information. They denied that the Company had authorized Mr. Sanjay Agrawal to execute any Pledge Agreement.

31.8. They denied that Texmo had pledged 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 Texmo.

31.9. They denied that the company had furnished false or misleading information. They submitted that lead Manager PAN Asia had never furnished the list of GDR subscribers to the company and after several requests PAN Asia had parted with the information about 4 allottees and the Company Secretary had thereafter communicated the same to the Exchanges. They submitted that it was only on receipt of the SCN that it has come to their notice that there was in fact only 1 subscriber, namely, Vintage which had subscribed to GDR. They reiterated that despite several request their Lead Managers refrained from providing them with relevant information.

31.10. In any event the email dated March 01, 2016 of the Financial Market Authority (FMA), being Annexure 10 to the SCN, could never be relied upon since the said communication nowhere refers that Vintage was the sole subscriber to the GDR of Texmo. All that the purported mail states that "the only subscriber of GDR of issuer companies was Vintage FZE" without any reference to Texmo. Even otherwise, the trail mail dated February 15, 2016 to the purported mail dated March 01, 2016 which was sought to be relied upon speaks of an "attached annexure comprising securities trades of all 23 GDR issuer companies". It submitted that no such annexure has been attached to the SCN. It further submitted that investigation thus cannot rely on Annexure 10 to the SCN.

31.11. They submitted that Texmo had an account in Euram Bank. The GDR proceeds received in the escrow account was immediately transferred to money market investment account of Euram Bank and thereafter the proceeds were received in the Euram Bank account which were then transferred to Standard Chartered Bank of Tapti Pipes and Products Limited's Account in UAE, their wholly owned subsidiary. They submitted that no account statement was provided by Pan Asia. It is only when the account statement was annexed to the SCN, they realized the same. The Lead Managers had not made an effort to provide the account statement to Texmo. They denied that that the transfer of funds was dependent on the loan repayment by Vintage which funds were transferred/withdrawn from Texmo's Euram Bank account.

31.12. They denied that there was any fraudulent arrangement of Loan and Pledge agreements which resulted into subscription of GDR issue which fact was not disclosed to the Exchange in a true and complete manner but was reported as misleading news which contained information in a distorted manner which might have made investors believe that the said GDR issue was genuinely subscribed. They neither authorised nor were aware of nor executed alleged Loan or Pledge Agreement and therefore the question of making disclosures in respect of said documents does not arise.

31.13. They further denied that they made any announcements which misled Indian retail investors and induced investors to deal in shares of Texmo in Indian capital market. They submitted that without bringing on record any evidence of the so-called influence on the decision of the investors was proved the allegation falls flat. Further, assuming while denying that the pledge and loan agreement were not expressly made public by intimating to the stock exchange, no misleading news

was ever published by Texmo and the same could have been at the most a technical lapse and no adverse inference may be drawn there from.

31.14. They submitted that post receipt of GDR proceeds, i.e. after allotment of underlying equity shares, the Company complied with all the disclosure requirements i.e. compliance of Clause 43 of the Listing Agreement was regularly made till the time of final utilization of issue proceeds as per requirements of said Clause 43. They further submitted that the disclosure regarding utilization of GDR Issue proceeds were also given under the Quarterly Reporting of UFR/AFR and the same were filed with NSE / BSE.

31.15. They submitted that Texmo had come up with issue of GDR only with the intention of expansion of the company in the best interest of the investors. Further, they submitted that the entire issue was managed by Lead Managers and they had no reason to doubt their credibility.

31.16. They submitted that that in view of the above submissions, no directions should be issued against the company. They further submitted that they have not committed any act in defiance of any regulations or any provisions of law and that they are not liable to be proceeded against with an inquiry and penalty, including any directions.

Noticee nos. 1 and 3 vide letter dated August 22, 2022, have mainly made the following submissions:

31.17. The Company denied that there is nothing on record to show that the loan amount of USD 3.49 million has not been received back by the Company. The entire issue of USD 9.99 million raised through GDR has been credited in the Escrow Account of the Company and was also utilized for the purpose for which

it has been raised. The entire GDR proceeds of USD 9.99 million received in the Escrow Account were immediately transferred to money market investment account of Euram Bank and thereafter Euram Bank transferred the same to the account of Tapti Pipes & Products Limited FZE Standard Chartered Bank Account in UAE, a wholly owned subsidiary of the Company.

31.18. The Company denied that GDRs to the tune of USD 3.49 million were issued by the Company free of cost since the Company did not receive GDR proceeds to the extent of USD 3.49 million from EURAM Bank as the Vintage defaulted on the repayment of loan as a consequence of which EURAM Bank invoked its pledge on the remaining GDR proceeds of the Company. In fact the amount of USD 3.49 million was forfeited but was thereafter received on 27.09.2012 by Tapti Pipes & Products Ltd. FZE.

31.19. They submitted that the company is a going concern with over 56,000 shareholders and 850 employees, both permanent and contract basis. The turnover for year ended 31.03.2020, 31.03.2021 and 2021-22 was Rs.383.84 Crores, Rs.494.94 Crores and Rs.691.52 Crores respectively. Further, the profit for the year ended 31.03.2020, 31.03.2021 and 31.03.2022 was Rs.4.32 Crores, Rs.11.23 Crores and Rs. 14.61 Crores respectively.

31.20. They submitted that Government of Madhya Pradesh has bestowed upon the company Bhamashah Award for outstanding contribution towards sales tax and awarded a prize of Rs. 50,000/- to the company. Thus the company has been honoured and appreciated as being a compliant Company. Moreover, the Company has paid income tax of Rs.5.37 Crores for AY 2022-23 and paid net amount of GST of Rs. 14.31 crores for AY 2021-22 and Rs.9.23 crores for AY 2022-23. Further, the Company has contributed Rs.1.03 crores towards Provident Fund and Rs. 24.64 Lakhs towards ESIC for FY 2021-22

31.21. They submitted that any restraint levied upon the company would affect the investors/shareholders in terms of liquidity and price of their shareholdings.

31.22. They submitted that post GDR Issue, vide preferential allotment, an amount of Rs. 965.23 lakhs for issuance of 53.75 lakhs equity shares has been raised by the Company in three tranches from 2017-18 to 2020-21. They further submitted that the entire capital of the Company continues to be listed on the stock exchanges.

31.23. During the hearing held on August 23, 2022, Noticee nos. 1 to 3 were represented by their advocate Shri Anil Shah and *interalia* submitted on the behalf of the Noticee that a penalty of Rs. 10 crore has already been imposed on Noticee no. 1, and a penalty of Rs. 20 lakh each on Mr. Sanjay Agarwal and Mr. Vinay Prasad Pappu has been imposed in SEBI's adjudication proceedings. The present SCN states that one of the directions that may be issued against the Noticees was to bring back the GDR proceeds. In light of the AO order, it was submitted that the same would amount to double jeopardy.

32. ***Noticee No. 4 (Mr. Shanit Lal Badera, Director)***

Noticee No. 4, vide letter dated March 08, 2021, have mainly made the following substantial submissions on findings/observations fo the SCN as against him:

32.1. Noticee No. 4, Mr. Shanti Lal Badera, submitted that he was appointed as a Non-Executive Independent Director (hereinafter referred to as '**NEID'**) of Texmo on 14.08.2008. He has retired and resigned as Non-Executive Independent Director effective from 13.08.2019. He stated and submitted that as a NEID of Texmo, he was not involved with the compliance requirements of the company no adverse inference may be drawn against him in this regard. Even he was not in charge of

operations of Texmo. He submitted that on 28.10.2010, an Extra Ordinary General Meeting of Texmo was held, wherein he was not present.

32.2. He submitted that the SCN was deemed to have been issued to him in his capacity as NEID. The SCN ought not to have proceeded against him at all in his capacity as NEID. He stated that for this reason alone the SCN against should be dropped as against him. The specific allegations against him were for the limited role that he had played as an NEID and as such, none of the allegations against him established as is more specifically detailed hereinafter.

32.3. He submitted that Section 2(30) of the Companies Act, 1956 provides that an officer includes any Director, Manager, Secretary or any person in accordance with whose directions or instructions, the Board of Directors or any one or more of the directors is or are accustomed to act. He stated that Section 5 of the Companies Act, 1956 provides that an officer of the company who is in default shall be liable to punishment or penalty.

He submitted that thus by implication, if a company has any officer, the other directors will not be held as officer in default per Section 5(g) of the Companies Act, 1956. He denied that he was in-charge or control of the day-to-day affairs of Texmo and hence, he can never be held responsible.

32.4. Further, he submitted that the SCN too is silent as to his role in-charge or control of the day-to-day affairs of Texmo. The Hon'ble Supreme Court has held that "to be in-charge" would mean that" the person should be in overall control of the day-to-day business of the company". He quoted that in *GirdhariLal Gupta's case [1970 SCC (2) 530[FERA Case]*, the Hon'ble Supreme Court has construed the expression "a person in-charge and responsible for the conduct of business of the company" shall mean the "person in overall control of the day-to-day business of

the company". Further, in *R.K. Khandelwal v State [(2004) 55 SCL 416]*, the Hon'ble Supreme Court referred to the judgment in GirdhariLal Gupta's case.

Thus, he stated that the analogy of vicarious liability of a NEID squarely applies to the present proceedings as there was neither any consent nor connivance from his side nor was it attributable to any neglect on his part.

32.5. He further stated that the alleged violations were not committed with his consent/knowledge/connivance and that he was not negligent. He quoted Section 633(1) of the Companies Act, 1956 which is an enabling provision for a director to seek relief from the court by proving that he had exercised all due diligence to prevent the commission of an offence and had acted honestly and responsibly and that the director ought to be excused.

32.6. He relied on the order dated 09.08.2019 passed by the Hon'ble SAT in the matter of *Sayanti Sen*. He submitted that the decision made in this matter squarely applies to the present case.

32.7. He further submitted that the Hon'ble Supreme Court in the matter of *SEBI vs. Gaurav Varshney[(2016) 14 SCC 430]* has held that "a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence.

The liability arises from being in charge of and responsible for the conduct of business of the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status." he placed reliance on the said order passed by the Hon'ble Supreme Court.

32.8. He further stated and submitted that he was not an officer in default as per Section 5 as a consequence of which whether the alleged violation was wilful or not did not arise. He quoted *C.V. Siva Prasad v Registrar of Companies [(1997) 2 Comp J 205 (AP) and/or 1997 88 CompCas 420 AP]* in support of his contentions. He placed reliance on the judgment in *Smt. G. Vijayalakshmi v SEBI [(2000) 25 SCI 183 (AP) and/or 2000 100 CompCas 726 AP]* wherein it has been settled that criminal liability of ordinary directors would arise only in respect of a company which has no Managing Director. He stated that it is on record that he is not the Managing Director and thus no liability could be fastened to him. The aforesaid judgment pertains to criminal liability whereas the SCN is for violation of the SEBI Act and the Regulations framed thereunder, the vigour of criminal liability is far more than a civil liability and as such the SCN needs to be withdrawn against him. He submitted that ordinarily, courts have inclined to relieve the directors who are not concerned with day to day management of a company unless there is clear evidence to the contrary.

32.9. He submitted that in ***Mahalderam Tea Estate Pvt Ltd v D.N. Prodhan [1979 49 CompCas 529 Cal]*** [Employees Provident Fund Case], wherein all the

directors of the company were prosecuted for the offence, the Hon'ble Calcutta High Court held that under the said section a company is made primarily liable for an offence committed under Act. The liability may be extended to other persons vicariously only under the conditions laid down in the section. A director of a company may be concerned only with the policy to be necessarily be immune from such prosecution.

Thus, it has to be established by placing before the court his part in running of the business of the company and a mere bald statement that the accused persons are directors of the company and hence responsible for the conduct of the business and management of the company will not do.

From the above paragraphs it would be amply convincing that it is only the directors who are concerned with the day to day management of the company that should ordinarily be held liable for company's offences and no liability could ever be cast on me as NEID.

32.10. He stated that as NEID, the directors who are there on the board by virtue of their special skill, expertise, profession or knowledge or those who are merely for name sake or in advisory capacity would virtually be outside the net of liability for the company's offences except where, of course, it is established that the director concerned was in charge of and responsible to the company for the conduct of its business, which, as already mentioned is a question of evidence and depend upon facts and circumstances of each case. He therefore stated that it is virtually an impossibility to establish this for the simple reason that as a matter of fact these professional directors have hardly any hand in the day to day functioning and management of the company.

32.11. In this connection, he placed on record, Circular No. 2/13/2003/CL-V dated 25.03.2011 issued by the Ministry of Corporate Affairs and addressed to all Regional Directors, all Registrars of Companies and all Official Liquidators clarifying that the Registrars of Companies and others should take extra care in examining cases where independent directors are identified as "officer in default". The Circular directs that the ROC should examine whether the violation has taken place with the knowledge attributable through Board process, with his consent or connivance and whether he acted diligently or not.

32.12. He further placed on record, Reserve Bank of India (RBI) Circular under reference DBR. No. CID. BC.89/20.16.001/2014-15 dated 23.04.2015 on Collection and Dissemination of Information on Defaulters. Para 3 thereof makes in abundantly clear that a Non- Whole Time Director should not be considered as a defaulter unless it is conclusively established that the default had taken place with consent or connivance.

32.13. He relied on Circular no. No. 27 dated 28.02.2002 issued by the Office of the Chief Metropolitan Magistrate, Esplanade Mumbai communicating concern that many a time process is issued against Non-Executive Directors who are not responsible to the Company for the conduct of business of the company which is causing hardship to such Non-Executive Directors in attending courts, engaging lawyers for defence and filing discharge applications.

The Circular mandates that the Magistrate should find out prima facie if, the Non-Executive Director is in any manner responsible for the conduct of the business of the company and thereafter consider and decide whether process should be issued or not against such Non-Executive Directors.

32.14. Further he placed reliance on Order no. WTM/GA/54/ISD/02/06 dated 16.02.2006 of the WTM, SEBI in the matter of Home Trade Limited. He stated that SEBI too has taken a liberal interpretation in the matter and has rightly passed the captioned order, relieving NEIDs.

32.15. He also relied on the judgment by the Hon'ble Delhi High Court in the case of S.S. Thakur v SEB/MANU/DE/1024/2013, dealing with the issue of vicarious liability of ordinary director for violation of SEBI Act.

32.16. He further relied on Circular No. List/JJB/DSS/2000 dated 11.04.2000 issued by the Stock Exchange Mumbai to all listed companies. On Page 8, reference has been drawn to Clause 49 of the Listing Agreement being the Clause on "Corporate Governance". He stated that a liberal interpretation has been granted in criminal matters on the responsibility of Non-Executive Directors. He further stated that the gravity of the issue of the present SCN is far less than criminal liability.

32.17. He stated that in view of above aforesaid submissions and the settled position in law, no liability may be fastened on him for the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003. He submitted that he has not committed any act in defiance of any regulations or any provisions of law and that he is not liable to be proceeded against suitable directions under Section 11(1), 11B and 11(4) of SEBI Act 1992.

32.18. He vide letter dated August 22, 2022 submitted that he relied on the following judgements of the Hon'ble Securities Appellate Tribunal:
Order dated 28.06.2021 in the matter of Prafull Shah vs SEBI.
Order dated 30.08.2021 in the matter of Vilas Joshi vs SEBI.

32.19. During the hearing held on August 23, 2022, Noticee nos. 4 was represented by his advocate Shri Anil Shah and *interalia* submitted on the behalf of the Noticee that a penalty of Rs. 10 lakhs has already been imposed on Noticee in SEBI's adjudication proceedings.

33. ***Noticee No. 5 (Mr. Rishabh Kumar Jain, Company Sercetary)***

Noticee No. 5, vide letter dated March 08, 2021, have *interalia* made the following substantial submissions on findings/observations fo the SCN as against him:

33.1. Noticee No. 5, Mr. Rishabh Kumar Jain, stated that he is Company Secretary graduated in the year 2008 and he was appointed as CS of Texmo on 01.08.2008. He had resigned as Company Secretary of the Company on 15.05.2011 i.e. immediately after 35 days of issuance of alleged GDR on 11.04.2011. The realization of GDR proceeds by Texmo tabulated vide Table 4 under para 22 and repayment of loan by Vintage as tabulated under para 23 commence from month of August 2011 i.e. two and half months after his resignation and there the alleged acts of commissions and ommissions cannot be attributed to him and no adverse inference ought to be drawn therefrom as against him.

33.2. He stated that without original documents for verification as well as the fact that the SCN is issued after 8 years, he has been disabled and deprived of an opportunity to verify the true and correct facts and offer any submissions. he is not in position to gather necessary information and records and therefore not in position to represent his case effectively, more so when inspection of original documents is denied. Also, no satisfactory reasons or even a whisper is recorded in the SCN to explain or justify such a long delay in issuing the SCN.

33.3. There was a delay in filing of reply, post inspection of documents, on account of time taken to gather necessary information and seek legal advice The matter dates back to year 2011 and the records were old. There was further delay on account of ongoing pandemic. It was humbly prayed that same be condoned.

He relied on order dated 07.09.2012 passed in the matter of *Khandwala Securities Ltd* by the Hon'ble SAT. He further relied on order dated 07.09.2012 passed in the matter of *HB Stockholdings Ltd* passed by the Hon'ble SAT wherein it is observed that proceedings before SEBI require finalisation within reasonable time.

Further, the unnatural delay of almost 9 years in the matter is also against the principles of natural justice. Reliance is placed on Appeal No. 37 of 2008 in the matter of *Libord FinanceLtd* in which it was held by SAT that 'no proper reply could be filed in a particular matter by any party after a lapse of (8) eight years from the occurrence of the incident and that grave injustice would be caused to the delinquent in such cases in complete violation of the principles of natural justice.'

He further relied on the order of the Hon'ble Supreme Court of India in *Mansaramvs S. P. Pathak and Others* (Civil appeal No 1262 (N) of 1978). He submitted that the same principle was upheld by Gujarat High Court in *Ramalabhai Jahalabhai Ganava v. State of Gujarat* on October 23, 2001.

He stated that in that view of the matter, as seen above, the exercise of issuance of the SCN against him is unreasonable. He therefore prayed that for this reason alone the present proceedings are therefore liable to be quashed and the SCN needs to be withdrawn qua him.

33.4. He denied that he had violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN and nothing be deemed to be admitted or accepted by him, unless specifically admitted herein.

33.5. He stated that he was neither aware nor involved in execution of purported Loan Agreement and Pledge agreement. He was not aware of the fact that Vintage was sole subscriber to GDR issue of Texmo. He believed that list of subscribers was submitted based on the information received from the Lead Managers and will never resort to submitting a false list to the exchange.

33.6. He submitted that that as an employee of Texmo, he was drawing Rs. 21,100 (Rupees Twenty-One Thousand One Hundred only) pm as salary. He stated that as the CS of Texmo, he had no authority or discretion to amend the contents of the communication that were sent out, including those that were addressed to BSE.

33.7. He stated and submitted that even though he was the CS of Texmo, the allegation that the same was reported as misleading news to the stock exchanges which contained information in a distorted manner, is contrary to the allegation set out in para 17 of the subject SCN, which states that the stock exchanges were not informed about the pledge and loan agreements at all. Further, even if the pledge and loan agreement were not expressly made public by intimating to the stock exchange, he understood that no misleading news was ever published by Texmo.

33.8. He submitted that as a CS, he was not privy to all the information and documents quoted in the SCN. The SCN too is silent that there was any wilful default on his account.

33.9. He submitted that the pledge agreement was not signed by him as he was the CS of Temxo, he did not doubt the credibility of their management and

professionalism especially the Lead Managers and he was under bonafide belief that laws of the countries including India, involved in the process of issue of GDR are duly complied. In view of the above, the allegations made against him may be withdrawn forthwith.

33.10. He denied that he had fraudulently certified the Board Resolution dated 28.10.2010, as wrongly alleged and further, he reiterated his submissions made hereinabove and denied that the GDR issue was fraudulent and hence, his act as a CS of Texmo by certifying the Board Resolution could never have enabled the purported fraudulent scheme of issuance of GDR and he denied that he acted as a party to the fraudulent scheme. In any event, the SCN is silent as to how the misleading news which contained information in distorted manner could have influenced investors decision and the same is based on pre ponderance of probability. He denied and refuted allegations levied thereon and submitted that no material fact was deliberately concealed by him.

33.11. He denied that the GDR issue would not have been subscribed had Texmo not given any such security towards the loan taken by Vintage. He reiterated the submissions made hereinabove and stated that there was no lapse from his end as CS in Texmo not informing the stock exchanges or that the same tantamount to suppression of material information and further that the same tantamount to misleading news which contained information in distorted manner which would have influenced the decision, if any, of investors.

33.12. He further stated that in any event, since he had resigned as CS of Texmo on 15.05.2011, all references made in the SCN after that date can never apply to him in so far as they pertain to the Annual Reports for FY 2012 -2013, 2013 2014, cancellation of GDR, sale of equity shares by entities in India between September 2011 and June 2014, termination of GDR in September 2014.

33.13. He further stated that the alleged violations were not committed with his consent/knowledge/connivance and that he was not negligent. He relied on the order dated 09.08.2019 passed by the Hon'ble SAT in the matter of *Sayanti Sen* wherein the decision applies to the present case.

33.14. He stated that in the absence of corroborative evidence for his involvement in GDR issue of the Company benefit of doubt ought to be granted to him and therefore no directions are required to be issued against him.

33.15. During the hearing held on August 23, 2022, Noticee nos. 5 was represented by his advocate Shri Anil Shah and *interalia* submitted on the behalf of the Noticee that a penalty of Rs. 2 lakhs has already been imposed on Noticee in SEBI's adjudication proceedings.

34. ***Noticee No. 6 (Mr. Arun Panchariya)***

Noticee No. 6, vide letter dated November 24, 2020, have mainly made the following substantial submissions on findings/observations of the SCN as against him:

34.1. The Noticee No. 6, Mr. Arun Panchariya denied all the allegations, charges made against him in the said Show Cause Notices.

34.2. He submitted that he is a non-resident Indian for the last more than 20 years and has certifications in finance and has been in the financial services industry in Middle East and Europe. 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 the SEBI. Therefore, SEBI cannot be said to have any jurisdiction over his business activities

or him in his personal capacity. Hence the said Show Cause Notices has been issued without jurisdiction and ought to be recalled immediately.

34.3. He submitted that the 'jurisdictional fact' that ought to have been established before SEBI could pass the Order has not been established. He submitted that the following submissions are relevant in this regard:

a) The show cause notice was issued against him, holding that he has connection with the various entities mentioned in the said SCNs and he is the beneficiary under various other entities being Pan Asia Advisors Limited, Vintage FZE, Highblue Sky Emerging Market, Aspire Emerging Funds; He submitted that each of these entities is duly incorporated under the relevant laws and have a separate legal existence and his role is totally different from the activities carried on by these entities under their Charter.

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 submitted that he had also established Cardinal Capital Partners as a company in Mauritius. Cardinal Capital partners established Cardinal 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 did not have any office or business in India. The activities of Vintage and IFCF and Cardinal Capital were wholly outside India. The subscription by 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. He submitted therefore

that the SCNs could not been issued under the provisions of the SEBI Act, against him i.e. Mr. Arun Panchariya as these entity as are different from him.

c) SEBI has merely on the basis of the documents / information obtained by it during its investigation, has assumed everything against him personally, without any independent application of mind. He further submitted neither SEBI has done fair investigation nor opted a path of Natural Justice.

d) 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 has already resigned from Vintage FZE (Resigned year 2009), IFCF (resigned year 2010), and Pan Asia (year OCT 2011) and since then he was not part of its management team.

34.4. The SCN is also very vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years. He also found that SEBI officials set a negative frame of mind against him in passing order against him, which is evident and seen from the different decisions in SEBI's order which reflects in other cases of GDR. In this regard, he referred to the recent Judgement of the Hon. Supreme Court of India in Civil Appeal 3687 of 2020 *UMC Technologies Pvt. Ltd. v Food Corporation of India*. At para 25 the Hon. Supreme Court has held *"the mere existence of a clause in the Bid document which mentions blacklisting as a bar against eligibility cant satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice"*.

34.5. The First ad interim ex party order has been passed against him i.e. Mr. Arun Panchariya in his capacity as Managing Director of Pan Asia Advisors and also against Pan Asia Advisors, on 21st September, 2011 in the matter of GDR manipulations and the vague allegation was of Money Laundering. However,

afterwards in the SCN issued in 16th May, 2013 after that the said allegation relating to money laundering and market manipulation has been with withdrawn as no allegation of Market manipulation has been mentioned in the said SCN.

34.6. 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 & between companies with executions of legal & binding agreement in place with obligations to respective jurisdictions.

34.7. 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 that were outside the territory of India and therefore, the provisions of SEBI Act are not applicable.

34.8. These legal entities are independent, incorporated under respective foreign jurisdictions and many of them is/are also regulated with respective financial market regulator/s of their respective jurisdictions. That shows that these legal entities are real and no case for looking through them and personally targeting him in his personal capacity, disregarding the principle laid down in *Salomon v. A. Salomon & Co. Ltd* is made out. There is no power or, in the facts and circumstances of the case, warrant or justification for the SEBI to have lifted/pierced the corporate veil and in any case, SEBI does not have the power to lift the corporate veil of an entity incorporated outside India.

34.9. He submitted that he has been in the financial services business in Dubai and UK and is well aware of the laws in these jurisdictions. Many companies were issuing

GDRs under the 1993 Scheme for issue of GDRs. He submitted that his first association with an Indian company for GDRs was in 2006. Prior to this numerous companies have come out with GDR issues which had the market practices allegedly now found to be illegitimate by the SEBI in the year 2011. He submitted that from the information available on the SEBI website, the SEBI has passed orders in the following prior GDRs;

Company Name	**GDR issue Date**	**Total Amount Raised by GDR issue (USD) million**	**Bank**	**Takedown investor**	**SEBI Order Date**
Himachal Futuristic Communications Ltd.	Sep-2002	US$50.00Mn.	The subscription amount was paid by Roker by obtaining loan (i.e. through a credit agreement) from Banco Efisa, S.F.E.S.A.	Roker Securities Inc	29-Mar-19 (Settlement)
Aftek Infosys Ltd. (name changed to Aftek Ltd.)	Feb-2003	US$14.99.Mn.			
Morepen Laboratories Ltd.	Mar-2003	US$15.25Mn.	Solsec and Seviron had obtained a loan of USD 7 and 8 millions respectively through the credit agreement with Banko Efisa	1. Solec Commpay limited. 2. Seviron company limited	24-Sep-19
Sterling Biotech Ltd.	Oct-2003	US$15.39 Mn.			
Aptech Ltd.	Nov-2003	US$14.40Mn.	Banko Efisa	Willow Brooks S.A	1-Apr-20
Crew B.O.S. products Ltd.	Jul-2005	US$5.00Mn.	Banko Efisa	Fusion Investment Ltd	18-Feb-20

KEI Industries Ltd.	Sep-2005	US$9.99Mn.	Banko Efisa	Fusion Investment Ltd	16-May-19 (Settlement)
Lyka Labs Ltd	Dec-2005	US$5Mn.	Banko Efisa	Fusion Investment Ltd	5-Jun-20

He submitted that from the orders passed by SEBI, it is clear that all these Issuers and the Lead managers and the subscribers, practiced the same modus operandi prior to him who followed the same market practice. So the conclusion to portraying him as master mind for creation of fraudulent device is absolute bias.

34.10. He further submitted that the SEBI in a highly prejudiced manner, has alleged/charged that a fraudulent scheme was devised and executed in Indian markets which affected the integrity of markets. Such allegations are totally contrary to the facts that there are numerous issues of GDRs, prior the GDRs with which he was associated. An analysis of the SEBI orders in other GDRs matters will show that no action has been taken against the overseas intermediaries associated with these GDRs, because the SEBI recognized that they committed no violations.

34.11. He also submitted SEBI and its officers are highly prejudiced against him and also stated that disciplinary action was initiated by SEBI and other investigative agencies against one of the key officers involved in the GDR investigation.

34.12. He submitted that no violation has been found against the intermediaries who followed similar modus operandi prior to him. He also submitted that he is no way connected with the disclosures to be made and the laws to be followed by the Issuer in India and such allegation in the SCN is not legally tenable.

34.13. He further submitted that the bias is further highlighted by the recent SEBI order passed in the GDR matters of Sanraa Media Limited and Lyka Lab Limited. No action or order against the investor Cliiford Capital Partners and or Fusion Investments Limited. From the order it shows that: " Sanraa had issued 10 million GDRs (amounting to US$ 27.50 million) on May 02, 2008. Clifford Capital Partners AGSA (earlier known as Seazun Limited and hereinafter referred to as 'Clifford') was the only entity to have subscribed entirely to these 10 million GDRs of Sanraa by depositing US$ 27.50 million as subscription amount. The investigation in this matter revealed that the subscription amount of US$ 27.50 million was paid by Clifford by obtaining loan (i.e. through credit agreement) from Banco. It was observed that Sanraa signed an Account charge agreement with Banco wherein it pledged its entire GDR proceeds with Banco for the loan taken by Clifford towards subscription of GDRs issued by it. Thereafter, on account of the loan default by Clifford, Sanraa requested Banco to transfer an amount of US$ 27.244 million (including interest) to Clifford towards closure of the loan taken by Clifford for subscription of GDRs issued by Sanraa.

34.14. He further submitted that in the matter of Himachal Futuristic Communication Ltd. (order no. SO/EFD-2/SD/280/MAR/2019 dated 26.03.2019) and KEI Industries (Order no. SO/EFD-2/SD/287/MAY/2019 dated 16.5.2019) wherein the SEBI had brought in charges related to pledging of GDRs and GDR funds and non-disclosures, SEBI had allowed the settlement application of these companies without accepting or denying charge thereby implying that the charges were not so serious. The amount paid as Settlement amount by Himachal Futuristic Communication Ltd. was Rs. 1.14 crores and that by KEI was Rs. 1.78 crores. An analysis of these settlement order cases and also the Orders in the matters of Aptech Ltd., Lyka Labs Ltd. it would be clear that the SEBI brought no action against the investor/subscriber (such as Fusion

Investment, Willow) and the entities that sold the converted GDRs in India. He submitted that this is the correct legal position as the SEBI had taken note of the recognized market practice overseas and not proceeded against these entities.

34.15. He further stated that the SCNs issued are exclusively based on the Xerox/Photostat copy of the documents, the original of which are not available with the SEBI. Since the allegation 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. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Smt. J. Yashoda Vs. Smt. K. Shobha Rani reported in (2007) 5 SCC 730*, wherein it is held that in order to enable a party to produce secondary evidence, it is necessary for such party to prove existence and execution of original document and that conditions laid down in section 65 of the Evidence Act, must be fulfilled before secondary evidence can be admitted. He further stated that even Photostat copies of documents have not been certified by any of the authorities from which they have been obtained. Reliance is also placed on the decision of *Hariom Agarwal Vs. Prakashchand Malaviya, reported in (2007)12 SCC 49*, wherein it is held that copy of instrument cannot be validated by impounding and this cannot be admitted as secondary evidence. Section 35 of the Indian Stamp Act, 1899 provides that document which was not properly stamped shall not be admitted in evidence.

34.16. SEBI has passed various orders in which no action has been taken against the investors like Cliford Partners, Solec company limited, Seviron company limited, Fusion Investment Ltd etc. Placing reliance on the doctrine of issue estoppel it submitted that, in light of the previous decision of the Hon'ble Whole Time

Member, covering essentially the same facts and addressing the same issues, here to he must be granted similar relief and the charges against it be dropped.

34.17. Further, the show cause 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 Show Cause Notices and thereby allegedly upon the alleged 'scheme' itself. In this regard, he submitted that assuming whilst denying that there was indeed such connection between the entities mentioned in the said Show Cause Notices and him, the same does not and cannot imply that the decisions of such entities were controlled by him. Further, the show cause notice or investigation report or any document provided to him does not indicate in any manner the exercising of such control by himself. The allegations in this regard are therefore based merely on surmises, conjectures and incorrect assumptions.

34.18. In relation to the Vintage FZE, he submitted that he has already resigned and he 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.

34.19. 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. In this regard, he submitted that 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 himself except showing few connections which are totally independent Business relationships. He

submitted that there is therefore no question of him being illegally or improperly connected to or being in control of the entities.

34.20. He stated that the Show cause Notices fails to bring out the correct facts relating to the issue, and the conversion of GDRs and sale of shares in the Indian markets and has wrongly held himself as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud.

34.21. He submitted that the players in the GDR process was as follows:

Players in the GDR Issue;

a) Euram Bank, Austria: Euram Bank – Vienna is a private bank mainly engaged in private banking & asset management business and alternative investments established and regulated in Austria (www.eurambank.com). Euram Bank provided loans to Vintage to subscribe to the GDRs, but held the control of the funds and the GDRs which supports its Private Banking & Asset Management Business to generate revenue. Euram bank bought the GDRs from Vintage and then sold the GDRs to India Focus Cardinal Fund (IFCF) which was functioning under a SEBI registered FII i.e. Euram Bank's FII umbrella and IFCF was under its FII's control parameters whereas IFCF was, merely a SEBI registered FII Sub account and similarly Bank sold GDR to other funds through bank's counter. Euram Bank – Vienna has held 63.11% Class "A" shares in IFCF, which (Class "A") purchased the GDRs and sold in India Post conversion. Euram Bank has made revenue as earned loan processing charges, earned interest on loan amount, custody charges for keeping pledge of GDRs, spread between buy and sell price of GDRs, FII fees from IFCF and revenue sharing with IFCF on fee income and various other charges from Vintage and the issuer company with no risk at all since

Bank had kept full control of the loan amount utilization as go to the issue proceeds and the GDRs kept in Bank's custody under lien mark though its reflected in Vintage's statement.

b) Vintage FZ LLC: Vintage was a limited liability company established under the laws of United Arab Emirates. 100% of shares of Vintage was held by himself until 2008-09 then it was owned by as 100% subsidiary company of Shri Karni Holding Limited, a British Virgin Island Company. Vintage was engaged in General trading activities in various commodities, was also a trading member of Dubai Gold & Commodity Exchange – Dubai and were doing Export-Import of various product by & between various countries. Whereas, Euram Bank lent money to Vintage to subscribe to the GDRs. Vintage FZE was a SPV subscriber and post subscription of GDR time to time, Euram bank – Vienna purchased the GDRs from Vintage through Bank's Over the counter platform and adjusted sale proceeds of GDRs towards the loan as per Pledge agreement signed by Bank & GDR issuer Company.

c) Lead Manager to the GDR issue: The role of the lead manager is to inter act with intermediaries like Bank, depository stock exchange and complete the GDR process overseas. In some cases, Pan Asia was the Lead Manager and in other cases there were other lead managers. The role of the lead managers was in respect of activities outside India.

d) Overseas depository: To hold the GDRs outside India. He is not a party to this.

e) Indian custodian and depository: To hold the underlying shares in India and carry out the conversion of GDR into shares. He is not a party to this arrangement.

f) India Focus Cardinal Fund – Sub account under the SEBI registered FII umbrella of European American Investment Bank AG (Euram Bank – Vienna): Established in Mauritius as an investment company. Cardinal Capital Partner was the sponsor of the Fund and 100% holder of the capital of the Company i.e. US Dollar 1/- (In words: US One Dollar). IFCF obtained a Collective Investment Scheme license with key object of Arbitrage of GDR/ADR and raised funds by issuing different classes of shares to the beneficiaries for the underlying investment. The company floated schemes with various classes of shares. Class A Shares which dealt in the GDRs was held 63.11% by Euram Bank and 7.82% by Citco Bank, Netherland both are Institutional Investor. Balance 29.06% was held by Atique Aqadi Trading LLC. The investment fund was managed by a Board of Directors and he was not the decision maker as confirmed by FSC Mauritius. IFCF was a FII-sub account fund which was trading into secondary market securities in Indian market and was also active in Sri Lanka, UAE and various other emerging market.

g) Highblue Sky Emerging Fund: Highblue Sky is an investment company incorporated in Mauritius and registered as a sub account of KBC Aldini Capital Limited from 18.06.2010 to 21.10.2012 and Golden Cliff from 22.10.2012 to 28.02.2017. He is not associated with Highblue.

34.22. He stated and submitted that he has in his personal capacity has no role at all in the GDR issue. 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.

34.23. He stated that the Show Cause Notices 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 himself 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 & loan agreement separately with both entities.

34.24. He submitted that Investigation officer has prepared this report with biased mind and he was investigated by government agencies.

34.25. SEBI very well understands that if any company propose IPO/GDR offer/FCCB offer/Right Issue being beneficiary of the fund raising programme thus company is responsible for all rules & regulations to follow which has framed by SEBI/Companies Act – India or any respective regulators. In this case, SEBI Investigation Officer was very much aware that Company is beneficiary of the transaction but just creating a story on default of loan and making Vintage responsible as a beneficiary whereas as per loan/Pledge agreement company has control on its GDR assets which company would have redeemed same time the moment Vintage defaulted the loan and if company didn't do so then it's very much clear that company has received money from Vinatge FZE in its main account or subsidiary account in cash or kind. Moreover, if company didn't receive

money then why did the company let go its GDR to Vintage FZE. All this loan default situation happened post SEBI's ex-parte Order and confirming order beyond SEBI's investigation period which was fixed at first time. It shows that company was aware of what they need to do if they are not receiving money of GDR i.e. redeem the capital and inform to stock exchange as well as SEBI but why company didn't do though they have GDR in their possession as per European American Investment Bank AG's drafted loan/pledge agreement.

34.26. SEBI investigation ignored that whole transaction was very well controlled by European American Investment Bank AG with following parameters; a) Custodian of loan/pledge agreement b) Providing FII umbrella to IFCF and managing IFCF fund being FII c) Execution of GDR trade over the Bank Counter d) execution of loan set off with pledge agreement and releasing GDR whereas, bank was equal by responsible as Arun Panchariya on each steps. Euram bank – Vienna was partner with AP in Dubai, Bank provided FII license to IFCF, Bank shared fees generated by GDR transaction, Bank earned Custodian fees of GDR transaction, Bank was managing IFCF fund through Euram Bank Asia Limited (above information is/are available at DFSA – Dubai and he is sure Investigation officer has collected those from DFSA-Dubai) but SEBI is putting not a single penny penalty on Euram Bank- Vienna which shows its bias.

34.27. SEBI passed first order in year Sept 2011 with confirming order passed in year 2012 with specific investigation period and such order killed GDR issuance market as SEBI order itself closed all GDR business and GDR scripts trading were suspended by SEBI itself. In true manner SEBI order caused loss to the investors and created situations of default of loan by Vintage through passing false Ex. Parte order for market manipulation & price speculation which in their final investigation came out as clean.

34.28. He submitted that the subscription to the GDRs was not a fraudulent scheme or device.

An allegation of fraud cannot be made on surmises and conjectures without appreciable evidence. He relied on following orders:

i) C.A. No. 2818 of 2008 SEBI vs Kishore R Ajmera

ii) Dilip S Pendse vs SEBI (Appeal No. 80 of 2009, decided on November 19, 2009)

iii) *Lord Denning LJ in Bater vs Bater* (1950) 2 All ER 458

iv) CA 2595/2013 SEBI v Kanaiyalal Baldevbhai Patel

v) Order of Hon. SAT in Appeal 6/2018 PWC v SEBI

He stated that the show cause notices puts forth no evidence to show that he has made any representations to Indian Investors.

He relied on above orders and submitted that that he himself has not committed any violation of the provisions of Regulation 3(1) (a), (b), (c), (d) of the PFUTP Regulations and consequently there is no violation of the provisions of Section 12 A (a), (b) (c) of the SEBI Act. In view therefore, he submitted that he has committed no violation of the provisions of section 12A (b) (c) of the SEBI Act, read with Regulation 3(1) (a), (b), (c), (d) and Regulation 4(1) of the SEBI PFUTP Regulations, 2003.

34.29. During the hearing held on September 06, 2022, his advocate Mr. Sandeep Wadhawan informed that Vintage has taken loan from EURAM Austria and it is EURAM Asia where the Noticee, Mr. Arun Panchariya is a shareholder. He was not involved in the impugned GDR transaction. Furthermore, EURAM Austria is not a party to the present proceedings. He submitted that the SCN/Investigation fails to provide the proof/evidence of a particular disgorgement amount and there

is no evidence/proof with respect to the disgorgement amount being transferred to the Noticee. He further stated that he has already undergone debarment for 10 years. Therefore, the quasi-judicial authority is requested to consider the same while passing the order.

34.30. He submitted that since allegations in the SCN do not flow out of the factual position and since it cannot be legally sustained, same may be dropped and he be discharged. He further submitted that as submissions demolishes the charges levelled against him, the SCN be disposed of without any further directions qua him.

35. ***Noticee No. 8 (Mr. Mukesh Chauradiya)***

Noticee No. 8, Mr. Mukesh Chauradiya vide letter dated May 02, 2019 and August 31, 2019 mainly submitted following:

35.1. He submitted that he has never been the Director or Managing Director of Vintage FZE as alleged in the SCN. He denied all the allegations contained in the SCN. He submitted that he has tried to collect relevant documents/ papers from Jebel Ali Free Zone Authority, UAE ("JAFZA") to prove that he was never a Director or Managing Director of FZE. He submitted the copy of his e-mail correspondence dated December 2, 2017 written to JAFZA seeking the desired information (i.e. either a DMSS certificate i.e. Director, Manager, Secretary Shareholder of Vintage FZE since its incorporation or a certificate clearly stating his position / designation in relation to Vintage FZE for the period he was is JAFZA) which is necessary for the purpose of defending the charges against him in the SCN.

35.2. He placed on record that vide its email dated December 25, 2017, JAFZA replied as follows:

"Please be advised that as per JAFZA concern department jafza can't issue any letter confirmation for below and can't provide any service when the contract status terminated, in case if you need any documents or facing problem with the company you can provide us a Court order addressed to Jafza in order to provide with any details."

35.3. In this connection, he submitted that since SEBI has powers of a civil court under section 11 of the SEBI Act, 1992, appropriate directions under section 11 may be issued to JAFZA requiring it to issue him necessary clarification or information. Alternatively, under the bilateral and multilateral convention between SEBI and the concerned regulator of UAE, the information may kindly be sought from the said entity. This information so obtained would be of great help to him in defending his case.

35.4. Further, as per Annexure 4 of the SCN being a copy of certificate from JAFZA dated December 28, 2010 ("DMSS Certificate"), addressed to EURAM Bank stating as FZE Manager: Mukesh Babulal Chauradiya. The DMSS certificate from JAFZA dated December 28, 2010 in relation to Vintage FZE clearly mentions his position as a Manager and not as the Owner or Director of Vintage FZE. This letter has an inward stamp of March 18, 2011 by Euram Bank and clearly clarified his position as a Manager and not as Director or Managing Director of Vintage FZE.

35.5. He requested that copies of statements recorded of Arun Panchariya during the course of investigation may kindly be furnished to him so that he could prove that he was only an employee of Vintage FZE working under Mr. Arun Panchariya. He

submitted that since he is no more associated with Vintage FZE and Arun Panchariya, he did not have access to any material to properly defend his case.

35.6. He submitted that he was never asked to participate in the investigation proceedings by the investigation officers at any point in time. His statement was not recorded during the course of investigation. Had he been called by the investigation officers at the relevant points in time, he would have clarified that he had no role to play in the affairs of Vintage FZE except as an employee taking instructions from Mr. Arun Panchariya and that the allegations contained in the SCN as far as he is concerned are without any basis.

35.7. He submitted that he was only an employee of Vintage FZE, the subscriber to the GDR of TEXMO. He submitted that the said Vintage FZE was fully owned and controlled by Mr. Arun Panchariya. This fact has been appropriately captured in the SCN itself. He was drawing only a monthly salary for the work done by him in Vintage FZE. He did not have any other advantage, monetary or otherwise for any of the facts done by him as an employee of Vintage FZE working under Mr. Arun Panchariya.

35.8. He submitted that he joined Vintage FZE as Manager in the year 2005. After joining Vintage FZE, he had relocated himself from Ahmedabad to Dubai. He had been staying in Dubai till the year 2016.

35.9. He submitted that under the Implementing Regulations No. 1/92 (pursuant Law No. 9 of 1992) of FZE ("FZE Regulation"), under which the Vintage FZE was registered as a Free Zone Enterprise)" FZE") in JAFZA shall have a SINGLE OWNER. He submitted that in this case it was Mr. Arun Panchariya who has been the beneficial and legal owner of Vintage FZE (directly and indirectly) and the real face behind Vintage FZE. It was a single member enterprise and he was

the owner. It can be said to be akin to a sole proprietorship concern with the sole proprietor taking keen interest in its operations. In such organization, the sole proprietor or the ultimate sole owner effectively takes all important decisions in relation to the activities of such organization.

35.10. He submitted that Mr. Arun Panchariya was initially the sole director and subsequently somewhere in 2010-2011, Mr. Ashok Panchariya, his brother, replaced him as the Director of the Vintage FZE. He was a mere manger and never the Director or Managing Director of Vintage FZE.

35.11. He submitted that from the copies of his resident permits for the period September 14, 2005 to September 9, 2017, it can be seen that his designation, position has always been mentioned as the General Manager and not as a Director/Managing Director. He couldn't have functioned as the Director/Managing Director in Vintage FZE (which operated in JAFZA) or in any other entity within JAFZA without an appropriate work permit as a Director/Managing Director from JAFZA.

35.12. He submitted that from the letter dated October 01, 2009 written by Vintage FZE to Abu Dhabi Commercial Bank it can be seen that he was referred to as the General manager since Sept 2005. The said letter was signed by Mr. Arun Panchariya himself.

35.13. He submitted that from the copy of the JAFZA Visa of Mr. Arun Panchariya for the period January 12, 2010 to January 11, 2013 that his designation was mentioned clearly as the Managing Director.

35.14. He submitted that from the Employment Card issued to him by JAFZA, he had always been an employee of Vintage FZE and not a Director or Managing Director of it.

35.15. He further submitted that from Annexure 25 of the SCN being the Shareholder's list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Mr. Arun Panchariya holds 9,998/18,59,013 Equity Shares in Vintage FZE Investment Holding Private Limited in his capacity as a Director of Vintage FZE. This clearly demonstrates that Mr. Arun Panchariya has all along been the Director/ Beneficial Owner of Vintage FZE. This also clearly proves that he could not have any played any role in Vintage FZE except as an employee and acting on instructions and under supervision of Arun Panchariya.

This shareholding in Vintage FZE Investment Holding Private Limited by Arun Panchariya was more than 99.99% of its shareholding. He was just holding qualification shares of mere 1 or 2 shares.

35.16. The Administrative fine statement passed by DFSA imposing fine of US$ 12,000 on Mr. Arun Panchariya (Annexure 20 of the SCN) also clearly indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE.

35.17. He submitted that as per regulation 30 of FZE Regulations as mentioned above, the business of a Free Zone Establishment shall be managed by the Directors who shall exercise all the powers under the Free Zone Establishment – which were exercised solely by Mr. Arun Panchariya or through his brother Mr. Ashok Panchariya. Key decision-making powers such as availing loans from Banks, subscribing to GDRs or other investments, repayment of loan etc. were taken by

the Owner and Director of Vintage FZE which was Mr. Arun Panchariya/ Mr. Ashok Panchariya. As an employee and Manager, he was required to execute such decisions taken. At no point of time he had the authority to take any such decision.

35.18. He submitted that as he has not been in possession of the constitutional documents of the Vintage FZE, he is not in a position to submit the same. He submitted that these Documents may be part of the documents collected by the investigation department of SEBI during its investigation- DMSS Certificate for the entire duration of Vintage FZE i.e. from the date of its incorporation till closure.

35.19. Further, he submitted Loan Agreement No K300508-002 dated May 30, 2008 between Euram Bank and Vintage FZE, Mr. Arun Panchariya had signed as Managing Director of Vintage FZE.

Somewhere in 2010 after Arun Panchariya setup Euram Bank Asia Ltd. ("Euram Bank Asia") in JV with Euram Bank and got it UAE DIFC License, there were concerns in relation to conflict of interest raised by Euram Bank as Arun Panchariya was also signing / verifying transaction documents as the Director/ President of Euram Bank Asia – the same has also been correctly noted in the SCN in para 17. Post which, Arun Panchariya, while continuing as the sole beneficial owner of Vintage FZE, stepped down as Director of Vintage FZE and was replaced by his brother, Ashok Panchariya. As an employee and authorized signatory of Vintage FZE, based on the instruction from the Director/ Sole Owner of Vintage FZE, he had signed certain documents on behalf of Vintage FZE. As a salaried employee of Vintage FZE following instruction from its sole beneficial owner, Arun Panchariya, he cannot be deemed to be the key employee / managing the affairs of Vintage FZE or treated as a key person in structuring GDR issue.

35.20. He submitted that on Specimen Signature format dated June 6, 2007, Mr. Arun Panchariya's name had been mentioned solely as the Owner or member of Management Board or managing Director. In the second table, his name was mentioned as one of the persons with signing authority. The said form dated June 6, 2007 was signed by Mr. Arun Panchariya himself.

He submitted that Mr. Arun Panchariya's name has been mentioned as sole Beneficial Owner and Director of Vintage FZE on the declaration of beneficial ownership (This declaration was also signed by Mr. Arun Panchariya). He submitted that he was only an employee of Vintage FZE and he was drawing monthly salary for the work done by him. He did not have any other advantage, monetary or otherwise for any of the acts done by him.

35.21. With regard to the Loan Agreement No. K280211-006 dated March 01, 2011, which was in relation to GDR of TEXMO (Annexure 3 of the SCN), he submitted that it was mentioned as Managing Director of Vintage FZE under his signature. He submitted that he was never a Managing Director/ Director of Vintage FZE as demonstrated above. He submitted that he was instructed by Mr. Arun Panchariya to sign this Document because in view of the conflict of Arun Panchariya as Director and President of Euram Bank, Asia. He had a stake in the Euram Bank Asia and hence it was advised that somebody other than him should sign the document. Since the title "Managing Director" was pre-printed or part of the pro-forma of the Bank, it was by oversight continued to be so. He signed in the capacity of an authorized signatory as mentioned above. He reiterated that he has never acted as a Managing Director at any point of time. He submitted that he signed the Document representing the sole Beneficiary Mr. Arun Panchariya at his behest and on his behalf and instructions.

35.22. With regard to para 15 of the SCN alleging that he signed the loan redemption requests as included in Annexure 9 of the SCN as an authorized signatory of Vintage FZE, in relation to the loan availed by Vintage FZE for subscribing to the GDRs of TEXMO, he submitted that these loan redemption letters were signed by him as instructed by Mr. Arun Panchariya as and when he generated liquidity to repay. Since they are only loan redemption requests, he submitted that nothing adverse can be read in to the same.

35.23. He submitted that Mr. Arun Panchariya as a Director of Euram Bank Asia had verified the signature of the representatives of the company, on the pledge agreement, in case of GDR issuance by Rasoya Protein Limited, Hiran Orgochem Limited and Nakoda Limited.

Further, he submitted that as seen in Annexure 7 of the SCN, even in the case of the Pledge Agreement in relation to TEXMO, Mr. Arun Panchariya had verified the signatures of the Director of TEXMO as Director of Euram Bank Asia.

35.24. He submitted that the allegation that he was associate of and collaborated with Mr. Arun Panchariya and Vintage FZE and thus acted as party to fraudulent scheme and thereby violated the provisions of SEBI Act and PFUTP Regulations is incorrect and without any basis.

35.25. Further, the following documents referred to in the SCN have not been provided as part of the SCN:

- SEBI Letter no. IVD/ID4/GRM/MP/14679/2015 dated May 27, 2015 referred to in Annexure 1 of the SCN;
- Copies of the Annexures referred to in Annexure 1 of the SCN;
- Copy of the email dated 15th November 2018 referred to in Annexure 6 of the SCN.

In the absence of receipt of the complete Investigation Report and the documents referred to above, he could not comment whether the findings extracted in the SCN are correct or not. He would be able to reply to SCN properly only upon receipt of full text of the Investigation Report along with the documents as listed above.

35.26. He submitted that he was not involved in the decision making of TEXMO to issue GDR or in the allotment or closure of the GDR.

35.27. He submitted that the Lead manager, Pan Asia, an entity wholly owned, managed and controlled by Mr. Arun Panchariya and he has never held any beneficial or any other interest with Pan Asia.

35.28. He submitted that Euram Bank, an entity which was connected with Arun Panchariya, held the proceeds of the GDR and had provided loan to Arun Panchariya in Vintage FZE for subscribing to the GDR of TEXMO. He has never held any beneficial or any other interest with Euram Bank or Euram Bank Asia.

35.29. With reference to paras 4, 5, 6, 7 and 8 of the SCN, he submitted that, as an employee of Vintage FZE, the proceeds of loan were not misused and were applied for the purposes for which it was obtained. He stated that taking a loan for subscribing to the GDR per-se is not a violation of any laws, especially that of UAE and JAFZA. He submitted that taking loan on such terms is not a violation of any Indian laws also. Further, he submitted that he is not aware of any arrangement that Arun Panchariya may have had with TEXMO in arranging the loan and its repayment. He submitted that he had no role to play in the said transaction.

35.30. He submitted that the decision to subscribe to GDR of TEXMO and to obtain loan from Euram Bank for subscribing to GDR of TEXMO was the sole decision of Mr. Arun Panchariya as the Director/ sole owner of Vintage FZE and he, as an employee, had no role to play in it. He submitted that he was not instrumental in nor was he involved in arranging loans for Vintage FZE or arranging Proceeds of GDR of TEXMO as security for the said loan. Since Mr. Arun Panchariya is Owner / Director of Vintage FZE and was also Director and President of erstwhile Euram Bank Asia, it was he who had taken all decisions.

35.31. With regard to paras 9 to 12, Para 16 to Para 22, para 24, para 26 to para 29 of the SCN, he submitted that the allegations are against the TEXMO and its officials. If TEXMO complied with these disclosure and other requirements, there would not have been any allegation of fraud in the whole transaction. He submitted that he cannot be blamed for fraud on account of certain corporate non-compliances by TEXMO and its officials.

35.32. With reference to para 13 to 15 of the SCN, he submitted that Vintage FZE, was the sole subscriber to the GDR of TEXMO The fact that TEXMO submitted a wrong list of GDR subscribers cannot in any way be held against him.

35.33. With regard to Para 15, Para 23 to Para 26 of the SCN relating to redemption of the loan amount and Letters signed by him as an Authorized Signatory of Vintage FZE (Annexure 9 of the SCN) and loan default by Vintage FZE, he submitted that the re-payments of loan taken from Euram Bank were made as and when Arun Panchariya arranged funds. He submitted that it is matter of record that the Loan was repaid in installments by Vintage FZE and that the loan redemption requests were signed by him as an employee of Vintage FZE, a single owner company owned by Mr. Arun Panchariya, on his instructions. Hence, he

has no role to play in the said transaction as an employee and authorized signatory only of Vintage FZE.

35.34. With regard to para 30 to para 32 of the SCN, he submitted as an employee of Vintage FZE, he had no role to play in procuring loan from Euram Bank, in arranging pledge of TEXMO GDR proceeds or in the repayment of such loans as the sole beneficial owner/ Director of Vintage FZE along with its connected entity Euram Bank, Arun Panchariya was the sole decision – making authority in relation to subscribing to GDRs of TEXMO, securing loan from connected entity, securing security for such loans, arranging funds for repayment of such loans and evoking security / pledged security in relation to such loan.

35.35. With regard to the cancellation of GDRs and sale of underlying shares by certain sub-accounts of certain FIIs in Indian capital market, he submitted that he was not aware of the said details and he had no role to play in the same. Further, he has no connection / beneficial interest in any of the entities mentioned in Para 30 and 31 of the SCN, nor have any of these entities alleged so.

35.36. With regard to para 33 and 34 of the SCN, he submitted that he cannot comment on the relation between other entities and Arun Panchariya. Mr. Arun Panchariya was his employer.

35.37. With regard to para 33(g) of the SCN, he submitted that as per Annexure 25 of the SCN being the Shareholders List of Vintage FZE Investments Holding Pvt. Ltd (M/s Ramsai Investment Holding Private Limited), he held only 1 or 2 shares whereas Mr. Arun Panchariya held more than 99.999% shares. Arun Panchariya was the beneficial owner of the said company. He submitted that holding nominal or qualification shares in the above company is normal business practice and nothing sinister can be attributed to him on account of the same.

He submitted that merely by being on the Board as nominee Directors on Ramsai, it does not make both of them connected in any sense other than the then existing relation of employer and employee. He reiterated that Arun Panncharia was a Director on Vintage FZE Investment Holding Private Limited (Ramsai Investment Holding Private Limited- first appointment and subsequent from August 17, 2010 to March 17, 2016) and nothing sinister can be attributed to the same. As the ultimate owner of the Holding company, it is the prerogative of Arun Panchariya to appoint him as Director of its subsidiaries.

35.38. With regard to para 33 (g) of the SCN, he submitted that he was a Director of Alka India Ltd as a nominee Director appointed by Arun Panchariya. Nothing sinister can be attributed to the same. He submitted that the fact that he was Director on the Board of Alka India Ltd have nothing to do with the allegations contained in the matter as far as GDR issue of ZBIL is concerned. There is no culpability in such an association. He had no relationship what so ever with Anant Kailash Chandra Sharma other than sharing board seat in a company Alka India Ltd. and Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited) and also the fact that Anant was an employee for some time in Vintage FZE. All the above entities viz. Alka India, Ramsai and Vintage FZE were controlled by Arun Panchariya and his family.

35.39. With regard to para 33 and para 34, he submitted that it is Mr. Arun Panchariya who as Director / Beneficial Owner of Vintage FZE taken decision to transfer the GDRs to India Focus Cardinal Fund where he was the beneficial owner. He submitted that he is not responsible for the said decision. Further, he submitted that he has not held any beneficial or any other interest with any of the entities mentioned in the above paras i.e. Pan Asia Advisors Limited, India Focus Cardinal Fund, Cardinal Capital Partners Ltd., Euram Bank, Euram Bank Asia, Highblue

Sky Emerging Market Fund, Golden Cliff, KBC Aldini Capital Limited, Aspire Emerging Fund and Leman Diversified Fund, nor have they alleged his involvement in the GDR issue in any manner.

35.40. With reference to para 33 (d) of the SCN, he submitted that Aurisse had no financial or ownership interest whatsoever in relation to High Blue Sky Emergimg Market Fund ("HBS"). Aurisse was involved in providing back office services to various entities including HBS. Such services were pure back office service and did not involve any operational, financial or investment decision making on his part or Mauritius that many entities are registered in the same address and there is nothing sinister in the same. He denied that he has anything to do with High Blue Sky.

35.41. With regard to Para 34(a) of the SCN, he submitted that there is no fraud committed by him in signing the loan agreement with Euram Bank as an authorized signatory (wrongly referred to as Managing Director) on the instructions of his employer Mr. Arun Panchariya. He submitted that he had no role in arranging loans to Vintage FZE, in TEXMO executing the Pledge agreement, in Vintage FZE defaulting the loan or in cancelling GDRs and selling the underlying shares in Indian Capital Market. His role, if any, is limited to signing the loan agreement as an authorized signatory of Vintage FZE in view of the conflicting positions Mr. Arun Panchariya had with Vintage FZE and with Euram Bank.

35.42. He submitted that the commissions and omissions on his part as alleged in the SCN were done in the JAFZA in Dubai and it is beyond the territorial jurisdiction of SEBI. He submitted that this SCN is beyond the scope and authority of SEBI.

35.43. He denied that Vintage FZE had committed any fraud on the Indian shareholders. He submitted that none of the commissions and omissions of

Vintage FZE constitute any offence/ violation of any of the provisions of the securities laws in India. In any case, he submitted that as an employee of Vintage FZE, he has no role to play in any of the acts committed by Vintage FZE and its sole beneficial owner and Director Mr. Arun Panchariya.

35.44. He submitted that he did not violate SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 as alleged in the SCN.

35.45. He submitted that he did not employ manipulative or deceptive device or contrivance as foreseen in Section 12A (a) of the Act. He has not violated sections 12A (b), 12A (c) of the Act. He further submitted that he has not violated Regulation 3 (a), 3 (b), 3 (c), 3 (d), 4(1) of the PFUTP Regulations.

35.46. He submitted that he is not guilty of the violations alleged against him and that there was no case made out in the SCN that an inquiry has to be conducted in the matter. He therefore prayed that the proceedings against him may kindly be dropped and he be exonerated of all charges.

36. ***Noticee No. 12 (Sparrow) and***
Noticee No. 13 (Leman)

Noticee No. 12, Sparrow Asia Diversified Opportunities Fund through it's Authorised Representative, Rajani Associates, vide letter dated December 30, 2022 and Noticee No. 13, Leman Diversified Fund vide letter dated April 28, 2021 mainly submitted the following:

36.1. Sparrow and Leman denied all the contentions that has been stated in the SCN. The SCN is vague, arbitrary and devoid of any particulars and on these grounds

itself the SCN is not maintainable in law and these proceedings ought to be dropped against the Noticees.

36.2. Sparrow and Leman are companies which were incorporated on July 3, 2008, and July 6, 2010 respectively under the laws of the Republic of Mauritius. It holds a Category 1 Global Business Company license and is an investment company with a limited liability. It is an expert fund of unlimited duration, incorporated in Mauritius as a company limited by shares under the Financial Services Act, 2007 and the Securities Act, 2005.

36.3. Sparrow is a Foreign Portfolio Investor (*"FPI"*) registered with SEBI. A portfolio is group of securities which represents a specific pool of funds to carry out different forms of investment. As such, an FPI may be understood as an investor who invests in these securities. It operates as FPIs, wherein the investments in them are pooled from various categories of investors. Each of them operates a single pool of co-mingled securities where investors hold units in the common portfolio in proportion to their initial investment. Such investments are then used to invest in securities of Indian companies through the FPI route. It is a common practice with FPIs to issue its units to investors in consideration for making investments in the FPI either by way of cash contribution or capital contribution.

36.4. The primary objective of Leman is to provide superior returns to its investors through long term capital growth by investing in a diversified portfolio of global equities and global equity derivatives listed or unlisted, quoted or unquoted or traded on any stock exchange or over the counter (OTC) market (subject to Applicable laws/ requirements) and through investments in ADRs, FCCBs and/or GDRs globally. Investments have primarily been targeted into India, Nepal and Sri Lanka. Leman is also registered as a Foreign Portfolio Investor (FPI) with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 and invests in

India through the FDI route or the portfolio management route.

36.5. Leman is headed by professional directors from time to time. Currently, Leman has only two directors namely, Shailender Ramsagur and Achasah Conhyea, both resident of Mauritius.

36.6. Sparrow submitted that the proceedings are blatantly vitiated by inordinate delay and latches. These allegations and findings made against the Noticee relate to events dating back to more than 10 years. The SCN was issued almost 8 years after the events took place. This has rendered it impossible for them to make out an effective defence.

It has been held in various cases of SEBI that even though there is no period of limitation prescribed under the Limitation Act or Regulations, an authority must exercise its powers within a reasonable time. This SEBI Authority, as well as the Hon'ble SAT in various cases, has upheld/referred/reiterated the following legal principles:

a) that there cannot be an inordinate/illegitimate/unexplainable/ unjustified delay in issuing show cause notices; and
b) That when the period of limitation for exercising powers by an authority is not prescribed, an authority must exercise its powers within a reasonable time.

Sparrow relied on SAT order in the matter of *HB Stockholdings Limited vs. Securities and Exchange Board of India Appeal No. 114 of 2012,* and in the matter of *Morepen Laboratories Limited vs. Securities and Exchange Board of India Appeal No. 62 of 2020.*

It is stated that the aforesaid judgement is pending before the Hon'ble Supreme Court but no ruling available on the same.

In this entire premise, the delay of more than a decade has caused great prejudice to the Noticee and therefore, the SCN deserves to be set aside.

36.7. Sparrow purchased 26,109 GDRs of Texmo on October 25, 2011, for $11.50 per security. The GDRs were purchased from Euroclear market. The said purchase was by way of rotation for the existing investors. Euroclear is a Belgium-based financial services company that specializes in the settlement of securities transactions, as well as the safekeeping and asset servicing of these securities. Euroclear participants can confirm, clear and settle trades on its platform. Once securities are delivered against payments in the Euroclear system, settlement is final. The Euroclear system is recognised worldwide. Euroclear is similar to the NSDL and CDSL platforms prevalent in India.

36.8. Leman purchased 93,458 GDRs of Texmo from EUROCLEAR market on behalf of and in the account of its client Global Emerging Strategies Fund Ltd. (GESF) the Enlil Fund (GESF – the Enlil Fund) by investing the sale proceeds of other securities held by GESF –the Enlil Fund with the Noticee. GESF- the Enlil Fund was already an investor in the Noticee which had subscribed several times prior to the purchase date of November 3, 2011. Hence, the said purchase was by way of rotation of the existing investments of GESF- the Enlil Fund in other securities against which Leman had already issued its Participating Shares to GESF – the Enlil Fund. The client GESF- the Enlil Fund redeemed 23,458 GDRs out of the aforementioned GDRs and reinvested the same with sparrow. Hence, the Noticee was left with 70,000 GDRs (93458-23458=70,000). Considering that the GDRs of Texmo were purchased by Leman on behalf of GESF- the Enlil Fund from the Euroclear market in accordance with the applicable laws, there is no basis for the allegation in the SCN that the shares of Texmo sold by Leman are the same shares which were acquired by Vintage without any consideration. The Noticee has no relation with Vintage or AP or any AP connected entity.

36.9. The GDRs/shares of Texmo were acquired by Sparrow and Leman in the ordinary course of business in accordance with the applicable laws of Mauritius and Bermuda. Sparrow had no knowledge or information about any kind of defect, illegality or irregularity involving the GDRs/shares of Texmo and thus Sparrow and Leman are a bona fide acquirer of the said GDRs/shares. When the GDRs were acquired by Sparrow and Leman there was no whisper about any kind of illegality/ irregularity involving them. Moreover, there is no material on record to show that Sparrow and Leman had any knowledge about the issuance of GDRs of Texmo, raising of loan by the Vintage or default in repayment by Vintage.

36.10. Sparrow submitted that the GDRs were converted by it on February 3, 2012 and March 5, 2012. After the conversion of GDRs, Sparrow had 9,91,340 shares in total. Subsequently, the shares were sold in the Indian Capital Market on Bombay Stock Exchange and National Stock Exchange. It submitted that the sale of 9,91,340 shares of Texmo by Sparrow from February 2012 to April 2012 has not caused any loss to the investors/ shareholders of Texmo, jointly or severally. The sold shares were legally acquired by Sparrow for lawful consideration and the purchasers further of the said shares have acquired lawful right, title and interest in the said shares which can be further sold by them for lawful consideration. It submitted that the entire transaction carried out by Sparrow is in good faith. There is no question arising of Sparrow causing any loss to the investors by selling the bona fide acquired shares of Texmo. Even if it considers the situation that loss has been caused to Texmo and its shareholders on account of issuance of GDRs to Vintage without consideration, the course of action in law is to be taken against the Directors of Texmo, Vintage and the other entities involved in committing fraud and not against the bona fide purchasers of the said GDRs/shares.

36.11. Texmo shares were sold from February 2012 to April 2012, which is much

prior to the date when the GDRs were terminated by the Global Depository on September 26, 2014. Therefore, Sparrow had no knowledge of the fraudulent issue of GDR as the sales undertook two years prior to termination and that too on the electronic platform of the exchanges, where there is anonymity between seller and buyer, the sale of shares cannot be held to be illegal. Sparrow was not involved in any sort of illegality or irregularity and did not make any unjust profit from the aforesaid transaction. Therefore, Sparrow cannot be held liable for disgorgement to any extent.

36.12. Leman denied that the sale of shares of Texmo by it in the Indian securities market has caused any loss to the investors, as alleged. The sold shares are legally issued shares by Texmo which were accepted by Leman as lawful consideration for subscription of its Participating Shares by GESF- the Enlil Fund and the Indian purchases of the said shares from the Noticee have acquired good title, right and interest in the said shares which can be further transferred by them for lawful consideration. The said shares were acquired by Leman and sold under bona – fide transactions. If loss has been caused to Texmo and its shareholders on account of issuance of GDRs to Vintage without consideration, as alleged, the law should take recourse against the Directors of Texmo, Vintage and entities involved in committing fraud but not against the bona-fide acquires/ purchasers of the said shares. The bona-fide acquirer/ purchaser who had no knowledge of any defeat in the goods/ property shall acquire a good title to the goods/ property and can pass on the same to the prospective purchaser.

36.13. There's no question of the Leman causing any loss to the Indian investors by selling the bona-fide acquired shares of Texmo and consequently it cannot be held liable for disgorgement. Further, the SCN has wrongly dubbed all the GDRs/ underlying shares of Texmo as the GDRs/shares acquired by Vintage without consideration whereas it acknowledges repayment by Vintage of USD 6.54 millions

and default of balance amount of loan of USD 3.49 millions. Hence, while on one hand, the SCN states that GDRs to the extent of USD 3.49 millions only were issued to Vintage without consideration, the SCN on the other hand wrongly assumes the holding of all GDRs/shares in the hands of Noticees as GDRs/shares acquired by Vintage without consideration. It is submitted that the SCN suffers from a serious flaw on account of this anomaly. The shares of Texmo have been sold in the Indian securities market in accordance with the terms of subscription of the Noticee's Participating Shares.

36.14. Leman has no connection whatsoever with Highblue Sky Emerging Market Fund (HBSF/Notice No. 11) and SCN has wrongly alleged that the Noticee is connected to AP by virtue of the connection with HBSF without any basis or material or record. It submitted that Leman is connected only to Sparrow as Leman and Sparrow have a common Director, namely Shailendr Ramsagur, resident of Mauritius. Leman and Sparrow are also incorporated under the laws of the Republic of Mauritius and each one of them have its registered office in Mauritius. Nayan Agarwal is a common authorized bank signatory of Sparrow and Leman. Further, while the management shares of Leman have been allotted to BAO Asset Managers Limited, the Management shares of Sparrow however are held by its Investment Manager i.e. Sparrow Investment Managers Limited.

36.15. Leman and Sparrow have no connection whatsoever with Arun Panchariya (Noticee No. 6) or any of the entities connected with him. Further, they have no connection whatsoever with Texmo (Noticee No. 1) or any of its directors and promoters. Hence, they are not aware of any fraudulent scheme on the investors in the Indian Securities market devised by Arun Panchariya, AP connected entities and the directors of Texmo.

36.16. They submitted that SCN erroneously alleges that it is an AP connected sub-account which received GDRs, converted them into equity shares and sold the same to Indian investors. The allegation that Sparrow and Leman are AP connected sub-accounts is without any basis and without any material on record. An outlandish connection is sought to be made between AP and them through HBSF where one Anand Kailash Chandra Sharma (AKCS) was a Director of Highblue Sky Emerging Market Fund (HBSF) along with Aslam Kanowah. As per the SCN, AKCS is connected to Arun Panchariya as he was a director of Saint Advisory (I) Private Limited along with Arun Panchariya (AP) the key person responsible for devising and structuring the fraudulent scheme of Texmo's GDR. However, HBSF or AKCS have no connection whatsoever with Sparrow and Leman. In order to connect to them with HBSF or AKCS, the SCN traces the connection of another director of HBSF namely, Aslam Kanowah who was also a Director of Aspire Emerging Fund along with Ashish Nanda. It further appears that Ashish Nanda was Managing Director of Image Securities Limited who as per the SCN is an investor in Leman.

36.17. However, Leman submitted that this contention is also incorrect. The fact is that Image Securities Limited had not invested in Leman but had invested in Participating Shares of GESF- the Enlil Fund by making payment of consideration thereof in kind i.e. by giving some of the Winsome GDRs. Hence, it may be observed that in aforementioned long chain, AP is sought to be connected with the Noticee indirectly through several different entities namely HBSF, AKCS, Aslam Kanowah, Aspire Emerging Fund, Ashish Nanda, Image Securities and GESF- the Enlil Fund, all operating at different levels. Pertinently, no action is sought to be taken by SEBI against any of those entities except HBSF.

There is also no material to show that Aslam Kanowah was acting in concert with AKCS or he was the beneficiary of the fraudulent scheme of AP. There is also no

basis for connecting this Noticee with Ashish Nanda or Image Securities who were investors in GESF- the Enlil Fund. Further, there is no material on record to show that the Noticee was acting in concert with AP directly or indirectly. The contention in the SCN that Al Jalore and Image Securities Ltd had invested in this Fund is erroneous and without any basis. As stated above, investment by way of Winsome GDR's was made in Leman by GESF- the Enlil Fund and not by Image Securities or Al Jalore in accordance with the relevant PPM and Subscription Agreement. Serious charge of market manipulation cannot sustain on mere suspicion, conjectures, surmises or hypothesis. There is no preponderance of evidence in favour of the allegation.

36.18. Leman submitted that the allegations made against Leman are incorrect counterfactual and discriminative in nature. On one hand the SCN alleges that the AP in connivance with the GDR issuer company devised and structured the fraudulent scheme through his connected entities including Pan Asia Advisors, Mr. Mukesh Chauradiya, Euram Bank, CCP, Vintage, Directors of Texmo, Golden Cliff, HSBF, FII CCP, Euram Bank, IFCF and SPARROW and Leman, however on the other hand the SCN has proposed directions for disgorgement under the said SCN only against the aforesaid FII sub-accounts including Leman besides AP and Vintage . The said SCN therefore is faulty and discriminative.

36.19. Sparrow submitted that in another GDR matter of Winsome Textiles Limited (*"Winsome"*) where a transaction of similar nature took place. GESF Enlil subscribed to participating shares of Leman and Sparrow by making payment of consideration in kind/other than cash i.e. by giving the Winsome GDRs to Leman and Sparrow. The Securities Appellate Tribunal (*"SAT"*) had granted and interim stay on the impugned order passed by SEBI against Sparrow in the Winsome GDR matter.

It is astonishing that after straining at every insignificant 'connection', no proceedings are initiated against the very persons (GESF-Enlil, Image, AKCS, Ashish and Aslam), it accuses Sparrow of being hand-in-glove with, to purportedly act as a conduit for AP, except HSEF. Further, there is no material on record to show that Sparrow was acting in concert with the AP directly or indirectly.

36.20. There is an explicit ruling of the Hon'ble Securities Appellate Tribunal in *KII Limited vs. SEBI, Appeal No.317 of 2017*. In this decision, a FII was charged with being party to a fraudulent scheme of GDR issue merely because it acquired shares underlying the GDRs. The Hon'ble SAT set aside SEBI's order.

36.21. In Sparrows' submission, the aforesaid findings and ruling of the Hon'ble Securities Appellate Tribunal is squarely applicable to the facts and circumstances of the present matter. It submitted that as per the above judgement, if the funding of an FII by way of a loan granted by AP was held to be not sufficient proof as held by the Hon'ble SAT so as to demonstrate knowledge of a fraudulent GDR Issue, it only raises the question as to how Sparrow can be held liable in the present transaction where Sparrow has no connection with AP, Vintage, Texmo or any of the so called connected entity and had no knowledge of the purported fraud.

36.22. Sparrow and Leman denied that they have received GDRs, converted them into equity shares of Texmo and sold them to the Indian investors and hence they are also a part of the fraudulent GDR scheme. As stated herein above, Sparrow was holding the shares of Texmo as investment in pool for the existing investors of the fund and Leman was holding the shares of Texmo as investment of the Subscriber GESF- the Enlil Fund.

36.23. Sparrow and Leman submitted that no case whatsoever has been made out to issue any directions whatsoever against Sparrow under Section 11B read with

Section 11(1) and 11(4) of the SEBI Act. Sparrow disputes that they have violated Section 12A (a), (b), (c) of the SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003. It submitted that the allegations made against Sparrow is incorrect, counterfactual and discriminative in nature. In view thereof, it submitted that there is no need to continue with the proceedings initiated by SEBI against Sparrow as no case whatsoever has been made out against Sparrow. It therefore prayed that the SCN be withdrawn, and these proceedings be disposed of against Sparrow.

Sparrow, Noticee No. 12 and the Leman, Noticee NO. 13, through its Authorised Representative, Rajani Associates, Advocate vide letter dated January 16, 2023 have *interalia* submitted the following:

36.24. Sparrow and Leman acquired the GDRs/shares of Texmo in the ordinary course of business in accordance with the applicable laws of Mauritius and Bermuda. The Noticee(s) had no knowledge or information about any kind of defect, illegality or irregularity involving the GDRs/shares of Texmo and thus the Noticee(s) are a bona fide acquirer of the said GDRs/shares.

36.25. It submitted that the Texmo shares were sold from February 2012 to April 2012, which is much prior to the date when the GDRs were terminated by the Global Depository on September 26, 2014, by an email dated July 09, 2016. Therefore, it shows that the Noticee(s) had no knowledge of the fraudulent issue of GDR as the sales undertook two years prior to termination and that too on the electronic platform of the exchanges, where there is anonymity between seller and buyer, the sale of shares cannot be held to be illegal.

36.26. The entire transaction carried out by the Noticee(s) was in good faith. The Noticee(s) are a bona fide acquirer of GDRs/shares of Texmo and has sold the shares in accordance with the Indian Laws. When the GDRs were acquired by the

Noticee(s) there was no whisper about any kind of illegality/ irregularity involving them. Moreover, there is no material on record to show that the Noticee(s) had any knowledge about the issuance of GDRs of Texmo, raising of loan by the Vintage or default in repayment by Vintage.

36.27. It is astonishing that after straining at every insignificant 'connection', no proceedings are initiated against the very persons (GESF-Enlil, Image, AKCS, Ashish and Aslam), it accuses the Noticee(s) of being hand-in-glove with, to purportedly act as a conduit for AP, except HSEF. Further, there is no material on record to show that the Noticee(s) were acting in concert with the AP directly or indirectly. Hence, the Noticee(s) cannot be held liable for disgorgement to any extent.

37. ***Noticee No. 15 (Euram Bank)***

The Noticee No. 15, European American Investment Bank AG through its Authorised Representative, Mr. Shouryendu Ray, Advocate vide letter dated August 30, 2022 have mainly submitted following submissions:

37.1. Euram Bank, has no tacit connection with Mr. Arun Panchariya ("AP") *vis-à-vis* these transactions. Euram has been cleared by various financial regulators with regard to its dealings with AP, and more particularly, the loan granted by Euram to Vintage FZE ("Vintage") has been held sound from an economic and legal standpoint by the Austrian Banking and White Collar Crime Regulators. The only purported connection between Euram and AP was through Euram Bank Asia Limited ("EBAL") which was a joint venture between AP-controlled Pan Asia Advisors Ltd. and Euram, entirely unconnected with the matter at hand and with no connection to the GDR issue, and in any case has since been dissolved in 2013. Authorities in Dubai, where this entity was incorporated have also cleared Euram from any ownership/control links with AP.

37.2. Euram was not involved in any fraudulent practice in relation to the Indian stock markets. The SCN does not present any evidence or plausible explanation to link Euram with AP with respect to the concerned transactions nor does it record any actual wrongdoing or breach of Indian law by Euram. An allegation of fraud under the SEBI Act requires a high evidentiary threshold. Additionally, India Focus Cardinal Fund ("IFCF"), the sub-account through which some of the trades occurred in the Indian market, was registered as a sub-account Euram FII from December 12, 2008 to July 19, 2011; as stated in the SCN, the cancellation of GDRs commenced from August, 2011, by which time the IFCF sub-account had been transferred to another entity – Cardinal Capital Partner (the transfer was effected on July 20, 2011) and in fact thereafter Euram surrendered its FII licence. As such, Euram played no role in the matter, at any stage. In fact, in para 34 of the SCN, the "*Role of the Noticees in these proceedings*" is set out, therein Euram does not find mention. The SCN records in para 34 (f): "*Hence, Vintage along with AP, IFCF, HBS, Sparrow and Leman is responsible for the loss of Rs. 14.82 Crore inflicted on the shareholders of Texmo, jointly and severally.*" Here too, Euram finds no mention – and rightfully so.

37.3. Further, these issues have already been dealt with by SEBI and is covered by the order of the Hon'ble Member, SEBI dated September 5, 2017, in the matter of *Alleged Market Manipulation Using GDR Issues by Asahi Infrastructure & Projects Ltd; Avon Corp. Ltd.; CAT Technologies Ltd.; IKF Technologies Ltd.; K Sera Sera Ltd; and Maars Software Intl. Ltd.* (SEBI/WTM/SR/EFD/64/09/2017). SEBI investigation reports have made no observations about any illegality committed by Euram either in its role as a commercial bank or an FII. In fact, quite the contrary, the Hon'ble Member in the above-mentioned matter gave Euram a clean chit and even commended Euram for its pro- active cooperation with SEBI in the investigation against AP and entities controlled by him.

Euram is not connected to AP *vis-à-vis* the matter at hand:

37.4. In the table provided at Para 33 (c) of the SCN, this Hon'ble Tirbunal sets out EBAL is stated to have the purported "connection"/link between Euram and AP. However, it is imperative to note that EBAL which was a joint venture established in Dubai between Euram and AP, Euram had no relationship with AP and was not connected to him in any way. AP exercised no control over Euram, and in fact, never even held a single share in Euram. AP was never the director or had any material role in Euram Bank;

37.5. EBAL was set up to explore business opportunities in the Middle East region, and has since been dissolved (public records of EBAL as available on Dubai International Financial Centre's ("DIFC") website here: https://www.difc.ae/public-register/euram-bank-asia-limited/). In fact, Euram was misled into entering in this JV with AP and at that time, due to representations by AP, thought it to be a way for Euram to connect with private investors in the Middle East. However, ever since Euram learnt of AP's involvement in the GDR manipulation, it has taken steps to end this JV and it was ultimately dissolved in December 30, 2013.

37.6. Further, it must also be noted that at no time did EBAL deal in or provide any assistance in connection with any transaction related to the Indian securities market. None of the transactions that were undertaken by IFCF through Euram as an FII, which are the subject matter of this investigation had any connection with EBAL. There is also no finding or mention of EBAL's role in any activity undertaken by AP or entities connected with him in the context of the GDRs or the Indian securities market.

37.7. In this regard, EURAM submitted the following submissions:

a) In Para 33 (a) of the SCN, SEBI relies on the DFSA's Administrative Fine Statement - whereby AP was fined USD 12,000 for failure to disclose his directorship and control over various entities to DFSA – to establish AP's connections with and control over *inter alia* a) Pan Asia, b) Vintage, and c) IFCF; but, SEBI fails to appreciate the fact that there is no mention of Euram in that list of entities in which AP has control or directorship. This again goes to show Euram's *bona fides* – Euram does not feature in DFSA's list because AP exercises no control over Euram, let alone ownership.

b) In this regard, reference is also drawn to the DFSA's letter dated August 8, 2012, whereby it communicates to EBAL that the DFSA has concluded its investigation into suspected contraventions by EBAL of provisions relating to *inter alia* false or misleading information, operations under Federal Law, due skill, care and diligence in operations, etc. It states that following the investigation, DFSA would not be taking any further action against EBAL – this may be contrasted with the DFSA's findings against AP and the subsequent fine levied on him directly as a result of his failure to disclose his association with entities such as Pan Asia and Vintage.

c) As noted in the SCN itself, the conspiracy was hatched between AP and the promoters of the company, who probably saw this as a way of making a quick profit by defrauding the company's shareholders. The real culprits behind the fraudulent scheme are AP, Texmo and its authorized signatory *viz.,* Mr. Sanjay Aggarwal, the Managing Director of Texmo. As such, on June 18, 2015, Texmo disclosed to BSE that it has allotted 6,27,500 GDRs to 4 subscribers whereas, they were only subscribed by Vintage.

d) The entire GDR fraudulent scheme was devised based on an understanding that Vintage would take the loan with security provided by Texmo, subscribe to the GDRs, and then default on the loan, with the ill-gotten proceeds being shared between AP and the company's promoters. As such, Euram granting the loan – more so, based on reasonable due diligence – cannot be faulted for it, especially considering the fact that it had no way to know at the stage of granting the loan that Vintage would default on repayment.

Euram's role as a bank / financier:

37.8. Euram's dealings as a bank incorporated in Austria, are regulated by the Austrian regulators, and Euram's lending activities do not fall under the jurisdiction of SEBI. Euram has been extensively investigated by the Austrian Financial Market Supervisory Authority ("FMA") and the Austrian Public Prosecutor for White Collar Crime and Corruption ("WKStA") and both have cleared Euram from all regulatory, civil, and criminal charges.

37.9. The WKStA report while dealing with a complaint against Euram by one of the GDR issuer companies, alleging fraud in the execution of the pledge agreement therein, has cleared Euram and its directors of all criminal charges and notes the structure – i.e., of granting Vintage a loan to subscribe to the GDRs of the company, secured by way of pledge on the GDR proceeds – is sound from an economic analysis perspective and there is no wrongdoing attributable to Euram.

37.10. The FMA in its communication dated May 22, 2013, also clears Euram Bank following an investigation in relation to its conduct under the Austrian Banking Act and notifies Euram of the cessation of all proceedings thereunder.

37.11. Moreover, the legality of the Pledge Agreement in another GDR issuance

matter of Teledata Technologies Limited was upheld in favour of Euram by all the levels of Austrian courts – Commercial Court of Vienna, Higher Regional Court of Vienna and Austrian Supreme Court, wherein the default amount of USD 32.35 million was adjusted by Euram in consonance with the terms of the Pledge agreement after almost 5 years and 3 rounds of litigation.

37.12. Euram, in its complaint to the Austrian Federal Police dated December 13, 2010 wherein it reported suspicious money laundering activities by AP-controlled entities, also stated the nature of due diligence it had conducted on AP/Vintage prior to engaging with him.

37.13. Euram submitted that Euram's banking practices have passed muster with the appropriate authorities exercising jurisdiction over it – being the Austrian regulators, who after conducting thorough investigations into the transactions, especially the loans made out to Vintage, have cleared Euram and its directors of all charges and have even gone on to remark that the transactions were sound from an economic viewpoint and cleared them under Austrian banking laws.

37.14. Euram relied on the Hon'ble Securities Appellate Tribunal's order dated September 30, 2003, in the case of *KSL & Industries Ltd v. SEBI* (Appeal No. 9 of 2003).

Euram's role as an FII:

37.15. Euram submitted that as per SCN, Euram was registered as an FII, with only one sub-account – *viz.*, IFCF, and that Euram Bank made no investment and registered as an FII only to facilitate IFCF in selling the converted equity shares of Texmo. However, Euram submitted that what is missed out is the crucial fact that

when the cancellation of GDRs commenced, Euram was no longer acting as the FII for IFCF, and as such, had no role in the matter. Euram was the FII for IFCF only for a limited period of time – up till July 19, 2011, which is prior to the cancellation of GDRs that started from August 2011 – after which a transfer was granted by SEBI and Cardinal Capital Partners became the FII for IFCF. Euram surrendered its FII licence on July 20, 2011. Furthermore, neither did Euram exercise any control over the said transactions conducted by IFCF nor did it receive any ill-gotten proceeds in connection to the same. Even prior to any adverse finding against IFCF, Euram had suspended acting as an FII for IFCF.

37.16. SEBI alleges that Euram has violated provisions of the PFUTP Regulations. Euram submitted that for an action to constitute a breach of these provisions, there has to be an element of *mala fide*. After all, wilful intent to defraud is a key ingredient of the malfeasance of fraud. Any action, which being devoid of this *mens rea* and in compliance with regulatory measures ought not be viewed as an act of fraud. The PFUTP Regulations itself defines "fraud" in Regulation 2 (1) (c) as acts such as: knowing misrepresentation of the truth or concealment of material fact, stating something knowing it to be false, promise made without intention to perform, etc. each of which requires the mental element on the part of the perpetrator to deceive.

37.17. Here, Euram firstly submitted that IFCF was registered as a subaccount Euram FII from December 12, 2008 to July 19, 2011 and Euram did not oversee any of the transactions conducted by IFCF as the date of cancellation of GDRs is August, 2011. It further submitted that while registering IFCF as a sub-account, Euram exercised the necessary precaution and only after conducting a thorough diligence – checking all of the prescribed credentials of IFCF and it fulfilling the mandated KYC norms – did it get IFCF registered as its sub-account.

37.18. Further, it submitted that SEBI had itself validated IFCF by granting it registration as an FII sub-account. As per Regulation 13 (1) (b) of the SEBI (Foreign Institutional Investors) Regulations, 1995 ("FII Regulations"), sub-accounts are registerable only upon satisfaction of the Board that "*the applicant is a fit and proper person*".

37.19. Euram had no control over the investment strategies and decisions of IFCF, and qua the allegation that Euram "*as a FII, did not make investment*" it cannot be said that Euram is being penalised merely for not having invested directly in the Indian markets – it would be a leap to say that Euram registered itself as an FII merely to facilitate transactions by IFCF, without any actual finding to that end. It submitted that Euram offered a bouquet of financial services, one of which was to offer a terminal for its clients to make investments – the investments themselves were made directly by the clients. As such, Euram should not be penalised simply for its business decision to not invest directly in the Indian markets at that point in time. There are no allegations of any violation of SEBI FII Regulations by Euram.

37.20. It also submitted that allegations as serious as fraud and market manipulation ought to be backed up by credible evidence and a finding of actual indulgence in fraud. In the case at hand, the allegations against Euram have not been proved but have been entirely premised on the misplaced assertion that Euram is connected to AP; there is no finding of any actual wrongdoing against Euram, and as such the SCN does not meet the high evidentiary threshold required to establish a breach of PFUTP Regulations.

37.21. Euram relied on the Hon'ble Securities Appellate Tribunal's order in the case of *Samir Arora v. SEBI*, (2005) 59 SCL 96 (SAT) and *Nirmal Bang Securities (P) Ltd. v. SEBI*, (2004) 49 SCL 421.

Principles of Natural Justice: Right of Cross Examination, *Res Judicata* and Limitation

Res Judicata

37.22. Euram submitted that similar scheme involving the same parties – AP, Vintage/Alta Vista, IFCF, Pan Asia, Cardinal Capital, etc. and Euram have already been investigated by SEBI. As observed in the order of the Hon'ble SEBI WTM, there are a total of 59 GDR issues of 51 Indian companies which are either under SEBI investigation or where the investigation has concluded involving the same players with just the scrips being different. Past SEBI investigation reports have made no observations about any illegality committed by Euram either in its role as a commercial bank or an FII.

37.23. In fact, quite to the contrary, *in the order of the Hon'ble Member stemming from a previous SCN (wherein the facts and parties involved are materially similar to the present SCN), in para 5.1.46 not only was Euram absolved of all charges, it was also commended for its pro-active cooperation with SEBI in the investigation against AP and entities controlled by him.* In the order dated September 5, 2017, in the matter of *Alleged Market Manipulation Using GDR Issues by Asahi Infrastructure & Projects Ltd; Avon Corp. Ltd.; CAT Technologies Ltd.; IKF Technologies Ltd.; K Sera Sera Ltd; and Maars Software Intl. Ltd.* (SEBI/WTM/SR/EFD/64/09/2017) the Hon'ble Whole Time Member notes:

37.24. Placing reliance on the doctrine of issue estoppel – as stated in the following judgments of the Hon'ble Supreme Court – it submitted that, in light of the previous decision of the Hon'ble Whole Time Member, covering essentially the

same facts and addressing the same issues, here too Euram must be granted similar relief and the charges against it be dropped.

37.25. Euram relied on the Hon'ble Securities Appellate Tribunal's order in the case of *Hope Plantation Ltd. v. Taluk Land Board*, (1999) 5 SCC 590, *Vijayabai v. Shrira Tukaram*, (1999) 1 SCC 693 and Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787.

37.26. In light of the above, it therefore submitted that the transaction structure being effectively the same, and even the allegations and issues in question being the same, from a legal viewpoint, SEBI is barred (or estopped) from denying Euram the benefit of the determination in its favour as per the Hon'ble Whole-Time Member's decision of September 5, 2017 in the earlier case – and that, in terms thereof, Euram be given a clean chit and the allegations against it, dropped.

Limitation

37.27. Euram submitted that the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches.

37.28. Euram relied on the Hon'ble SAT's order in the case of *Khandwala Securities v. SEBI* (Appeal no. 19 of 2012), Subhkam Securities Private Limited, v. Securities and Exchange Board of India decided on July 25, 2012 Appeal no. 73 of 2012, Aditi Dalai us. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 and *Sanjay Jethalal Soni v. SEBI.*

37.29. In the present case, the period under investigation, was March 01, 2011 to April 30, 2011 and the present hearing is happening eleven years after the investigation period. It submitted that, this, by no stretch, could be

construed as a reasonable period of time, especially considering the fact, as observed from the Hon'ble Member's order of June 16, 2016 (WTM/PS/58/IVD/JUN2016) that this concerns GDR issues in 59 scrips, which are being investigated by SEBI since at least 2010.

37.30. In fact, in the order of the Hon'ble Member dated January 25, 2012 (WTM/PS/ISD/64/01/2012) (which confirmed the previous ad interim *ex-parte* order dated September 21, 2011 debarring Euram from dealing in Indian securities until further orders), it was directed that "*SEBI shall expeditiously complete the investigation in the matter, in the interest of justice and thereafter shall immediately take appropriate actions in accordance with law.*" This order was passed over 9 years ago. At this belated stage, it submitted that it is a case of delayed justice, despite the Hon'ble Member directing that the investigation be conducted expeditiously. As such, in addition to the submissions made in the preceding paragraphs, in view of the enormous delay, and in the interest of justice, the proceedings ought also to be dismissed on the ground of laches.

CONSIDERATION OF SUBMISSIONS AND FINDINGS

38. I have considered the SCN and SSCN issued to the Noticees, along with their 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 SCN.

39. 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 provisions of SEBI Act, 1992

Section 12 A (a), (b), (c)

"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) ……"

Provisions of the SEBI (PFUTP) Regulations, 2003:

Regulation 3(a), (b), (c) and (d)

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 (1) and (2)

"Regulations 4: Prohibition of manipulative, fraudulent and unfair trade practices

"(1) Without prejudice to the provisions of regulation 3, no person shall indulge in manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves 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;

…….."

40. **The issues that arise for consideration in the present case are:**

I. ***Whether Texmo Pipes and Products Ltd. (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No.7) towards the subscription of GDRs issued by Texmo, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors?***

II. ***Whether the Directors of Texmo Pipes and Products Limited, namely, Mr. Sanjay Agrawal, Chairman & Managing Director (Noticee No.2), Mr. Vijay Prasad Pappu, Director (Noticee No. 3), Mr. Shanti Lal Badera, Director (Noticee No.4) and Mr. Rishabh Kumar Jain, Company Secretary (Noticee No. 4) who attended the Board Meeting authorised EURAM Bank to use the GDR proceeds as security in connection with the loan acted as parties***

to the fraudulent scheme, and whether the Directors of Vintage namely, Mr. Arun Panchariya (Noticee No.6) and Mukesh Chauradiya (Noticee No. 8), were involved in perpetrating the fraudulent scheme?

III. ***Whether the Lead Manager to the issue, Pan Asia Advisors Ltd. (Noticee No.9) acted as a party to the fraudulent scheme?***

IV. ***Whether the sub-accounts namely, India Focus Cardinal Fund (Noticee No. 10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12), Leman Diversified Fund (Noticee No. 13) and the FIIs namely, Cardinal Capital Partners (Noticee No. 14), EURAM Bank (Noticee No. 15), Golden Cliff (Noticee No. 16) through whom the sub-accounts traded in the Indian securities market, acted pursuant to the fraudulent scheme?***

V. ***Whether Mr. Arun Panchariya (Noticee No.6), Vintage FZE (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12), Leman Diversified Fund (Noticee No. 13) should be directed to disgorge the illegal gains?***

41. Before proceeding with the merits of the matter, it would be relevant to deal with the preliminary objections raised.

42. **Jurisdiction of SEBI challenged as GDR issue done outside India**

42.1. Noticee No. 6, Arun Panchariya has raised this objection as the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. It is stated that the said question has already been answered by the

Hon'ble Supreme Court of India in its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India V. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013, AIR 2015 SC 2782***. The case came before the Hon'ble Supreme Court pursuant to an appeal by SEBI against the order dated September 30, 2013, passed by the Hon'ble Securities Appellate Tribunal ("**SAT**"), Mumbai, in Appeal No.126 of 2013. The Hon'ble SAT by way of its above mentioned order had set aside SEBI's Order dated June 20, 2013, whereby SEBI had debarred Pan Asia Advisors and Arun Panchariya for a period of ten years in dealing with securities with respect to their roles in the issuance of GDRs by six companies. In this background, the Hon'ble Supreme Court through the said judgement has clarified the scope of SEBI's territorial jurisdiction, especially with respect to the issuance of GDRs by companies. The Hon'ble Supreme Court noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of ***GVK Industries Officer v. Income Tax Officer (2011) 4 SCC 36***, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in India or related to India and Indians in terms of impact, effect of consequence*". The court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of above-mentioned reasons, the Hon'ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against

Pan Asia Advisors and Mr. Arun Panchariya, even though they were based outside India, since their actions impacted the interests of Indian investors.

42.2. Thus, the issue of jurisdiction of SEBI in GDR matters having been settled by the Hon'ble Supreme Court, I proceed to consider the matter on merits.

43. **Proceedings not maintainable owing to delay**

43.1. 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 defence in the matter. The Noticees have relied upon the observations of various orders of the Hon'ble SAT, 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 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 the GDRs were subscribed without any valid consideration and the underlying shares were sold in the securities market in India. Accordingly, where such *modus operandi* were *prima facie* observed, such GDR issues were examined. SEBI initiated investigation as soon as it came to know that such companies have adopted the modus operandi as referred to above. Since, the GDRs are issued abroad and related transactions occured 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 also had to collect this information from the concerned entities in order to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming.

43.2. I also note that SEBI had received alerts that certain FIIs/Sub-accounts were converting the GDRs held by them in those companies into equity shares to sell in the Indian markets within a short period after the issue of GDRs by those companies. As prima facie manipulative practices were suspected, SEBI vide an *ad–interim ex – parte* Order dated September 21, 2011 had *inter alia* barred Pan Asia Advisors Limited and Mr. Arun Panchariya from rendering services in connection with Indian market. Thereafter, SEBI passed final order dated June 20, 2013 prohibiting Pan Asia Advisors Limited and Mr. Arun Panchariya from accessing the securities market for a period of 10 years. In appeal, the Hon'ble SAT vide its majority judgment dated September 30, 2013 set aside SEBI's order dared June 20, 2013 on the ground of SEBI not having the jurisdiction over the creation and issuance of GDRs abroad. Aggrieved by the said order, SEBI moved the Hon'ble Supreme Court and the Court vide order dated July 06, 2015 in *SEBI vs. Pan Asia Advisors Ltd. & Anr.* (2015) 14 SCC 71 upheld SEBI's jurisdiction over the GDR issues. Therefore, I note that the question of SEBI's jurisdiction over GDRs had not attained finality until 2015.

43.3. I note from SEBI order dated June 16, 2016 bearing reference no. WTM/PS/58/IVD/JUN/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 similar modus operandi was observed and the investigation was completed in January, 2019. I note that after completion of the investigation, the SCN was issued to the Noticees on April 11, 2019. Also, as many of the Noticees were based out of India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, inspection of documents as well as personal hearings were granted to the Noticees who had sought for the same. Inspection of documents sought by various Noticees were given on various dates i.e. June 11, 2019, July 12, 2019, March 04, 2020, November 17, 2022. The SCNs could not be delivered to Noticee nos. 12 and 13, the service to these Noticees were undertaken through their lawyer, and got completed only in November 2022. 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.

43.4. 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...."

43.5. In the facts and circumstances of the present matter, I note that the investigation was conducted and proceedings were initiated in a reasonable time. The Noticees have relied on the order of the Hon'ble SAT dated in ***Morepen Laboratories Ltd. v. SEBI*** (Appeal No. 62 of 2020, decided on April 15, 2021) where in a similar GDR matter it was observed that in a there has been an inordinate delay in the issuance of SCN and the Hon'ble Tribunal observed that the power to adjudicate has not been exercised within a reasonable period and therefore no direction could be imposed. Having noted the above, I am also aware of the order of the Hon'ble SAT in ***Jindal Cotex Ltd. and others Vs. SEBI*** *(Appeal No. 376 of 2019 decided on 05.02.2020)* wherein 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……."

43.6. Similarly, in another GDR matter namely ***G. V. Films Ltd. Vs. SEBI.*** (*Order dated February 15, 2021 in Appeal No. 168 of 2020, Securities Appellate Tribunal)* the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDRs as follows:

"Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time." (Emphasis supplied)

43.7. Moreover, I note that all the documents relied upon for making allegations in SCN have been provided to the Noticees along with the SCN. Noticees have not pointed out any specific document/evidence which they could not retrieve due to passage of time, which render them unable to put an effective defence in the matter. Hence, in view of the aforesaid facts and circumstances of the present case, I find that the delay, if any, in the present proceedings as alleged by the Noticees and the contention of Noticees in this regard is untenable.

44. **Specificity of Violations Alleged in the SCN**

The Noticee, Mr. Arun Panchariya has submitted that the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 11 years and the Noticee is completely in the dark about the directions that may be imposed by SEBI. In this regard, I note that in the instant proceedings, the SCN has been issued for breach of provisions of securities law, which confer discretion upon SEBI to take such measures as it thinks fit in the interest of investors and securities market. In this regard, it is further noted that the SCN issued to the Noticee has clearly spelt out the provisions under which the desired preventive/remedial measures, etc. if found necessary, would be issued and also clearly indicate the specific nature of violations that have been alleged against it in terms of different provisions of the PFUTP Regulations, 2003. Therefore, it is observed that specific allegations were unambiguously conveyed to the Noticee and further, opportunity was given to the Noticee for tendering its response thereto. It is, therefore, incumbent on the part of the Noticee to explain its position with the support of relevant evidence in response to various allegations made against it in the SCN. Only after examining and considering the explanation offered by the Noticee to the allegations levelled under the SCN, it would be possible for the Competent Authority to determine as to what directions are required to be issued against the Noticee, depending on its role in the alleged violations and the impact of the alleged violations on the securities markets. I also note that the SCN does mention the proposed direction with respect to certain

noticees. However, it is to be noted here that the powers of SEBI under Sections 11(1), 11(4) and 11B of the SEBI Act include the plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be crystallised and formulated before the adjudication of issues involved.

45. **All Documents/ Annexures of Investigation Report not provided by SEBI**

45.1. The Noticees have submitted that all the documents in the matter were not provided to them. Similarly, Noticees have submitted that annexures of the Investigation Report on the basis of which the SCN was issued, was not provided to them. Further, it has been submitted by one of the Noticees that the allegations made in the SCNs were based on Xerox/Photostat copy of documents, and so those documents do not satisfy the conditions of Sections 63 and 65(a) of the Evidence Act, 1872 and the same cannot be admissible as evidence in the present proceedings.

45.2. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN along with the Investigation Report have been provided to Noticees. It is noted that Noticees had sought inspection of documents and the same was provided to them as detailed above under the heading of Inspection and Personal Hearing.

45.3. As regards, the assertion of Noticee that the documents relied upon by SEBI were merely photocopies and not originals, it is stated that as a lot of the entities involved in GDR matters were incorporated/registered in foreign jurisdictions, the documents in the matter had to be obtained from the regulators in those jurisdictions, namely, Financial Market Authority, Austria; Financial Services Commission, Mauritius; and Dubai Financial Services Authority. With respect to

the applicability of the provisions of the Indian Evidence Act, 1872, as raised by one of the Noticee, it is stated upfront that the present proceedings are in the nature of quasi-judicial proceedings, and are not bound by the strict rules of evidence. In cases where primary evidence is not available, reliance on information supplied by Regulators abroad along with photocopies of the underlying documents would constitute sufficient evidence. I also find that the objections are merely raised to deflect the focus from the core issues.

45.4. In this regard, it would be appropriate to refer to the *Order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI (Appeal No. 28 of 2020)* wherein, it was observed that: "*The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.*"

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

Issue I - Whether Texmo had devised a scheme with Vintage to defraud the investors?

46. The SCN has alleged that issuance of GDRs by Texmo was fraudulent as the Company had entered into a Pledge Agreement with EURAM Bank for a loan that had been

availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors. No reply has been received from the subscriber of the GDRs i.e., Vintage.

47. TEXMO is a company listed on BSE and NSE. By virtue of being a listed company, it is required to make all the material disclosures such as important corporate announcements. On perusal of corporate announcements made by TEXMO to BSE during October, 2010 to May, 2011, investigation observed that TEXMO had informed BSE that their Board of Directors in their meeting held on April 11, 2011 *inter alia* had "*approved the allotment of 6,27,500 GDRs at USD 15.93 each underlying 1,25,50,000 equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- to "The Bank of New York Mellon" in its capacity as a depository*". TEXMO vide letter dated June 18, 2015 informed SEBI that it had issued 6,27,500 GDRs and also provided the list of subscribers to its GDRs to SEBI which is tabulated as under:

Table No. 11

Sl. No.	**Name of the subscriber**	**Address of subscriber**	**No. of GDRs allotted**	**No of shares underlying**
1	Axinite Capital Inc	Level 19, Monarch office Tower, One Sheikh Zayed Road, P.O. Box 333840, Dubai, UAE	2,00,000	40,00,000
2	Beluga Corporation	33, Australia Square, 264, George Street, Sydney, NSW 2000, Australia	1,50,000	30,00,000
3	Calculus Capital Ltd.	Suite 901, The Hongkong Club Building, 3A Chapter Road, Central Hongkong, China	1,27,500	25,50,000
4	Smart Money Ltd.	2016, 20, Peddar Street, Hong Kong	1,50,000	30,00,000
TOTAL			**6,27,500**	**1,25,50,000**

48. I note from the SCN that the Board of Directors of Texmo had passed board resolution dated October 28, 2010 *inter alia* to open a Bank Account with EURAM Bank for the purpose of receiving the subscription money in connection with its GDR and had authorized Mr. Sanjay Agrawal **(Noticee No. 2)**, Mr. Vijay Prasad Pappu **(Noticee No. 3)** and Mr. Rishabh Kumar Jain **(Noticee No. 5)** to sign any agreement related to GDR issue of Texmo. The relevant extract of the Resolution is 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 Shri Sanjay Agrawal, Managing Director, Shri Vijay Prasad Pappu, Whole Time Director and Shri Rishabh Kumar Jain, Company Secretary of the Company, be and are hereby severally 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 Shri Sanjay Agrawal, Managing Director of the Company, of the Company, be and are hereby severally authorized 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.****"."*

49. As per the records available with SEBI, the said meeting on October 28, 2010 was attended by Noticee nos. 2 to 5. It is observed from the aforesaid minutes of board meeting that the Board of directors had also authorized the EURAM Bank to use the funds deposited in the bank account opened with the Bank for receiving the subscription money in respect of the GDR issue of the company as security in connection with loans, if any.

50. It is pertinent to note that the company, TEXMO, thereafter, entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank. The salient clauses of the Pledge Agreement are as under:

"1. Preamble

By Loan Agreement K280211-006 (hereinafter referred to as the "Loan Agreement") dated 01 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 9,996,075. The pledger has received a copy of the Loan Agreement No K280211-006 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 bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 ***all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 9,996,075 existing from time to time at present or hereafter on the securities account(s) no. 580038 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. 580038 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.

…
…
…

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

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment of 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 public authorized for such transactions, selected by the Bank.

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

51. The Pledge Agreement clearly states that the borrower i.e., Vintage has been granted a loan of USD 9,996,075 vide Loan Agreement dated March 01, 2011 and that the pledgor i.e. TEXMO has received a copy of the Loan Agreement. Thus, I note from the Pledge Agreement that while acknowledging the terms and conditions of the Loan Agreement, TEXMO has agreed to pledge all its right, title and interest in and to the securities deposited in the Pledged Securities Account and funds in Pledged Time Deposit account so as to secure the present and future obligations of Vintage as is evident from the Pledge Agreement which states that "in the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations". The Pledge Agreement and Loan Agreement were

both dated March 01, 2011. I also note that Clause 6.1 of the Loan Agreement dated March 01, 2011 also states that the Pledge Agreement is an integral part of the Loan Agreement.

52. The SCN has alleged that Vintage **(Noticee No. 7)** was the sole subscriber to GDR by obtaining a loan of USD 9.99 million by entering into a Loan Agreement No. K280211-006 dated March 01, 2011 with EURAM Bank (**Noticee No. 15**) with respect to the subscription of GDRs issued by Texmo. The relevant extract of the loan agreement is as under:

> *"2. Nature and Purpose of Facility:*
> *To provide funding enabling Vintage FZE to take down GDR, issue of 627,500 Luxemburg public offering and may only be transferred to Euram account no.580038, Texmo Pipes and Products Limited.*
> …
> …
> …
> *6. Security:*
> *6.1 In order to secure all and any of the Bank's claims and entitlement against the Borrower arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*
> - *Pledge of certain securities held from time to time in the Borrower's account no 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
> - *Pledge of the account no 580038 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.*
>
> *6.2 The Bank may cancel this Loan Agreement and demand prompt repayment of the amounts outstanding, if the Bank perceives that any decrease in value of any of the securities has or will occur or is imminent. The market value of the securities pledged to the Bank in accordance with Annex 2 shall always exceed 101% of the amounts outstanding under this Agreement.*
> *6.3 All cost, taxes, fees and expenses incurred in the taking of security and its ultimate realization, if applicable, shall be borne by the Borrower."*

53. On perusal of the above Loan Agreement and bank account statement of Vintage, I note that Vintage had availed the loan facility to the extent of USD 9.99 million from EURAM

Bank to subscribe to the GDRs of TEXMO which was credited to its escrow account on April 08, 2011. Further, on reading together the Loan Agreement, EURAM bank account statement of Vintage (Annexure 9 to SCN) and EURAM bank escrow account statement of TEXMO (Annexure 8 to SCN) it is observed that the entire GDR proceeds received by TEXMO on April 08, 2011 in its escrow account bearing no. 580038-002-4 held with EURAM Bank were from the loan amount raised by Vintage, transferred from Vintage's bank account held with EURAM Bank. From the above, it is observed that the obligation of Vintage under the Loan Agreement was, thus, secured by TEXMO through the Pledge Agreement. I note that the arrangement of pledging securities and GDR proceeds, which resulted in and facilitated the subscription of GDR issue of the company by only one subscriber i.e. Vintage was not disclosed to the stock exchange in a true and complete manner. The information was reported in a distorted and misleading manner to the stock exchange. On April 11, 2011, the company reported to BSE that it had "*The Company has allotted 627500 Global Depository Receipts (GDR) at USD 15.93 each underlying 1,25,50,000 equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty Six only) each to "The Bank of New York Mellon" in its capacity as a depository.*" which would have led investors to believe that the said GDR issue was genuinely subscribed. Thus, the investors in India were made to believe that the issuer company i.e. TEXMO has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by only subscriber, Vintage with the support of the loan agreement and pledge agreement.

54. On perusal of the above Board Resolution, I find that the aforesaid Board Resolution was approved by Noticee nos. 2 to 5 for opening a bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Further, Euram Bank was authorized to use the GDR proceeds deposited with it as security in connection with loan, if any, as may be required by the Bank and Noticee 2, Noticee 3 and Noticee 5 were authorized to sign any agreement related to GDR issue of Texmo.

55. From the resolution as stated above, I find that the Company and Noticee no. 2 to 5 had already decided as back as on October 28, 2010 to go for a GDR issue and had even decided at that very stage to open a bank account with EURAM for receiving the GDR proceeds. Also in the same Board resolution, it had already been contemplated that the GDR proceeds may be used as a security for loans although the nature and purpose of the proposed loans to be availed was not specified in the said resolution.

56. I note that no information/document with regard to the said meeting of Board of Directors of Texmo dated October 28, 2010 was mentioned in its Annual Report for FY 2010-11 and also no information/document with regard to minutes of the said board meeting was received from Texmo. Thereafter, the Company, vide its email dated November 17, 2018, forwarded a copy of its letter dated November 16, 2018 informing SEBI that no such Board of Director's meeting was held on October 28, 2010. The Company, however, informed that an Extra Ordinary General Meeting (**EGM**) was held on October 28, 2010 and provided copy of minutes and the resolutions passed in the aforesaid EGM.

57. In this regard, I find it pertinent to look into the certified true copy of the resolution passed at the EGM of shareholders of TEXMO on October 28, 2010 at 11:00 AM. The shareholders through such resolution authorised the Board to act in certain manner. The relevant extracts of which are reproduced as under:

> *"RESOLVED FURTHER THAT for the purpose of giving effect to the above resolution, the Board of Directors of the Company be and is hereby authorized to do all such acts, deeds and things as it may, in its absolute discretion deemed necessary or desirable and settle any question, difficulty or doubt that may arise in regard to the offer, issue and allotment of securities."*
>
> *"RESOLVED FURTHER THAT the Board is also entitled to enter into and execute all such arrangements/ agreements with the lead managers underwriters/ guarantors/ depository (ies)/ custodians/ advisors/ registrars and all such agencies as may be involved including by way of payment of commission, brokerage, fees, expenses incurred in cash or otherwise in relation to the issue of securities and other expenses, if any, or the like."*

"RESOLVED FURTHER THAT the Board do open one or more bank accounts in the name of the Company, including escrow account, special purpose accounts etc. in Indian currency or foreign countries as may be required in connection with the aforesaid issue/ offer, subject to requisite approvals from the RBI and other overseas regulatory authorities, if any."

"RESOLVED FURTHER THAT the Board be and is hereby authorized to delegate all or any of the powers herein conferred in such manner as they deem fit."

58. Upon being authorised as aforesaid by the EGM held on October 28, 2010 at 11:00 AM, I understand from the Board Resolution dated October 28, 2010 that the Board of Directors assembled at the same venue i.e. the registered address of the company at 02:30PM and *inter alia* resolved that EURAM Bank be authorised to use the GDR proceeds as security in connection with loans, if any. Furthermore, I note that, the said board resolution is certified true copy of the resolution passed by the Board of Directors of Texmo and Noticee no. 5 on October 28, 2010 which is printed on the letter head of the company and signed by Noticee no. 2 to 5. Further, the said board resolution is notarised at Burhanpur which is the place where, company has its registered address.

59. I note that, Section 372 A (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. Thus, I note that, it was by being signatories to the aforesaid resolution dated October 28, 2010 provided by Austrian FMA, that Noticee no. 2 to 5 passed the resolution for opening a bank account with the EURAM Bank and authorized Noticee no. 2, 3 and 5 to sign, execute, any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. Further, Noticee No. 2 was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company. Thus, the aforesaid resolution gave wide powers to Noticee no. 2, 3 and 5 to enable them to execute the Pledge Agreement and Noticee no. 2 to 5 have consciously agreed to the delegation of such wide powers to Noticee no. 2, 3 and 5.

60. Thus, it was only pursuant to the said board resolution that, Noticee no. 2 went on to sign the Pledge Agreement dated March 01, 2011 with EURAM Bank on behalf of Texmo, whereby a deposit account of Texmo maintained with EURAM Bank having USD 9.99 million was given as security for all the obligations of Vintage under the Loan Agreement. The said Pledge agreement also bear the seal of company. Thus, in view of the aforesaid, I find no merit in the contentions of Noticee No. 1 to 5 denying the passing of such board resolution and knowledge of such board resolution and pledge agreement.

61. As Noticee no. 1 to 5 denied executing/ passing such resolution, I am of the view that such board resolution authorizing the use of funds of GDR proceeds deposited with EURAM as security was fraudulently approved by the directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4, and Noticee 5 acted on the above said fraudulent board resolution and executed the Pledge Agreement. Thus, Noticee no. 1 to 5 enabled the fraudulent scheme of issuance of GDRs and acted as party to the fraudulent scheme. Thus, by not disclosing information with regard to such intentions of the Board to the shareholders, I conclude that Noticee no. 1 to 5 misled the investors by concealing such an important disclosure from shareholders of Texmo.

62. I also note that specific mention is made at 6.1 of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 9.99 million on March 01, 2011. It is pertinent to note that the loan as per the said Loan Agreement was granted to Vintage on the pledge of the following assets: "*Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. Pledge of the account no. 580038 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."* It is stated that the above reference to the pledge of Account No 580038 through a separate pledge

agreement, which forms an integral part of the Loan Agreement, is to the Pledge Agreement dated March 01, 2011 entered between Texmo and EURAM Bank.

63. By signing the Pledge Agreement, Texmo is clearly aware that Vintage was the subscriber to the GDR issue. On perusal of contents of the pledge agreement, I note that, Pledgor (Texmo) pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds up to 9.99 million USD in the A/C no. 580038 with EURAM Bank (hereinafter referred to as "as Pledge Accounts"). I note that account no. 580038 was the escrow account where the GDR proceeds of Texmo were deposited. Texmo had pre-pledged to the EURAM Bank, its entire GDR proceeds as security for the loan to be disbursed to a third party i.e. Vintage, for making subscription to GDR of Texmo on March 01, 2011, much before the actual GDR issue that took place on April 11, 2011. Thus, evidently Texmo already knew in advance who would be subscribing to its entire GDR issue, for which Texmo drew up a premeditated plan to facilitate its GDR issue in the manner as described above much before the actual GDR issue, with the prior approval of the Board of Directors of Texmo which had passed necessary resolution to this effect enabling the MD to execute the plan.

64. Further, I also note that, on behalf of Texmo, Mr. Sanjay Agrawal vide letter dated July 09, 2012 to EURAM has confirmed the rights of EURAM Bank to set off the pledged deposit (GDR Proceeds) with the outstanding loan amount and interest. The said letter was notarised by same notary public placed at Burhanpur.

65. Thus, in view of the above, I note that Texmo, itself held the pledge agreement as valid and did not raise any query regarding the loan amount of USD 3496075.00 due to be repaid and in fact stated in the letter that, *"we confirm that the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 3,496,075 USD."* Thus, subsequently, on September 04, 2012, an amount USD 34,98,579.85 was adjusted by EURAM Bank against the loan default of Vintage/ Alta Vista International

FZE (present name of Vintage). This is evidenced by Texmo's EURAM Bank retail account statement and Vintage's loan account statement.

66. As noted earlier, Vintage had signed a Loan Agreement No. K280211-006 dated March 01, 2011 with EURAM Bank for a loan of 9.99 million USD to pay for the subscription amount of US$9.99 million for the GDR issue of Texmo. Vintage had opened an exclusive loan account (a/c no. 540012-053-0 titled as Loan K280211-006 Texmo pipes) with EURAM Bank for receiving the loan and making subscription to GDR of Texmo.

67. On perusal of clause 2 and 3 of the Loan Agreement, I find that the said loan was availed exclusively by Vintage for the purpose of subscribing to the GDR issue of Texmo and the loan amount could only be transferred to EURAM Account No. 580038 of Texmo. I further note that in terms of clause 6 of the said Loan Agreement, the EURAM Bank A/C no. 580038 of Texmo will be pledged as security for the loan taken by Vintage from EURAM as set out in detail in the Pledge Agreement. The said Loan Agreement with EURAM Bank was signed by Noticee no. 7 viz. Mr Mukesh Chauradiya (designated as Managing Director of Vintage) and a Pledge Agreement was signed by the Noticee no. 2 (CMD of Texmo) on the same day. The execution of Loan Agreement dated March 01, 2011 prior to the GDR issue on April 11, 2011 shows that Vintage was already pre-decided by Texmo to be the sole subscriber to the GDR issue. It was also pre-decided that Vintage will subscribe to the GDR by taking a loan equivalent to the total amount of the whole of GDR issue of Texmo. This clearly indicates that Company was aware much before the issuance of GDR that, the proceeds to be realized against the issuance of GDR would be held as security towards the loan amount sanctioned by EURAM Bank to Vintage to enable it to pay the subscription amount. Due to this arrangement, Texmo was restrained from using the proceeds of the issuance of GDR for a considerable period for the stated purpose for which the fund was raised through issue of GDR. Prima facie, this does not appear to be a normal loan transaction between EURAM Bank and Vintage rather, it appears to be a peculiar transaction wherein under the garb of loan agreement,

the amount is merely rotated on paper from the Bank to the borrower and from the borrower to the Company's a/c in the same bank where it is kept as a security against the said loan availed by the borrower. The net result is that the Company is not really able to utilize the proceeds of GDR, as the same is pledged as security against the loan taken by the borrower to pay for the GDR subscription. Thus the money/fund only rotates on paper from one a/c to another but remains in the Bank in an encumbered state. Further, Vintage defaulted in repayment of loan to the extent of USD 3.49 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012), thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that Vintage acquired GDRs of Texmo to the tune of USD 3.49 million at free of cost. It is observed from available records that the Noticee No.6 is the beneficial owner of Vintage.

68. On perusal of the Loan agreement between Euram Bank & Vintage, on the one side, and pledge agreement between Euram Bank and Texmo, on the other side, one would clearly find that the said agreements were executed only to secure the obligations of the borrower viz. Vintage, on the basis of which it was granted a loan for 9.99 million USD from EURAM Bank. However, the Pledge Agreement also mentions that the Pledgor received copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. This cross reference of Loan Agreement in Pledge Agreement and vice-versa indicates that Noticees had, much before the actual issuance of GDR pre-decided on the future subscriber and the entire modus operandi through which GDR were issued by facilitating financing the subscriber and there was no intention to immediately bring the GDR proceeds to India to utilize for the stated needs of the Company. One interesting aspect is the timing of execution of Loan Agreement between EURAM Bank and the borrower i.e. Vintage and execution of Pledge Agreement between the said bank and the issuer company i.e. Texmo. Both these agreements were dated March 01, 2011. I note that Pledge Agreement has been incorporated in the Loan Agreement and made part of it as an annexure in terms of sequence of events and Pledge Agreement refers to the Loan Agreement dated March 01, 2011 between the borrower i.e. Vintage, and EURAM Bank,

whereby Vintage was granted loan of USD 9.99 million and it is stated that the Pledgor i.e. Texmo has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another one.

69. Further, from clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), also extracted in preceding pages, I note that Texmo had given consent to the Bank to apply the funds in the Pledged Accounts in case of default of repayment by the Borrower, Vintage for settling their obligations. As a consequence, even after the GDR issue, Texmo did not have the GDR proceeds at its disposal until repayment of the loan made by Vintage. Further, on examination of the Bank A/C statement of Texmo no. 580038 and Vintage's Loan A/C no. 540012, I find that Vintage repaid the loan to EURAM Bank in several instalments from August 03, 2011 to March 02, 2012 and each time, only after repayment of a loan instalment by Vintage, on almost the same day of repayment, an equal amount of money was transferred from Texmo's EURAM Bank A/c to its UAE subsidiary's A/c viz. Tapti Pipes and Products FZE (hereinafter referred to as "**Tapti's**"). Thus, the Company's subsidiary viz. Tapti did not actually receive the GDR issue proceeds till repayment of loan by Vintage. Therefore, in essence, the money equivalent to the GDR issue amount rotated within the EURAM Bank, firstly, as a loan in the name of Vintage and then it travelled as GDR proceeds to the account of Texmo but there was actually no transfer of money to the Company against the GDR issue as on April 11, 2011 for the purpose of utilization. Therefore, I note that the amounts transferred from Texmo's EURAM account to Tapti's bank accounts were dependent on the repayment of the loan by Vintage and was not at free disposal in the account of Texmo's Bank. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage. Details of repayment of loan by Vintage as observed from information provided by Euram Bank are tabulated below:

Table No. 12

Date of Loan Amount repaid by Vintage	Loan Amount repaid by Vintage (USD)	Date of Transfer of funds from Texmo's Euram Bank a/c to Tapti	Transfer of funds from Texmo's Euram Bank a/c to Tapti (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from Texmo's Euram Bank a/c to Tapti (USD)
03/08/2011	1,00,000	04/08/2011	1,00,000	1,00,000	1,00,000
09/08/2011	5,00,000	10/08/2011	5,00,000	6,00,000	6,00,000
24/08/2011	7,00,000	24/08/2011	7,28,000	13,00,000	13,28,000
06/08/2011	12,00,000	26/08/2011	12,00,000	25,00,000	25,28,000
21/09/2011	10,00,000	21/09/2011	10,00,000	35,00,000	35,28,000
27/10/2011	3,00,000	27/10/2011	3,00,000	38,00,000	38,28,000
07/11/2011	10,00,000	07/11/2011	10,15,000	48,00,000	48,43,000
23/02/2012	4,00,000	23/02/2012	4,05,000	52,00,000	52,48,000
01/03/2012	8,00,000	01/03/2012	8,00,000	60,00,000	60,48,000
02/03/2012	5,00,000	02/03/2012	5,00,000	**65,00,000**	**65,48,000**

70. On a comparison of the above two tables, some clear patterns emerge: a) payments by Vintage to Euram Bank are followed, almost concurrently, by payments from Texmo's account to Tapti's account; and b) the amounts transferred from Texmo's account to Tapti's account are only a few dollars short of or more than the amount transferred by Vintage to Euram Bank.

71. Thus, from the above table, I note that, the obligation of Vintage under the Loan Agreement was secured by Texmo through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. Thus, due to such pledging of the GDR proceeds, the funds were not available at Texmo's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but through a fraudulent arrangement. I find that Noticee no. 6 had aided and abetted the fraudulent scheme of self-financing of the GDR issue of Texmo by acting on behalf of Vintage as Noticee No.6 was the beneficial owner of Vintage FZE, the Noticee No.7

where he had served as Managing Director therein. Therefore, Noticee No. 6 was connected with the Noticee No. 7.

72. Further, with regard to the subscription of GDR issues of certain other listed Indian companies through the aforesaid modus operandi viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of Pan Asia Advisors Limited vs. SEBI had held that: *"28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted."*

73. Thus, I find that Texmo in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for the GDRs, at the cost of shareholders / investors of Texmo. Accordingly, I find that Texmo and Vintage have clearly violated Section 12A (a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

74. Additionally, it has been alleged that Texmo had made wrong disclosures to the stock exchanges regarding the investment in GDRs by foreign investors. As already brought out, the Loan Agreement had reference to the Pledge Agreement entered into between Texmo and Euram Bank by virtue of which Euram Bank provided credit facility to Vintage for the purpose of subscribing to the GDRs of Texmo. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock Exchanges. However, the Company reported to the stock exchange (BSE) on April 11, 2011 that *"the Board of Directors of the Company at its meeting held on April 11, 2011, inter alia, has considered and approved the following:*

1. *Adopt the Escrow Agreement entered into between the Company, the Lead Manager - Pan Asia Advisors Ltd., and the Escrow Agent- European American Investment Bank AG (EURAM Bank).*
2. *Adopt the Deposit Agreement entered into between the Company and the depository.*
3. *Adopt the Placing Agreement entered into between the Company and the Lead Manager - Pan Asia Advisors Ltd.*
4. *The Company has allotted 627500 Global Depository Receipts (GDR) at USD 15.93 each underlying 1,25,50,000 equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty Six only) each to "The Bank of New York Mellon" in its capacity as a depository.*
5. *Approve the Deed Poll.*
6. *The listing of the 627500 GDR will be made on Luxembourg Stock Exchange on April 12, 2011*".

75. I note that Company reported to NSE on April 11, 2011 that, it had successfully completed placement of GDR and the Board, at its meeting held on April 11,2011, approved & allotted equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty-Six only) each to "The Bank of New York Mellon" in its capacity as a depository represented in the said GDR. Given the way GDRs were issued to one subscriber in a pre-planned manner as discussed above, I find that the Company, by making a disclosure on April 11, 2011 that GDR have been successfully subscribed, tried to give a misleading impression to the investors and to the market at large, about the potential of the Company, without disclosing the actual arrangement undertaken (Pledge Agreement/ collateral security) to ensure successful subscription to its GDR. The above disclosures are fraught with fraudulent intentions and is an example of an unfair trade practice which was inflicted by the Company on the shareholders and investors at large. The Company along with other Noticees had successfully misled the investors to believe that the shares of the Company have a good market abroad and have been very well received by foreign investors hence, its shares may be of great value in India as well as abroad.

76. Hon'ble Supreme Court in their judgment dated July 6, 2015 in ***SEBI v. PAN Asia Advisors Ltd & anr.*** (Civil Appeal No. 10560/2013, AIR 2015 SC 2782), while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, observed that: -

"the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank…….

…. that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs…….

To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none…."

77. I note that, SEBI obtained the information regarding the initial investors in GDRs from the Issuer Companies who in turn had received the same from Pan Asia. Interestingly, the Company furnished wrong information to SEBI by providing a list of GDR subscribers to SEBI vide email dated June 18, 2015, whereas actually the entire 6,27,500 GDRs (amounting to USD9.99 million) was subscribed by only one entity, i.e. Vintage. I also note that the Pledge Agreement dated March 01, 2011, which was specifically signed by the authorized representative of Texmo viz. Noticee no. 2 makes reference to Vintage. The same also clearly shows that Texmo was aware that the subscriber to the GDR issue was just Vintage. Such actions also indicate mala fide intention on the part of Texmo and Vintage. Thus, Texmo had submitted a blatantly false list of the subscribers. In this regard, I note that the Hon'ble SAT in the matter of ***Pan Asia Advisors Ltd. vs. SEBI***, held the following in its order dated October 25, 2016:

"It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were non-existent entities because-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. In case of Tradetec the address shown was 'level 47, Prudential Tower, 30 Cecil Street, Singapore, 049712'. Investigation carried out by SEBI through the Monetary Authority of Singapore revealed that there was no level 47 and the highest floor of Prudential Tower was level 30 and

that Tradetec is not even listed in the office directory of Singapore. One of the alleged initial subscriber known as Rexflex Ltd. was found to be controlled by AP and admittedly the name of Rexflex Ltd. has now been changed PAN Asia Management Ltd. Even in case of other issuer companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted."

78. As discussed above in detail, the GDR issue would not have been subscribed by Vintage had Texmo not given the required security towards the loan taken by Vintage from the EURAM Bank. However, the Company, through its misleading disclosures to NSE and at the same time by suppressing the facts from the public view about its arrangement with EURAM Bank to facilitate financing of the GDR subscription by Vintage, has created a misleading and overrated impression about the potential of the Company in the market.

79. I find that the entire arrangement of issuance of its GDR by way of loan and pledge agreements, non-disclosure of the resolution passed by the Company in its meeting held on October 28, 2010, non-disclosure of the entering into pledge agreement with EURAM bank, making corporate announcement on April 11,2011 about successful subscription of the GDR and not disclosing the pledge and loan arrangement to the investors, and has resulted in disclosure of misleading and distorted information to the stock exchanges. Therefore, the entire scheme of issuance of GDR was fraudulent.

80. In this respect, I note that the Hon'ble Supreme Court in the case of SEBI v. PAN Asia Advisors Ltd & anr.(Supra) has held that:

"any Act which caused any infringement in such trading of those underlying shares by virtue of any malfeasance or misfeasance or misdeeds committed by any person under the Act which worked against the interests of the investors in securities and the securities market, the SEBI was entitled to proceed against such persons who are involved in any of those allegations"

81. I also note that, the Hon'ble Supreme Court in its judgment in the matter of *Kanaiyalal Baldevbhai Patel v. SEBI* (civil appeal no. 2595 of 2013) has also observed that:

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

Further, I note that the Hon'ble Supreme Court in the same judgment, has also observed that:

> *"that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, these provisions get attracted in a situation....".*

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

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

83. Thus, I find that Texmo in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for the GDRs, at the cost of shareholders / investors of Texmo. Accordingly, I find that Texmo and Vintage

have clearly violated Section 12A (a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003. Further, the publication/disclosure of information by the Company with respect to the GDR issue was misleading and contained distorted information which induced investors to deal in the shares of Texmo. Accordingly, I find that Texmo has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

Issue II - Whether the Directors of Texmo and Vintage can be held liable for the fraudulent scheme?

Directors of Texmo

84. During the investigation period, as seen from the Annual Report for FY 2010-11 & 2011-12, Noticee No. 2, Mr. Sanjay Agrawal was the Chairman & Managing Director (CMD), Noticee No. 3, Mr. Vijay Prasad Pappu was the Whole Time Director and Noticee No. 4, Mr. Shanti Lal Badera was Non-Executive, Independent Director ('NEID').

85. It is further seen from the said Annual Report that 8 (Eight) Board meetings were held during the financial year 2010-11. The details regarding the attendance of the above-named directors in the board meetings of the Company are provided hereunder:

Table -13

Name of Directors	**Category of Directors**	**No. of Board Meetings attended during 2010-11**	**Attended at last AGM**
Mr. Sanjay Agrawal	Managing Director & Chairman	8	Yes
Mr. Vijay Prasad Pappu	Whole Time Director	8	Yes

Mr. Shanti Lal Badera	Non-Executive & Independent Director	5	Yes

86. I note that Noticee no. 2 was the Managing Director of Texmo. Further, it is observed that Noticee No. 2, 3 & 5 were authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. It is also observed that Noticee No. 2 was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company, by way of the said Board Resolution dated October 28, 2010. It is also noted from the copy of the board resolution received from EURAM Bank, that it was in fact certified to be true by Noticee no. 2, 3,4 and 5, and furthermore EURAM Bank was authorized to use Texmo's GDR proceeds deposited with them, as security in connection with any loan. It is further noted that the Pledge Agreement entered into by Texmo with EURAM Bank, whereby a deposit account of Texmo maintained with EURAM Bank was given as security for all the obligations of Vintage under the Loan Agreement and had been signed by Noticee No. 2, Mr. Sanjay Agrawal.

87. The said Noticees have claimed that they were not aware of the Loan Agreement entered into between Vintage and EURAM Bank and the Loan Agreement could not be considered as an integral part of the Pledge Agreement. It has already been established above that the said Noticees had clear knowledge of the Pledge Agreement having entered into the same with EURAM Bank on March 01, 2011. The Pledge Agreement in its preamble mentions that "The *Pledger has received a copy of the Loan Agreement No K280211-0069 and acknowledges and agrees to its terms and conditions.*" Loan Agreement No K280211-006 is the same loan agreement entered into between Vintage and EURAM Bank dated March 01, 2011 for a loan amount of USD 9,996,075 with the purpose of "*enabling Vintage FZE to take down GDR issue of 627,500 Luxemberg public offering and may only be trasnfererd to Euram account nr. 580038, Texmo Pipes and Products Ltd.*" Furthermore, as shown earlier above, the GDR proceeds were not available to TEXMO immediately after its subscription. It was only after Vintage repaid loan instalments, on same day or

later, equivalent amount of money was transferred from TEXMO's EURAM Bank account. Being directors of the company, they would have known about the same. Therefore, I am unable to agree with the contention of the Noticees that were not aware of the Loan Agreement.

88. Reference is made to the said letter, addressed by Texmo to EURAM Bank, which was signed by Mr. Sanjay Agrawal, Noticee no. 2 and was notarised by a registered Notary. Further, the Pledge Agreement has been signed by Mr. Sanjay Agrawal on behalf of Texmo.

89. The Noticee, Mr. Sanjay Agrawal has contended that the said documents might have been signed due to oversight while signing Escrow Agreement dated March 01, 2011. In this regard, reliance is placed on the order of the Hon'ble SAT in ***Ajay Bankda v. SEBI*** (Appeal No. 97 of 2020, decided on April 30, 2021) wherein the Tribunal observed as under:

> *"17. So far as appellant Mr. Ajay Bankda the then Managing Director of the Company, the Company itself and appellant Mr. Jagdish Bagaria, the Whole Time Director are concerned, they cannot escape the liability. The Company would be liable for the acts of the Managing Director. So also the Managing Director is also liable for any default committed by the Company. Appellant Mr. Jagdish Bagaria was the Whole Time Directors and, therefore, he cannot plead that he was not aware of the day to day affair of the Company which included non return of GDR proceeds to the Company. Their involvement in the fraudulent activity as detailed supra is writ large from the record.* ***Though the appellant Mr. Ajay Bankda claims that he had merely signed the documents religiously on instructions by the Lead Manager, being a Managing Director he cannot claim that he was not aware of the result of the account charge agreement i.e. misappropriation of the GDR proceeds****."*

90. Furthermore, even assuming without admitting that the said documents were signed due to oversight, the facts remains that Mr. Sanjay Agarwal vide letter dated July 09, 2012 on behalf of Texmo wrote to EURAM Bank and confirmed that *"We hereby confirm that the pledge agreement entered into by and between Texmo Pipes and Products Ltd. and European American Investment Bank AG is valid and was duly signed by Texmo Pipes and Products Ltd."* (emphasis

supplied) The letter further states that "we *confirm the right of European American Investment Bank to set off the pledged cash deposit with the outstanding loan amount 3,496,075.00 USD*". Therefore, Mr. Sanjay Agrawal cannot escape liability for his actions.

91. The Noticees have also asserted that they had no knowledge that Vintage was the sole subscriber of the GDRs, and it was PAN Asia Advisors, the lead manager who had the full details. In this regard, it has already been established that a copy of the Loan Agreement, wherein it was mentioned that a loan of USD 9,996,075 was being given to Vintage so as to enable it to subscribe to 627,500 GDRs of Texmo, was provided to Texmo. Also, the issue size of the GDR issue was 627,500 GDRs amounting to USD 9.99 million. The bank account maintained by Texmo with EURAM Bank shows a credit entry of transfer of USD 99,96,075 on April 08, 2011, which was from Vintage. Further, in the letter dated July 09, 2012 addressed by Texmo to EURAM Bank (signed by Sanjay Agrwal), it has been stated by Texmo that "*We, Texmo Pipes and Products Ltd., were informed by Alta Vista International FZE (*formerly known as Vintage*) of your letter dated 10th April 2012 and 24th April 2012 that the loan in the amount of USD 3,496,075.00 is due and that the loan has to be repaid within 10 days, otherwise the pledged cash deposit will be set off with the outstanding loan amount plus any outstanding interest.*" Further, it is noted that by way of the letter dated July 09, 2012 referred to above, EURAM Bank was instructed that upon exercising its right to set off, the GDRs pledged by Vintage which would have come to Texmo, should be transferred to Vintage's account in Habib Bank AG Zurich. So, it is quite evident that the above-mentioned Noticees were clearly aware of Vintage and that it was the sole subscriber of the GDR issue.

92. The Noticees have also contended that no account statement was provided by the Lead Manager and that they had no reason to doubt the credibility of the Lead Manager i.e. Pan Asia. I note that directors of a company have a duty of reasonable care and skill towards the company. Furthermore, it would be too naïve to believe that the Noticees were not able to obtain their own bank account statement either from EURAM Bank or

through their Lead Manager. There is nothing to show that they took any steps against the Lead Manager for its non – compliance.

93. I further note from the contents of the Pledge Agreement dated March 01, 2011 that Texmo had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of Vintage.

94. Further, Hon'ble Securities Appellate Tribunal in its order dated October 25, 2016 in the case of ***PAN Asia Advisors Ltd. & anr. v. SEBI***, observed the following:

> *"The expression 'fraud' is defined under the PFUTP Regulations, 2013……*
> *…. from the aforesaid definition 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, 2003 against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not……...*
> *……. 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 fully 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, 2003."*

95. Noticee no. 3 has adopted the reply of the company. I note that the contentions of the company have been dealt with above, and it has been found that the company acted in violation of section 12A (a), (b) and (c) of the SEBI Act, 1992 and Regulation 4 (1), 4(2) (k) and (r) of the PFUTP Regulations. I note that the Noticee No.4 in his reply has stated that, he was an Independent, Non-Executive Director. The Noticee has submitted that he was not in charge of the day to day affairs of the Company. I note that, Mr. Shanti lal was independent director of Texmo from 14.08.2008 till 13.08.2019, which is 11 long

years. In this regard, I note that, The Hon'ble Supreme Court in ***Official Liquidator vs P.A. Tendolkar*** (1973) 1 SCC 602 has observed that:

> *"A Director may be shown to be so 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 the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially".*

96. It must be emphasized that the role of independent directors is to work as a watchdog, help in managing risk and safeguard the interests of minority shareholders. Further, I note from the Annual report for FY 2010-2011 and 2011-12 that is the period when the GDR issue of Texmo took place that, Mr. Shanti Lal Badera was also member of Audit Committee, remuneration committee and shareholders/investors' Grievance committee during the period. It is pertinent to note 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 Noticee no. 1 with respect to GDR issue and proceeds received thereof. Further, in accordance with Clause 49(II)(D) of the then applicable Listing Agreement, it is also *inter-alia* the responsibility of the Audit Committee to review the financial reporting process of the Company, review the annual and quarterly financial statements of the Company before being presented to the board of the Company and to review the Statement of Use/ Application of funds raised through public issue. Thus, being audit committee member, Noticee no. 4 should have analysed the proceeds of GDR issue. However, I note that nothing has been brought on record to show that, Noticee no. 4 has raised any query or sought any clarifications regarding the GDR proceeds. Further, being signatory to board resolution dated October 28, 2010, he should have raised any objection or query regarding the Board Resolution which proposed to pledge the entire GDR proceeds as a security for any loan.

97. In this context, I also note that in another GDR case, namely, ***Mohandas Shenoy Adige Vs. SEBI*** (Appeal No. 511 of 2020, Order dated July 28, 2021), the Hon'ble SAT

noted that the Appellant was a director in the company for several years and was the member of the audit committee which handled/reviewed the financial matters of the Company during the period when the GDR proceeds vanished from the accounts of the Company. In view of the same, the Tribunal held that *"Taking into consideration all these facts, in our view it would be naive to conclude that the appellant Mohandas was only an independent director and had innocently consented to the Board decision authorising Mr. P.V.R. Murthy to deal with the GDR including loan if any."*

98. Similarly, in the instant matter too, Noticee no. 4 was associated with Texmo for 11 long years and was also the member of audit committee during the period of GDR Issue. Thus, I am unable to accept the contention of Noticee no. 4.

99. Noticee no. 4 has also cited matters such as ***Adi Cooper & Anr. Vs. SEBI*** (SAT Appeal No. 124 of 2019) to contend that the resolution passed by the Company did not authorize Euram Bank to utilize the GDR proceeds as security in connection with a loan given to third party. However, the Hon'ble Supreme Court, vide order dated September 21, 2021, has reversed the order of the Hon'ble SAT in ***Adi Cooper Vs. SEBI*** and held that such a 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 the stock exchange(s). Accordingly, the Hon'ble Supreme Court upheld the view taken by SEBI in the matter. Further, vide an order of the same date, i.e., September 21, 2021, the Hon'ble Supreme Court also set aside the order dated November 16, 2020 of the Hon'ble Tribunal in ***Adesh Jain Vs. SEBI***, which has also been cited in this regard by the Noticee no. 4. The Hon'ble Supreme Court *inter alia* observed that the Tribunal's order in Adesh Jain Vs. SEBI had relied upon Tribunal's order in Adi Cooper Vs. SEBI. Since the latter has been reversed, the Hon'ble Supreme Court relegated the parties before the Hon'ble SAT for reconsideration of the appeal afresh.

100. Noticee no. 4 has also placed reliance on the decision of the Hon'ble SAT in ***Prafull Anubhai Shah v SEBI*** (Appeal No. 389 of 2021 decision dated 28.06.2021), I note that SEBI has filed review petition against the Hon'ble SC Order dated 06.12.2021 in the matter of *SEBI vs. Prafull Anubhai Shah*, which is pending before Hon'ble Supreme court.

101. I further note that, Hon'ble SAT in ***Chromatic India Ltd & Anr vs. SEBI*** (Appeal No. 393 of 2020, decision dated May 12, 2021) while deciding on the liability of Independent Director who was also a member of the Audit Committee in a matter involving similar GDR Issue has held the following:

> *The Resolution dated August 13, 2010 by itself does not create any suspicion nor creates any fraudulent act. Being a signatory to the said Resolution by itself does not violate any provision of the SEBI Act or the PFUTP Regulations. However, being part of the Audit Committee he had access to the financial status of the company. It is deemed to be in his knowledge that the GDR proceeds of the company were lying in an account in European American Investment Bank ("Euram Bank") and the same was not being utilized for the business purposes of the company rather it was being utilized as collateral for the loan given to Vintage. Being part of the Audit Committee he should have raised a red flag by observing that the funds were not being utilized by the company for the purpose for which the GDR were issued. In this regard, this Tribunal in Mr. Kishore Hegde vs SEBI (Appeal No. 300 of 2019 decided on November 05, 2019) held:-*
> *'The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds. Apart from the above, we also find that the appellant was also the Chairman of the audit committee of the company. The WTM found that being the Chairman of the audit committee, he did not place any objection as to why the GDR proceeds did not reach the company and how the proceeds were utilized. We are thus, of the opinion that in the light of the findings given by the WTM, the appellant Kishore Hegde was part of the scheme through which issue of GDR by the company was effected through a fraudulent arrangement of loan agreement and pledge agreement. We are also of the opinion that the conduct of the appellant Kishore Hegde was inimical to the interest of the company, to the investors, as well as to the shareholders and, the action of the appellant Kishore Hegde was in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations."*

102. I note that, Noticee no. 4 while referring to minutes of EGM has submitted that he had not attended the EGM dated October 28., 2010 during which the aforesaid resolution pertaining to GDR was passed. In this regard, I note that even if one were to accept that Noticee is not present in EGM but he has signed the board resolution in the board meeting which was held on the same date i.e., October 28, 2010. Thus, his argument

regarding his absence from said EGM and denying the signing of the board resolution w.r.t. GDR issue raises doubt. Nevertheless, there is lot of evidence mentioned in pre-paras which indicates that, Noticee no. 4 was very well aware of impugned GDR issue and the arrangements of the Company in this regard and being audit committee member he should have taken all possible steps to clarify himself about all the aspects of the proposed GDR issue by asking the management all pertinent questions. When the relevant board resolutions were placed before the audit committee, why he did not ask pertinent questions, such as – a) to whom the GDR were allotted; b) why the GDR proceeds did not reach the Company; c) how were the proceeds utilized; d) whether the proceeds were used as security against any loan; etc. I note that, as per the offer document for GDR of Texmo, one of the objects was to utilize the funds for payment for current acquisition and investment and loan to subsidiary. However, no records have been submitted/ produced by the Company to prove the utilization of funds in terms of the aforesaid objects of the issue to Noticee no. 4 and he has also not taken any step to verify the utilization of such proceeds from the management. By remaining mute and not raising any query at any point during his tenure as a member of Audit Committee and as an independent director, Noticee no. 4 has failed to do justice to the duty cast upon him by statute and with his role of independent director in the Company, wherein, he was supposed to act in the interest of investors and raise his voice with regard to the practices and fraudulent act of the Company, which has jeopardised the interests of shareholders and stakeholders of the Company and investors in the securities market.

103. I further note that, Noticee no. 5 has stated that, he was CS and being an employee of Texmo draw Rs. 21,100 (Rupees Twenty-One Thousand One Hundred only) pm as salary and should not be made responsible as even otherwise when Non Executive Independent Directors are not made responsible for acts when there is a Managing Director in place. In this regard, I note that, being company secretary he has certified the said board resolution and he was also authorised to sign, execute, any application, agreement etc. which may be required by EURAM Bank and thus, he was delegated with

wide powers of decision making with respect to GDR issue of Texmo. I further note that he was employee of Texmo on April 11,2011 i.e., the date of GDR issue and has resigned thereafter.

104. Thus, in view of the above, I note that, Noticee no. 4 and 5 did not act diligently despite being were aware of the fraudulent scheme of issuance of GDRs of Texmo at the time of resolution dated October 28, 2010 and played an active role in the said scheme as it was their duty to ask the question as to why any company or its directors would at all decide at the time of planning to raise funds through an issue of GDR and to pledge the entire GDR proceeds as a security for any loan. Further, being audit committee member and company secretary they failed to examine the financials of Texmo and also failed to ensure the correctness of financial information and utilisation of GDR proceeds and also correct reporting to stock exchanges. Hence, in view of the aforementioned, I hold the contentions of Noticee no. 4 and 5 untenable and also find the ratio of orders, judgements, circulars and clarifications cited by Noticee no. 4 and 5 are clearly distinguishable from the facts and circumstances of the instant case.

105. Further, in this regard, I refer to the order of Hon'ble SAT in case of ***Ketan Parekh v. SEBI*** (Appeal no. 2/2004) (decided on July 14, 2006), wherein Hon'ble SAT had categorically held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available. I also find it pertinent to make reference to judgment of Hon'ble Supreme Court in ***SEBI v. Kishore Ajmera*** (Civil Appeal No. 2818 of 2008; dated February 23, 2016) in this regard: *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence*

thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

106. I note that by passing such a resolution, the Board of Texmo has explicitly indicated that the GDR proceeds were not meant to be brought in India but to be kept as a security against a loan and the details of such arrangement was not meant to be disclosed to anyone at that point of time. Thus, involvement of Texmo and Noticee no. 2 to 5 in entire fraudulent scheme of GDR issue is observed on account of signing of and entering into Pledge Agreements by Mr. Sanjay Agrawal, Chairman and Managing Director of Texmo with EURAM Bank for loan availed by Vintage from EURAM Bank for entire subscription of GDRs of Texmo pursuant to the board resolution dated October 28, 2010 signed by Noticee no. 2 to 5. Further, Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. These agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of Texmo. The GDR issue would not have been subscribed, had Texmo not given any such security towards the loan taken by Vintage.

107. In view of the aforementioned, I note that, Noticee no. 2 to 5 cannot escape their liability by denying passing of such board resolution as they were not only aware of the pledge agreement but their conduct attests to their acceptance of the existence of the pledge agreement as mentioned in the letter dated July 09, 2012 being signed by Noticee no. 2 and Loan availed by Vintage to subscribe to GDR issue of TEXMO by providing such security towards the loan taken by Vintage. Also, the said board resolution which authorized the bank to use the funds as security in connection with loans had clearly indicated that there was (at least) an intention to divert the funds even before the issue of GDR was finalized and raising no red-flag to such a clause clearly indicates the involvement of all the signatories to the Board resolution.

108. Further, no rationale has been submitted by Noticee no. 1 to 5 with respect to transfer of only USD 6.54 million (includes the interest earned on money market instruments) to Tapti Pipes & Products Ltd. FZE out of GDR proceeds of USD 9.99 million raised by the GDR issue in April, 2011. Hence, GDRs to the tune of USD 3.49 million were issued by Texmo to Vintage at free of cost. Texmo was aware of the loan default by Vintage as neither the Company nor the Noticee no. 2 to 5 who are now denying passing of such board resolution and execution of pledge agreement, have filed any complaint against Vintage for taking loan and pledging the GDR proceeds for the same and nor have they taken any action against vintage for the same. Thus, based on the available documentary evidences, it is evident that neither Texmo nor Noticee no. 2 to 5 took any step to safeguard the interests of the company or shareholders of company. Moreover, Texmo instructed EURAM Bank to transfer the remaining GDRs to Vintage's account with Habib Bank.

109. Thus, in view of the aforementioned, I am of the view that the Directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4 and its Company Secretary (Noticee 5) have violated the provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations as the fraudulent scheme of GDR issue was enabled only on the basis of board resolution dated October 28, 2010 passed by directors of Texmo namely Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu, Mr. Shanti Lai Badera who fraudulently approved the board resolution, Company Secretary Mr. Rishabh Kumar Jain who fraudulently certified the board resolution and Mr. Sanjay Agrawal, Chairman & Managing Director who executed the Pledge Agreement, enabled the fraudulent scheme of issuance of GDRs and acted as party to the fraudulent scheme.

Directors of Vintage

Arun Panchariya

110. It has been stated in the SCN that Arun Panchariya **(Noticee No. 6/**AP) was the beneficial owner and Managing Director of Vintage as on June 06, 2007.

111. Arun Panchariya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;
b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;
c. the Noticee was a director in Vintage FZE only till 2007; and
d. decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management.
e. SEBI has passed various orders in which no action has been taken against the investors like Cliford Partners, Solec company limited, Seviron company limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of "issue estoppel", the Noticee must be granted similar relief.

112. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. As regards the defence of issue estoppel raised by the said Noticee, it is stated that the same has been dealt with in a detailed manner in the subsequent paragraphs of the Order. It is seen from a letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that Vintage was a Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, it is seen from a Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management Company Trust (BVI) Ltd., that the only shareholder in the said company was Mr. Arun Panchariya, who held 50,000 shares. Mr. Arun Panchariya was also the sole director of the said company.

Also, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya, by way of which, a fine of USD 12,000 was imposed on him. The said Administrative Fine Statement notes that on February 19, 2009 Arun Panchariya had disclosed that he was controller/ director/ partner in three firms, including Vintage FZE. So, it is clear that the sole beneficial owner of Vintage was Arun Panchariya, who held complete shareholding of Vintage through Alkarni Holding Ltd. So, it clearly belies the claim of the Noticee that he was a director in Vintage FZE only till 2007. Furthermore, it is seen from the above-mentioned letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that the director of Vintage was Ashok Panchariya, who is the brother of Arun Panchariya.

113. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., October 2010 to April 2011, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. Also, during this period Ashok Panchariya, who is the brother of Arun Panchariya was the director of Vintage. The Noticee, Mr. Arun Panchariya in his reply has relied on the principle laid down in ***Salomon v. A. Salomon & Co. Ltd***. and contended that the facts and circumstances of the case, do not warrant or justify lifting of the corporate veil by SEBI. In this regard, A. Ramaiya's ***Guide to Companies Act*** notes that the corporation has a legal entity of its own, however, in course of time, the doctrine that a corporation or company has legal and separate entity of its own has been subjected to certain exception by the application of the fiction that the veil of the corporation can be lifted and its examined in substance.[1] The Hon'ble Supreme Court in ***Delhi Development Authority vs Skipper Construction Company (P) & Another***[2] observed that "*the concept of corporate entity was evolved to encourage and promote trade and commerce: but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court*

[1] A. Ramaiya, *Guide to the Companies Act* (19th Edn., LexisNexis, 2020) at 582.
[2] 1996 SCC (4) 622.

would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders". In view of the above discussion, I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme. Accordingly, I find that Arun Panchariya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Mr. Mukesh Chauradiya (Noticee No. 8)

114. It has been alleged in the SCN that Mr. Mukesh Chauradiya served as Managing Director of Vintage.

115. Mr. Mukesh Chauradiya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The principal grounds of defence taken by the said Noticee in respect of the allegations made in the SCN are summarised hereunder:
    a. he has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;
    b. the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee, had no role to play in it; and
    c. the Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

116. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Mr. Mukesh Chauradiya on behalf of Vintage, and in the space for providing the "Title" of the signatory, Managing Director has been mentioned. In addition to the above references, a letter dated

December 28, 2010, issued by the Jebel Ali Free Zone Authority, shows Mr. Mukesh Chauradiya as a Manager of Vintage and not the director. Also, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mention his occupation as General Manager. It was also observed that Vintage's redemption of loan amount requests was signed by Mr. Mukesh Chauradiya in capacity of Authorized Signatory of Vintage.

117. It is seen from the Loan Agreement dated March 01, 2011 that the Noticee has represented himself to be the Managing Director/Director of Vintage. Having represented himself as being the Managing Director/Director of Vintage, the Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee.

118. In this regard, I note that even though Noticee no.8 claims that he has signed the Loan Agreement as per the instructions of Mr. Arun Panchariya, Noticee no. 6, as per the Loan Agreement dated March 01, 2011, Noticee no. 8 has signed the same as the Managing Director of Vintage, Noticee no. 7 for obtaining loan of USD 9.99 million from EURAM Bank for subscribing to the GDR issue of Texmo. Therefore, I find that Noticee no. 8 has acted as party to the fraudulent scheme of GDR issue of Texmo in connivance with AP and his connected entities and cannot escape liability for the same as he has been instrumental in signing the Loan Agreement that has facilitated the subscription of GDRs by Vintage, Noticee no. 7. Further, I also note that Noticee no. 8 has signed the loan agreements for GDR issuance of approximately 10 other listed companies including: Vikash Metal & Power Ltd. and Rasoya Proteins Ltd., Winsome Yarns Ltd., wherein similar fraudulent scheme of GDR issuance was devised by Mr. Arun Panchariya. I note that Noticee no. 8 was connected to Mr. Arun Panchariya through various other entities owned by Mr. Arun Panchariya such as Ramsai Investment Holdings Private Ltd. and Alka India Ltd. and he was a director in both

these companies. I also note from SEBI's order dated October 22, 2021 in the matter of GDR issue of Rasoya Proteins Ltd., that the Noticee, Mr. Mukesh Chauradiya was again mentioned as Managing Director in the Loan agreement dated March 01, 2011 between Vintage and EURAM Bank for the purpose of availing loan for subscription. Therefore, it is too much coincidence of mistake that Vintage repeatedly designated Noticee no. 8 as a director on more than one occasion by mistake. In this regard, I note that from similar transactions related to the fraudulent GDR issue of Winsome Yarns Ltd. on March 29, 2011, adjudication proceedings were also initiated against Noticee no. 8 and penalty was imposed on him. Noticee no. 8 challenged the order of the Adjudicating officer wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the Company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. 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:

> *"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."*

119. In view of the above, as held by the Hon'ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in which he could put his signature in the Loan Agreement with EURAM Bank under

the designation of Managing Director. From the facts of the case, it is clear that the appellant was holding a position by way of which he could execute binding agreements on behalf of Vintage. Thus, the present circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. Accordingly, I find that Mukesh Chauradiya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue III - Whether the Lead Manager to the Issue, Pan Asia Advisors Ltd. (Noticee No.8) acted as a party to the fraudulent scheme?

120. Pan Asia Advisors Ltd. ("**Pan Asia**"), a UK based entity, was the Lead Manager for the GDR issue of Texmo. It has been alleged in the SCN that Arun Panchariya was the director and beneficial owner of Pan Asia and as the Lead Manager, Pan Asia had handled the GDR issue of Texmo. No replies/submissions have been received from Pan Asia.

121. I note from the material available on record that, Noticee no. 11, provided details of its directorship and its connection with AP to SEBI. On perusal of the same, it was observed that Noticee no. 11 was incorporated on April 24, 2006 and AP was director of Pan Asia during the period August 30, 2006 to September 29, 2011. It is also seen that the name of the said Noticee has been changed from Pan Asia Advisors Ltd. to Global Finance and Capital Limited on February 08, 2013. According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, AP held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.). 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 Texmo took place. So, during the period when the process for issue of GDRs was initiated and the

announcement of allotment of GDRs was done i.e., during October 2010 to April 2011, Arun Panchariya was a director and had a controlling stake in Pan Asia.

122.In this regard, reference is also made to the letter dated February 20, 2012 of Pan Asia addressed to SEBI. By way of the said letter, Pan Asia has provided a summary of the various steps involved in the consummation of a GDR issue, right from the initiation of the issue till the closing of the issue. Pan Asia, as part of the letter, has also provided a list of activities that it is usually required to carry out as the Lead Manager which is given hereunder:

> "1*) Signing the mandate with the Client (i.e. Indian Listed Company).*
>
> *2) Conducting the due diligence that includes documentary evidences as well as a check on the premises owned by the company.*
>
> *5)Then lead manager (PAA) enters into a tri-party Escrow Agreement wherein the parties are the (a) Issuer Company, (b) Lead manager (Pan Asia) and (c) Escrow Agent appointed by the company.*
>
> *6)PAA introduces all the parties to each other by circulating a Working Group List.*
>
> *7)PAA presents the project report of the Issuer Company along with the Offer document to the investor(s). This process runs simultaneously along with the progress on the working group coordination in terms of documentation for the listing.*
>
> *10) As per the opening/closing schedule of the transaction- PAA obtains confirmation from Escrow Agent that the subscription money from the Investors is in place, on the day that is the last day for receipt of the subscription from investors.*
>
> *11) On the closing day/allotment day, PAA closely monitors the documentation that is required by/from each & every working group member for the successful closure of the transaction."*

123.I further note that Pan Asia Advisors Ltd. wherein Mr. Arun Panchariya (Noticee no. 6) was the director and 100% shareholder was the Lead Manager which managed the GDR issue of Texmo and procured the subscriber, i.e. Vintage (Noticee no. 7). I also note that as stated by Texmo, Pan Asia supplied the list of 4 subscribers to the GDR issue to

Texmo which was thereafter, disclosed by Texmo to SEBI. I also note that in reality AP controlled Vintage was sole subscriber to GDR issue which subscribed to GDR issue by obtaining a loan and entering into Loan Agreement with EURAM Bank and defaulted in repayment of balance loan amount of USD 3.49 million, forfeited by EURAM Bank to that extent. It brings out the fact that Pan Asia was well aware of the entire scheme underlying the GDR issue of Texmo. As seen from the sequence of events as described above, the fraudulent scheme was devised by Arun Panchariya using all his connected entities to enact various roles in the GDR issue, including Pan Asia as the Lead Manager. From the fact that AP controlled Noticee no. 9, being its 100% shareholder and director and the fact that Noticee no. 9 was the Lead Manger managing the placement of the GDRs wherein it procured another AP connected entity as the sole subscriber, I note that the whole scheme of subscription was fraudulent, as discussed in the previous paras. I find that Noticee no. 9 in connivance with Noticee no. 6 and its connected entities played an active role in fraudulent scheme of GDR issue of Texmo.

124. In this context, I would like to place reliance of the Order dated October 25, 2016 of the Hon'ble SAT in **Pan Asia Advisors Limited V. SEBI** in Appeal No. 126 of 2013. The Hon'ble SAT while considering the role of the lead manager i.e., Pan Asia Advisors Limited and its Managing Director, Arun Panchariya, with respect to the GDR issue of Asahi Infrastructure & Projects Ltd., which is similar to the present matter, has held,

> "*…instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. 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…*"

125. Accordingly, I find that Noticee No. 9, namely, Pan Asia Advisor Ltd. being an Arun Panchariya owned and controlled entity, acted as a party to the fraudulent scheme, and as such has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue – IV: Whether India Focus Cardinal Fund (Noticee No. 10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12), Leman Diversified Fund (Noticee No. 13), and the FIIs, Cardinal Capital Partners Noticee No. 14), EURAM Bank (Noticee No. 15) and Golden Cliff (Noticee No. 16) have acted in pursuance of the fraudulent scheme?

126. It has been alleged in the SCN that GDRs were issued through the fraudulent scheme to Vintage free of cost and at the cost of other investors of Texmo to the extent of USD 3.49 million. The GDRs were thereafter converted by four sub-accounts (IFCF, HBS, Sparrow and Leman) connected with Arun Panchariya into equity shares of Texmo. All sub accounts, namely, IFCF, HBS, Sparrow and Leman sold the converted equity shares to the tune of Rs. 14.82 crore on Indian stock exchanges (BSE and NSE). Further, all sub accounts together continued to hold total of 1,25,50,000 shares of Texmo. Therefore, it was observed in the investigation that the four sub-accounts, namely IFCF, HBS, Sparrow and Leman, acted as conduits for Arun Panchariya in selling/ holding shares of Texmo through the fraudulent scheme. Considering that GDRs were received by Vintage pursuant to the fraudulent GDR scheme and were partly at free of cost, all were parties to the fraud.

127. It has been further alleged in the SCN that FIIs CCP, EURAM Bank and Golden Cliff got registered as FIIs only to facilitate their sub-accounts to sell the converted shares of Texmo in the Indian securities market. FIIs CCP, EURAM and Golden Cliff did not make any investment in India and facilitated Arun Panchariya connected sub-accounts

in selling the shares received from Vintage on account of cancellation of GDRs. Based on the above, FIIs CCP, EURAM Bank and Golden Cliff facilitated Arun Panchariya connected entities thereby being parties to the fraudulent scheme of GDR issue to perpetrate the fraudulent scheme.

128. In this regard, the summary of the registration of FIIs and sub-accounts is tabulated below:

Table- 14

Sl. No.	**Name of sub a/c**	**Date of registration of sub a/c**	**Registration end date of sub a/c**	**Name of FII under which sub a/c is registered**	**Date of registration of FII**	**Registration end date of FII**
1	India Focus Cardinal Fund	12/12/2008	19/07/2011	European American Investment Bank AG	21/11/2008	20/11/2011
		20/07/2011	19/06/2017	Cardinal Capital partners	20/06/2011	19/06/2017
2	Highblue Sky Emerging Market Fund	18/06/2010	21/10/2012	KBC Aldini Capital Limited	22/03/2010	21/03/2016
		22/10/2012	28/02/2017	Golden Cliff (previously known as Vaibhav Investments Limited)	01/03/2011	28/02/2017

129. The liability of the above-named Noticees are being taken up for consideration in four parts: a) joint role of India Focus Cardinal Fund and Cardinal Capital Partners; b) role of EURAM Bank as an FII c) joint role of Highblue Sky Emerging Market Fund and Golden Cliff; d) role of Sparrow Asia Diversified Opportunities Fund; and role of Leman Diversified Fund.

India Focus Cardinal Fund (IFCF) and Cardinal Capital Partner (CCP)

130. In response to the allegations made in the SCN, IFCF and CCP have not filed any replies/submissions with SEBI.

131. A summary of the shares received by IFCF upon conversion of GDRs and the sale of those shares is provided hereunder:

Table – 15

Name of entity	No. of GDRs converted	No. of shares received on conversion of GDRs	Dates of selling shares	Trade value (Rs.) (BSE)	Total trade value (Rs.) (NSE)	Total trade value (Rs.)
IFCF	42,550	8,51,000	August 2011 to June 2014	22,29,625	57,47,403	79,77,028

132. It is seen from the above table that India Focus Cardinal Fund received 8,51,000 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all 8,51,000 equity shares received by IFCF were then sold by it in the Indian capital market between August 2011 to June 2014 for a total value of Rs. 79,77,028. The shares sold by the sub-account, India Focus Cardinal Fund were done through the FIIs, Cardinal Capital Partners and EURAM Bank.

133. A reference is also made from the GDR order in the matter of Rasoya Proteins Limited that *"letter dated September 15, 2016 addressed by the Financial Services Commission, Mauritius to SEBI. By way of the said letter, it has been informed that in respect of India Focus Cardinal Fund, Cardinal Capital Partners Ltd. was the management shareholder since August 22, 2008, and Arun Panchariya was the beneficial owner. Further, reliance is placed on letter dated April 02, 2012 addressed by India Focus Cardinal Fund to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 01, 2009 to May 31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Pancahriya."*

134. In this regard, reference is made to Arun Panchariya's email dated July 12, 2010, wherein he has stated himself to be the Investment Manager of IFCF and Chief Investment Officer of Cardinal Capital Partners in the year 2010. Further, reference is drawn to letter

dated April 02, 2012 addressed by India Focus Cardinal Fund to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 01, 2009 to May 31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Panchariya.

135. Arun Panchariya in his submissions before me has also stated that Cardinal Capital Partners, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund. Reference is also made to the Administrative Fine Statement passed by the Dubai Financial Services Authority (DFSA), against Arun Panchariya, in which DFSA had imposed a fine of USD 12,000 for non-disclosure of certain directorships that he was holding, while applying for authorization as a Licensed Director of a Firm in Dubai International Financial Centre(DIFC). Such information furnished by him, which was false, misleading or deceptive, included *inter alia,* the failure to disclose his directorship/ controlling position in IFCF.

136. From the above, it is seen that complete shareholding in India Focus Cardinal was held by Cardinal Capital Partners Ltd., and in turn the complete shareholding in Cardinal Capital Partners Ltd. was held by Arun Panchariya. So, both India Focus Cardinal Fund and Cardinal Capital Partners Ltd. were controlled by Arun Panchariya during the period of the sale of converted equity shares in the Indian securities market.

137. In the present proceedings, the allegation is that Cardinal Capital Partners Ltd., a registered FII facilitated India Focus Cardinal Fund, its sub-account to sell the illegally acquired shares of Texmo in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Texmo. It has also been brought out above that India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) and Cardinal Capital Partners Ltd. were both owned and controlled by Arun Panchariya. In view of the same, I am convinced that Cardinal Capital Partners Ltd. worked as a conduit for Arun Panchariya

by providing a vehicle through India Focus Cardinal Fund to sell the illegally acquired shares of Texmo in the Indian securities market. Accordingly, I find that Cardinal Capital Partners Ltd. and India Focus Cardinal Fund have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

EURAM Bank

138. EURAM Bank in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN are *interalia* provided hereunder –

138.1. In earlier orders, covering essentially the same facts and addressing the same issues as in the present matter, Whole Time Member, SEBI has granted relief to EURAM Bank, so similar relief should be granted in the present matter and the charges should be dropped on the basis of issue estoppel/cause of action estoppel;

138.2. Euram Bank's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited and he had no material role in EURAM Bank; and

138.3. Euram Bank offered a bouquet of financial services, including providing a terminal to sub-accounts to make investments — the investments themselves were made directly by the clients.

139. The Noticee has specifically placed reliance on (i) **Hope Plantation Ltd. v. Taluk Land Board, (1999) 5 SCC 590** (ii)**Vijayabai and Others v. Shriram Tukaram, and Others (1999) 1 SCC 693 and** (iii) **Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787** to assert issue estoppel / cause of action estoppel. In respect of the assertion made by the Noticee, it would be relevant to examine the principle as laid down in the above-mentioned cases. The specific references made by the Noticee are as follows:

Hope Plantation Ltd. v. Taluk Land Board, (1999) 5 SCC 590

" When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'.

Vijayabai and Others v. Shriram Tukaram, and Others (1999) 1 SCC 693 –

" It would be impermissible to permit any party to raise an issue, inter se, where such an issue under the very Act has been decided in an early proceeding. Even if res judicata in its strict sense may not apply but its principle would be applicable.

Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787–

Reliance has been placed by the Noticee on the undermentioned English cases, which were cited by the Hon'ble Supreme Court in the above-mentioned matter.

" In Thoday v. Thoday, 1964 (1) All ER 341, Lord Diplock held: "cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties.

140. At this juncture, I find it relevant to upfront clarify that the Order referred to by the Noticee, wherein EURAM Bank has been discharged of the allegations made in the SCN was purely based on the facts and circumstances as available on record. However, this does not entitle it to advance the ground of issue estoppel/ cause of action estoppel in relation to the present proceedings, in view of the difference in the factual matrix. In this regard, reliance is placed on the case of ***Gopal Prasad Sinha vs. State of Bihar (1970) 2 SCC 905***, whereby the Supreme Court held that the fundamental principle underlying the rule of issue estoppel is that the same issues of fact and law should have been determined in the prior litigation. So, for the invocation of the principle of issue estoppel, the issues of fact and law in the present matter, as they relate to the Noticee, should be the same as that determined in the Order referred to by the Noticee. It is seen that the SCN, from which the present proceedings emerge, has alleged that EURAM Bank facilitated India Focus Cardinal Fund to become its sub account and sell the

converted shares of Texmo in the Indian securities market. As regards SEBI's Order of September 05, 2017 bearing number SEBI/WTM/SR/EFD/64/09/2017, it is seen that the allegation in the said matters pertained to the facilitation of EURAM Bank for the sale of converted equity shares of Asahi Infrastructure & Projects Limited, Avon Corporation Limited, CAT Technologies Limited, IKF Technologies Limited, K Sera Sera Limited and Maars Software International Limited. So, it is evident that the facts in issue in the matters decided earlier were distinct from the facts in issue in the present matter. Thus, the principle of issue estoppel is inapplicable in the present proceedings.

141. The cause of action in both the matters have arisen from different sets of facts. The case here is that the Noticee has adopted the same strategy with respect to different companies. To illustrate, the cause of action in the present matter emerges from the facilitation granted by EURAM Bank to India Focus Cardinal Fund to become its sub account and sell the converted shares of Texmo in the Indian securities market. In contrast, the cause of action in the previous matters emerged from the facilitation granted by EURAM Bank for the sale of converted equity shares of Asahi Infrastructure & Projects Limited, Avon Corporation Limited, CAT Technologies Limited, IKF Technologies Limited, K Sera Sera Limited and Maars Software International Limited. Furthermore, the orders in the said matters are in the nature of *judgments in personam* and therefore, not binding in other proceedings. In view of the above, I note that the principle of cause of action estoppel does not apply as contended.

142. Coming to the merits of the allegation made against EURAM Bank, which is that its sub account India Focus Cardinal Fund sold the converted shares of Texmo in the Indian securities market. EURAM Bank was registered as FII in India during the period November 21, 2008 to November 20, 2011. IFCF was a Sub–account of EURAM Bank during the period December 12, 2008 to July 19, 2011. It has already been established in the previous part of this order that the issuance of GDRs to Vintage, (an Arun Panchariya related entity), was illegal. It has also been established that India Focus

Cardinal Fund was controlled and managed by Arun Panchariya. In view of the above, the fact that Arun Panchariya was a director in EURAM Bank Asia Ltd. (which was incorporated in Asia), which was a joint venture between EURAM Bank (which was incorporated in Asia) and Pan Asia Advisors Ltd., another Arun Panchariya entity becomes quite relevant. It has been stated by EURAM Bank that "*AP was never the director or had any material role in Euram Bank*". However, I find that in the Pledge Agreement signed between Texmo and EURAM Bank, a stamp mark reads, "*Signature verified Dir. AP*". Another stamp mark on the said Pledge Agreement reads, "*EURAM Bank Asia Ltd., Verified With Original, Name: Arun Panchariya, Date: 12th March, 2011, Reg. No. 0868*". It is quite clear that the arm's length relationship between EURAM Bank Asia Ltd. and EURAM Bank, as asserted by the Noticee, was not existing or maintained in fact. There was certainly a relationship between EURAM Bank and Arun Panchariya which existed beyond EURAM Bank Asia Ltd. Further, it has been brought out that during the relevant period the sub-account availing the services of EURAM Bank as an FII happened to be an Arun Panchariya entity. In this regard, EURAM Bank has contended that they provided a bouquet of services, which included the sub-account facility to clients, and that it was simply a business decision. I am not convinced with the defence that it had not done any facilitation but only extended services as part of its services. This is all the more evident from the fact that as an FII, EURAM did not make any direct investments in the Indian securities market, but was using its FII status to provide sub-account facilities to its clients to access the Indian securities market. As noted above, IFCF (which was registered as a sub account of FII Euram Bank) converted 42,550 GDRs and sold 8,51,000 shares of Texmo for Rs. 79,77,028 in the Indian securities market. Thus, it cannot be a simple business decision or coincidence that the entity availing the sub-account facility happens to be an entity managed and controlled by Arun Panchariya, at a time when EURAM Bank was in a joint venture with him and he was signing the agreements that were being entered into by EURAM Bank. There is a clear and evident nexus between EURAM Bank and Arun Panchariya.

143. In this regard, reference is made to the Hon'ble SAT's **Order dated February 05, 2020 in Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI**, whereby the role of EURAM Bank has been acknowledged. The Hon'ble SAT has stated that –

> *"This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). 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. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted."*

144. Thus, I find that EURAM Bank was acting as a conduit of Arun Panchariya and facilitated India Focus Cardinal Fund to become its sub-account and sell the converted shares of Texmo in the Indian securities market. Accordingly, I find that EURAM Bank has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Highblue Sky Emerging Market Fund and Golden Cliff

145. In response to the allegations made in the SCN, HBS and CCP have not filed any replies/submissions with SEBI.

146. A summary of the shares received by HBS upon conversion of GDRs and the sale of those shares is provided hereunder:

Table – 16

Name of entity	No. of GDRs converted	No. of shares received on conversion of GDRs	Dates of selling shares	Trade value (Rs.) (BSE)	Total trade value (Rs.) (NSE)	Total trade value (Rs.)

HBS	4,65,383	93,07,660	March 2012 to July 2012	3,27,70,717	5,49,77,510	8,77,48,227

147. It is seen from the above table that Highblue Sky received 93,07,660 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all the 93,07,660 equity shares received by Highblue Sky Fund were then sold by it in the Indian capital market during March 2012 and July 2012 for a total value of Rs. 8,77,48,227. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff.

148. In this regard, it is seen that Reema Narayan Shetty was a director of Golden Cliff from May 16, 2013 to August 01, 2014. There was a common period of two months (May 16, 2013 to July 16, 2013) when she was a director of Golden Cliff, which coincided with the period of selling of shares by Highblue Sky Emerging Market Fund.

149. Reference is made to emails dated March 02, 2016 and April 29, 2016 whereby Highblue Sky Emerging Market Fund has provided its shareholding and directorship details. The details provided by way of the above emails bring out the connection between Reema Narayan Shetty and Arun Panchariya. The details are as under:

149.1. Reema Narayan Shetty was the authorised signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011. It has already been established above that India Focus Cardinal Fund was managed and operated by Arun Panchariya.

149.2. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014.

149.3. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky Emerging Market Fund, she also became the beneficial owner of Highblue Sky Emerging Market Fund.

150. As regards Anant Kailash Chandra Sharma, it is seen from the above mentioned emails that —

150.1. He joined as a director of Highblue Sky Emerging Market Fund on August 11, 2014.

150.2. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 09, 2014.

150.3. He also became the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky Emerging Market.

151. Furthermore, it is seen from the information available on the MCA website that Anant Sharma was a director in the following Companies between 2009 and 2016:

Table-17

Sr. No.	**Director**	**Company**	**Start Date**	**End Date**
1	Anant Kailash Chandra Sharma	Alka India Limited	01/12/2009	-
2	Anant Kailash Chandra Sharma	Sai Sant Advisory (India) Private Ltd.	01/12/2009	18/03/2016
3	Anant Kailash Chandra Sharma	Vintage FZE (India) Private Limited	22/12/2009	18/03/2016
4	Anant Kailash Chandra Sharma	Ramsai Investment Holdings Private Limited	01/09/2015	18/03/2016

152. It is seen from the MCA website that between 2009 and 2016, the tenure of Arun Panchariya as a director coincided with Anant Sharma's tenure as a director in the following companies:

Table-18

Sr. No.	**Director**	**Company**	**Start Date**	**End Date**

1	Arun Panchariya	Sai Sant Advisory (India) Private Ltd.	31/08/2007	20/10/2010
2	Arun Panchariya	Ramsai Investment Holdings Private Limited	04/02/2008	18/08/2010

153. Further, between 2009 and 2016, the tenure of Mukesh Chauradiya as a director coincided with Anant Sharma's tenure as a director in the following companies:

Table-19

Sr. No.	Director	Company	Start Date	End Date
1	Mukesh Chauradiya	Alka India Limited	31/01/2006	01/06/2010
2	Mukesh Chauradiya	Ramsai Investment Holdings Private Limited	17/08/2010	17/03/2015

154. Furthermore, from the MCA website it is seen that between 2009 and 2016, the tenure of Satish Panchariya and Ashok Panchariya (related to Arun Panchariya) as directors coincided with Anant Sharma's tenure as a director in the following companies:

Table-20

Sr. No.	Director	Company	Relevant Period
1	Satish Ramswaroop Panchariya	Alka India Limited	01/02/2000 onwards
2	Ashok Ramswaroop Panchariya	Alka India Limited	29/04/2005 onwards
3	Ashok Ramswaroop Panchariya	Ramsai Investment Holdings Private Limited	17/03/2016 onwards
4	Ashok Ramswaroop Panchariya	Sai Sant Advisory (India) Private Ltd.	17/03/2016 onwards
5	Ashok Ramswaroop Panchariya	Vintage FZE (India) Private Limited	30/09/2007 onwards

155. So, from the above-mentioned tables, it is seen that Anant Sharma was a director in the companies where the directorships were either held by Arun Panchariya or Arun Panchariya related entities.

156. Also, it would be relevant to see the shareholding pattern of the companies in which Anant Sharma held directorships:

Table-21

Serial No.	**Company**	**Shareholding Pattern**
1	Vintage FZE (India) Private Limited	*As on September 30, 2010* ▪ Vintage FZE – 99.98 % (9998 shares) ▪ Arun Panchariya – 0.01% (1 share) ▪ Mukesh Chauradiya – 0.01% (1 share) *As on September 30, 2013* ▪ Vintage FZE – 99.99 % (9998 shares) ▪ Mukesh Chauradiya – 0.02% (2 shares)

157. Thus, it is seen from the above that Anant Sharma was involved in such businesses which were owned/managed by Arun Panchariya or related entities. It is to be noted that Anant Sharma became the owner of Golden Cliff upon receiving the shares from Reema Narayan Shetty. The connection that exists between Anant Sharma and Reema Narayan Shetty, is that both are related to Arun Panchariya. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff.

158. Furthermore, it is seen from the record that Daniel Baumslag was a director of Highblue Sky from March 05, 2010 to May 16, 2011. Also, it is seen from the record that as on June 13, 2011, Daniel Baumslag was the beneficial owner of Highblue Sky.

159. In the present proceedings, the allegation is that Golden Cliff, registered FII, facilitated Highblue Sky Emerging Market Fund, their sub-account to sell the illegally acquired shares in the Indian securities market.

160. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Texmo. It has also been brought out that Highblue Sky Emerging Market Fund, which came to possess the GDRs and converted them into equity shares, and Golden Cliff were both Arun Panchariya related entities. Daniel Baumslag, a director of Highblue Sky as on June 13, 2011 was the beneficial owner of Highblue Sky Emerging Market Fund. It has already been brought out that the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014 was Anant Sharma, by virtue of being the beneficial owner of Golden Cliff, which holds 100% shareholding in Highblue Sky Emerging Market Fund. Also, it has already been brought out above that Anant Sharma was also connected to Arun Panchariya.

161. In view of the same, I am convinced that Golden Cliff worked as a conduit for Arun Panchariya and Highblue Sky Emerging Market Fund to sell the illegally acquired shares of Texmo in the Indian securities market. Accordingly, I find that Highblue Sky Emerging Market Fund and Golden Cliff have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund

162. A summary of the shares received by Sparrow and Leman upon conversion of GDRs and the sale of those shares is provided hereunder:

Table – 22

Name of entity	No. of GDRs converted	No. of shares received on conversion of GDRs	Dates of selling shares	Trade value (Rs.) (BSE)	Total trade value (Rs.) (NSE)	Total trade value (Rs.)
Sparrow	49,567	9,91,340	February 2012 to April 2012	1,03,43,188	1,14,48,321	2,17,91,509
Leman	70,000	14,00,000		1,40,13,586	1,66,82,453	3,06,96,039

163. It is seen from the above table that Sparrow received 9,91,340 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all the

9,91,340 equity shares received by Sparrow were then sold by it in the Indian capital market during February 2012 to April 2012 for a total value of Rs. 2,17,91,509.

164. On the other hand, it is seen from the above table that Leman received 14,00,000 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all the 14,00,000 equity shares received by Leman were then sold by it in the Indian capital market during February 2012 to April 2012 for a total value of Rs. 3,06,96,039.

165. It was observed that these two FII sub-accounts namely Sparrow and Leman are connected to one another on the basis of common authorized signatory Mr. Nayan Agarwal and common directors and these two FII-sub-accounts are connected to AP by virtue of connection with Highblue Sky Emerging Market Fund.

166. With regard to HBS (Noticee no. 11), I note that the SCN alleges the following connection of HBS to AP:

> *KYC documents of HBS were obtained from custodian ICICI Bank Ltd. It was observed that it is having 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. Google search reveals that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Limited wherein Mr. Mukesh Chauradiya was director and CFO in 2011. Examination of website of Aurisse International Limited reveals that it shares common address and contact number with HBS.*

167. From the above-mentioned connections between Sparrow, Noticee no. 12 and AP such as beneficial owners of Noticee no. 16 being associates of AP, and the fact that Sparrow received the equity shares after conversion of GDRs (which were issued without consideration), I find that Sparrow 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.

168. I also note that Enlil Fund, a sub- fund of Global Emerging Strategies Fund Ltd., had subscribed to the Participating Shares of Leman and had paid subscription amount in kind i.e. by delivering GDRs of Texmo and that the Leman received the amount equal to the value of Texmo's GDRs as subscription amount for its Participating Shares which implies that the Leman was holding the said shares of Texmo as investment / subscription amount of the subscriber, namely, The Enlil Fund.

169. The SCN has alleged that Leman Diversified Fund had Al Jalore and Image Securities Limited as its investors. This allegation is based on the fact that Aslam Kanowah was a director of Highblue Sky Emerging Fund and was also a director of Aspire along with one Mr. Ashish Nanda who is the Managing Director of Image Securities Limited.

170. As regards, investment of Image Securities Limited (an Ashish Nanda entity), it has been submitted by Leman that the said assertion is without any basis.

171. In this regard, it has already been brought out above that Highblue Sky Emerging Market Fund, an Arun Panchariya entity, was related to Aspire Emerging Fund, an entity owned by Ashish Nanda.

172. I also note that Sparrow has been involved in several other fraudulent GDR issues devised by AP and regulatory directions have also been issued against it in several matters including Winsome Textile Industries (order dated December 15, 2021), Zenith Birla (India) Ltd. (order dated March 30, 2021), Farmax India Ltd. (order dated July 14, 2020), Southern Ispat and Energy Ltd. (order dated October 22, 2021), Winsome Yarns Ltd. (order dated October 26, 2021), Rainbow Papers Ltd. (order dated October 26, 2021), etc.

173. In view of the above connection, I find that Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund have acted as a conduit for Arun Pancahriya to sell the illegally acquired shares in the Indian capital market.

174. Accordingly, I find that Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue V - Whether Mr. Arun Panchariya (Noticee No. 6), Vintage (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12) and Leman Diversified Fund (Noticee No. 13) should be directed to disgorge the illegal gains?

175. As already stated a Show-cause Notice dated April 11, 2019 was issued to Noticee Nos. 6, 7, 10, 11, 12 and 13 for disgorging of profits made through the sale of shares, upon conversion of fraudulently acquired GDRs of Texmo.

176. I note that Noticee Nos. 10, 11, 12, and 13 sold shares of Texmo, upon conversion of GDRs, in the Indian capital market and earned **Rs. 79,77,028**; **Rs.8,77,48,227; Rs. 2,17,91,509** and **Rs. 3,06,96,039** respectively. Thus, the said Noticees made a total gain of **Rs. 14,82,12,803.** I also note that the acquisition of the GDRs was due to Noticee No.7, which had subscribed to the GDR issue of Texmo, and the onward transmission to Noticee Nos. 10, 11, 12 and 13 who then converted the GDRs into equity shares and sold them in the market for the above mentioned amount. The above mentioned Noticees i.e. Noticee Nos. 6, 7, 10, 11,12 and 13 were either owned/ controlled or related to Noticee No. 6, Arun Panchariya, who had devised the whole scheme for making illegal gains. Thus, the total gain of **Rs. 14,82,12,803** made was a consequence of the collective action of Noticee Nos. 6, 7, 10, 11, 12 and 13. In view of the above, as alleged in the

SCN, I find that Noticee Nos. 6, 7, 10, 11, 12 and 13 are jointly and severally liable to disgorge **Rs. 14,82,12,803**.

177. I note that vide order dated June 28, 2022 passed by the Adjudicating Officer wherein a various penalty have been imposed on Noticee No. 1 to 6 and 8. However, I also note that five appeals have been filed against the order dated June 28, 2022 wherein the Hon'ble SAT vide order dated September 30, 2022 reduced the penalties in a following manner:

Sr. No	**Noticee**	**Provisions**	**Penalties vide Adjudication Order dated June 28, 2022**	**Reduced penalties vide SAT Order dated September 30, 2022**
1	Texmo Pipes and Products Ltd	Section 15HA of SEBI Act	Rs. 10 Crores	Rs. 25 Lakhs
		Section 23E of SCRA	Rs. 25 lakhs*	Nil
2	Mr. Sanjay Agrawal	Section 15HA of SEBI Act	Rs. 20 Lakhs	Rs. 20 Lakhs
3	Mr. Vijay Prasad Pappu	Section 15HA of SEBI Act	Rs. 20 Lakhs	Rs. 10 Lakhs
4	Mr. Shanti Lal Badera	Section 15HA of SEBI Act	Rs. 10 Lakhs	Nil
5	Mr. Rishabh Kumar Jain,	Section 15HA of SEBI Act	Rs. 20 Lakhs	Rs. 2 Lkahs

** As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.*

CONCLUSIONS

178. Thus, from the above, it is concluded that Texmo in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for the GDRs, at the cost of the shareholders / investors of Texmo.

179. Besides Texmo, I note that, Sanjay Agrawal (Noticee No. 2), Vijay Prasad Pappu (Noticee No. 3), Shri Shanti Lal Badera (Noticee No. 4) are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company as its directors, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. They have misled the Indian investors by concealing the information of entering into Pledge and loan Agreement to facilitate and finance the issue of GDRs of company at the cost of shareholders and then cancelling all of the GDRs of Texmo before its GDR termination program and thereby fraudulently issuing shares underlying the GDRs and then selling those converted shares in Indian market by AP connected entities for an approximate amount of Rs. 15 crores. Further, no information was provided to Stock Exchanges and in annual reports of company about pledge and loan agreement. Moreover, Texmo made false announcement that its GDRs were genuinely subscribed thus causing a fraud on the innocent investors. I note that the magnitude of fraud is enormous to the extent of the amount of issue of GDR i.e. USD 9.99 million. Further, there is nothing on record to show that loan amount to the tune of USD 3.49 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) which was paid by Texmo at the expense of shareholders of company has been paid back to the company.

180. Vintage FZE, Noticee No.7, was part of the fraudulent scheme as a consequence of which, it received the GDRs without payment of consideration. Arun Panchariya, Noticee No. 6, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, Noticee No. 8, a key manager in Vintage was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan

was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of Texmo. Further, Pan Asia Advisors Ltd., Noticee No. 9, the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, Noticee No. 10; Highblue Sky Emerging Market Fund, Noticee No. 11; Sparrow Asia Diversified Opportunities Fund, Noticee No. 12 and Leman Diversified Fund. The above entities were subaccounts of Cardinal Capital Partners, Noticee No. 14; EURAM Bank, Noticee No. 15; and Golden Cliff, Noticee No. 16. These entities were all related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same, I have found that Noticee Nos. 10 to 13 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

181. The above summary brings out that Arun Panchariya was the principal architect in in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Texmo and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through IFCF, HBS, Sparrow and Leman with the intention of making illegal gains. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market. In this context, it is noted that in the matter of Pan Asia Advisors Limited and Another vs. SEBI (Appeal No. 126 of 2013), the Hon'ble SAT, while dismissing the appeal filed by the appellants therein (against the SEBI Order inter alia prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had inter alia observed: *"… apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were*

subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. 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 Arun Panchariya. 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. …" Further, in the matter of **Jindal Cotex Limited and Ors vs. SEBI** (Date of Decision: February 5, 2020 Appeal No. 376 of 2019), the Hon'ble SAT had observed: *"This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include PAN Asia Advisors Limited and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). 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. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted."* It is seen that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also participated in such schemes. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of the offences that have been perpetrated by Arun Panchariya, I am of

the considered opinion that stern measures need to be taken against him and his connected entities.

182. Further, as a consequence of the collective action of Noticee Nos. 6, 7, 10, 11, 12 and 13, a total gain of Rs. 14,82,12,803 was made by Noticee Nos. 10, 11, 12 and 13, and as such, the said Noticees are jointly and severally liable to disgorge the above amount.

DIRECTIONS

183. I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B (1) the Securities and Exchange Board of India Act, 1992 hereby pass the following directions:

183.1. Texmo Pipes and Products Limited 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.

183.2. Texmo Pipes and Products Ltd. is also hereby directed to continue to pursue measures to bring back the outstanding amount of USD 3.49 million, the GDR proceeds into its bank account in India within a period of one year. Directors of Texmo to ensure the compliance of this direction by Noticee No. 1 and Noticee No. 1 shall furnish a Certificate from a Chartered Accountant of 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*".

184. The Noticees, as listed in the table below, shall be restrained from accessing the Indian 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:

Noticee No.	Name of the Noticee	Period of Debarment
2.	Sanjay Agrwal	3 years
3.	Vijay Prasad Pappu	3 years
4.	Shanti Lal Badera	1 year
5.	Rishabh Kumar Jain	1 year
6.	Arun Panchariya	10 years
7.	Vintage FZE	8 years
8.	Mukesh Chauradiya	3 years
9.	Pan Asia Advisors Ltd.	8 years
10.	India Focus Cardinal Fund	5 years
11.	Highblue Sky Emerging Market Fund	5 years
12.	Sparrow Asia Diversified Opportunities Fund	5 years
13.	Leman Diversified Fund	5 years
14.	Cardinal Capital Partners	2 years
15.	European American Investment Bank AG	2 years
16.	Golden Cliff	2 years

185. The Noticees, as listed in the table below, shall be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for the respective periods as provided hereunder:

Noticee No.	Name of the Noticee	Period (in years)
6.	Arun Panchariya	10
8.	Mukesh Chauradiya	3

186. Mr. Arun Panchariya (Noticee No. 6), Vintage FZE (Noticee No. 7), India Focus Cardinal Fund (Noticee No.10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12) and Leman Diversified Fund (Noticee No. 13) are further directed to disgorge illegal gains of a total gain of Rs. **14,82,12,803**, made by way of sale of equity shares of Texmo along with interest of 12% per annum from July 15, 2014 till the payment of disgorgement amount, within a period of 45 days from the date of this order. As already stated, the liability of Nos. 6, 7, 10, 11,12 and 13 to disgorge the said amount shall be joint and several. In the event, Noticee Nos. 6, 7, 10,11,12 and 13 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 the said 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, whichever is later.

187. The amount, as directed to be disgorged in para above, shall be remitted by Noticees no. 6, 7, 10, 11, 12 and 13 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".

188. The above directions shall come into force with immediate effect.

189. The obligation of the Noticees debarred in the present 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, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticees debarred in the present Order, in the F&O segment of the Stock Exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

190. The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in para above, who may already be undergoing any period of debarment with respect to similar issues of GDRs.

191. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

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

Place: Mumbai **ANITHA ANOOP**

Date: February 28, 2023 **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA