WTM/AB/IVD/ID4/9275/2020-21

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 respect of:

Sr. No.	Name of the Noticee	PAN
1.	Birla Cotsyn (India) Limited	PAN: AAACJ1362K
2.	Mr. P.V.R. Murthy	PAN: ABRPM1271B
3.	Mr. Yashovardhan Birla	PAN: AAJPB2505N
4.	Mr. Y.P. Trivedi	PAN: AAFPT3468G
5.	Mr. Mohandas Adige	PAN: AARPA3809L

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

In the matter of Birla Cotsyn (India) Limited

1. Present proceedings have emanated from the show cause notice dated January 09, 2018 (hereinafter referred to as, "**the SCN**") issued to the Noticees, alleging violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, "**SEBI Act, 1992**") read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003'**) by Birla Cotsyn (India) Limited (hereinafter referred to as "**the Company**"/ "**Noticee No. 1**"/ "**BCIL**") and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 5. The Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11B and

11(4) of the SEBI Act, 1992 should not be issued against them. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:

Annexure No.	Details
1.	BCIL letter dated June 08, 2015
2.	Vintage Loan Agreement dated February 23, 2010 with EURAM Bank
3.	Company's resolution in its meeting on December 21, 2009
4.	Minutes of the Board Meeting dated December 21, 2009 of BCIL
5.	Pledge Agreement dated February 23, 2010 between BCIL and EURAM Bank
5A	Escrow account statement
6.	BCIL's retail bank account statement
7.	Vintage's loan account statement

2. As can be noted from the SCN, the aforesaid SCN came to be issued against the Noticees in view of the fact that Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") noticed that some arrangements were being perpetrated by certain persons/ entities in respect of issuance of Global Depository Receipts (hereinafter referred to as "**GDR**") and therefore, SEBI conducted investigation into the GDR issue of various companies including BCIL for its GDR issue made on March 15, 2010, details of which are tabulated as below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
15-March-2010	9.69 (at USD 2.58 each GDR)	24.99	HSBC Bank	96,89,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

The GDRs of BCIL were subscribed by only one entity Vintage FZE (hereinafter referred to as "**Vintage**"), by obtaining a loan through credit agreement from the European American Investment Bank (hereinafter referred to as "**EURAM Bank**"), a bank based in Austria and further the Noticee No. 1 (BCIL) had provided security for the loan obtained by Vintage from EURAM Bank by pledging the GDR proceeds, through account charge agreement with the EURAM Bank.

3. The SCN contained *inter alia* the following basic allegations:

a) BCIL issued 9.69 million GDRs (amounting to USD 24.99 million) on March 15, 2010, equivalent to 96,89,00,000 equity shares of Rs. 1 each. Vintage was the only entity to have subscribed to 9.69 million GDRs (amounting to USD 24.99 million) of BCIL and the subscription amount was paid by obtaining loan from EURAM Bank. Details of receipt of GDR proceeds in the BCIL's EURAM Bank a/c no. 580015 are as given below:

Date of credit of funds	Credit amount (US$)
March 12, 2010	24,997,620

b) The Loan Agreement (**Annexure 2 to SCN**) was signed by Shri Arun Panchariya on behalf of Vintage as Managing Director of Vintage for subscription of GDRs of BCIL. The following was inter-alia mentioned in the Loan agreement:

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

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

2) *Pledge of the account no. 580015 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."*

b) *"Nature and purpose of facility"* is "*To provide funding enabling Vintage FZE to take down GDR issue of 9,689,000 Luxembourg public offering and may only be transferred to Euram account nr. 580015, Birla Cotsyn (India) Limited.*"

c) BCIL provided security towards the loan obtained by Vintage, through Pledge Agreement dated February 23, 2010 (**Annexure – 5 to SCN**) signed between BCIL and EURAM Bank, wherein BCIL pledged GDR proceeds against the loan availed by Vintage for subscription of its GDRs. The Pledge Agreement was signed by Mr. P. V. R. Murthy, director of BCIL (Noticee No. 2) and the preamble of the Pledge Agreement states as under:

"By loan agreement K23022010-005 (hereinafter referred to as the "Loan Agreement") dated 23 February 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 24,997,620.00. The pledgor has received a copy of the Loan Agreement No. K23022010-005 and acknowledges and agrees to its terms and conditions."

d) P.V.R. Murthy (Noticee No 2), director of BCIL, executed the Pledge Agreement with EURAM Bank (i.e. BCIL provided security for loan availed by Vintage from EURAM Bank for subscription of GDRs of BCIL). The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank (i.e. Vintage availed loan of USD 24.99 million from EURAM Bank for subscription of GDRs of BCIL).

e) These agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of BCIL. The GDR issue would not have been subscribed had BCIL not given any such security towards the loan taken by Vintage.

f) The fraudulent arrangement of Credit Agreement and Account Charge Agreement, which resulted in the fraudulent scheme of GDR issue of the company, was not disclosed to the stock exchange. The company reported to the stock exchange on March 16, 2010 that *"…at the meeting of the Committee of the Board of Directors of the Company, duly convened and held on March 15, 2010, the Company has allotted to 'The Bank of New York Mellon' in its capacity as Depositary, 968,900,000 fully paid equity shares of Re. 1.00 each of the Company to be represented by a global master GDR certificate representing 9,689,000 Global Depository Receipts."* The corporate announcement made by the company to BSE reported misleading news which contained information in a distorted manner and might have influenced decision of investors and was therefore found to be fraudulent in nature.

g) Information regarding signing of pledge agreement is of material information of contingent liability to the extent of GDR issues. Suppression of such material information shows that the corporate announcement was primarily meant to mislead Indian retail investors that GDRs were fully subscribed, whereas the GDR issue was supported by the company itself.

h) The directors of BCIL, namely P.V.R. Murthy (Noticee No 2), Yashovardhan Birla (Noticee No 3), Y.P. Trivedi (Noticee No 4) and Mohandas Adige (Noticee No 5) who approved the board resolution in its meeting on December 21, 2009, had authorized the EURAM Bank to use the BCIL's GDR proceeds deposited with EURAM Bank as security in connection with loan and had authorized the director P.V.R. Murthy (Noticee No 2) to sign any application, agreement etc. as may be required by the EURAM Bank. The director P.V.R. Murthy (Noticee No 2) had executed the Pledge Agreement on the basis of such resolution. The relevant extracts of the resolution (**Annexure – 3 to SCN**)**,** as provided by EURAM Bank, are as under:

"RESOLVED THAT a bank account be opened with Euram Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the

Company."

Resolution also states that:

"RESOLVED FURTHER THAT Shri P.V.R. Murthy, Director and Shri Tushar Dey, Company Secretary of the Company, be and are hereby jointly and 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.."

Resolution further states that:

"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."

i) The above acts of concealing and suppressing material facts about the fraudulent arrangement of the Pledge and Loan Agreements by BCIL and its Board of Directors found to be in violation of provision of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('SEBI (PFUTP) Regulations, 2003').

4. SCN also advised the Noticees to file their reply within a period of 21 days from the date of receipt of the SCN. The Noticees filed their separate reply/representation. The contentions raised by the Noticees in their respective replies/written submissions are detailed separately in ensuing paragraphs.

INSPECTION, REPLY, HEARING AND WRITTEN SUBMISSIONS:

5. The Noticee no. 1 vide its letter dated January 29, 2018, *inter alia*, sought extension of time for filing its reply. Further, vide letter dated February 15, 2018, it requested for inspection of documents and for a personal hearing. Inspection was granted to the Noticee no. 1 on March 20, 2018. Subsequently, vide letter dated March 29, 2018, Noticee no. 1

sought for further documents. Vide SEBI's letter dated April 06, 2018, the Noticee no. 1 was, *inter alia*, informed that all the documents relied upon in the SCN have already been provided in the inspection on March 20, 2018. Noticee no. 4 vide its letter dated January 19, 2018, filed its reply to the SCN. Since the SCN could not be delivered to Noticees no. 2 and 5, affixture of the SCN was done on March 06, 2018 at the last known address of Noticees no. 2 and 5.

6. In compliance with the principles of natural justice, the Noticees were provided an opportunity of personal hearing on September 24, 2018. Vide a joint letter dated September 10, 2018 on behalf of Noticee no. 1 and Noticee no. 3, it was submitted that the company would be filing an application for settlement under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as "**Settlement Regulations**") and hence sought for keeping the SCN in abeyance and adjourning the hearing to a later date. SEBI vide its letter dated September 19, 2018 informed the Noticees that as specified under Section 7(1) of the Settlement Regulations, filing for application of settlement will not affect the continuance of the proceedings except that of passing final order. Vide a joint letter dated September 21, 2018 on behalf of Noticee no. 1 and Noticee no. 3, time was sought for filing reply and for an adjournment of the hearing scheduled for September 24, 2018.

7. The Noticee no. 4 vide letter dated September 12, 2018, sought for keeping the matter in abeyance since the company had filed an application for settlement. Further, vide letter dated September 21, 2018, Noticee no. 4 sought time for filing reply to the SCN. Noticee no. 5 vide letter dated September 18, 2018, also sought for keeping the matter in abeyance and for adjourning the hearing scheduled for September 24, 2018, as he would also be filing an application for settlement. The notice of hearing for September 24, 2018 was affixed on the last known address of Noticee no. 2 on September 17, 2018. Further, another affixture was done on September 21, 2018. No one appeared for the hearing on September 24, 2018, as Noticees no. 1, 3, 4 and 5 sought for adjournment and Noticee no. 2 did not appear for the hearing, nor did he file any letter seeking adjournment.

8. Another opportunity for personal hearing was granted to the Noticees on November 20,

2018. Noticees no. 1, 3, 4 and 5 vide a joint letter dated October 31, 2018, sought adjournment for the hearing due to unavailability of its advocates. Accordingly, the hearing scheduled for November 20, 2018 was adjourned to November 26, 2018. The hearing notice for Noticee no. 2 was affixed on October 26, 2018 at the Noticee's last known address. However, Noticee no. 2 did not appear for the hearing on November 20, 2018, nor did it file any letter seeking another date of hearing. Hence, I note that the Noticee No. 2 has neither filed any reply to the SCN nor appeared for availing the opportunity of hearing. Meanwhile, vide letter dated November 21, 2018, a joint reply to the SCN was filed by Noticees no. 1, 3, 4 and 5. Further, Noticee no. 3, 4 and 5 also filed separate replies vide their respective letters dated November 21, 2018.

9. On November 26, 2018, Advocates for Noticees no. 3, 4 and 5 appeared and made their submissions. Further, the Advocates for Noticees no. 3, 4 and 5 submitted during the hearing that it was unable to represent Noticee no. 1 as a Section 7 application under the Insolvency and Bankruptcy Code, 2016 has been admitted by the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "**NCLT**") on November 20, 2018 against Noticee no. 1. Considering the appointment of the Interim Resolution Professional (hereinafter referred to as "**IRP**") a final opportunity of hearing was given on December 20, 2018 and the same was intimated to the IRP. Thereafter, vide letter dated December 04, 2018, the IRP, *inter alia*, submitted that in consonance with the stipulations contained in Section 14 of the IBC, a moratorium has been declared for all matters against the company before all courts and authorities vide the NCLT Order dated November 20, 2018. Accordingly, Noticee no. 1 did not appear for the hearing scheduled on December 20, 2018.

10. Noticee no. 4 vide letters dated February 06, 2019 and February 14, 2019, sought for another opportunity of personal hearing. Further, Noticee no. 5, vide letter dated February 14, 2019, sought for another personal hearing. Accordingly, another final opportunity of hearing was granted to Noticees no. 4 and 5 on March 13, 2019. The advocates representing Noticees no. 4 and 5 appeared on March 13, 2019 and made submissions. Further, separate replies dated March 11, 2019 for Noticees no. 4 and 5, were filed by the Advocates during the hearing.

11. The proceedings were in abeyance in view of the pendency of the settlement proceedings and these proceedings were resumed after rejection of the settlement applications filed by the Noticees. Subsequently, the Noticees submitted further written submissions and time was given upto August 25, 2020 for completion of filing submissions.

12. The submissions made by Noticees nos. 1, 3, 4 and 5 vide their aforesaid replies, written submissions and those made during the course of hearing, are summarized as hereunder:

a. *The captioned SCN pertains to issuance of GDR by the company during March – 2010 which is more than eight years old. Strangely, no justification or reasons for inordinate delay on issuance of SCN after such a long gap from the date of the GDR issuance has not been mentioned in the SCN. It is submitted that issuance of SCN beyond reasonable period of time is bad in law and deserves to be withdrawn at the threshold itself more particularly when the delay in initiation of proceedings causes great prejudice to the Noticees since presently, all the staff of the Company who were handling the matter have changed and they do not have relevant material, information, data and records handily available with them so as to comprehensively defend their case. Without prejudice to the aforesaid, they deny all the allegations made against them in the aforesaid SCN in toto.*

b. *The company is a joint venture between Yash Birla Group and P.B. Bharadwaj (Chairman Sunflag Group) which was entered during 2006-07. The company is engaged in cotton ginning, pressing and oil expelling and after the acquisition for assets of Khamgaon Syntex (I) Ltd at MIDC (Khamgaon) w.e.f. August 2006, the company has entered into manufacturing of synthetic yarn.*

c. *The act of not providing documents sought amounts to judicial insubordination which goes against the various legal principles established by the Hon'ble Supreme Court. Further, SEBI is in complete violation of principles of natural justice and have relied upon the order of the Hon'ble Supreme Court, wherein SEBI had filed an appeal before the Hon'ble Supreme Court in the matter of Price Waterhouse & Co. and others, which*

was dismissed with the direction that:

"We direct, that all statements recorded during the course of investigation shall be provided to the respondents. We further direct, that all documents collected during investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon (against the respondents), shall be offered for cross examination to the respondents. Only thereupon, it will be permissible to rely upon the same."

d. *The Hon'ble Apex Court did not find any justification to examine the matter in detail and disposed of the case with the above directions. That despite clear cut directions given by the Hon'ble Supreme Court, SEBI has not followed the ratio laid down in the above judgement. As per settled law that the directions of higher courts should be followed by lower courts. Further, attention has been drawn to the Smitaben N Shah vs. SEBI (SAT Appeal no. 37 of 2010) and Kashinath Dikshita vs. Union of India & Ors (1986 3 SCC 229).*

e. *It was observed by the Hon'ble SAT in the case of Aditi Dalal that the alleged manipulation in six scrips in question is said to have taken place in the year 1999-2000 and proceedings against the appellants were initiated only in the year 2005. In the instant case also the alleged GDR issue in the case of BCIL is said to have taken in the year 2010 and proceedings have been initiated in the year 2018 i.e. Eight years after the alleged GDR issue. Hence, there has been inordinate delay in the initiation of the proceedings.*

f. *That the observations made by Hon'ble SAT in the matter of HB Stockholdings (SAT Appeal no. 114 of 2012) are relevant to the present proceedings initiated against the company since already more than eight years have passed since the GDR issue of BCIL, which has effected the moral of their team and there is always risk of loss of evidence or the data getting corrupt since the reliance has been placed both on electronic record and the physical records etc.*

g. *On March 15, 2010, the company came up with an offering of 96,89,000 GDR on March*

15, 2010 representing 96,89,00,000 underlying equity assets of nominal value of Rs. 1 each (offering at Rs. 1.20 each). Each GDR represented 100 equity shares in the capital of the company. The offer price was US$ 2.58 per GDR. Other details of the GDR issue is as below:

Local Custodian	*HSBC Bank*
Global Depository Bank	*The Bank of New York, Mellon*
Lead Manager	*Pan Asia Advisors Ltd*
Bank where GDR proceeds deposited	*Euram Bank, Austria*
GDR listed on	*Luxembourg Stock Exchange*

h. *The above action was taken by the company (viz. issue of GDR's) by seeking requisite approvals, complying with the applicable provisions of the law and after making proper disclosures. Further, the event was in public domain and nobody had raised any queries or objections at that point of time.*

i. *Mr. PVR Murthy who was having vast experience in the field of finance especially fund raising, both in India and abroad, since he has worked with various reputed Merchant Bankers over the last 20-25 years, was part of the Board of Directors. They had the liberty of his experience and knowledge, hence, the Board of directors authorized him to carry out the necessary formalities related to the GDR issue.*

j. *The GDR issue was made bonafide for the legitimate purposes in the ordinary course of business by the company and in the best interests of the company and its shareholders. They issued GDR to expand their business as they were of the view that with the issue of GDR, the company will get the benefit of flow of foreign capital and company will get the benefit of global stock exchange. However, that SEBI has without going into the merits of the case and without any documentary evidence, made serious allegations for violation of SEBI Act and PFUTP Regulations.*

k. *That along with the SCN, they have been issued SCN no. EAD-4/ADJ/SRP/AE/OW/24904/1/2018 dated September 05, 2018 under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and Rule 4 of the Securities Contracts (Regulation) Procedure and*

imposing penalties by Adjudicating Officer) Rules, 2005. It is submitted that issuing of two SCNs for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India and it also increases the legal costs.

l. *Pan Asia Advisors Limited, a UK based entity was lead Manager of GDR issue of the company. UK FSA is a regulatory authority responsible for the regulation of the financial service industry in the United Kingdom which is reputed globally. In view of the same they were of the opinion that they would be well aware of the policies/procedures in other jurisdiction. They therefore trusted them and carried out the process as per instructions given by them. That during that point in time, no regulatory authority/stock exchange pointed out violation of their part despite disclosures made by them at each stage of the activity.*

m. *The loan agreement entered between Vintage FZE & Euram bank was signed by Mr. Arun Panchariya on behalf of Vintage as MD of the Vintage for subscription of GDR's of Birla. Their name is not there in the agreement and therefore they cannot be held liable for any averments/declaration/statements/conditions mentioned in the agreement since they are not party to the agreement. Hence, any liability of Vintage and Euram bank cannot be lumbered upon them.*

n. *Company had authorized two persons namely Mr. P.V.R. Murthy, Director & Mr. Tushar Dey, Company Secretary to execute the documents/forms/papers if and when required. This authority was given to authorized signatory prior to any IPO, GDR Issue or any other fund issuance carried out by the company in the ordinary course of business. Consequently, company cannot be held responsible for the acts done by their authorized representatives since the company has not specifically authorized directors to execute pledge agreement in respect of the said GDR issue. Hence, they have denied that they had given authority to Euram bank to use the GDR proceeds as against security against loan and have denied that they have entered into pledge agreement with Euram Bank.*

o. *That they had authorized Mr. P.V.R. Murthy and Mr. Tushar Dey for acting vigilantly and in the best interest of the company. Mr. P.V.R. Murthy and Mr. Tushar Dey never*

informed them that they had entered into pledge agreements with Euram Bank. This enunciates that they were not part of any scheme, device, artifice etc. conceived by the Lead Manager to manipulate the Indian investors.

p. *The SCN is misdirected towards company and its other directors just being part of Board Meeting which has appointed Mr. P.V.R. Murthy. The fraud carried out by Mr. P.V.R. Murthy cannot be saddled on the company and its other directors without any documentary evidence of connivance of the company and its other directors with Mr. P.V.R. Murthy.*

q. *PAN Asia Advisors Ltd was the lead manager of the GDR Issue. They are very reputable firm in UK. They relied on them and appointed them as lead manager of the GDR Issue and as per their advice, they carried out all the procedure of GDR issue. Hence, they deny that they were having knowledge that GDR Issue was subscribed by only one entity. They did not have any independent mechanism to verify the same and as per the secrecy laws available in other jurisdictions, it was not possible for them to verify the information.*

r. *It is SEBI's own case that Mr. P.V.R. Murthy had knowledge about the subscriber to GDR issue, as well as source of the funding, pledge agreement and the loan agreement and had understanding with Vintage but the same had not been informed to the shareholders/investors. This conclusively proves that Mr. P.V.R. Murthy was the brain behind the scheme, artifice, device and has inflicted a fraud on the Indian securities market and has harmed the interest of genuine investors. Hence the allegation of violation of SEBI Act and PFUTP Regulations against the company and its directors is devoid of merit.*

s. *The conversion of GDR's into equity shares and further selling those equity shares in the Indian Market is not the matter of the company. Therefore, they deny adverse observations made thereto in the SCN and have no comments to offer on the same.*

t. *The SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. SCN is repeating the same*

allegation again and again and only general allegation has been made without any documentary evidence and admittedly agreement was misused by Mr. P.V.R. Murthy on whom the Board has shown faith. This shows that the SCN is based on surmises and conjectures. In view of the same, it is submitted that they have been roped in wrongfully to broaden the ambit of investigation.

u. Legal Submissions have been made with reference to the following cases:

a. Nandkishore Prasad vs. State of Bihar (1978) 3 SCC 366
b. H.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354
c. M/s Vintel Securities Pvt. Ltd. vs The Adjudicating Officer (SAT Appeal no. 219/2009)
d. Sterlite Industries Limited vs. SEBI (2001) 34 SCL 485
e. Videocon International vs. SEBI (2002) 4 CLJ 402 (SAT)
f. Parsoli Corporation vs. SEBI (SAT Appeal no. 146/2011 dated 12.08.2011)
g. Narendra Ganatra vs. SEBI (SAT Appeal no. 47/2011 on 29.07.2011)
h. M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited (AO dated 16.03.2017)

13. Noticee No. 3 has filed a separate reply vide letter dated November 21, 2018 and, inter alia, submitted as under:

a) He was a Non Executive Director of BICL since May 16, 1995. He has an impeccable tract record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against him by any regulatory authority including SEBI.

b) BCIL has already filed a reply and he adopts the submissions made by BCIL in its reply, in support of my contentions that he has acted bonafide in consonance with the applicable provisions of law.

c) He has never indulged in any fraudulent practices relating to the GDR issue. He has not made any gains or derived unfair advantage as a result of alleged violations. There

is nothing to indicate in the Notice that he has made any gains. He has also not caused any loss to the investors or group of investors.

d) The SCN also has not brought any evidence of connivance with Mr. P.V.R. Murthy on record, hence, the SCN is untenable in fact and law. The issuing authority has not brought on record any evidence to that effect.

14. Noticee No. 4 has also filed a separate reply vide letter dated November 21, 2018 and, *inter alia,* submitted that he is an Independent Director of BCIL. He is a B.Com, LLB by qualification and was appointed on Board as the Non-Executive Independent Director of BCIL on October 24, 2008 and resigned from the same on June 30, 2010. He has submitted that he was neither a Chairman nor Member in any of the Committees during his time.

15. Noticee No. 5 has also filed a separate reply vide letter dated November 21, 2018 and, *inter alia,* submitted that he is an independent director of BCIL. That he is a B.Sc (Met.Engg) graduate from Banaras Hindu University, M. Met from Sheffield University, UK and Diploma Holder in Operations & Financial Management from JBIMS, Mumbai University by qualification. He was appointed on Board as non-Executive Independent Director of BCIL on October 24, 2008, and resigned from the same on August 29, 2013. He was Member of the Audit Committee – Share Transfer & Investor Grievance Committee from the year 2008 to 2012 and the Member of the Remuneration /Compensation Committee in 2010-11 and Chairman in 2011-12.

16. Noticee No. 4 and 5 have made similar contentions in their respective replies dated November 21, 2018 wherein *inter alia* the following contentions have been made:

a) His role as an independent director was very limited and restricted. He was not involved in day to day management and affairs of BCIL. He did not have any kind of material/pecuniary relationship as director with BCIL, its promoters, directors, Senior Management or its holding company, its subsidiaries or associates which may affect his independence as a director. He was not related to the promoters or partners

occupying management position at the Board level or at one level below the Board and he had not been Executive of BCIL or any company within the group at any point of time. He was neither a partner nor an executive, nor was partner or executive in the Statutory Audit Firm or Internal Audit Firm associated with BCIL and/or legal firms and/or consultancy firm that have a material relationship with BCIL.

b) *He only attended Board Meetings of the Company and did not participate in day to day management. The agendas of the meeting were also received either a day prior, or on the day of the meeting.*

c) *Admittedly, the allegations of the Notice arise for analysis of day to day activities performed by the Managing Director/Executives/Officials of BCIL with regard to GDR issue of the Company, wherein inter alia allegation of concealing and suppressing material facts about fraudulent arrangement of the Pledge and Loan Agreements are alleged. There is nothing in the Notice that alleges that the alleged activities carried out by BCIL were approved in the Board Meetings. Opening bank account with EURAM Bank was part of the proposal to issue GDRs by the Company, and prima facie there was nothing present on record for the time being to establish it suspicious or liable to be rejected. For the time being, it was a procedural formality, which was supplementary to fulfilling the main agenda of issuing GDRs.*

d) *He was an independent director and was not at all involved in any of the day to day activities of BCIL pertaining to the GDR issue or the Pledge Agreement by the Company, which are the core of allegations in the Notice. Further, except for making allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to him in the Notice in terms of as to how he was involved in the day to day activities or that the alleged activities had his approval or he was aware of it etc. While levelling the allegations in the Notice, it has been ignored and overlooked that Independent Directors are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which lies in the domain of whole time directors. He reiterates that he as an independent director was not even*

remotely involved in the alleged activities as stated in the Notice carried out by BCIL. The fundamental distinction between the role of Whole Time Directors and Independent Directors has been lost of while leveling allegations in the Notice.

e) *No separate role has been attributed to him in the Notice. The only allegation levied against him is that he had "attended the said board meeting" dated December 21, 2009 in which BCIL had authorized Mr. P.V.R. Murthy, Director and Mr. Tushar Dey, Company Secretary of the company to carry our necessary formalities for opening and operating the Bank account with EURAM Bank, which also included the following resolution, an extract of which is reproduced as follows:*

"RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangement if an when required."

f) *The Board has thus given authority to Mr. P.V.R. Murthy and Mr. Tushar Dey to create the security if and when so required. This established that it was Mr. P.V.R. Murthy's decision to enter into a pledge agreement and hence he denies that he has violated any provisions of the PFUTP Regulations, 2003.*

g) *The company had a separate Secretarial Department which looked after all secretarial matters, such as issuing notices, sending agendas, intimating the stock exchanges before and after the board meetings including the content to be submitted the stock exchanges, etc, this he cannot be alleged for not intimating or misleading the stock exchanges regarding any announcements. These announcements might have been approved by the then Mr. Tushar Dey, Company Secretary of the Company, and he did not have any role to play in the said corporate announcements.*

17. Further, Noticee No. 4 and 5 have made similar contentions in their respective written submissions dated March 11, wherein *inter alia* the following contentions have been made:

a) *It is also submitted that as per the provisions of the Companies Act, it is settled law that only officers in default be held liable or can be penalized for any violation by the Company. In the present case, he cannot be termed as Officer in Default as per the provisions of the Companies Act for the alleged wrong doing by BCIL and its directors, being a Non-Executive Independent Director. It is held in number of cases by Supreme Court of India that to be in charge would mean that the person should be in overall control of the day-to-day business of the company and in the present case as stated above and in forgoing paras, he has demonstrated that he cannot be held as officer in charge of BCIL. It is further submitted that in the matter of Nanjundiah (H.) vs. Govindan, Registrar of Companies [(1986) 59 Comp Cas 356 (Bom)] it is held that the director, who was neither a managing or whole time director, not even a shareholder nor was he involved in day-to-day affairs of the company could not be said to be "an officer in default".*

b) *He was not part of the procedural aspects of GDR issue any time from the start of the issue, through its execution, till its conclusion, either for execution of agreements, receipt of funds, or any other consequential matters. Admittedly, he participated in the Board meeting of the company which authorized Mr. P.V.R. Murthy and Mr. Tushar Dey to execute the necessary formalities of opening bank account in respect of GDR issue.*

c) *He cannot be held liable for not informing the stock exchange regarding the pledge agreement. He never entered into any agreement which has the effect of giving security towards the loan availed by Vintage. He has never met any official of the Merchant Banker or Vintage to discuss any matter relating to the GDR issue any time. He had not reported any misleading information to stock exchange which contained information in a distorted manner or that he was part of any fraudulent schemes or device as has been alleged.*

d) *Para 18 of the SCN specifically mentions that:*
"The Loan Agreement was an integral part of the Pledge Agreement and vice versa and both were executed concurrently. It shows that director & Noticee No. 2 Mr. P.V.R.

Murthy had knowledge about the subscriber to GDR issue, as well as source of the funding, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same had not been informed to the shareholders/ investors of BCIL."

The above findings itself establish that Mr. P.V.R. Murthy was having full knowledge of the GDR issue and he was dealing with the GDR issue totally. There is not a single averment against him or any allegation which substantiate the allegation that he was having any knowledge of the alleged transaction with Vintage or any other third party. The bare perusal of the above said findings clearly establish that he was not a part of the said transaction and hence he cannot be held liable for the alleged violations as stated in the SCN against him.

18. I note that the Noticees no. 1, 3, 4 and 5 had filed their respective applications under the Settlement Regulations to settle the present proceedings under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 as well as the pending Adjudication proceedings initiated against them. However, the applications for all the said Noticees were rejected.

19. Subsequently, there was an outbreak of COVID-19 and consequential lock down was imposed. Accordingly, vide letter dated July 15, 2020, the Noticees were given the opportunity to file any further submissions in the matter. Noticee no. 4 vide email dated July 23, 2020 submitted that representation has already been made and he had nothing further to add. Noticee no. 5 vide email dated July 24, 2020 submitted that there are no further developments in the matter and does not wish to file any further written submissions or additional reply in the matter. Noticee no. 3 vide email dated August 04, 2020, submitted that he is facing certain constraints due to the ongoing lockdown and requested time to file his further submissions by August 25, 2020. However, the Noticee no. 3 has not filed his further submissions till date.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

20. I have considered the SCN dated January 09, 2018 along with its annexures and the aforementioned replies and written submissions filed by the Noticees and the submissions

made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCNs.

21. Before dealing with the issues, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992

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

Section 12A: *No person shall directly or indirectly,-*

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

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

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

(d) ……."

Relevant extract of provisions of PFUTP Regulations, 2003:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a)…….

(b)…….

…

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)…

(h)…

……

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

(l)…..

(m)…..

……..

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

……..”

22. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by the Noticees. The Noticees have submitted that

the SCN pertains to issuance of GDR by the company during March 2010, which is more than eight years old and that issuance of SCN beyond reasonable period of time is bad in law and deserves to be withdrawn at the threshold itself. The Noticee has relied upon the observations of the Hon'ble SAT in the case of *Aditi Dalal vs SEBI (Order dated November 28, 2011 in SAT Appeal no. 143 of 2011)* and *HB Stockholdings Ltd vs SEBI (Order dated August 27, 2013 in SAT Appeal No. 114 of 2012)* to contend that there has been inordinate delay in the initiation of the proceedings. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues made before the year 2009 were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number number of fraudulent GDR issues. Such information *inter alia* included 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. These information were 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. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Birla Cotsyn (India) Limited (Noticee No. 1)

was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in March, 2017. I note that after completion of the investigation, the SCN was issued to the Noticees on January 09, 2018. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unreasonable delay in the matter, as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2003)(which has also been relied upon by the Noticees) 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...."*

23. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. In the matter of *Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020)* while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was

also taken by the appellant therein, Hon'ble SAT observed as under:

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

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

24. I note that the Noticees in their letter dated November 21, 2018 have claimed that SEBI did not provide any of the documents as sought by the Company which is in complete violation of principles of natural justice and goes against the various legal principles established by the Hon'ble Supreme Court. Further, that they have not been allowed the opportunity to inspect the originals of the annexures received along with the SCN. I note that the Noticees are entitled to inspection of the documents relied upon in the SCN. Further, I note that Noticees 3, 4 and 5 vide their respective letters have not sought for inspection but have only referred to the inspection sought by the Company. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticees along with the SCN dated January 09, 2018, as detailed in para 1 above. However, Noticees have requested for various other documents and my observations on the request for such various other documents sought by the Noticees are as under:

Sr. No.	**Documents sought by the Noticees**	**Observation**
1.	Copy of complete Report of Investigation	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have already been provided to the Noticees

		along with the SCN as given in para 1 above. The request made by the Noticees is untenable
2.	Copy of all Annexures appended to investigation report	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have already been provided to the Noticees along with the SCN as given in para 1 above. The request made by the Noticees is untenable Further, I note that inspection was granted for all the annexures to the SCN during the inspection undertaken by the Company on March 20, 2018.
3.	Statements of any person forming part of the investigation conducted by SEBI.	No recorded statement has been relied or referred to in the SCN. The request made by the Noticee is random and irrelevant and is untenable.
4.	The data/documents provided by Euram Bank in respect of the present proceedings	The relevant data/documents provided by Euram bank as relied upon in the SCN as annexures to the SCN have been provided to the Noticees along with the SCN as given in para 1 above. Further, Noticees have not specified the particular data/documents. Noticees have made an omnibus request without specifying the particular data/documents required. Such request are roving and cannot be entertained. The request made by the Noticees is untenable.
5.	Copy of the communications made by/between SEBI and Vintage FZE, Mr. Arun Panchariya, Euram Bank on the subject matter of the present proceedings.	The request is omnibus and roving and without reference to a specific or particular communication or document. However, copies of the documents relied upon in the SCN have already been provided as Annexure to the SCN and the inspection thereof has also been

		provided to the Noticees. The request made by the Noticees is untenable.
6.	Copy of complaints/information/statements on which SEBI has relied while issuing an order for investigation in matter of GDR issue of BCIL as well as issuing the captioned SCN.	The request is omnibus and roving and without reference to a specific or particular communication or document. The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have also been provided to the Noticees. The request made by the Noticee is untenable.
7.	Documentary evidence/basis for making allegation that the company along with other Noticees were engaged in fraudulent practice as alleged in the SCN or otherwise.	The request is omnibus and roving and without reference to a specific or particular communication or document. Copies of the documents relied upon in the SCN have already been provided as Annexure to the SCN and the inspection thereof has also been provided to the Noticees. The request made by the Noticee is untenable.
8.	Statement of all the entities/persons recorded during the course of investigation and request to grant opportunity of cross examination of such persons whose statements have been recorded.	No recorded statement has been relied or referred to in the SCN. The request made by the Noticee is random and irrelevant and is untenable.
9.	Any other document, data, statement referred to and relied upon by SEBI while issuing the SCN dated January 08, 2018 qua the Noticees.	The request is without reference to a specific or particular communication or document. Noticees have made an omnibus request without specifying the particular communication required. Such request are fishing and roving and cannot be entertained. The request made by the Noticee is random and irrelevant and is untenable.

25. 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 have been forwarded to the Noticees. Therefore, the contention of the Noticees that SEBI has not provided complete documents is untenable. Further, regarding, inspection of original copy of the Annexures, sought by the Noticees, my observations are as under:

Annexure No.	**Document for which contention for inspection of Original/Certified is made**	**Observations**
1.	BCIL letter dated June 08, 2015	The letter pertains to the Noticee no. 1 itself. A copy of the same has already been provided to the Noticee as Annexure 1 to the SCN. The request made by the Noticee is untenable.
2.	Vintage Loan Agreement dated February 23, 2010 with EURAM Bank	The Loan Agreement was signed and executed by Vintage with Euram Bank which is situated outside India. A copy of the document as received by SEBI from overseas regulator has been provided to the Noticees as Annexure 2 to the SCN. The original copy is not available with SEBI. The request made by the Noticee is untenable.
3.	Company's resolution in its meeting on December 21, 2009	The document pertains to the Noticee no. 1 itself. A copy of the same has been provided to the Noticee as Annexure-3 to the SCN. Original is not available with SEBI. The request made by the Noticee is untenable.
4.	Minutes of aforesaid board meeting of BCIL	The document pertains to the Noticee no. 1 itself. A copy of the same has been provided to the Noticee as Annexure-4 to the SCN. Original is not available with SEBI. The request made by the Noticee is untenable.

5.	Pledge Agreement dated February 23, 2010 between BCIL and EURAM Bank	The document pertains to the Noticee no. 1 itself. Copy of the same as received from the overseas regulator has been provided to the Noticees as Annexure 5 to the SCN. Original is not available with SEBI. The request made by the Noticee is untenable.
5A.	Escrow account statement	The document pertains to the Noticee no. 1 itself. A copy of the same has been provided to the Noticee as Annexure-5A to the SCN. Original is not available with SEBI. The request made by the Noticee is untenable.
6.	BCIL's retail bank account statement	The bank account statement pertains to the Noticee no. 1 itself. A copy of the same has been provided to the Noticee as Annexure-6 to the SCN. Original is not available with SEBI. The request made by the Noticee is untenable.
7.	Vintage's loan account statement	The Loan account statement pertains to Vintage with Euram Bank which is situated outside India. A copy of the document as received by SEBI from overseas regulator has been provided to the Noticees as Annexure 7 to the SCN. The original copy is not available with SEBI. The request made by the Noticee is untenable.

26. I find that the Noticees were provided with all the relevant documents as relied upon in the SCN as mentioned above. I note that the Noticee No. 1 has filed detailed replies to the SCN. Further, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in ***NSDL Vs. SEBI (2017) 5 SCC 517.*** As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when

the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. I, further, note that the copies of the documents relied upon, were obtained by SEBI during investigation, through overseas securities market regulators. As copies of all the documents relied upon by SEBI in the SCNs were already provided to the Noticees in response thereto Noticees have filed detailed replies, I find that no prejudice has been caused to any of the Noticees in defending their interest and contesting the allegation made against them in the SCN. Thus, in view of the above, I find that the contention made by the Noticees that there is violation of principles of natural justice is untenable.

27. I note that the Noticees have relied upon the case of ***SEBI Vs. Pricewaterhouse Coopers (Civil Appeal No. 6003-6004)*** before the Supreme Court and have submitted that despite the clear cut directions given by the Hon'ble Supreme Court, SEBI has not followed the ration laid down in the said judgement. In this regard, I note that the order of the Hon'ble Supreme Court in *Pricewaterhouse Coopers* matter (*supra*) relied on by the Noticees came to be passed in the Civil Appeal Nos. 6000-6001 of 2012 and 6003-6004 of 2012, filed by SEBI before Hon'ble Supreme Court, against the order dated June 01, 2011 passed in Appeal No. 8 of 2011 and other connected appeal, by Hon'ble SAT. I note that Hon'ble SAT in its order dated June 01, 2011 passed in Appeal No. 8 of 2011 observed as under:

"15. …….Be that as it may, there is no rule of law which permit appellants to have access to all the material available with the Board which has not been relied upon or referred to in the show cause notice issued to the appellants.

16. We have given our thoughtful consideration to the prayer made by the appellants. After hearing both the parties and perusing the record, we are inclined to agree with learned Advocate General that in the facts and circumstances of this case, it is not appropriate nor it is the requirement of principles of natural justice that appellant should be allowed inspection of all the material that might have been collected during the course of investigation but has not been relied upon in the show cause notice. In the case law discussed above, it has been abundantly made clear that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and

circumstances of the case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for the purpose. There is no provision in the Act that all material collected during the course of investigation should be made available to the appellant…….

……The present show cause notice has been issued by the Board on the basis of evidence collected by it which prima-facie shows that there might have been complicity of the auditors in manipulation of accounts and they might have aided and abetted the company in making such a large scale manipulation and that too for a number of years. If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to produce its defence before the Board to show that it was not a party to the fraud. In our this view, we are supported by the judgment of the Supreme Court in the case of Natwar Singh vs Director of Enforcement (2010) 13 SCC 255 where the Apex Court has observed that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of the principles of natural justice. The situation may be different in a criminal case where the investigation report is placed before the court and the accused person asks for copy of the material collected during the course of investigation. This is not so here……..”

28. Aggrieved with the other observations given in the order dated June 01, 2011 passed by Hon’ble SAT, SEBI filed Civil Appeal Nos. 6000-6001 of 2012 and 6003-6004 of 2012 before Hon’ble Supreme Court. The Hon’ble Supreme Court while disposing of the aforesaid civil appeals vide its order dated January 10, 2017 directed as under:

“1. Having heard learned counsel for the rival parties, we find no justification to examine the matter in detail. We wish to dispose of this case with some simple clarifications.

2. We direct, that all statements recorded during the course of investigation shall be provided to the respondents. We further direct, that all documents collected during

investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon (against the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same.

3. Since the process was initiated as far back as in the year 2010, and has remained pending since then, we consider it just and appropriate to direct the Whole Time Member, before whom the matter is pending, to conclude the same, within six months from today.

4. Disposed of in the aforesaid terms."

29. The aforesaid directions passed by the Hon'ble Supreme Court in *Pricewaterhouse* Cooper *case* (*supra*) have been relied upon by the Noticees to contend that they are entitled to inspection of complete investigation report and all the documents collected by SEBI during the investigation. In this regard, I note that similar contention based on the aforesaid directions of Hon'ble Supreme Court were raised by the appellant in ***Appeal No. 286 of 2014 – B. Ramalinga Raju Vs. SEBI*** before the Hon'ble SAT. The Hon'ble SAT vide its order dated May 12, 2017 passed in the said appeal, rejected the said contention holding as under:

> *"21. ……..Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases……."*

Therefore, the submissions that the said order is applicable to all other cases, generally, is not correct.

30. In this regard, it would also 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:

> "*19. 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."*

31. On the merits of the case, I note that the SCN dated January 08, 2018, alleges that BCIL issued 96,89,000 GDRs (USD 24.99 million, approximately Rs.113.94 crore, *at RBI exchange rate of Rs 45.58 per USD on 15/03/2010*) on March 15, 2010. I note that Pan Asia Advisors Limited, a UK based entity was the Lead Manager of the GDR issue of BCIL. From the corporate announcements made by BCIL to Bombay Stock Exchange (hereinafter referred to as "BSE") during the period October 2009 - March 2010, it is alleged in the SCN that the company had informed BSE that their Board of Directors (hereinafter referred to as "Board") at their meeting held on October 27, 2009 had approved raising of funds by way of GDRs. The company also informed BSE on March 16, 2010 that the Board, in its meeting of March 15, 2010, had allotted 96,89,00,000 equity shares of Rs. 1/- each underlying 9.69 million GDRs, details of which are tabulated as below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
15-March-2010	9.69 (at USD 2.58 each GDR)	24.99	HSBC Bank	96,89,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

32. The SCN alleges that Vintage signed a Loan Agreement dated February 23, 2010 with

EURAM Bank for payment of subscription amount of USD 24.99 million for GDR issue of BCIL. From the Escrow account statement, it has been alleged that the GDR subscription money (9.69 million GDRs amounting to USD 24.99 million) was received from only one entity i.e. Vintage and hence, the GDR issue of BCIL was subscribed by only one entity, i.e., Vintage. Further, it is alleged that a Pledge Agreement dated February 23, 2010 was entered into between BCIL (as Pledgor) and EURAM Bank (as Bank) for providing security towards the said loan obtained by Vintage from EURAM Bank and the Pledge agreement was signed by Mr. P. V. R. Murthy (Noticee No. 2) as authorized in the Board Meeting of BCIL dated December 21, 2009. Further, during the said Board Meeting of BCIL, a resolution was passed authorizing the EURAM Bank to use the GDR proceeds as security against loan. From the minutes of aforesaid board meeting of BCIL, it has been alleged in the SCN that the directors namely Mr. P.V.R. Murthy (Noticee No 2), Mr. Yashovardhan Birla (Noticee No 3), Mr. Y.P. Trivedi (Noticee No 4) and Mr. Mohandas Adige (Noticee No 5) approved the board resolution.

33. I note that the SCN alleges that the Loan Agreement was an integral part of the Pledge Agreement and vice versa and both were executed concurrently. Further, that the director, Noticee No. 2 (Mr. P.V.R. Murthy) had knowledge about the subscriber to GDR issue, as well as the source of the funding, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same had not been informed to the shareholders/ investors of BCIL. Further, it has been alleged that that the manner in which the funds were transferred/ withdrawn from BCIL's EURAM Bank account and that the transfer of funds was dependent on the loan repayment by Vintage led investigation to conclude that BCIL was aware of the Pledge Agreement. Based on the above, it has been alleged in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Pledge and Loan Agreements by BCIL and its Board of Directors are in violation of provision of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('SEBI (PFUTP) Regulations, 2003').

34. With regard to the issue of GDR's, the Noticees have submitted that the same was done by seeking requisite approvals, complying with the applicable provisions of the law and

after making proper disclosures. That the GDR issue was made bonafide for the legitimate purposes in the ordinary course of business by the company and in the best interests of the company and its shareholders. They issued GDR to expand their business as they were of the view that with the issue of GDR, the company will get the benefit of flow of foreign capital and company will get the benefit of global stock exchange. However, that SEBI has without going into the merits of the case and without any documentary evidence, made serious allegations for violation of SEBI Act and PFUTP Regulations.

35. I find that the Noticees contention that allegations have been made without any merit and documentary evidence as erroneous and untenable. In this regard, I find that the following relevant documentary evidence has been provided to the Noticees along with the SCN:

a) **Company Resolution dated December 21, 2009:** I find that the Company's resolution dated December 21, 2009, where the company had resolved that a bank account will be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue, has been provided to the Noticees as **Annexure – 3** to the SCN. It was in the said resolution that the Board resolved to authorize Shri. P.V.R. Murthy and Shri Tushar Dey 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. Further, it was also resolved to authorize the bank 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.

b) **Minutes of Board Meeting dated December 21, 2009:** The above resolutions taken by the Company on December 21, 2009, was signed by Noticees 2, 3, 4 and 5. Copy of the said minutes has been provided to the Noticees along with the SCN as **Annexure – 4.**

c) **Pledge Agreement dated February 23, 2010:** I find that it is with this authorization granted to Shri. P.V.R. Murthy and Shri Tushar Dey in the Board Meeting dated

December 21, 2009, that Shri P.V.R Murthy signed the pledge agreement dated February 23, 2010 between BCIL and EURAM Bank. I note that the said Pledge Agreement dated February 23, 2010 has also been provided to the Noticees as **Annexure – 5** to the SCN.

d) **Loan Agreement dated February 23, 2010:** Further, the loan agreement dated February 23, 2010 between Vintage and EURAM Bank for payment of subscription amount of USD 24.99 million for GDR issue of BCIL has also been provided to Noticees as **Annexure-2** to the SCN.

e) **Bank Account Statements:** In addition to the above, the bank account statement of BCIL where the GDR proceeds were deposited and the loan account statement of Vintage have also been provided to the Noticees as **Annexure – 6** and **Annexure – 7**, respectively along with the SCN.

36. Hence, I find that the relevant documentary evidence has been provided to the Noticees with regard to the allegations in the SCN. Further, from the said documents, I find that the Company had facilitated subscription of its own GDR issue by entering into an arrangement where Vintage, the only subscriber to the GDR's issued by BCIL, obtained loan from EURAM Bank for subscribing the GDR issue of BCIL, and BCIL pledged the GDR proceeds with EURAM Bank for securing the loan taken by Vintage from EURAM Bank.

37. The Noticees have submitted that the Company had authorized two persons namely Mr. P.V.R. Murthy, Director & Mr. Tushar Dey, Company Secretary to execute the documents/forms/papers if and when required. That this authority was given to the authorized signatory prior to any IPO, GDR Issue or any other fund issuance carried out by the company in the ordinary course of business. Consequently the company cannot be held responsible for the acts done by their authorized representatives since the company has not specifically authorized directors to execute pledge agreement in respect of the said GDR issue. Hence, they have denied that they had given authority to Euram bank to use the GDR proceeds as against security against loan and have denied that they have

entered into pledge agreement with Euram Bank.

38. In this regard, it is noted through the Board resolution dated December 21, 2009 of BCIL, that Noticee No. 2 (Mr. P.V.R. Murthy) was authorized by the Company to open and operate the account of the Company with EURAM Bank and was also authorized to sign/execute various application /agreement escrow agreement /undertakings /confirmation /declaration/ documents, if and when so required. It is noted that through the said resolution the Company also resolved 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 agreements if and when so required".* I note from the minutes of the Board Meeting dated December 21, 2009 that none of the directors have raised any question/objection on the Board resolution. I note that the primary argument of the Noticees is that Mr. P.V.R. Murthy and Mr. Tushar Dey never informed them that they had entered into pledge agreements with EURAM Bank and that the fraud carried out by Mr. P.V.R. Murthy cannot be saddled on the company and its other directors without any documentary evidence of connivance of the company and its other directors with Mr. P.V.R. Murthy. However, I find the contention untenable as documentary evidence is available from the said Board Resolution and the Minutes of the Board Meeting dated December 21, 2009, and the connivance of the company and its other directors is clear from the resolution to authorize Mr. P.V.R. Murthy as enunciated above in para 35. I find that a company has to be held responsible for all resolutions passed by the board of directors of the Company for actions taken to implement such decisions and the company also reaped the benefit of such GDR issue/subscription money. A company cannot wriggle out of its obligations with respect to resolutions passed by it in its board meetings and simply throw the entire obligation and liability of the company and its directors on a director to which they had authorized to sign such agreements. Further, I find that Mr. P.V.R. Murthy is a director of BCIL and has acted in the capacity authorized by the Company to him through the resolution dated December 21, 2009.

39. The Noticees have also contended that PAN Asia Advisors Ltd, a very reputable firm in UK, was the lead manager of the GDR Issue. That they relied on them and appointed them as lead manager of the GDR Issue and as per their advice, they carried out all the

procedure of GDR issue. Hence, they deny that they were having knowledge that GDR Issue was subscribed by only one entity. They did not have any independent mechanism to verify the same and as per the secrecy laws available in other jurisdictions, it was not possible for them to verify the information. In this regard, as per the Escrow Agreement, which was signed by Noticee no. 2 on behalf of the Company with PAN Asia Advisors Ltd and EURAM Bank with regard to the issue of GDR's by BCIL, I note that in Clause 4.2 of the Escrow Agreement, it states that "*4.2 The Lead Manager shall inform the Escrow Agent in writing of any deposit by the Placees of the Escrow Moneys into the Escrow Account by means of a deposit instruction in writing substantially in the form of Schedule 3 to this Agreement (a "**Lead Manager Deposit Instruction**") at least one Business Day prior to the intended Business Day of deposit and the Escrow Agent shall confirm receipt in writing to the Company and the Lead Manager one Business Day following receipt of the amount so deposited*." Further, from the Escrow Account statement, I note that a single deposit of USD 24,997,620/- was made by Vintage on March 12, 2010. Hence, as per Escrow Agreement, the same should have been notified to the Company. Further, on perusal of the bank account statement of BCIL with EURAM Bank, I note that the entire GDR proceeds were received by BCIL on March 12, 2010 in its bank account bearing A/c. no. AT301934005800150101 held with EURAM Bank from only one entity. Therefore, I find the Noticees contention that they were not aware that the GDR Issue was subscribed by only one entity as erroneous and untenable. Further, even if it was the case that the Lead Managers have misled them, I find that the Noticees have not provided any other information or documents to substantiate that they were misled by the Lead Managers or that they have filed any complaint or taken action in this regard. Hence, I find the above submissions of the Noticees is not tenable and I find that the corporate announcement made by the Company on March 16, 2010, on BSE, was misleading as it gave the false impression of a successful GDR issue, as discussed in para 44 below.

40. The Noticees have also contended that the loan agreement entered between Vintage and EURAM bank was signed by Mr. Arun Panchariya on behalf of Vintage as MD of the Vintage for subscription of GDR's of Birla. That their name is not there in the agreement and therefore they cannot be held liable for any averments/ declaration/ statements/

conditions mentioned in the agreement since they are not party to the agreement. Hence, any liability of Vintage and EURAM bank cannot be lumbered upon them. In this regard, I find that the allegations in the SCN are not based solely on the said loan agreement between Vintage and EURAM bank. The loan agreement is being read along with the pledge agreement signed between BCIL and EURAM Bank (**Annexure – 5 to SCN**). In this regard, I note that the preamble of the Pledge Agreement states as under:

> *"By loan agreement K23022010-005 (hereinafter referred to as the "Loan Agreement") dated 23 February 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 24,997,620.00. The pledgor has received a copy of the Loan Agreement No. K23022010-005 and acknowledges and agrees to its terms and conditions."*

41. From the above preamble to the Pledge Agreement between BCIL and EURAM Bank, I note that there is reference to the Loan agreement K23022010-005 of Vintage with EURAM Bank and it also clearly states that the pledger (BCIL) has received a copy of the Loan Agreement No. K23022010-005 and acknowledges and agrees to its terms and conditions. Further, I note that the pledge created in the Pledge Agreement is as stated below:

> *"2. Pledge*
>
> *2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*
>
> *2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 24,997,620.00 existing from time to time at present or hereafter on the securities*

account(s) no. 580015 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. 580015 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

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

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

42. Further, I note that the following conditions were put in the Pledge Agreement for realization of the pledge.

"6. Realisation of the Pledge

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

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

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

43. From the aforesaid paras of the Pledge Agreement, it is clear that the BCIL (the Pledgor)

has secured any and all obligations, present and future, whether conditional or unconditional of Vintage towards the bank under the loan agreement (taken by Vintage from EURAM Bank) and has pledged the amount of USD 24,997,620 existing in the account of BCIL with EURAM Bank as collateral to the Bank. Therefore, the bank account in which GDR proceeds were deposited was in the name of BCIL but the amount deposited in the account was not at the free disposal of the BCIL as the same was kept as collateral prior to issuance of GDRs for the loan availed by Vintage. Hence, I note that BCIL had pledged the GDR proceeds with EURAM Bank before issuance of the GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of BCIL. In view the above, I find the contention of the Noticees that they are not party to the loan agreement between Vintage and EURAM Bank and any liability of Vintage and Euram bank cannot be lumbered upon them as erroneous and untenable. At the time of passing the resolution, the Noticees were aware that a bank account would be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue and that the bank is authorized to use the funds deposited in the said bank account as security in connection with loans, if any. Further, by the same resolution, the Board had authorized Mr. PVR Murthy (Noticee no. 2) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as may be required by the EURAM Bank. From the above, it is abundantly clear that the liability of Vintage in the event that it is unable to repay its loan with EURAM Bank, is being secured by BCIL through the said Pledge Agreement.

44. The Noticees have further submitted that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. In this regard, I note that the disclosure made by BCIL to the BSE vide its corporate announcement dated March 16, 2010 did not mention about execution of 'Pledge Agreement' dated February 23, 2010 by BCIL securing the loan availed by Vintage for subscribing of its GDR issue or that the GDR issue was subscribed by only one entity. Instead, BCIL in its corporate announcement dated February 23, 2010 stated that, *"…at the meeting of the Committee of the Board of Directors of the Company, duly convened and held on March 15, 2010, the Company has allotted to 'The Bank of New York Mellon'*

in its capacity as Depositary, 968,900,000 fully paid equity shares of Re. 1.00 each of the Company to be represented by a global master GDR certificate representing 9,689,000 Global Depository Receipts." This announcement conveys that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. BCIL has acquired a good reputation in terms of investment potential and, therefore, foreign investors have successfully subscribed to the GDR issue. Such statements had the potential to induce the investors in India to remain invested in the company or to invest in the shares of the company. In fact there was only one subscriber i.e. Vintage which had subscribed to the GDR issue of BCIL by obtaining loan from EURAM Bank and that loan was further secured by the BCIL itself by pledging the GDR proceeds. I find that all these events were price sensitive information and could have impacted the scrip price of BCIL. Thus, I find that the corporate announcements made by BCIL on March 16, 2010 regarding GDR issues may have misled the investors and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed and that the capital has been infused in the Company and would be utilized for the growth of the Company and that many foreign investors have subscribed the GDRs of BCIL and therefore, BCIL is a good Company to remain invested or to make investment.

45. In this regard, it would be appropriate to refer to the Order of the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") dated October 25, 2016 in ***Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)*** wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

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

prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."

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

*"9…… 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……..."*

47. Similarly, in the matter of ***SEBI v. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1***, the Hon'ble Supreme Court has observed as under:

"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".

48. In view of the above, I find that the act of BCIL in making misleading announcements regarding its GDR issue has resulted in 'fraud' as defined under the PFUTP Regulations, 2003 and SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though it may not be possible to identify individual investors who have become the victim of such fraud. Hence, I find the submissions of the Noticees that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company as untenable.

49. Further, upon examining the retail bank account statement of BCIL held with EURAM Bank (where GDR proceeds were deposited) and Vintage's loan account statement with EURAM Bank, I find that only after Vintage repaid the loan amount in several installments from July 06, 2010 to August 26, 2011, less/equal amount of money was transferred from BCIL's EURAM Bank account to BCIL's bank account in India, BCIL's UAE based subsidiary's bank account and to various entities for payments. Details of repayment of loan by Vintage as provided by EURAM Bank are tabulated below:

Date of transfer of funds	**Amount repaid by Vintage (USD)**	**Amount of funds transferred from BCIL's EURAM Bank a/c to 1)BCIL's bank a/c in India (USD), 2) BCIL's UAE subsidiary's bank a/c and 3) Other entities**
06/07/2010	145,700	142,050
27/07/2010	765,000	762,410
28/07/2010	9,000	12,038
01/09/2010	150,000	150,000
20/09/2010	300,500	300,000
18/01/2011	2,000,000	2,000,000
31/01/2011	1,800,000	1,800,000
03/02/2011	2,000,000	2,000,000
18/03/2011	2,000,000	2,000,000
03/05/2011		11,506
10/05/2011		233,000
11/05/2011		13,507
12/05/2011	1,500,000	
13/05/2011		1,500,000
26/07/2011	1.500,000	1,500,000
27/07/2011	1,700,000	1,700,000
02/08/2011	400,000	400,000
16/08/2011	3,500,000	3,500,000
18/08/2011	2,000,000	2,000,000
22/08/2011	2,000,000	2,000,000
23/08/2011	1,500,000	1,500,000
25/08/2011	1,000,000	1,000,000
26/08/2011	727,420	772,313
Total	**24,997,620**	**25,296,823**

50. Hence, from the above details of repayment of loan by Vintage as provided by EURAM Bank, it is established that the amount transferred from BCIL's EURAM Bank account was dependent on the repayment of the loan by Vintage. In view of the above, I find that the arrangement of BCIL, in allotting GDR issue to only one entity i.e. Vintage which

subscribed the GDR issue of BCIL by obtaining loan from EURAM bank and the same was again secured by BCIL by pledging its GDR proceeds, seen along with the misleading corporate announcements made by BCIL on March 16, 2010, lead to conclusion that the same were done in a fraudulent manner which had the potential to mislead or induce the investors to sale or purchase of its scrip. The Noticee No. 1 has, therefore, violated the provisions of Section 12A (a) of SEBI Act, 1992 and Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

51. I note that the said 'Pledge Agreement' dated February 23, 2010 was signed by Mr. P.V.R. Murthy (Noticee No. 2), Director of BCIL who was authorized vide Board resolution dated December 21, 2009, wherein BCIL had approved for opening of a bank account with EURAM Bank for the purpose of receiving the proceeds of GDR issue and had also authorized EURAM Bank to use the funds as security in connection with the loans if any as well as to enter into any Escrow agreement or similar arrangements. As per the minutes of the Board meeting of BCIL held on December 21, 2009, Mr. P.V.R Murthy (Noticee No. 2), Mr. Yashovardhan Birla (Noticee No. 3), Mr. Y. P. Trivedi (Noticee No. 4) and Mr. Mohandas Adige (Noticee No. 5), the directors of the Company, had attended the Board meeting.

52. Noticee No. 3 vide his reply dated November 21, 2018 submitted that he was a Non-Executive Director of BCIL since May 16, 1995 and that he has an impeccable track record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against me by any regulatory authority including SEBI. Further, that he has never indulged in any fraudulent practices relating to the GDR issue and has not made any gains or derived unfair advantage as a result of alleged violations and that he has also not caused any loss to the investors or group of investors. He has also contended that the SCN has not brought any evidence of connivance with Mr. P.V.R. Murthy on record, hence the SCN is untenable in fact and law.

53. Noticee no. 4 vide his reply dated November 21, 2018 has submitted that he is an Independent Director of BCIL, a B.Com, LLB by qualification and was appointed on Board

as the Non-Executive Independent Director of BCIL on October 24, 2008 and resigned from the same on June 30, 2010. He was neither a Chairman nor Member in any of the Committees during his time. Noticee no. 5 vide his reply dated November 21, 2018 submitted that he is an independent director of BCIL, a B.Sc (Met.Engg) graduate from Banaras Hindu University, M. Met from Sheffield University, UK and Diploma Holder in Operations & Financial Management from JBIMS, Mumbai University by qualification. He was appointed on Board as non-Executive Independent Director of BCIL on October 24, 2008, and resigned from the same on August 29, 2013. He was Member of the Audit Committee and the Share Transfer & Investor Grievance Committee from the year 2008 to 2012 and the Member of the Remuneration /Compensation Committee in 2010-11 and Chairman in 2011-12.

54. Further, I note that Noticees no. 4 and 5 vide their respective replies, have submitted that their role as an independent director was very limited and restricted. Further, they have submitted that they were not involved in the day to day management and affairs of BCIL. Further, that they did not have any kind of material/pecuniary relationship as director with BCIL, its promoters, directors, Senior Management or its holding company, its subsidiaries or associates which may affect his independence as a director. They submitted that they only attended the Board Meeting of the Company and that there is nothing in the SCN that alleged that the alleged activities carried out by BCIL were approved in the Board Meetings. It is also submitted by the Noticees that except for making allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to them in the SCN in terms of as to how they were involved in the day to day activities or that the alleged activities had his approval or he was aware of it etc. Further, that no separate role has been attributed to them in the Notice and the only allegation levied against them is that they had “attended the said board meeting” dated December 21, 2009 in which BCIL had authorized Mr. P.V.R. Murthy, Director and Mr. Tushar Dey, Company Secretary of the company to carry our necessary formalities for opening and operating the Bank account with EURAM Bank. The Board had given authority to Mr. P.V.R. Murthy and Mr. Tushar Dey to create the security if and when so required. That this established that it was Mr. P.V.R. Murthy’s decision to enter into a pledge agreement and hence they deny that they have violated any provisions of the PFUTP Regulations, 2003.

55. I note that the primary argument of Noticee no. 3, 4 and 5 is that Mr. P.V.R. Murthy and Mr. Tushar Dey never informed them that they had entered into pledge agreements with EURAM Bank and that the fraud carried out by Mr. P.V.R. Murthy cannot be saddled on the company and its other directors without any evidence of connivance of the company and its other directors with Mr. P.V.R. Murthy. In this regard, I note that the Board of directors play a key role in balancing the interests of managements and shareholders and the independent directors are expected to, *inter alia*, ensure fairness and transparency in dealings of the Company. Where an act or omission occurs through board processes, then such non-executive directors can be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticee No. 3, 4 and 5 had attended the board meeting dated December 21, 2009 of the Company wherein resolution was passed for opening a bank account with EURAM Bank and authorizing EURAM Bank to use the GDR proceeds as security against loan, if any. I also note that the Noticee no. 3 was the Co-Chairman of BCIL during the period when the GDRs were issued and that Noticee no. 5 was a Member of the Audit Committee from the year 2008 to 2012. Thus, Noticee No. 3, 4 and 5 were aware of authorization for pledge as the board resolution dated December 21, 2009 clearly mentioned 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,…"* and the Noticees 3, 4 and 5 did not raise any question as to whether any loan had been taken or proposed to be taken by the Company as the resolution authorised pledging of the funds kept in the bank account of the Company as a security in connections with loans, if any. On the contrary, the Board had authorized the opening of bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. Further, by the same resolution, the Board had authorized Mr. P.V.R. Murthy (Noticee no. 2) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the EURAM Bank. Thus, I find that Mr. P.V.R. Murthy had acted in furtherance of the resolution passed by the Board and the Noticees who participated in the Board Meeting

where such resolution was passed, cannot escape their liability for such resolution by contending that there was no collusion between them and Mr. P.V.R. Murthy. Further, I observe that neither the Company nor the Noticees who are now contending that the fraud was carried out by Mr. P.V.R. Murthy, have filed any complaint against Mr. P.V.R. Murthy and nor have they taken any action against Mr. P.V.R. Murthy for the alleged fraud.

56. Regarding the contention of Noticee No. 3 that he was a Non-Executive Director of BCIL since May 16, 1995, I note that as per the joint reply dated November 21, 2018 filed by the Noticees no. 1, 3, 4 and 5, the Noticee no. 3 was the Co-Chairman of BCIL during the period when the GDRs were issued. Further, I note from the website of BCIL that the Company is promoted by the Yash Birla Group, of which the Noticee no. 3 was the Chairman.

57. With regard to the Noticee no. 3's contention that he has not made any gains or caused any loss to the investors, I note that there is no allegation in the SCN that the Noticees have gained from the said fraud and hence the contention is irrelevant. Further, with regard to the loss caused to any investors, as already discussed in the foregoing paras, reference has been made to the Order of the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") dated October 25, 2016 *in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)* wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was held that "*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"*. Further, Hon'ble Supreme Court in SEBI Vs. Rakhi Trading & Others (2018) 13 SCC 753 observed as under:

> *"……..36. Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged……"*

Hence, I find the above contention of the Noticee is untenable.

58. The Noticees no. 4 and 5 also submitted that as per the provisions of the Companies Act, it is settled law that only officers in default be held liable or can be penalized for any violation by the Company. That in the present case, they cannot be termed as Officer in Default as per the provisions of the Companies Act for the alleged wrong doing by BCIL and its directors, being a Non-Executive Independent Director. That it has been held in number of cases by Supreme Court of India that to be in charge would mean that the person should be in overall control of the day-to-day business of the company and in the present case as stated above and in forgoing paras, he has demonstrated that he cannot be held as officer in charge of BCIL. In this regard, I note that "officer in default" is responsible for only those acts of company regarding which liability has been fastened on "officer in default" by the provisions of the Companies Act, 1956/2013. In the present case, liability of the Noticees has to be determined in the context of violation of the provisions of the securities laws as alleged in the SCN. In such case, the concept of "officer in default" has no application and therefore, the contention of the Noticees that they are not "Officers in default" is misplaced.

59. I note that the Noticees, with regard to the liability of directors as "Officers in default", have relied upon the Order of the Hon'ble High Court of Bombay in the matter of ***Nanjundiah (H.) vs. Govindan, Registrar of Companies [(1986) 59 Comp Cas 356 (Bom)]***. However, I find that the reliance upon the said judgment is misplaced and untenable for the reasons that the said judgment relies upon the definition of "Officer who is in default" under Section 5 of the Companies Act, 1956, prior to the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988, after which the definition changed. Further, the facts of the case pertain to the alleged violation of Section 58A of the Companies Act, 1956, where the Company received deposits in excess of the limits under Section 58A and whether the petitioner, a director of the company, was liable as an 'Officer who is in default', whereas the present case pertains to violations of the SEBI Act and PFUTP Regulations.

60. Noticees no. 4 and 5 have also contended that since in the board meeting dated December

21, 2009, authorization was given only for opening of bank account and not for any pledge agreement. They had never entered into any agreement which has the effect of giving security towards the loan availed by Vintage. That they never met any official of the Merchant Banker or Vintage to discuss any matter relating to the GDR issue any time. Further, that they had not reported any misleading information to stock exchange which contained information in a distorted manner or that they were part of any fraudulent schemes or device as has been alleged. In this regard, as discussed in aforesaid paras, I note that the board resolution dated December 21, 2009 clearly mentioned 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,…"* which shows the Noticees not only had knowledge but had authorized the opening of bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. The Board had also authorized Mr. P.V.R. Murthy (Noticee no. 2) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the bank. Further, I find that the Noticees no. 3, 4 and 5 had attended the said Board Meeting where the resolution was passed and did not raise any query/objection on offering funds deposited in the bank account as security for loan and thus, I find that the contention raised by the Noticees No. 3, 4 and 5 in this regard is not tenable.

61. I note that the Noticees have also contended that along with the SCN, they have been issued a show cause notice dated September 05, 2018 under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and Rule 4 of the Securities Contracts (Regulation) Procedure and imposing penalties by Adjudicating Officer) Rules, 2005. They have submitted that issuing of two show cause notices for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India and it also increases the legal costs. In this regard, I note that the Adjudicating proceedings initiated vide show cause notice dated September 05, 2018, although borne out of the same set of facts, have been initiated *inter alia* under the provisions of Chapter VIA of the SEBI Act. The SEBI Act enables the Board to initiate parallel proceedings on the same set of facts against a person under Sections 11 and 11B

or under Section 11D, as the case may be, on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other hand. Further, directions under Sections 11 and Section 11B or an Order under Section 11D are passed by the Board whereas, the proceedings under Chapter VIA are conducted by an Adjudicating Officer who adjudicates and imposes monetary penalty. Reliance is also placed on the Order of the Hon'ble SAT in the matter of ***Dipak J. Panchal vs. SEBI,*** *Appeal No. 198 of 2011 (Order dated November 12, 2012)*, wherein, it had observed: "*There is no bar under the Act in taking all the three actions (under Chapter IV, Chapter VIA and Section 24 of the SEBI Act) simultaneously or taking only one of the actions as the Board may deem fit…*" In view of the aforesaid, I find the contention raised by Noticees is untenable.

62. I note that Noticees have also referred to orders passed by the Hon'ble Supreme Court and Hon'ble SAT to substantiate their arguments on the level of evidence required for establishing serious charges of fraud. Judgment of Hon'ble Supreme Court in ***Nandkishore Prasad vs. State of Bihar*** *(1978) 3 SCC 366* and judgements of Hon'ble SAT in ***M/s Vintel Securities Pvt. Ltd. vs The Adjudicating Officer*** *(SAT Appeal no. 219/2009),* ***Sterlite Industries (India) Ltd. Vs. SEBI*** *(2001) 34 SCL 485 (SAT),* ***Videocon International vs. SEBI*** *(2002) 4 CLJ 402 (SAT)* ***Parsoli Corporation Vs. SEBI*** *(Order dated August 12, 2011 in Appeal No. 146/2011)* and ***Narender Ganatra Vs. SEBI*** *(Order dated July 29, 2011 in Appeal No. 47/2011)* have *inter alia* been relied upon by the Noticees to contend that fraud is a serious charge and hence, must be supported by higher degree of proof. Regarding the higher degree of proof, as observed in the aforesaid orders relied on by the Noticees, reference may be made to the recent Judgment of the Hon'ble Supreme Court in ***SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1***, wherein it was observed, "…….*the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud……..*" In the Kanaiyalal matter, Hon'ble Supreme Court

further observed that *"…….the difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required……."* In the present case, in the board meeting dated December 21, 2009 of the Company attended by the Noticees No. 2, 3, 4 and 5, the opening of account with EURAM Bank was approved along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. The said account charge was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding successful subscription of GDRs. This arrangement had the potential to "induce" or to mislead the investors to remain invested or to invest in the securities of the Company. I note that the evidence available on record in the form of board resolutions, pledge agreement, loan agreement, disclosure made to the stock exchanges by the Company, bank statements of the company, etc. shows higher degree of probability, of bringing out of such inducement or misleading investors to deal or abstain from dealing in the securities of the company and consequential fraud committed, in the present matter. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court and Hon'ble SAT, in the cases, relied on by the Noticees.

63. In light of the above, I note that the Noticees Nos. 3 to 5 had attended the Board meeting dated December 21, 2009, wherein, the Board had authorized the opening of bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. Further, by the same resolution, the Board had authorized Mr. P.V.R. Murthy (Noticee no. 2) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe

required by the EURAM Bank. Further, none of the Noticees No. 3 to 5 who participated in the Board Meeting have produced any material or record reflecting objections raised by them on the proposal that EURAM Bank will use the amounts deposited in its bank account as security to loan which ultimately facilitated Vintage to obtain loan from EURAM Bank for subscribing the GDR issue of the Company. In respect of allegation against the Noticee No. 2 who had signed the 'pledge agreement' dated February 23, 2010 on behalf of BCIL, I note that he was not only having the knowledge but also played an active role and by execution of said 'pledge agreement' dated February 23, 2010, actually facilitated the subscription of GDR issue of BCIL and also authorized EURAM Bank to use the GDR proceeds of BCIL as security to the loan obtained by Vintage.

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

> *"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be* placed *and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

65. In view of the above, I find that the Noticees No. 2 to 5 had participated in the Board meeting of BCIL on December 21, 2009, wherein, approvals were made to, among others, authorizing the EURAM Bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by BCIL (Noticee No. 1) in which the Noticee No. 2 had signed and executed the pledge agreement dated February 23, 2010 on behalf of BCIL (Noticee No.1). Thus, the Noticees No. 2 to 5 were part of the arrangement which resulted in facilitating the subscription of GDR issue of BCIL wherein the subscriber (Vintage) obtained loan from EURAM Bank for subscribing the GDR issue of BCIL and,

BCIL pledged the GDR proceeds with the EURAM Bank securing the loan taken by Vintage. Further, I note that the Noticees No. 2 to 5 were also directors of the BCIL during the period when the corporate announcement were made by BCIL, which were false and misleading to the extent that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Vintage by obtaining loan from the EURAM Bank which was again secured by the BCIL (Noticee No.1) by pledging the GDR proceeds. Thus, I find that the directors of BCIL (Noticee No. 1) namely; Mr. P.V.R Murthy (Noticee No. 2), Mr. Yashovardhan Birla (Noticee No. 3), Mr. Y.P. Trivedi (Noticee No. 4) and Mr. Mohandas Adige (Noticee No. 5) are liable for violation of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.

66. I note that Section 11 of the SEBI Act, 1992 lays down the functions of SEBI. In particular Section 11(2)(e) of the SEBI Act, 1992 enumerates prohibiting fraudulent and unfair trade practices relating to securities market, as one of the functions of SEBI. Additionally, Section 12A of the SEBI Act, 1992 prohibits certain manipulative and deceptive devices, as enumerated in clauses (a), (b) and (c), thereof. SEBI has framed PFUTP Regulations, 2003 (earlier PFUTP Regulations, 1995) to fulfil the intended objects of Section 11(2)(e) and 12A(a) –(c) i.e. ensuring investor protection and development of securities market. Therefore, any fraudulent act or manipulative and deceptive devices, as noted in the present case, fall foul of provisions of SEBI Act, 1992 and PFUTP Regulations, 2003.

67. I note that vide letter dated December 04, 2018 to SEBI, the IRP, *inter alia*, submitted that in consonance with the stipulations contained in Section 14 of the IBC, a moratorium has been declared for all matters against the company before all courts and authorities vide the NCLT Order dated November 20, 2018. Subsequently, from the Public Announcement dated October 14, 2019, I note that the NCLT has ordered the commencement of liquidation of BCIL on September 24, 2019 under Section 33 of the IBC. In terms of Section 14(4) of the IBC, the order of the moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process, however, where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to

have effect from the date of such approval or liquidation order, as the case may be. Therefore, in view of the order dated September 24, 2019 of the NCLT, the moratorium declared under Section 14 of the IBC, has ceased to have effect. In this regard, I find that since BCIL has been ordered to be liquidated, directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against BCIL, at this juncture would not serve any purpose. However, having regard to the nature of violations and conduct of the directors (Noticees no. 2 to 5), issue of regulatory directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against Noticees no. 2 to 5 is called for in the present matter.

DIRECTIONS:

68. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:

a. In view of the findings in para 67 above, the present proceedings initiated against Noticee no. 1 vide SCN dated January 09, 2018, stands disposed of. However, in the event that the order for liquidation passed by the NCLT is reversed in appeal, the Noticee No. 1 shall be restrained from accessing the securities market and also remain prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of such reversal of liquidation order.

b. Mr. P.V.R Murthy (Noticee No. 2), 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. During the period of restraint, the existing holding of securities including units of mutual funds of the said Noticee shall also remain frozen.

c. Mr. Yashovardhan Birla (Noticee No. 3), is hereby restrained from accessing the

securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of the said Noticee shall also remain frozen.

d. Mr. Y.P. Trivedi (Noticee No. 4) and Mr. Mohandas Adige (Noticee No. 5) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen.

69. This Order comes into force with immediate effect.

70. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

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

Sd/

Place: Mumbai **ANANTA BARUA**

Date: September 29, 2020 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA