

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO.: Order/VV/NK/2023-24/28470]**

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

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In respect of:  
**Arun Panchariya**  
**(PAN: AEVPP6125N)**

**In the matter of Texmo Pipes & Products Limited**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the Global Depository Receipts (hereinafter referred to as “**GDR**”) issue of M/s Texmo Pipes and Products Ltd. (**‘Texmo’/‘Company’**) which issued 6,27,500 GDRs (amounting to USD 9.99 million) on April 11, 2011 for the period, March 01, 2011 to April 30, 2011 (hereinafter referred to as **‘Investigation Period’/‘IP’**). Pursuant to investigation, Adjudication Proceedings were initiated *inter-alia* against Shri Arun Panchariya ( **‘Noticee’/ ‘AP’**) under section 15HA of SEBI Act, 1992 for the violation of provisions of section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**") for acting as party to the fraudulent scheme.
2. Adjudication Order No. Order/VV/NK/2022-23/17383-17389 was passed on June 28, 2022 in respect of the Noticee, by which a penalty of Rs.25,00,000/- (Rupees Twenty-Five

Lacs only) was imposed on the Noticee viz. Mr. Arun Panchariya in terms of section 15HA of the SEBI Act, for the violation of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations (hereinafter referred to as '**Earlier Adjudication order**').

3. The Noticee appealed the Adjudication Order dated June 28, 2022 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), and Hon'ble SAT vide order dated March 28, 2023 has remitted back the matter to the Adjudicating Officer (hereinafter referred to as "**AO**") for passing a fresh order on merits after giving an opportunity of personal hearing to the appellant. Hon'ble SAT in the said Order has directed that,

*"15. ...In this regard, the appellant shall appear before the AO on 10<sup>th</sup> April, 2023 on which dated the AO will serve the show cause notice upon the appellant or his learned counsel and from there onwards the matter will proceed in accordance with law...."*

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. In compliance with the direction of Hon'ble SAT order, Show Cause Notice dated July 29, 2019 ("SCN") along with its Annexures (in CD) was handed over to person, Authorised to collect SCN by Authorized Representative ("AR") of Noticee on April 10, 2023 at Securities and Exchange Board of India, Head Office, Mumbai. The allegations levelled against the Noticee in the SCN are summarized as follows:

1. *Securities and Exchange Board of India ('SEBI') conducted investigation in to the GDR issue of M/s Texmo Pipes and Products Ltd. ('Texmo'/Company) for the period March 01, 2011 to April 30, 2011 (hereinafter referred to as 'Investigation Period'/IP). Pursuant to investigation, vide communique dated February 27, 2019 (Annexure-1), the undersigned was appointed as the Adjudicating Officer under Section 19 read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules'), to inquire into and adjudge under the provisions of Section 15HA of SEBI Act for the alleged violation of relevant provisions of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') by Shri Arun Panchariya (hereinafter referred to as 'Noticee 1'/AP) and*

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*Adjudication Order in respect Mr. Arun Panchariya in the matter of M/s Texmo Pipes and Products Ltd.*

Shri Mukesh Chauradiya (hereinafter referred to as '**Noticee 2**' and hereinafter collectively referred to as '**Noticees**').

2. It is observed that Texmo was formed as a Partnership Firm by the name of M/s Shree Mohit Industries on May 13, 1999 and subsequently converted and incorporated as a Public limited Company on July 03, 2008 under the name "Texmo Pipes and Products Ltd." The Company got listed on Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**) on March 10, 2010. The company is engaged in business of manufacturing of plastic products viz. PVC and HDPE pipes. Tapti Pipes and Products Ltd. (hereinafter referred to as '**Tapti**'), a wholly owned subsidiary of Texmo was incorporated in UAE on March 13, 2011.
3. It is observed from the Shareholding pattern submitted by the Company to BSE that the company had issued a total of 1,12,70,000 shares as on quarter ending March 2011. Thereafter, the Company issued 6,27,500 Global Depository Receipts (hereinafter referred to as '**GDRs**') on April 11, 2011 to raise a total of \$ 9.99 million i.e. approximately Rs. 44.18 crore at RBI exchange rate of Rs. 44.20 per USD as on April 11, 2011 with each GDR valuing equal to 20 underlying equity shares. This issue of GDRs of Texmo was managed by PAN Asia Advisors Ltd. (now known as Global Finance & Capital Limited and hereinafter referred to as '**Pan Asia**') and the GDRs were listed on Luxumberg Stock Exchange. The proceeds of the GDRs were deposited in European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'). A summary of the GDR issues as provided by Texmo vide its letter dated June 18, 2015 (**Annexure 2**) is tabulated below:

**Table 1**

<b>GDR issue date</b>	<b>No. of GDRs issued (mn.)</b>	<b>Capital raised (USD mn.)</b>	<b>Local custodian</b>	<b>No. of equity shares underlying GDRs</b>	<b>Global Depository Bank</b>	<b>Lead Manager</b>	<b>Bank where GDR proceeds were deposited</b>	<b>GDRs Listed on</b>
11-04-2011	6,27,500 (at \$ 15.93 each GDR)	9.99	DBS Bank Ltd.	1,25,50,000	The Bank of New York Mellon, US	Pan Asia Advisors Ltd	Euram Bank, Austria	Luxembourg Stock Exchange

4. It is noted from the Corporate announcements made by the Company that Board of Directors of the Company in its meeting held on October 04, 2010 had decided to issue GDRs and the shareholders of the Company in the Extra Ordinary General Meeting held on October 28, 2010 had approved the issuance of GDRs.
5. It is observed that Texmo, Pan Asia and Euram Bank had entered into an Escrow Agreement dated March 01, 2011 for the purpose of the aforesaid GDR issue. The Escrow Agreement inter-alia states that "...The Lead Manager has entered into a placing agreement dated on or about the date hereof (the "Placing Agreement") with the Company to procure investors (the "Placees") for the

subscription of up to 6,27,500 global depository receipts.. ". Copy of the Escrow Agreement is placed at **Annexure 3**.

6. It is observed that SEBI received a copy of letter dated February 25, 2016 of Pan Asia (**Annexure 4**) through Financial Conduct Authority, United Kingdom (FCA UK). Vide the said letter, Pan Asia provided details of its directorship and connection with AP. On perusal of the documents submitted by Pan Asia, along with the said letter, it was observed that Pan Asia was incorporated on April 24, 2006 and AP was director of Pan Asia Advisors Ltd. during the period August 30, 2006 to September 29, 2011. Further, vide letter dated February 20, 2012 (**Annexure 5**), Pan Asia submitted that AP held 100% shareholding in the company during the period July 01, 2008 to January 20, 2012. In view of this, it is alleged that Pan Asia is connected to AP and AP was director and 100% shareholder of Pan Asia during the issuance of GDRs of Texmo.
7. Vide letter dated June 18, 2015 (**Annexure 2**), Texmo also provided the list of the GDR allottees. According to the said list, the following were the investors who had subscribed to the GDRs issue of Texmo:

Table 2

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

8. However, upon further examination of statement of Escrow account opened by Texmo with Euram Bank, it is observed that the subscription money for GDRs issue was received in the Escrow account from only one entity named Vintage FZE (now known as Alta Vista International FZE and hereinafter referred to as 'Vintage'). Further, vide email dated March 01, 2016 (**Annexure 6**), Financial Market Authority, Austria (hereinafter referred to as 'FMA') informed SEBI that Euram Bank has submitted that the whole GDR issue of Texmo was subscribed by only one entity i.e. Vintage.
9. It is further observed that Vintage had signed a Loan Agreement bearing No. K280211-006 dated March 01, 2011 (**Annexure 7**) with Euram Bank to provide it funding and, thereby, enabling Vintage to subscribe to the GDR issue of 6,27,500 Luxembourg public offering for an amount of \$

99,96,075. The loan agreement was signed by Noticee 2 on behalf of the borrower i.e. Vintage, in the capacity of its Managing Director.

10. Pursuant to this, Vintage opened a loan account having number 540012-01-01 with Euram Bank to avail the above mentioned loan facility. At the same time, Texmo also opened a retail account having number 580038 with Euram Bank. The Loan Agreement states "Nature and purpose of facility" is "To provide funding enabling Vintage FZE to take down GDR issue of 6,27,500 Luxembourg public offering and may only be transferred to EURAM account nr. 580038, Texmo Pipes and Products Ltd." In this regard, it is noted that this was the same account where Texmo deposited its GDR proceeds.
11. With regard to security for the loan, Loan Agreement states that "...it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be 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. 580038 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."
12. From the examination of the above Loan Agreement, it is observed that Vintage had availed of loan facility to the extent of \$ 9.99 million from Euram Bank to subscribe to GDRs of Texmo.
13. Further, upon perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage, as available with Euram Bank, it was observed that Alkarni Holding Ltd. was the sole shareholder of Vintage and AP was the sole shareholder of Alkarni Holding Ltd. Copy of the KYC documents and shareholding details of Vintage are placed at **Annexure 8**. In view of this, it is alleged that Noticee 1 was sole beneficiary of Vintage.
14. It is further noted that Texmo had entered into a Pledge Agreement with Euram Bank (**Annexure 9**) on March 01, 2011 i.e. on the same day Vintage entered in the Loan Agreement with Euram Bank. The preamble of the Pledge Agreement states:

"By Loan Agreement K280211-006 (hereinafter referred to as the "Loan Agreement") dated 01 March 2011 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 9,996,075. The pledger has received a copy of the Loan Agreement No K280211-006 and acknowledges and agrees to its terms and conditions."

15. *The pledge created in the Pledge Agreement is 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 bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

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

*2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580038 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein ....*

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

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

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

16. *Further, 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 Accounts to settle the Obligations. In such case*

*the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

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

- 17. In view of the above Loan agreement between Euram Bank & Vintage, on the one side, and pledge agreement between Euram Bank and Texmo, on the other side, it is alleged that the account no. 580038 of Texmo, maintained with Euram Bank, was opened to keep the GDR proceeds and, at the same time, the said GDR proceeds, to be raised, were pledged by Texmo even before the issuance of GDRs to secure the rights of Euram Bank against the loan given by it to Vintage for subscription of GDRs issue of Texmo.*
- 18. On perusal of the Pledge Agreement and Loan Agreement, it was observed that issuance and subscription of GDRs was done through loan availed by Vintage from Euram Bank. Further, it is alleged that bank account in which GDR proceeds were deposited, was in name of Texmo but the amount deposited in the account was not at the free disposal of Texmo as the same was kept as collateral even before the issuance of GDRs for the loan availed by Vintage. Further, upon comparison of Texmo's Euram Bank retail account statement (**Annexure 10**) and Vintage's loan account statement (**Annexure 11**), it is observed that, only after Vintage repaid loan instalments, equivalent amount of money was allowed to be withdrawn from Texmo's bank Account.*
- 19. Further, it is noted that the Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. Therefore, it is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of Texmo and the GDR issue would not have been subscribed, had no such security was given by Texmo towards the loan taken by Vintage.*

20. Further, during the course of Investigation, all the Corporate Announcements made by Texmo during the period October 2010 - May 2011 were examined by SEBI and it was observed that Texmo did not inform stock exchange about Pledge Agreement/ collateral security. In light of this, it is alleged that the said corporate announcement had made investors believe that the said GDR issue was genuinely subscribed.
21. Therefore, it is further alleged that the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements allegedly misled Indian retail investors and induced investors to deal in shares of Texmo in Indian Capital Market. Therefore, it is further alleged that the whole scheme of issuance of GDRs was fraudulent.

**Realization of GDR proceeds by Texmo:**

22. As observed above, the GDR proceeds of Texmo was pledged against the loan taken by Vintage for subscription of GDRs of Texmo. It is further observed that Vintage repaid the loan amount to the extent of \$ 6.50 million in 10 instalments by March 02, 2012 and thereafter defaulted on the repayment of balance loan amount. Details of repayment of loan by Vintage as observed from information provided by Euram Bank are tabulated below:

Table 3

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

23. The GDR proceeds amounting to \$ 99,96,075 were deposited in Texmo's Euram Bank account no. 580038 on April 08, 2011. Out of the GDR proceeds of \$ 9.99 million (along with the interest earned on money market instruments), an amount of \$65,48,000 was transferred by Texmo to the account of Tapti on the dates given in the table above immediately after the corresponding amount was paid by Vintage.

24. It is also observed from the above table that Vintage had repaid loan amount of \$ 6.50 million and thereafter defaulted on the repayment of balance loan amount of \$35,00,628.98 (including interest on loan amount). It is observed from Euram Bank's letter dated September 05, 2012 to Texmo (**Annexure 12**) that an amount of \$35,00,628.98 (\$34,96,075- Principal + \$4,55,398- Interest) was due from Vintage. Against the said amount, an amount of \$34,98,579.85 (equivalent to Rs. 19.43 crore, at RBI exchange rate of Rs. 55.536 per USD on September 04,2012) was adjusted by Euram Bank on September 04, 2012 and an amount of \$ 2049.13 was due from Vintage. In view of this, it is alleged that GDRs to the tune of \$3.49 million were issued by Texmo to Vintage free of cost.

**Cancellation of GDRs (conversion into equity shares):**

25. Conversion of GDRs into equity shares is termed as cancellation of GDRs. It is observed that the GDRs of Texmo were eventually converted into equity shares and these shares were sold in the Indian Securities Market i.e. on BSE and NSE. Custodian of the GDRs, DBS Bank Ltd. informed SEBI that cancellation of GDRs started from August 03, 2011 and as on July 15, 2014, all the 6,27,500 issued GDRs were cancelled and converted into equity shares of Texmo.
26. Vide email dated July 09, 2016 (**Annexure 14**), Global Depository i.e. The Bank of New York Mellon also provided the date of termination of several GDR programs to SEBI. It was observed that Texmo's GDR program was terminated on September 26, 2014 and all the GDRs of Texmo were cancelled before its GDR termination program.
27. Further, post cancellation of GDRs, certain Foreign Institutional Investors' sub-accounts namely 1) India Focus Cardinal Fund ('**IFCF**'), 2) Leman Diversified Fund ('**Leman**'), 3) Sparrow Asia Diversified Opportunities Fund ('**Sparrow**') and 4) HighBlueSky Emerging Market Fund ('**HBS**') received total 1,25,50,000 shares of Texmo on conversion of 6,27,500 GDRs. A summary of schedule of Cancellation of GDRs and respective allotment of shares is as below:

Table 4

Date of conversion of GDRs	No. of GDRs converted	No. of equity shares Issued on conversion of GDRs	No. of remaining GDRs	Entity becoming holder of equity shares post conversion of GDRs
			6,27,500	
3-Aug-11	13,800	276,000	613,700	IFCF
4-Aug-11	28,750	575,000	584,950	IFCF
31-Jan-12	25,000	500,000	559,950	Leman
3-Feb-12	26,109	522,180	533,841	Sparrow
5-Mar-12	45,000	900,000	488,841	Leman
5-Mar-12	23,458	469,160	465,383	Sparrow
9-Mar-12	48,500	970,000	416,883	HBS
2-May-12	24,096	481,920	392,787	HBS

9-May-12	19,875	397,500	372,912	HBS
30-May-12	13,193	263,860	359,719	HBS
9-Jul-12	20,000	400,000	339,719	HBS
17-Jul-12	19,597	391,940	320,122	HBS
18-Feb-13	48,729	974,580	271,393	HBS
25-Feb-13	20,000	400,000	251,393	HBS
19-Mar-13	20,000	400,000	231,393	HBS
10-Apr-13	35,000	700,000	196,393	HBS
15-May-13	40,000	800,000	156,393	HBS
22-May-13	50,000	1,000,000	106,393	HBS
6-Jun-13	30,000	600,000	76,393	HBS
11-Jul-13	30,000	600,000	46,393	HBS
13-Aug-13	12,943	258,860	33,450	HBS
15-Jul-14	33,450	669,000	0	HBS
<b>TOTAL</b>	<b>6,27,500</b>	<b>1,25,50,000</b>	<b>0</b>	

Summary of the equity shares received post cancellation of GDRs is tabulated below:

Table 5

(Source: custodian DBS Bank)

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

**Sale of converted equity shares:**

28. Vide email dated September 11, 2018 (**Annexure 15**), NSDL has provided the transaction statements of IFCF, Leman, Sparrow and HBS to SEBI. Vide email dated September 18, 2018 (**Annexure 16**), custodian ICICI Bank provided transaction details of IFCF and HBS which sold converted equity shares of Texmo's GDRs. Vide email dated September 17, 2018 (**Annexure 17**), custodian Deutsche Bank AG provided transaction details of Sparrow which sold converted equity shares of Texmo's GDRs. Vide email dated September 11, 2018 (**Annexure 18**), custodian HSBC Securities Services provided transaction details of Leman which sold converted equity shares of Texmo's GDRs.

29. It is observed from the details of GDR trades (**Annexure 19**), as received from Euram Bank, that IFCF had received GDRs from Vintage. Further, from the transaction details of IFCF, as received from NSDL and custodian of IFCF i.e. ICICI Bank, it is observed that IFCF converted the 42,550 GDRs of Texmo into 8,51,000 equity shares of Texmo and sold all the shares during the period from August 2011 to June 2014. A summary of sale trades of IFCF, as received from ICICI bank is as below:

Table 6

<b>Date</b>	<b>No. of shares sold</b>
02/08/2012	40000
26/05/2014	100000
27/05/2014	4395
28/05/2014	100000
29/05/2014	190000
03/06/2014	100000
04/06/2014	200000
05/06/2014	100000
06/06/2014	16605
<b>Grand Total</b>	<b>8,51,000</b>

30. Further, vide email dated October 15, 2018 (**Annexure 20**), Leman submitted to SEBI that it had received GDRs from Euram Bank. In this regard, from the transaction details of Leman, as received from NSDL and custodian of Leman i.e. HSBC Securities Services, it is observed that Leman converted the 70,000 GDRs of Texmo into 14,00,000 equity shares of Texmo and sold all the shares during the period from February 2012 to April 2012. Summary of sale trades of Leman, as received from HSBC Securities Services, is tabulated below:

Table 7

<b>Date</b>	<b>No. of shares sold</b>
02/02/2012	53000
03/02/2012	190000
23/02/2012	125000
28/02/2012	120000
29/02/2012	12000
06/03/2012	120000
07/03/2012	150000
12/03/2012	100000
03/04/2012	125000
10/04/2012	100000
12/04/2012	100000
18/04/2012	150000
20/04/2012	55000
<b>Grand Total</b>	<b>14,00,000</b>

31. Vide emails dated October 15, 2018 & October 17, 2018 (**Annexure 21**), Sparrow submitted to SEBI that it purchased the GDRs by placing an order into the Euroclear system and these were eventually settled into its custodian's Euroclear account. Sparrow replied that seller's Euroclear No. was 22821. On lookup of Euroclear Bank participants list available on London Stock Exchange Group [website \(https://www.lseg.com/sites/default/files/content/documents/euroclearbank%20participant%20list.pdf\)](https://www.lseg.com/sites/default/files/content/documents/euroclearbank%20participant%20list.pdf) (**Annexure 22**), it is observed that seller with Euroclear No. 22821 was Euram Bank.

32. Further, from the transaction details received from NSDL and custodian of Sparrow i.e. Deutsche Bank AG, it is observed that Sparrow converted the 49,567 GDRs of Texmo into 9,91,340 equity shares of Texmo and sold all the shares during the period from February 2012 to April 2012. A summary of sale trades of Sparrow, as received from Deutsche Bank AG, is as below:

Table 8

Date	No. of shares sold
16/02/2012	75000
21/02/2012	110000
24/02/2012	150000
27/02/2012	150000
28/02/2012	30000
29/02/2012	7180
04/04/2012	100000
11/04/2012	125000
17/04/2012	100000
19/04/2012	100000
20/04/2012	44160
<b>Grand Total</b>	<b>9,91,340</b>

33. Vide email dated September 28, 2018 (**Annexure 23**), HBS submitted to SEBI that it had received GDRs from Euram Bank, SMB Securities Ltd. (Port Louis), Julius Bear (Singapore) and MCB Bank (Port Louis). Further, from the transaction details of HBS, as received from NSDL and custodian of HBS i.e. ICICI Bank, it is observed that HBS converted the 4,65,383 GDRs of Texmo into 93,07,660 equity shares of Texmo and sold all the shares during the period from March 2012 to July 2012.

34. The details of sale of shares by these entities in Indian Securities Market are as below:

Table 9

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (Rs.)		Total trade value (Rs.)
	BSE	NSE		BSE	NSE	
IFCF	2,41,151	6,09,849	8,51,000	22,29,625	57,47,403	79,77,028
Leman	6,40,000	7,60,000	14,00,000	1,40,13,586	1,66,82,453	3,06,96,039
Sparrow	4,71,340	5,20,000	9,91,340	1,03,43,188	1,14,48,321	2,17,91,509
HBS	37,85,952	55,21,708	93,07,660	3,27,70,717	5,49,77,510	8,77,48,227
Total	51,38,443	74,11,557	1,25,50,000	5,93,57,116	8,88,55,687	14,82,12,803

From the above table, it can be seen that a total of 1,25,00,000 shares of Texmo, on conversion of GDRs, were sold in the market for a consideration of Rs. 14.82 Crore.

35. As per information submitted by FII sub-accounts and custodians and available with SEBI, it is observed that the details of registration of IFCF, Leman, Sparrow and HBS is as below:

Table 10

<i>I si. No.</i>	<i>Name of sub a/c</i>	<i>Period of registration</i>	<i>Name of FII under which sub a/c is registered</i>	<i>Period of registration with FII</i>
1	IFCF	12/12/2008 to 19/07/2011	Euram Bank	21/11/2008 to 20/11/2011
		20/07/2011 to 19/06/2017	CCP	20/06/2011 to 19/06/2017
2	HBS (previously known as KBC Aldini Capital (Mauritius) Ltd.)	18/06/2010 to 21/10/2012	KBC Aldini Capital Ltd.	22/03/2010 to 21/03/2016
		22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Ltd.)	01/03/2011 to 28/02/2017
3	Leman	17/05/2012 to 03/01/2017	Arcstone Capital Ltd.	17/05/2012 to NA
4	Sparrow	10/08/2009 to 27/07/2014	Sparrow Investment Managers Ltd.	10/08/2009 to NA

36. It is observed that IFCF was incorporated on August 22, 2008 in Mauritius and was registered as sub-account of FII-Euram Bank from December 12, 2008 to July 19, 2011. Thereafter, IFCF was granted transfer from Euram Bank to CCP on July 20, 2011 and was registered as sub-account of CCP from July 20, 2011 to June 19, 2017. It is observed that both IFCF and CCP were incorporated on the same day i.e. August 22, 2008 in Mauritius. In this regard, Copies of certificates of Incorporation of IFCF and CCP are placed at **Annexure 49**.

37. It is also observed that from the Email dated November 30, 2015 (**Annexure 50**) from the Concerned Department of SEBI which deals with FIIs, other than IFCF, no sub-account was registered with Euram Bank. Further, as observed from Emails dated December 01, 2015 and March 16, 2016 from ICICI Bank Ltd. (**Annexure 51**), both Euram Bank and CCP did not make investment in India as FIIs except their sub-account IFCF which sold shares of Texmo in the market.

38. HBS was registered as sub-account under FII KBC Aldini Capital Ltd. and FII Golden Cliff. However, it is observed from Emails dated December 01, 2015 and March 16, 2016 from ICICI Bank Ltd. (**Annexure 51**) that both KBC Aldini Capital Ltd. and Golden Cliff did not make investment in India as FIIs except their sub-account HBS which sold shares of Texmo in the Indian market.

39. According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website (**Annexure 24**), AP held positions with inter-alia Pan Asia, Vintage and IFCF. In this regard, it is alleged that AP had the following connections with the various entities involved in the present matter:

Table 11

Sl. No.	Name of entity	Connection/association of AP with entity
1	Pan Asia	AP was director (August 30, 2006 to September 29, 2011) and 100% shareholder (from July 01, 2008 to January 20, 2012) and 90% shareholder as on January 2016 ( <b>Annexure 25</b> ).
2	Vintage	AP was beneficial owner (as on June 06, 2007) and Managing Director (as on June 06, 2007 and May 12, 2010). Alkarni Holdings Ltd. was sole shareholder of Vintage as on December 28, 2010 and AP was sole director of Alkarni as on April 21, 2014. ( <b>Annexure 7 &amp; 26</b> )
3	IFCF	AP was director from August 22, 2008 to October 28, 2010, Investment Manager (as on July 12, 2010) and 100% shareholder (January 01, 2009 to May 31, 2010) and beneficial owner since August 22, 2008. ( <b>Annexure 27 and Annexure 28</b> )
4	Cardinal Capital Partners (CCP)	AP was 100% shareholder and Chief Investment Officer (as on July 12, 2010). CCP held 100% shares of IFCF. ( <b>Annexure 28</b> )
5	Euram Bank	AP connected Pan Asia had joint venture with Euram Bank namely Euram Bank Asia Ltd. (incorporated on August 23, 2009, dissolved in December 30, 2013). ( <b>Annexure 29</b> )
6	Euram Bank Asia Ltd. (EBAL)	AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011. ( <b>Annexure 29</b> )
7	Mr. Mukesh Chauradiya	<p>AP was beneficial owner of Vintage in which Noticee 2 served as Managing Director, Authorized Signatory and director (<b>Annexure 11</b>).</p> <p>In Ramsai Investment Holdings Pvt. Ltd., Vintage was holding around 99.98% shares through its director AP (for the period 2009-2013). AP was director of Ramsai Investment Holdings Pvt. Ltd. for the period from February 04, 2008 to August 18, 2010. Noticee 2 was director of Ramsai Investment Holdings Pvt. Ltd. (first appointment from February 04, 2008 and latest appointment from August 17, 2010 till March 17, 2016). (<b>Annexure 30</b>)</p> <p>AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (<b>Annexure 31</b>). AP's brother Mr. Satish Ramswaroop Panchariya is director (first appointment on February 01, 2000 and latest appointment as Managing Director since May 11, 2018 till date). AP's brother Mr. Ashok Ramswaroop Panchariya is director in Alka India Ltd. since April 29, 2005 till date. (<b>Annexure 30</b>).</p>

		<i>Mr. Mukesh Chauradiya was director of Alka India Ltd. from January 31, 2006 to June 01, 2010. (Annexure 30)</i>
8	<i>Mr. Anant Kailash Chandra Sharma ('AKS')</i>	<i>AP and AKS were directors in Sai Sant Advisory (India) Pvt. Ltd. AP-August 31, 2007 to October 20, 2010 AKS-December 01, 2009 till March 18, 2016. (Annexure 30 &amp; 32) AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (Annexure 31). AKS was additional director in Alka India Ltd. since December 01, 2009 till April 26, 2018. AP's brother Mr. Satish Ramswaroop Panchariya is director (first appointment on February 01, 2000 and latest appointment as Managing Director since May 11, 2018 till date). AP's brother Mr. Ashok Ramswaroop Panchariya is director in Alka India Ltd. since April 29, 2005 till date. (Annexure 32) AKS has worked with Vintage (Annexure 33).</i>
9	<i>Highblue Sky Emerging Market Fund ('HBS')</i>	<i>AKS is director (since August 11, 2014 till date) and 100% beneficial owner of HBS (since September 09, 2014 till date by virtue of being beneficial owner of Golden Cliff from September 09, 2014 till date which in turn is beneficial owner of HBS since April 21, 2014). AKS is connected to AP. (Annexure 30, 31 and 33) Ms. Reema Narayan Shetty was beneficial owner of HBS from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014). Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with Euram Bank Austria. (Annexures 33 and 28)</i>
10	<i>Golden Cliff (previously known as Vaibhav Investments Ltd.)</i>	<i>AKS is director (since July 15, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. AKS is connected to AP. (Annexure 30, 31 and 33) Reema Narayan Shetty was director (from May 16, 2013 till August 01,2014) and 100% beneficial owner (from September 12, 2013 till September 09, 2014) of Golden Clifff. She is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with Euran Bank Austria. (Annexure 33, 28 and</i>

		<b>34)</b>
11	KBC Aldini Capital Ltd.	Mr. Daniel Baumslag is director of KBC Aldini Capital Ltd. (since Oct 25, 2009 till September 27, 2011 and since August 03, 2015 till date) and HBS (from March 05, 2010 to May 16, 2011). Mr. Daniel Baumslag was 100% shareholder of HBS (from March 05, 2010 to June 14, 2011). AKS is connected to AP and is beneficial owner and director of HBS. (Annexure 33, 30, 35, 31)
12	Aspire Emerging Fund (Aspire)	100% Shares held by Image Securities Ltd. in which Mr. Ashish Nanda was a Managing Director (Annexure 36). Also: Mr. Ashish Nanda was a director of 1 Aspire along with Mr. Aslam Kanowah who was also a director of HBS. . (Annexure 37)
13	Sparrow Asia Diversified Opportunities Fund ('Sparrow')	Common authorized signatory for Leman Diversified Fund and Sparrow is Mr. Nayan Agarwal (Annexure 38). Investors of Leman Diversified includes: Image Securities Ltd. (Annexure 39) whose Managing Director is Mr. Ashish I Nanda (Annexure 36) who was also a director of Aspire (Annexure 37)
14	Leman Diversified Fund ('Leman')	Investors include Al Jalore and Image Securities Ltd. (Annexure 39) and Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd. (Annexure 36)

40. It is further observed that Cardinal Capital Partners (CCP) held 100% shares of IFCF during the period January 2009 to May 31, 2010. At the same time, AP was holding 100% shares of CCP. In view of this, it is observed that AP was 100% shareholder of India Focus Cardinal Fund (IFCF). AP also served as Chief Investment Officer of CCP in the year 2010. (Copy of IFCF's letter dated April 02, 2012 and AP's email dated July 12, 2010 evidencing same is placed at Annexure 28).

41. It is observed from the information received from Euram bank through FMA, vide Emails dated March 03, 2016, March 01, 2016, February 15, 2016 (Annexure 40), that Pan Asia had a joint venture with the Euram Bank namely "Euram Bank Asia Ltd." (EBAL), which was incorporated on August 23, 2009 and dissolved in December 30, 2013, in which AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011. The same was also corroborated with the information available on the website of Dubai International Financial Centre (Annexure 41).

42. SEBI also examined the securities trade account of Vintage, held with Euram Bank (Annexure 42). From the said trade account, it was observed that, for several GDR issues which are under investigations with SEBI, IFCF received GDRs from Vintage, which was sole subscriber of these

issues and sold these shares on BSE/ NSE after converting them from GDRs. In view of this and the alleged connections of IFCF with AP, it is alleged that IFCF was acting as conduit to AP in selling converted shares of GDR issuer companies.

43. During the course of investigation, SEBI obtained the KYC documents of HBS from custodian ICICI Bank Ltd (**Annexure 43**). From the KYC documents received by SEBI, it was observed that HBS had mentioned its registered address as 'C/o Auriss International Ltd., 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius'. Further, the E-mail address mentioned in KYC documents is 'fundadmin@aurisse.com' and contact no. is mentioned as +2304640077. However, in the records of SEBI, while applying for registration, HBS had mentioned its e-mail id as 'saleem@aurisse.com'. SEBI conducted a Google search regarding Aurisse International Ltd. and it was observed that it is a company based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Ltd. wherein Noticee 2 was a director and CFO in 2011. SEBI conducted further examination of the website of Aurisse International Ltd. and found out that it shares common address and contact number with HBS (**Annexure 44**).

44. Thereafter, vide emails dated March 02, 2016 and April 29, 2016 (**Annexure 34**), HBS provided shareholding and directorship details of HBS and Golden Cliff. From the details provided by HBS, it is observed that Golden Cliff is 100% shareholder of HBS since April 21, 2014. Further AKS is connected to Golden Cliff and HBS in the manner mentioned below:

Table 12

Connection with HBS		Connection with Golden Cliff	
1.	Director since August 11, 2014 till date	1.	Director since July 16, 2014
2.	Beneficial owner (100% shareholder) since September 09, 2014 till date (by virtue of being beneficial owner of Golden Cliff since September 09, 2014 till date which in turn is beneficial owner of HBS since April 21, 2014)	2.	Beneficial owner (100% shareholder) since September 09, 2014 till date

It is further noted that AKS, in his email dated August 04, 2017 and September 28, 2018 (**Annexure 33**), submitted that he has worked with Vintage FZE in Dubai and was directly reporting to Noticee 2.

45. Further, it is observed that AP was one of the promoters of Alka India Ltd. from quarter ended December 2005 to quarter ended March 2018. At the same time, AKS served as Additional Director of Alka India Ltd. (from December 01, 2009 till date) and Noticee 2 served as director of Alka India Ltd. from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Pvt. Ltd., Noticee 2 and AKS served as directors during a common period. Vintage FZE was shareholder in Ramsai Investment Holdings Pvt. Ltd. through its director AP (**Annexure 30**). At the same time,

AKS had also served as a Director along with AP in Sai Sant Advisory (India) Pvt. Ltd. during a common period (**Annexure 30**). Details of alleged connections among AP, Noticee 2 and AKS are tabulated in the table 11 above.

46. It is further observed that one Ms. Reema Narayan Shetty was also connected to HBS and Golden Cliff in the following manner:

Table 13

Connection with Golden Cliff		Connection with HBS	
1.	Director from May 16,2013 to August 01, 2014.	1.	Beneficial owner (100% shareholder) from April 21, 2014 to September 09,2014 (by virtue of being beneficial owner of Golden Cliff from September 12,2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21,2014)
2.	Beneficial owner of Golden Cliff from September 12,2013 till September 09, 2014		

47. It is observed from the conversion details of GDR issues of several Indian companies, which are investigated/ under investigation by SEBI, that HBS received shares in its account post conversion of GDRs for several GDR issues under investigations, for which AP connected Pan Asia/Prospect Capital Ltd. were Lead Managers and Vintage was sole subscriber to GDRs. Copy of the conversion details evidencing above is placed at **Annexure 45**.

48. In view of the above, it is observed that AKS (who worked with AP) and Reema Narayan Shetty (who worked with AP connected entity i.e. IFCF), are associated with HBS as beneficial owners (**Annexure 34**). Further, from the facts/details mentioned above and from the analysis of sale of converted shares of Texmo on BSE/ NSE by HBS, it is alleged that HBS acted as conduit to AP for sale of shares of Texmo.

49. SEBI also sought the details i.e. directorship, beneficial owner and KYC details of FII sub-accounts from the custodians/ FII sub-accounts. Summary of the connections among FII sub-accounts is tabulated below:

Table 14

Sr. No.	Name of the entity	Basis of connection among entities at S. N. 1 & 2
1	Leman Diversified Fund	1. Common director - Mr. Deva Marianen, Mr. Mohammad Rehaz Cotobally, Zaheerah Banu Jhummun, Aziza Housna Banon Moraby 2. Common authorized signatory - Mr. Nayan Agarwal
2	Sparrow Asia Diversified Opportunities Fund	

50. SEBI had sought details of investors in Leman Diversified Fund from its custodian i.e. Deutsche Bank. Deutsche Bank, in its Email dated September 12, 2016 (**Annexure 39**), submitted the details of investors in Leman. As per those details, it is observed that investors of Leman Diversified Fund

*inter-alia* are Al Jalore and Image Securities Ltd. In this regard, it is observed that Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd. and is also director of Aspire Emerging Fund (**Annexures 36 & 37**).

51. It is further observed that one Mr. Aslam Kanowah is also a director of Aspire Emerging Fund (**Annexure 37**). At the same time, from the information received from HBS, vide its Email dated April 29, 2016 (**Annexure 46**), it is observed that Aslam Kanowah was director of HBS. As already alleged in the pre-paragraphs, HBS is a connected entity of AKS who himself is allegedly connected to AP and Noticee 2 on account of his employment at Sai Sant Advisory (India) Pvt. Ltd. and Vintage in Dubai and was directly reporting to Noticee 2.
52. In view of the above, it is observed that two FII sub-accounts namely Leman Diversified Fund and Sparrow Asia Diversified Opportunities Fund are connected to one another on the basis of common authorized signatory Mr. Nayan Agarwal and common directors. Further, it is alleged that these two FII-sub-accounts are connected to AP by virtue of their connection with HBS.
53. In light of the above, it is alleged that Pan Asia, IFCF, HBS, Sparrow, Leman, Euram Bank, CCP, Golden Cliff, Vintage and Noticee 2, are connected to AP and, in collusion with these entities and Texmo, AP devised the GDR issue in fraudulent manner and subsequent sale of shares in Indian market.
54. It is alleged that Noticee 2 had long association with AP. In this regard, it is observed that Noticee 2 has worked as director in Ramsai Investment Holdings Pvt. Ltd. wherein AP was director and also holding 99.98% shares through Vintage (**Annexure 30**). It is also observed that Euram Bank had sent a copy of letter dated September 05, 2012 (**Annexure 47**), by which it had intimated Vintage about realization of Pledge, by email to Noticee 2 at his email ID ([mukesh.c@vintagegroupfze.com](mailto:mukesh.c@vintagegroupfze.com)). It is also observed that Noticee 2 had also signed the Loan Agreement dated March 01, 2011 between Euram Bank and Vintage for subscription of Texmo's GDR issue (**Annexure 7**) and signed redemption requests of loan account in his capacity of Managing Director as well as authorised signatory of Vintage. In this regard, it is observed that Vintage's default on loan repayment for GDR issue of Texmo, affected Texmo to the tune of \$ 3.49 million.
55. From the above, it is observed that Noticee 2 was holding key position in Vintage (was Managing Director and authorized signatory of Vintage) at the relevant time and had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan. In view of this, it is alleged that Noticee 2 was in knowledge of the AP's scheme of subscribing to

*GDR issues through Loan Agreement and defaulting on repayment of loan in several GDR issues. It is further alleged that Noticee 2 had acted as aid to AP and facilitated AP's scheme by executing the Loan Agreement for the GDR subscription of Texmo in capacity of the Managing Director of Vintage.*

- 56. Therefore, it is alleged that Noticee 2 had acted as party to the whole fraudulent scheme and by his role, help and assistance in executing the abovementioned fraudulent scheme, has violated section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*
- 57. Further, it is alleged that AP was the beneficial owner and was controlling Pan Asia, which was Lead Manager for about 14 GDR issues during the years 2006-11 including Texmo. In this regard, the list of GDR issues is placed at **Annexure 48**. As the Lead Manager, Pan Asia managed the GDR issue and procured the subscriber for GDR issue. However, Vintage was the sole subscriber to the GDR issue of Texmo as well as 22 other GDR issues. It is observed in this regard that AP was beneficial owner and Managing Director of Vintage. It is alleged that, in all these 23 GDR issues, subscriptions were made by only Vintage, by obtaining loans from Euram Bank and security towards the loans were given by the GDR issuer Indian companies by way of separate pledge agreements.*
- 58. In the similar manner, it is alleged that Vintage was sole subscriber of GDR issue of Texmo and subscription was arranged through a loan availed from Euram Bank to the extent of \$ 9.99 million for which security was provided by Texmo by pledging its GDR proceeds even before the amount was raised. It is further observed that Vintage had repaid loan to the tune of \$6.50 million as per the details given in table 3 and defaulted in repayment of outstanding loan, thereby GDR proceeds to that extent of \$ 3.49 million were adjusted by Euram Bank. In view of this it is alleged that Vintage had acquired GDRs of Texmo to the tune of \$ 3.49 million at free of cost.*
- 59. It is also alleged that the four FII-sub-accounts (IFCF, HBS, Sparrow and Leman), which had converted GDRs into equity shares of Texmo, were entities connected to AP by various connections mentioned in Table 7 above. It is observed that these four sub-accounts sold the converted equity shares to the tune of Rs. 14.82 crore on Indian stock exchanges (BSE and NSE).*
- 60. In view of the details mentioned above, it is alleged that the fraudulent GDR scheme, which can be summarized as - AP arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub-accounts which, in turn, sold the converted equity shares in the Indian securities market, was completely devised by AP along with Texmo wherein Texmo misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors*

*believe that GDRs were genuinely subscribed and loan default caused loss to the shareholders of Texmo to the tune of \$ 3.49 million. It is further alleged that the existing shareholders and prospective investors of Texmo were informed of the positive news that Texmo had received foreign capital through GDRs but they were completely uninformed of the activities of AP and his connected entities, in such GDR issue.*

- 61. It is further alleged that the fact that GDRs were issued pursuant to a well thought out plan devised by AP involving Vintage, Pan Asia, Euram Bank and Texmo and executed with the help of all above entities, was not in the public domain. As a result, investors in India were lulled into thinking that stocks of the issuer company have been highly valued by foreign investors. In view of this, it is also alleged that the issuance of GDRs, subsequent transfer and sale of shares of Texmo in Indian market was a fraudulent scheme.*
- 62. In view of this, it is alleged that AP was the key person in structuring the GDR issue of Texmo who devised and structured the GDR issue in connivance with Texmo. Further, it is also alleged that the entities having connections with AP were involved at all stages of the GDR issue since AP controlled Vintage subscribed to GDR issue by entering into Loan Agreement with AP connected Euram Bank for which Texmo pledged its GDR proceeds as security. AP connected Pan Asia was Lead Manager to GDR issue. It is further alleged that AP connected FIs namely Euram Bank and CCP made AP controlled IFCF their sub-account to facilitate it in selling converted equity shares of Texmo. Further, it is also alleged that AP connected FI namely Golden Cliff made AP connected entity HBS its sub-account to facilitate it in selling converted equity shares of Texmo. It is further alleged that, by involving in the abovementioned scheme, AP connected FI sub-accounts IFCF, HBS, Sparrow and Leman cancelled GDRs and sold converted equity shares. In this regard, it is observed that AP controlled Vintage defaulted on loan payment of \$ 3.49 million and same amount was adjusted by Euram Bank from the GDR proceeds of Texmo as Texmo had pledged GDR proceeds against this loan.*
- 63. Thus, it is alleged that AP devised GDR scheme along with Texmo wherein Texmo misled the Indian investors by concealing the information of entering into Pledge Agreement and by informing GDR related news in a distorted manner to stock exchanges which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders to the tune of \$ 3.49 million.*
- 64. Therefore, in view of all the details mentioned above, it is alleged that AP has violated sections 12A (a), (b), (c) of the SEBI Act read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*
- 65. The text of the provisions of law allegedly violated by the Noticees is being reproduced below:*

➤ **SEBI Act**

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

**12A.** No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

➤ **PFUTP Regulations**

**3. Prohibition of certain dealings in securities**

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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

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

66. The aforesaid alleged violations of SEBI Act and PFUTP Regulations, if proved, make the Noticees liable for monetary penalty under the provisions of Section 15HA of the SEBI Act. The text of the provisions of law are being reproduced below:

**SEBI Act**

**Penalty for fraudulent and unfair trade practices.**

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

67. *It is noted that, vide order dated June 20, 2013, AP was prohibited from accessing the capital market directly or indirectly for a period of 10 years from the date of the order. Further, vide order dated November 13, 2009, a monetary penalty of Rs. 5 Lakh was imposed by Adjudicating Officer on AP.*
68. *It is also observed that, vide ad interim ex-parte order dated September 21, 2011, SEBI had restrained IFCF from dealing in securities or instrument with indian securities as underlying, in any manner whatsoever, until further order. The aforesaid directions were confirmed vide order dated December 30, 2011. Thereafter, vide final order dated September 05, 2017 IFCF was prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying in any manner whatsoever, for a period of six years*
69. *It is further observed that, vide ad Interim ex-parte order dated September 24, 2014, Vintage was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities or any Instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever, till further directions. The aforesaid directions were confirmed vide order dated March 23, 2015. Thereafter, vide final order dated September 05, 2017, Vintage was prohibited from accessing the capital market directly or indirectly, and dealing in securities or instrument with Indian securities as underlying in any manner whatsoever, for a period of ten years.*
70. *It is further observed that, vide ad interim ex-parte order dated September 24, 2014, Noticee 2 was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible Into securities, directly or indirectly, in any manner whatsoever, till further directions. The aforesaid directions were confirmed vide order dated March 23, 2015.*
71. *In view of the above, the Noticees are called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of Adjudication Rules read with Section 15-I of the SEBI Act and why penalty, if any, should not be imposed on the Noticee under the provisions of Section 15HA of the SEBI Act.*

5. Noticee vide letter dated May 22, 2023 had filed its written submissions in response to the SCN. Noticee has *inter-alia* made the following submissions:

- a Noticee cannot be made liable for any misinformation supplied by the company to stock exchange. As per the SEBI, the issue of GDR is not a fraudulent scheme but the manner of information to the stock exchange is such that it has resulted in fraudulent action on the part of the company, thereby, misleading the investors. Under such circumstances had the company informed the Stock Exchange, there was no occasion for a SEBI to allege anything against the noticee. If company has not informed the Stock Exchange or has misinformed the Stock Exchange, the noticee cannot be held liable for any act on behalf of the company
- b Connection Of AP with various entities especially Vintage IFCF, Euram Bank, Austria, Anant Kailash Chandra Sharma, Highblue Sky Emerging Market Fund (Hbs), Golden Cliff, Kbc, Espire Emerging Fund, Sparrow And leman is just an after thought and based upon conjunctures and surmises without there being any evidence
- c Noticee is connected to Pan Asia being 100% shareholder. This is absolutely wrong and incorrect. As per Annexure 25 itself the noticee has already resigned from Pan Asia directorship on 29.09.2011. Noticee was never a 100% shareholder in the Pan Asia nor there is any proof or evidence attached with the Show Cause Notice.
- d The Escrow Agreement dated March 1, 2011, has not been signed by the noticee Arun Panchariya
- e In so far as Vintage FZE is concerned, a document of June 6, 2007 has been appended with the Show Cause Notice to claim that AP was a beneficial owner whereas, the transactions in the present case were held in March 2011 and even the noticee had already resigned from the Vintage in August 2010. Even as per the Annexure 26 attached with the Show Cause Notice, one Alkarni Holdings Ltd. is being shown to be owner of one share of Vintage as on 04.11.2010 whereas, certificate of incumbency allegedly shown is of 21.04.2014 and is not relatable to the period of transaction. Therefore, though the noticee is disputing all the said documents but still even as the said documents are not sufficient to connect noticee with the Vintage as on the date of transaction in March 2011.
- f Moreover, even the Loan agreement in the present case has not been signed by the noticee, AP.
- g In so far as IFCF is concerned, the noticee had already resigned in October, 2010 whereas, the transactions in the present case are of March 2011 and conversion of the GDRs by IFCF are of August 2011. In fact, the ownership rights of the GDRs as well as shareholding pattern of Class A share belongs to Euram Bank, Austria.
- h As per the interim order dated 29.09.2011 passed by the SEBI, Arun Panchariya, Pan Asia, Euram Bank and IF-CF were already banned from dealing in Securities Market.
- i The Noticee has no connection with Mukesh Chauradiya. Simply because some other family members of AP are shown and alleged to be connected with Mukesh Chauradiya does not mean that the noticee is also connected with him.
- j In order to connect HBS with the noticee, it has been alleged that one Anant Kailash Chandra Sharma was Director in HBS since 11.08.2014 and owner since 09.09.2014. The show Cause Notice has failed to establish or show any evidence with regard to connection of the Anant Kailash Chander Sharma with HBS from 09.03.2012 to 15.07.2014. Further, entire connection (though strictly denied), which has been shown between the noticee and HBS is again without any evidence and is based upon conjuncture and surmises and on hypothetical basis.
- k Similar is the position with other entities like Lemman and Sparrow. There is no connection shown at all with Lemman and Sparrow which could leave to conclusion that AP is actually connected with the noticee.
- l Noticee is not the beneficiary
- m IFCF was regulated by FSC Mauritius as Alternate Investment Fund. IFCF being regulated as a FUND, was required to have professional Board to run and not individual as AP Every Fund in Mauritius has its own Fund Administrator (Fund Admin or also known as Management Company("MC") in Mauritius), who manages everything and control the day-to-day affairs of a Fund as Fund admin is the first point of contact & answerable for fund's day to day affairs to the regulator

- i.e. FSC, Mauritius. He reviews the entire account and no Banking transaction or any other activity of a Fund is complete without the signatures or approval of a Fund Admin.*
- n A Fund does not trade but trade is done through Fil. The Fund Admin vouches for every transaction and also monitors and operates the Bank account.*
  - o In the present case, Euram Bank/Fil made a trade desk/counter for GDR conversion and sale, which was being monitored by a specific staff appointed by the Euram. The said staff, after completion of trade, used to report to the Fund Admin and other Staff and treasurer of the Euram bank.*
  - p Arun Panchariya never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares*
  - q Arun Panchariya was only a director of IFCF from 22.08.2008 to 28.10.2010 and all the investment decisions were taken collectively by the Board of directors. Mr.Panchariya was neither a whole-time director nor the managing director. IFCF was sub-account of Euram Fil till 20.07.2011 and thereafter, of CCPL. Therefore, even CCPL could not have acted as an investment manager prior to July 20, 2011.*
  - r IFCF had no relationship with Highblue Sky or Golden Cliff or KBC Aldini Capital Mauritius or PAN Asia or Vintage.*
  - s Euram Bank held 63.11 Class A shares in IFCF, which acquired the GDRs and sold in India .Euram Bank was having ownership rights on subscribed investments of India Focus. Euram Bank never discharged its ownership rights.*
  - t Euram bank provided loans to Vintage to subscribe to the GDRs, but held the control of the funds and the GDRs. Euram bank took the GDRs from Vintage and then sold the same through India Focus Cardinal Fund (IFCF) a SEBI registered Fil Sub account or other funds.*
  - u To hold the underlying shares in India and carry out the conversion of GDR into shares, the Noticee is not a party to this arrangement.*
  - v High Blue sky is an investment company incorporated in Mauritius and registered as a sub account of KBC Aldini Capital Limited from 18.062010 to 21.10.2012 and Golden Cliff 22.10.2012 to 2802.2017. The Noticee is not associated with High blue Sky at all. Noticee has referred to the order of Hiran Orgachem passed by WTM (Order dated 06.10.2021 Para 6.7)*
  - w there is not even an iota of evidence to connect noticee with the said entities including Golden Cliff, Sparrow, Leman etc*
  - x The case set up by the SEBI is that Vintage repaid the loan amount to the extent of USD 6.5 million(approx.) in installments from 2011 to 2012 and thereafter, defaulted on the repayment of outstanding loan on account of which Euram Bank had adjusted the outstanding amount to the extent of USD 3.5 million and therefore, the shareholders of Texmo had suffered the loss of to the tune of USD 3.5 million and therefore, the shareholders of Texmo had suffered the loss of to the tune of USD 3.5 million.*
  - y In this regard, it is submitted that it is not discernible as to how the noticee is being connected post 29.09.2011 with the funds and other entities. All the conversions of the GDR was done by the said entities post 29.092011 which cannot be attributed to the noticee.*
  - z the issuer company was responsible to make the disclosures on the stock exchange. Neither the Noticee nor the entities that subscribed have an obligation to make any disclosures in India*
  - aa As per the SEBI, the issue of GDR is not a fraudulent scheme but the manner of information to the stock exchange is such that it has resulted in fraudulent action on the part of the company, thereby, misleading the investors. Under such circumstances had the company informed the Stock Exchange, there was no occasion for a SEBI to allege anything against the noticee. Even otherwise, it is the company who has to be held liable and on the other hand, if any default having been occurred subsequently, the same cannot be attributed to the noticee. This entire allegation on the part of the SEBI against the noticee show their malafide approach in unnecessarily connecting the noticee with other entities.*
  - bb The Noticee also referred to the judgements of the Hon'ble Supreme Court in Civil Appeal No.380 of 2020 titled as SEBI Versus Adi Cooper and Appeal No.745 of 2021 titled as M/s. Winsome Yarns Ltd. Vs. SEBI before Hon'ble SAT to submit that Arun Panchariya nor the Vintage FZE (though not connected to Arun Panchariya) were required to make any representation or disclose anything*

- either to the shareholders or to the investors of the security market through BSE and hence are not a party to the fraud.
- cc As per the loan/Pledge Agreement, company was having all the time control over its GDR issue and it was open for the company not to set off the GDRs against fixed deposits and rather the company would have call back issued GDRs (underline equity shares) and could have cancelled the same at the moment when
  - dd Vintage defaulted in the loan. This is for the simple reason because the GDR proceeds were lying as a security with the Bank and even the GDRs were also lying in the Bank. This is supported from the fact that the company was earning interest from the deposits of the GDR proceeds. Therefore, it was required of the company to cancel the GDRs and call back the same after making payment from the fixed deposit (proceeds) which was lying as a security with the Bank. If the company did not do so, then it is clear that the company had in fact received the money in some other account or in some subsidiary account in cash or kind. On the other hand, if the company had not received the amount then it is not discernible as to why the company let go its GDR to be set off.
  - ee Post the year 2011, Arun Panchariya was full time Consultant General and was not at all director in any of the companies nor holding any office of profit with any other companies. Therefore, it is not discernible as to how any proceeds, profits or gain could go to Arun Panchariya especially when he was already restrained from dealing in Security Markets in the year 2011 itself.
  - ff There is no allegation against Arun Panchariya that he advised any of the companies to execute such Resolutions or Pledge GDRs in order to generate capital or equity or advised the company to set off the Pledged deposits of GDR proceeds with the outstanding loan of Vintage.
  - gg There is an inordinate and unexplained delay in issuing Show Cause Notice qua the noticee to the extent of more than 8 years.
  - hh Investigation officer has prepared this report with a biased mind SEBI itself is confused while saying it is fraud whereas SEBI knows that it wasn't fraud at all
  - ii SEBI investigation officer in the Ex-parte order legitimately portrayed GDR purchase & cancellation by IFCF in a wrong way, just to misguide court and public investors with malafide intention for acceptance of Bribe from alleged parties. SEBI first order in year Sept 2011 with confirming order passed in year 2012 with specific investigation period killed GDR issuance market as SEBI order itself closed all GDR business and GDR scripts trading were suspended by SEBI itself. It created situation of default with the Vintage.
  - jj Noticee resigned as director from Vintage in 2010.
  - kk In IFCF, Noticee was a director only till October 2010. However, Noticee did not exercise any control over IFCF. Investment decisions were taken by the board of directors of which the Noticee was not a part. Cardinal Capital Partner ("CCP") was FII only for the period of two months prior to the ex parte order published by SEBI against FUND and AP. Since CCP was having a sub-account as IF-CF and IFCF being banned on 21.09.2011 itself, there is no question of CCP dealing in Indian Market for selling of shares. Before that Euram Bank Austria was managing day to day business of IFCF.
  - ll IFCF was controlled by EURAM as it was provided in the FII umbrella by EURAM and it was EURAM's staff that controlled the affairs of IFCF.
  - mm Vintage FZE or the Pan Asia were never made a party in the present proceedings. In the absence of the said entities having made parties, the allegations of connection against the noticee fall to the ground and cannot sustain the test of legality or of fairness.
  - nn The charges that the AP was the mastermind to craft the devious scheme and fraudulent devices with a view to dupe the Indian investors is devoid of any merit.
  - oo the noticee categorically prays that the proceedings qua him as initiated in the present Show Cause Notice may kindly be dropped as the noticee has nothing to do with the transactions executed between Texmo, Euram or Vintage FZE nor any illegal gain or ill-gotten gain has been passed on to the noticee and further there is no proof or evidence to support the same.

6. In the interest of natural justice and in terms of Rule 4 (3) of Adjudicating Rules. Hearing was conducted on May 25, 2023 at 02:30 PM through Webex Call and on the scheduled date of hearing, authorized representative (“AR”) of Noticee appeared through video conference and reiterated the written submissions made vide letter dated May 22, 2023. As hearing / inquiry in this matter is concluded, Therefore, after taking into account the allegations, submissions of the Noticee, Direction of Hon’ble SAT in the matter and facts/evidences / material available on record, I hereby proceed to decide the case on merit.

### **ISSUES FOR CONSIDERATION AND FINDINGS**

7. I have carefully perused the oral and written submissions of the Noticee, Direction of Hon’ble SAT in the matter and the documents available on record. The issues that arise for consideration in the present case are:

- I. **Whether the Noticee has violated section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003?**
- II. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act; and**
- III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act read with respective Adjudication Rules?**

8. Before proceeding further, *it is pertinent to refer to the relevant provision of law which are alleged to have been violated. The said provisions are reproduced hereunder-*

### **SEBI Act**

**12A. No person shall directly or indirectly—**

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

### **PFUTP Regulations, 2003**

#### **3. Prohibition of certain dealings in securities**

*No person shall directly or indirectly-*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

#### **4. Prohibition of manipulative, fraudulent and unfair trade practices-**

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

*[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]<sup>3</sup>*

9. Upon perusal of the allegation, submissions of the Noticee and other material available on record, findings of the present matter are recorded in succeeding paragraphs.

**Issue – I:- Whether the Noticee has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003?**

### **FINDINGS**

10. Before proceeding with the merits of the matter, it would be first appropriate to deal with the preliminary contention raised by Noticee in the matter.

### **Delay in issuance of SCN:**

11. Noticee has raised the objection of inordinate delay in issuance of SCN. In this regard, I note that SEBI initiated multiple investigations in the issue of GDRs in the overseas markets by the Indian companies with the intention of defrauding Indian investors. 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 to the GDRs without any valid consideration and sold the underlying shares in the securities market in India through their connected entities. It is noted that, investigation was initiated in respect of 59 GDR issues made by 51 Indian

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<sup>3</sup> Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.

Companies during the period 2002 to 2014 involving the same modus operandi, as discussed above. In these investigations, since the GDRs were issued abroad and related transactions were carried out outside India, SEBI had to call for information from various entities situated abroad in such large number of fraudulent GDR issues. Such information, *inter alia*, included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc. Since, this information was not readily forthcoming; Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India. The foreign regulators had also to collect this information from the concerned entities and then to furnish it to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases, Mr. Arun Panchariya (Noticee) and his connected entities were found to be involved.

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

the GDR issues. Texmo was one such GDR issuer where a similar modus operandi, as discussed above, was observed during investigation. Therefore, I note that the question of SEBI's jurisdiction over GDRs did not attained finality until 2015. Because of the multiple entities involved, many of which were based overseas, and the complexity of data to be gathered and collated, the investigation, which was initiated in the instant matter in the year 2016, was completed in February 22, 2019. I note that, after completion of the investigation, adjudication proceedings were initiated with appointment of Shri K Sravanan as Adjudicating Officer and the SCN was issued to the Noticee on July 29, 2019 and pertains to the GDR issue of Texmo, which occurred in the year 2011. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of Noticees is fairly understandable and cannot be ignored.

13. Further, I note that, SCN dated July 29, 2019 was issued to the Noticee. However, since the SCN issued by air mail could not be delivered to the Noticee at the address available on record, it was served to the Noticee vide e-mail dated June 07, 2022 on his e-mail id arun.panchariya@me.com, which was duly delivered. The said e-mail id of the Noticee is active till date and recent communications with AR of Noticee also mentions the same email id in the CC. Also, In compliance with the principles of natural justice an opportunity of personal hearing was also granted to Noticee on June 27, 2022, Webex link was also sent to Noticee, but the Noticee neither replied nor attended the personal hearing and finally an ex-parte order was passed against him on June 28, 2022.

14. Further, I note that in *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 Securities Appellate Tribunal (SAT) held that,

*".....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*

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*Adjudication Order in respect Mr. Arun Panchariya in the matter of M/s Texmo Pipes and Products Ltd.*

*relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.....”*

15. It is therefore, as seen in Jindal Cortex Ltd.(supra), the Hon’ble SAT has accepted the complexities involved in the matters pertaining to GDR issues and held that the time period taken by SEBI in such cases is justified. Thereafter, in the instant case, the Noticee has failed to demonstrate as to how precisely the delay has caused prejudice to him and his right to properly defend himself.

16. Again, in the matter of *G.V. Films Ltd. Vs. SEBI* (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon’ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR’s as follows:

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

17. In view of the above, I am inclined to reject the contention of delay raised by the Noticee as the Hon’ble SAT has accepted the complexity involved in the GDR issues and held that such matters are bound to take longer than usual time as various entities from other jurisdictions are also involved. Also, there are more than 50 Indian Companies who were found by SEBI to be involved in fraudulent GDR issuance and disclosures using similar modus operandi and SEBI has been taking actions against such companies and other associated persons.

18. Having decided the preliminary contention raised by the Noticee, I shall now proceed to examine the key issues to determine the veracity of allegations raised against the Noticee.

19. I note that, Noticee in its reply has contended its connections with various entities involved in Fraudulent GDR Issue by Texmo namely, Pan Asia Advisors Ltd (“**PAN ASIA**”), Vintage FZE (now known as Alta Vista International FZE and hereinafter referred to as ‘**Vintage**’), European American Investment Bank AG (hereinafter referred to as ‘**Euram Bank**’), Mr. Mukesh Chauradiya, Euram Bank Asia Ltd. (**EBAL**), India Focus Cardinal Fund (**IFCF**), Leman Diversified Fund (**Leman**), Sparrow Asia Diversified Opportunities Fund (**Sparrow**), HighBlueSky Emerging Market Fund (**HBS**), KBC Aldini Capital (Mauritius) Ltd., ANANT KAILASH CHANDRA SHARMA (“**AKS**”), Golden Cliff (previously known as Vaibhav Investments Ltd.) (**GOLDEN CLIFF**), Ms. Reema Narayan Shetty, Aspire Emerging Fund (**Aspire**).

20. In this regard, connection/ association of AP with these entities involved in whole fraudulent GDR Scheme as brought out during investigation and in the SCN is summarised in the following table,:

(Source: MCA database, custodian DBS Bank and foreign regulators)

<b>Sl. No.</b>	<b>Name of the entity</b>	<b>Connection/association of AP with entity</b>
1.	Pan Asia	AP was director (August 30, 2006 to September 29, 2011) and 100% shareholder (from July 01, 2008 to January 20, 2012) and 90% shareholder as on January 2016
2.	Vintage FZE (now known as Alta Vista International FZE)	AP was beneficial owner (as on June 06, 2007) and Managing Director (as on June 06, 2007 and May 12, 2010). Alkarni Holdings Ltd. was sole shareholder of Vintage as on December 28, 2010 and AP was sole director of Alkarni as on April 21, 2014
3.	IFCF	AP was director from August 22, 2008 to October 28, 2010, Investment Manager (as on July 12, 2010) and 100% shareholder (January 01, 2009 to May 31,

		2010) and beneficial owner since August 22, 2008
4.	Cardinal Capital Partners Limited( <b>CCP/CCP L</b> )	AP was beneficial owner and 100% shareholder
5.	EURAM Bank, Austria ( <b>EURAM BANK</b> )	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited.
6.	EURAM Bank Asia Limited ( <b>EBAL</b> )	AP was director and president (resigned on September 22, 2011)
7.	Mr. Mukesh Chauradiya	<p>AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and director.</p> <p>In Ramsai Investment Holdings Private Limited, where AP was holding 99.98% shares (for the period 2009-2013) and was director for the period from February 04, 2008 to August 18, 2010 wherein Mr. Mukesh Chauradiya was director in the same company (first appointment from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016).</p>
8.	Mr. Anant Kailash Chandra Sharma( <b>AKS</b> )	<p>AP and Mr. Anant Kailash Chandra Sharma were directors in Sai Sant Advisory (India) Private Limited:</p> <p>AP-August 31, 2007 to October 20, 2010</p> <p>Anant Kailash Chandra Sharma-December 01, 2009 till March 18, 2016.</p> <p>AP's brother Mr. Satish Ramswaroop Panchariya is</p>

		<p>promoter of Alka India Limited. Anant Kailash Chandra Sharma is also additional director in Alka India Limited since December 01, 2009 till date. AP's brother Mr. Satish Ramswaroop Panchariya and Mr. Ashok Ramswaroop Panchariya are directors in Alka India Limited since October 05, 2011 and April 29, 2005 respectively, till date.</p> <p>AKS has worked with Vintage</p>
9.	Highblue Sky Emerging Market Fund ('HBS')	<p>Mr. Anant Kailash Chandra Sharma is director and beneficial owner of HBSEMF (since September 09, 2014 till date). Mr. Anant Kailash Chandra Sharma is connected to AP.</p> <p>Ms. Reema Narayan Shetty was beneficial owner of HBS from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014). Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with Euram Bank, Austria</p>
10.	Golden Cliff (previously known as Vaibhav Investments Limited)	<p>Mr. Anant Kailash Chandra Sharma is director and 100% beneficial owner (since September 09, 2014 till date)) of Golden Cliff. Anant Kailash Chandra Sharma is connected to AP.</p> <p>Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was</p>

		authorized signatory for the bank account of AP connected entity IFCF which was maintained with EURAM Bank Austria.
11.	KBC Aldini Capital Ltd	Mr. Daniel Baumslag was director of KBC Aldini Capital (till September 27, 2011) and HBSEMF (from March 05, 2010 to June 14, 2011). Mr. Daniel Baumslag was 100% shareholder of HBSEMF (from March 05, 2010 to June 14, 2011). AKS is connected to AP and AKS is beneficial owner and director of HBSEMF since April 21, 2014 till date of the investigation.
12.	Aspire Emerging Fund ( <b>Aspire</b> )	100% Shares held by Image Securities Ltd. in which Mr. Ashish Nanda was a Managing Director. In addition, Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah who was also a director of HBS.
13.	Sparrow Asia Diversified Opportunities Fund ( <b>Sparrow</b> )	Common authorized signatory for Lemman Diversified Fund and Sparrow is Mr. Nayan Agarwal. Investors of Lemman Diversified includes: Image Securities Ltd. whose Managing Director is Mr. Ashish Nanda, who was also a director of Aspire
14.	Lemman Diversified Fund ( <b>Lemman</b> )	Investors include Al Jalore and Image Securities Ltd. and Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd.

21. I note that, all the relevant documents that have been relied upon in the SCN have also been provided to the Noticee as annexures to the SCN in the instant proceedings as well as in Parallel 11B proceedings.

22. I note from the SCN that, the Company after being duly authorized by the Board, had issued 6,27,500 GDR (at \$ 15.93 each GDR) on April 11, 2011 for raising 9.99 million USD and the number of underlying shares issued by the Company under the GDR issue was 1,25,50,000 shares. Summary of the aforesaid GDRs issued by Company, is tabulated below:

<b>GDR issue date</b>	<b>No. of GDRs issued</b>	<b>Capital raised (USD mn.)</b>	<b>Local custodian</b>	<b>No. of equity shares underlying GDRs</b>	<b>Global Depository Bank</b>	<b>Lead Manager</b>	<b>Bank where GDR proceeds were deposited</b>	<b>GDRs Listed on</b>
11-04-2011	6,27,500 (at \$ 15.93 each GDR)	9.99	DBS Bank Ltd.	1,25,50,000	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd	Euram Bank, Austria	Luxembourg Stock Exchange

23. In this regard, SEBI is in receipt of copy of certified copy of Texmo's Board Resolution dated October 28, 2010, submitted at the time of opening of Bank Account with Euram Bank and the same was provided by EURAM Bank received through Austrian Financial Market Authority (**FMA**) vide an email dated October 08, 2018. The said Board resolution pertains to opening of Bank Account with Euram Bank for GDR issue and *inter-alia*, authorizes EURAM Bank to use the GDR proceeds as security against loan, if any. Relevant extracts of the Board Resolution are as under:

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

*"RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director, Shri Vijay Prasad Pappu, Whole Time Director and Shri Rishabh Kumar Jain, Company Secretary of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required, RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director of the Company, of the Company, be and are hereby severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps to do all such things as may be required from time to time on behalf of the Company, RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required."*

24. On perusal of the above Board Resolution, I find that the said Board Resolution was for opening a bank account with EURAM Bank for receiving subscription money in respect of the GDR issue of the Company. Further, Euram Bank was authorized to use the GDR proceeds deposited with it as security in connection with loan, if any, as may be required by the Bank. In light of the same, SEBI Investigation observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement. Thus, from the aforesaid board resolution I note that, it was already decided long before GDR Issue on October 28, 2010 that, the GDR proceeds may be used as a security for loans. Therefore, it was alleged in the SCN that, the Noticee devised a fraudulent scheme along with company which misled investors into believing that GDRs were genuinely subscribed and also caused loss to the shareholders due to the loan default. Therefore. the Noticee was a part of the scheme of fraudulent issuance of GDR.

25. I note that, the said board resolution is certified true copy of the resolution passed by the Board of Directors of Texmo and its company secretary on October 28, 2010 which authorized, the Shri Sanjay Agrawal, Managing Director, Shri Vijay Prasad Pappu, Whole Time Director and Shri Rishabh Kumar Jain, Company Secretary of the Company, to sign and execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, they were *inter alia* authorized to carry and use the seal of company. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any. Thus, it was only pursuant to the said board resolution that, MD of Texmo viz. Mr. Sanjay Agarwal, went on to sign the Pledge Agreement dated March 01, 2011 with EURAM Bank on behalf of Texmo, whereby a deposit account of Texmo maintained with EURAM Bank having USD 9.99 million was given as security for all the obligations of Vintage under the Loan Agreement.

26. Noticee has contended its connection with Vintage, in this regard, I note from material available on record that, Arun Panchariya was the beneficial owner and Managing Director of Vintage as on June 06, 2007. I note from perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank that, the Noticee is the beneficial owner of Vintage. Also from a letter, dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, it is observed that Vintage was a Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, it is seen from a Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management Company Trust (BVI) Ltd., that the only shareholder in the said company was Mr. Arun Panchariya, who held 50,000 shares. Mr. Arun Panchariya was also the sole director of the said company.

27. Also, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority ('DFSA") against Arun Panchariya, by way of which, a fine of USD 12,000 was imposed on him. The said Administrative Fine Statement notes that on

February 19, 2009, Arun Panchariya had disclosed that he was controller/ director/ partner in three firms, including Vintage FZE. Therefore, it is clear that the sole beneficial owner of Vintage was Arun Panchariya, who held complete shareholding of Vintage through Alkarni Holding Ltd. Furthermore, it is seen from the above-mentioned letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that the director of Vintage was Ashok Panchariya, who is the brother of Arun Panchariya.

28. Thus, from the above, it is quite evident that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., October 2010 to April 2011, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. I find that, no contradictory evidence has been put forth before me by Noticee, which shows that, he was not the beneficial owner of vintage/Alkarni holdings during this period. Also, during this period, Ashok Panchariya, who is the brother of Arun Panchariya was the director of Vintage. I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and was the sole beneficial owner.

29. I note that Pledge agreement was duly signed by Mr. Sanjay on behalf of Texmo and bear the seal of Texmo, it also mentions the loan agreement date and number viz. 01 March 2011 and K280211-006 with respect to loan granted by Euram to Vintage. This clearly shows that, Noticee owned Vintage will make subscription to GDR of Texmo on March 01, 2011 and the Texmo will pledge EURAM Bank, its entire GDR proceeds as security for the loan to be disbursed to Vintage, for making subscription to GDR of Texmo, much before the actual GDR issue that took place on April 11, 2011. The preamble of the Pledge Agreement states as under:

*"By Loan Agreement K280211-006 (hereinafter referred to as the "Loan Agreement") dated 01 March 2011 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 9,996,075. The pledger has*

*received a copy of the Loan Agreement No K280211-006 and acknowledges and agrees to its terms and conditions."*

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

31. I Further note that, the pledge created in the Pledge Account stated as under:

*"2. Pledge*

*2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

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

*2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580038 kept by the Bank (hereinafter*

*referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein ....*

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

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

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

32. Also, following condition has been 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 Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

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

33. Thus, it is evident from the executed pledged agreement that, Texmo pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds up to 9.99 million USD in the A/C no. 580038 with EURAM Bank (hereinafter referred to as "as Pledge Accounts") and the said account no. 580038 was the escrow account where the GDR proceeds of Texmo were deposited. Thus, the pledge agreement clearly evidences the premeditated plan to facilitate subscription of GDR issue by AP owned Vintage in the manner as described above much before the actual GDR issue.

34. Also, the clause 2 and 3 of the Loan Agreement, clearly states that, Loan was exclusively taken by Vintage for the purpose of subscribing to the GDR issue of Texmo and the loan amount could only be transferred to EURAM Account No. 580038 of Texmo. I further note that in terms of clause 6 of the said Loan Agreement, the EURAM Bank A/C no. 580038 of Texmo will be pledged as security for the loan taken by Vintage from EURAM as set out in detail in the Pledge Agreement. The said Pledge Agreement was signed by MD of Texmo viz. Mr. Sanjay and said Loan Agreement with EURAM Bank was signed by Mr Mukesh Chauradiya (designated as Managing Director of Vintage) who is connected entity to Noticee on the same day. I note that Mukesh Chauradiya was closely associated with AP, as he was shown Managing Director / Director of Vintage, in which AP was the Beneficial Owner. Further, I note that Mukesh Chauradiya was an Authorized Signatory of Vintage and he signed redemption of loan amount request of Vintage to EURAM Bank in the instant matter. I also note that Mukesh Chauradiya was a Director in Ramsai Investment Holdings Private Ltd., wherein AP was Director in the same company and was holding 99.98% shares. It is pertinent to note that Mukesh Chauradiya is also connected with one Mr. Anant Kailash Chandra Sharma (beneficial owner of HBSEMF & Golden cliff – AP connected entities) who served as Additional Director of Alka India Ltd., (from December 01, 2009 till date), wherein Mukesh Chauradiya also served as Director

of Alka India Ltd., from January 31, 2006 till June 01, 2010. In this connection, it is relevant to note that Alka India Ltd., is promoted by AP. From these connections, it is clearly established that, Mukesh Chauradiya was close associate of Arun Panchariya and thus his contention of having no connection with Mukesh Chauradiya is not tenable.

35. Reliance is also placed on the order dated 06.06.2023 of Hon'ble SAT, where in, vide its order, in the matter of Mukesh Chauradiya and Ors Vs. SEBI, while acknowledging the positions held by Mr. Muksh Chauradiya, in the companies related to the Noticee, stated that, *"In our opinion, the reasoning adopted by the AO that Mr. Mukesh Chauradiya is a close associate of Mr. Arun Panchariya may be true to some extent..."*, confirming the connection between the them.

36. The execution of Loan Agreement dated March 01, 2011 prior to the GDR issue on April 11, 2011 shows that Vintage and Texmo pre-decided that, Vintage to be the sole subscriber to the GDR issue and Vintage would subscribe to the GDR by taking a loan equivalent to the total amount of the whole of GDR issue of Texmo. This clearly indicates that, Company and AP connected entity viz. Vintage devised this fraudulent scheme much before the issuance of GDR that, the proceeds to be realized against the issuance of GDR would be held as security towards the loan amount sanctioned by EURAM Bank to Vintage to enable it to pay the subscription amount. Further, Vintage defaulted in repayment of loan to the extent of USD 3.49 million (equivalent to Rs. 19.43 crore, at RBI exchange rate of Rs. 55.536 per USD on September 04,2012), thereby GDR proceeds to that extent were adjusted by EURAM. I note that the Default by Vintage has also been admitted by Noticee in its reply wherein he has stated that, *"SEBI Investigation officer passed first order in year Sept 2011 with confirming order passed in year 2012 with specific investigation period and those order killed GDR issuance market as SEBI order itself closed all GDR business and GDR scripts trading were suspended by SEBI itself. It created a situation of default with the Vintage."* Hence, it is evident that Vintage defaulted in its payment of loan which was taken to subscribe the GDR issue and thus, acquired GDRs of Texmo to the tune of USD 3.49 million at free of cost benefitting the Noticee's

own and connected entity viz., Vintage. Noticee has not put forth any evidence to substantiate its claim made in his reply that "*the company had in fact received the money in some other account or in some subsidiary account in cash or kind*".

37. Further, On a perusal of Loan agreement between Euram Bank & Vintage, on the one side, and pledge agreement between Euram Bank and Texmo, on the other side, one would clearly find that, the said agreement was executed only to secure the obligations of the borrower viz. Vintage, on the basis of which it was granted a loan for 9.99 million USD from EURAM Bank. However, the Pledge Agreement also mentions that, the Pledgor received copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. This cross reference of Loan Agreement in Pledge Agreement and vice-versa indicates that Company and AP owned Vintage had, much before the actual issuance of GDR pre-decided on the future subscriber and the entire modus operandi through which GDR were issued by facilitating financing the subscriber and there was no intention to immediately bring the GDR proceeds to India to utilize for the stated needs of the Company. One interesting aspect of the entire matter is the timing of execution of Loan Agreement between EURAM Bank and the borrower i.e. Vintage and execution of Pledge Agreement between the said bank and the issuer company i.e. Texmo. Both these agreements were dated March 01, 2011. I note that Pledge Agreement has been incorporated in the Loan Agreement and made part of it as an annexure in terms of sequence of events and also Pledge Agreement refers to the Loan Agreement dated March 01, 2011 between the borrower i.e. Vintage and EURAM Bank, whereby Vintage was granted loan of USD 9.99 million and it is stated that the Pledgor i.e. Texmo has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another one.

38. Further, on examination of the Bank A/C statement of Texmo no. 580038 and Vintage's Loan A/C no. 540012, I find that Vintage repaid the loan to EURAM Bank in several

instalments from August 03, 2011 to March 02, 2012 and each time, only after repayment of a loan instalment by Vintage, on almost the same day of repayment, an equal amount of money was transferred from Texmo's EURAM Bank A/c to its UAE subsidiary's A/c viz. Tapti. Thus, the Company's subsidiary viz. Tapti did not actually receive the GDR issue proceeds till repayment of loan by Vintage. Therefore, in essence, the money equivalent to the GDR issue amount rotated within the EURAM Bank, firstly, as a loan in the name of Vintage and then it travelled as GDR proceeds to the account of Texmo but there was actually no transfer of money to the Company against the GDR issue as on April 11, 2011 for the purpose of utilization. Therefore, I note that the amounts transferred from Texmo's EURAM account to Tapti's bank accounts were dependent on the repayment of the loan by Vintage and was not at free disposal in the account of texmo's Bank account. Due to this arrangement, Texmo was restrained from using the proceeds of the issuance of GDR for a considerable period for the stated purpose for which the fund was raised through issue of GDR. *Prima facie*, this does not appear to be a normal loan transaction between EURAM Bank and Vintage. Rather, it appears to be a peculiar transaction wherein under the garb of loan agreement, the amount is merely rotated on paper from the Bank to the borrower and from the borrower to the Company's a/c in the same bank where it is kept as a security against the said loan availed by the borrower. The net result is that the Company is not really able to utilize the proceeds of GDR, as the same is pledged as security against the loan taken by the borrower to pay for the GDR subscription. The money/fund only rotates on paper from one a/c to another but remains in the Bank in an encumbered state. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage. Details of repayment of loan by Vintage as observed from information provided by Euram Bank are tabulated below:

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

39. Thus, from the above table, I note that, the obligation of Vintage under the Loan Agreement was secured by Texmo through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. Thus, due to such pledging of the GDR proceeds, the funds were not available at Texmo's disposal. With regard to the subscription of GDR issues of certain other listed Indian companies through the aforesaid modus operandi viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of Pan Asia Advisors Limited vs. SEBI had held that:

*"28.... there can be no dispute that the GDR subscription amounts running into several million US \$ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted."*

40. It is quite evident that GDR proceeds were not available at disposal of Texmo. Thus in view of the aforesaid, the contention of Noticee that, “*Company was having all the time control over its GDR issue*” is untenable. Further, from the clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), also extracted in preceding pages, I note that Texmo had given consent to the Bank to apply the funds in the Pledged Accounts in case of default of repayment by the Borrower Viz. Vintage for settling their obligations. As a consequence, even after the GDR issue, Texmo did not have the GDR proceeds at its disposal until repayment of the loan made by Vintage.

41. I note that as per the definition of ‘**fraud**’ under the PFUTP Regulations, 2003 as defined in Reg. 2(c) , “*fraud*” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

(2) *a suggestion as to a fact which is not true by one who does not believe it to be true;*

(3) *an active concealment of a fact by a person having knowledge or belief of the fact;*

(4) *a promise made without any intention of performing it*

(5) *a representation made in a reckless and careless manner whether it be true or false;*

(6) *any such act or omission as any other law specifically declares to be fraudulent,*

(7) *deceptive behaviour by a person depriving another of informed consent or full participation, (8) a false statement made without reasonable ground for believing it to be true. And “fraudulent” shall be construed accordingly.*

42. Thus, as per the definition of ‘fraud’ under the PFUTP Regulations, 2003. I note that such announcements misled Indian retail investors and induced investors to deal in shares of company. Thereby, the scheme of issuance of GDRs was fraudulent. Hence, the act of Vintage and the company resulted in ‘fraud’ under the PFUTP Regulations, 2003. As

GDR issue would not have been subscribed had the company not given any such security towards the loan taken by Vintage.

43. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in *Pan Asia Advisors Limited vs. SEBI* (Civil Appeal No. 10560/2013, AIR 2015 SC 2782) 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."*

44. Further, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

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

45. Further, I note that, there is no allegation against the Noticee regarding non-disclosure of the pledge agreement and the loan agreement to the stock exchange but of devising and structuring the GDR issue in connivance with the company, such that the obligation of

Vintage under the Loan Agreement was secured by Texmo through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated. Such suppression of the material and price sensitive information from the stock exchange by not informing the following to the exchange viz. execution of aforesaid pledge agreement and loan agreement in which GDR proceeds were pledged as security for loan given by EURAM to Vintage to subscribe to the its GDR issue and also the fact that Vintage was the only subscriber of GDR issue of Company. Therefore, the entire GDR scheme devised by company and Noticee was fraudulent involving entering into Pledge Agreement, making corporate announcement that the GDRs were genuinely subscribed without disclosing the arrangement to the investors and loan default by Vintage (which is Noticee owned company) causing loss to shareholders of Texmo resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Thus, in light of the aforesaid, the contention of Noticee that, he is not liable for any misinformation supplied by the company to stock exchange / he or Vintage were not required to make any representation or disclose anything either to the shareholders or to the investors of the security market through BSE and hence are not a party to the fraud is devoid of any merit and the ratio of Judgements cited by Noticee is different from the facts and circumstances of the instant case.

46. I also note that due to such pledging of the GDR proceeds, the funds were not available at company's disposal and Vintage also faulted in its loan obligation due to which GDR proceeds to the tune of USD 3.49 Million were forfeited by EURAM Bank. Thus, GDRs were not issued in Genuine manner, but through fraudulent arrangement devised by company and Noticee owned Vintage.

47. I note that, Pan Asia Advisors Ltd. ("**Pan Asia**"), a UK based entity, was the Lead Manager for the GDR issue of Texmo and procured the subscriber, i.e. Vintage. I note that, Noticee was the director and 100% shareholder Pan Asia Advisors Ltd. I also note that as stated by Texmo, Pan Asia supplied the list of 4 subscribers to the GDR issue to

Texmo which was thereafter, disclosed by Texmo to SEBI. While, in reality there was only one subscriber to GDR issue viz. AP owned Vintage which subscribed to GDR issue by obtaining a loan and entering into Loan Agreement with EURAM Bank and defaulted in repayment of balance loan amount of USD 3.49 million, forfeited by EURAM Bank to that extent. It brings out the fact that, the fraudulent scheme was devised by Arun Panchariya wherein his owned entity viz. Pan Asia was the Lead Manager. From the fact that AP controlled Pan Asia, by being its 100% shareholder and director and the fact that Pan Asia was the Lead Manger managing the placement of the GDRs wherein it procured another AP connected entity as the sole subscriber viz. Vintage, I note that the whole scheme of subscription was fraudulent, as discussed in the aforesaid paras. Thus, I find that Noticee's owned Pan Asia being the lead manager to GDR Issue played an active role in fraudulent scheme of GDR issue of Texmo.

48. I also note that, Highblue Sky Emerging Market Fund (previously known as KBC Aldini Capital Mauritius Ltd.: FII Registration No.: INUEFD237810) provided details of its directorship and its connection with AP to SEBI. On perusal of the same, it was observed that HBS was incorporated on April 24, 2006 and AP was director of Pan Asia during the period August 30, 2006 to September 29, 2011. It is also seen that the name of has been changed from Pan Asia Advisors Ltd. to Global Finance and Capital Limited on February 08, 2013. According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, AP held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.). Vide Letter dated February 25, 2016 ,Pan Asia Advisors Ltd. Submitted to Financial Conduct Authority, United Kingdom which mentions the letter dated February 20, 2012, wherein it is stated that AP held 100% shareholding in the company during the period July 2008 to January 2012, i.e. the period when the fraudulent scheme of GDR issue of Texmo took place. In addition, I also note that letter dated January 20, 2012 of Pan Asia mentions clearly that, Noticee is 100% shareholder of PAN Asia and the period of directorship is from 24-April-2006 to 29-September-2011. So, during the period when the process for issue of GDRs was initiated

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

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

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

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

50. Thus, it is quite evident that, how the Noticee was connected to Pan Asia Advisor Ltd who was the lead manager to the issue of GDR and acted as a party to the fraudulent scheme.

51. Thus, aforesaid paras clearly establishes Noticee's connection with Vintage, PAN ASIA and Mukesh Chauradiya and thus, his contention is not tenable in light of the same.

52. I note that the Noticee has submitted that he has not signed the loan agreement and when the loan default occurred he already resigned as director from Vintage, IFCF etc. I note that in the instant case, it is imperative to observe the scheme in entirety rather than observe/mention events in isolation. As seen in previous order in the current matter, there was a chain of events carried out with common understanding and in connivance with each other by various entities to execute this entire scheme of the GDR issue. The fraudulent scheme of GDR issue was formally initiated by entering into the said Loan and Pledge Agreements. Further, it is also pertinent to note that, Noticee has been involved in other similar fraudulent GDR issues, wherein similar modus operandi were employed, and various orders had also been passed against him by SEBI establishing the same. Hence, it can be said that, Noticee was acting on behalf of Vintage in furtherance of the common objective.

53. With respect to his contention that Vintage and PAN ASIA is not made party in the present proceedings, the allegations against the Noticee fall to the ground and cannot be sustained due to lack of legality and fairness. In this regard, With respect to Vintage, I would like to refer to bylaws of the Dubai which are applicable on Free Zone Establishments (FZEs). I note from the Implementing Regulations No.1/92 issued by Jebel Ali Free Zone Authority pursuant to Law no.9 of 1992. I note that under the said regulations the term "Owner" is defined as under :-

*"The person, whether an individual, company or other establishment, which is the single shareholder of any Free Zone Establishment formed and registered in accordance with these Implementing Regulations."*

54. Further, I note that Clause 18 of the said Regulations states that, "*No Free Zone Establishment shall have more than one shareholder.*" From the above, it is clear that there cannot be more than one shareholder of an FZE. Hence, it can be said that only AP held the alienation rights of Vintage FZE. From the reply, it is also made out that Noticee has not contended that he was not the owner of Vintage at any point of time

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55. In the previous paras of this order, it is established that Arun Panchariya was the beneficial Owner of Vintage FZE. Further, from the above Regulations, it becomes clear that an FZE cannot have multiple shareholders. In such circumstances, I note that even if Vintage is not made a party to the instant proceedings, the same cannot, in any manner, cause any prejudice to AP especially considering that AP is the sole beneficial owner of Vintage.

56. The concept of 'lifting of corporate veil' is a commonly employed mechanism to apply in such cases to find out the person/s acting for the legal corporate entities or their role in the contraventions committed by the corporate entities. It is sufficiently established in the preceding paragraphs as well in various SEBI orders in other GDR matters that Noticee was the beneficial owner of Vintage and therefore he was acting on behalf of Vintage when this entire fraudulent scheme was designed by company and Vintage through Noticee. The concept of 'lifting of corporate veil' is also incorporated in the SEBI Act, 1992:

**27. Contravention by companies.**

(1) ...

*(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. (emphasis supplied)*

57. In view of the above observations, I note that the whole scheme of arrangement of company of allotting GDR issue to only one entity i.e. Vintage which in turn subscribed the GDR issue by obtaining loan from EURAM Bank and which was secured by company by pledging its GDR proceeds, seen along with the false and misleading corporate

announcements made by company and allotment, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner.

58. Further, I note that the Noticee was the beneficial owner of Vintage and Mukesh Chauradiya acted as an aide to the Noticee and facilitated the fraudulent scheme by executing the loan agreement and Loan Redemption Letters and Extension of date for Loan Repayment Letter addressed to EURAM Bank in capacity of the Managing Director of Vintage whereby it was stated that the amount shall be utilised by Vintage for subscribing the GDR issue of Company. I further note from the material available on record that the said pledge agreement was verified by the Noticee affixing vide a stamp named "*Signature verified Dir.AP*". The said facts clearly establish that the Noticee is involved in the fraudulent scheme as a beneficial owner of the Vintage.

59. Further, it may be noted that, The limited purpose of these proceedings against Noticee is to determine if Noticee has violated provisions of SEBI ACT and PFUTP Regulation and if so, determine whether penalty should be imposed and assess the quantum of such penalty. I also note that, SEBI has already taken action under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 against these entities in the matter of GDR Issue of Texmo Pipes and Products Ltd. Thus, I find the Contention of Noticee is devoid of any merit.

60. As mentioned above, GDRs were issued through the fraudulent scheme to Vintage free of cost and at the cost of other investors of Texmo to the extent of USD 3.49 million. I note from the SCN that, The GDRs were thereafter converted by four sub-accounts (IFCF, HBS, Sparrow and Leman) who are alleged to be connected with Arun Panchariya into equity shares of Texmo. All sub accounts, namely, IFCF, HBS, Sparrow and Leman sold the converted equity shares to the tune of Rs. 14.82 crore on Indian stock exchanges (BSE and NSE). Further, all sub accounts together continued to hold total of 1,25,50,000 shares of Texmo. Therefore, it was observed in the investigation that the four

sub-accounts, namely IFCF, HBS, Sparrow and Leman, acted as conduits for Arun Panchariya in selling/ holding shares of Texmo through the fraudulent scheme. Considering that GDRs were received by Vintage pursuant to the fraudulent GDR scheme and free of cost to the extent of USD 3.49 Million, all were parties to the fraud.

61. I note that the issuance of GDRs is from the authorised share capital of a company listed in Indian stock exchanges and that the underlying security of the GDRs are Indian securities and the two-way fungibility scheme for GDRs allows for conversion of GDRs in Indian market and vice versa. Conversion of GDRs into equity share is termed as cancellation of GDRs. I note that the GDRs of Texmo were eventually converted into equity shares and these shares were sold in the Indian Securities Market i.e. on BSE and NSE. I note from the investigation report that, Custodian of the GDRs, DBS Bank Ltd. informed SEBI that cancellation of GDRs started from August 03, 2011 and as on July 15, 2014, all the 6,27,500 issued GDRs were cancelled and converted into equity shares of Texmo. I also note that vide email dated July 09, 2016, Global Depository i.e. The Bank of New York Mellon also provided the date of termination of several GDR programs to SEBI and it was observed that, Texmo's GDR program was terminated on September 26, 2014 and all the GDRs of Texmo were cancelled before its GDR termination program.

62. A summary of schedule of Cancellation of GDRs and respective allotment of shares is as below:

Date of conversion of GDRs	No. of GDRs converted	No. of equity shares Issued on conversion of GDRs	No. of remaining GDRs	Entity becoming holder of equity shares post conversion of GDRs
			6,27,500	
3-Aug-11	13,800	276,000	613,700	IFCF
4-Aug-11	28,750	575,000	584,950	IFCF
31-Jan-12	25,000	500,000	559,950	Leman

3-Feb-12	26,109	522,180	533,841	Sparrow
5-Mar-12	45,000	900,000	488,841	Leman
5-Mar-12	23,458	469,160	465,383	Sparrow
9-Mar-12	48,500	970,000	416,883	HBS
2-May-12	24,096	481,920	392,787	HBS
9-May-12	19,875	397,500	372,912	HBS
30-May-12	13,193	263,860	359,719	HBS
9-Jul-12	20,000	400,000	339,719	HBS
17-Jul-12	19,597	391,940	320,122	HBS
18-Feb-13	48,729	974,580	271,393	HBS
25-Feb-13	20,000	400,000	251,393	HBS
19-Mar-13	20,000	400,000	231,393	HBS
10-Apr-13	35,000	700,000	196,393	HBS
15-May-13	40,000	800,000	156,393	HBS
22-May-13	50,000	1,000,000	106,393	HBS
6-Jun-13	30,000	600,000	76,393	HBS
11-Jul-13	30,000	600,000	46,393	HBS
13-Aug-13	12,943	258,860	33,450	HBS
15-Jul-14	33,450	669,000	0	HBS
TOTAL	6,27,500	1,25,50,000	0	

63. The Summary of the equity shares received post cancellation of GDRs by respective Sub-Accounts are tabulated below:

(Source: custodian DBS Bank)

Sl. No.	Name of the entity	No. of GDR's converted	Quantity of converted equity shares
1	IFCF	42,550	8,51,000
2	Leman	70,000	14,00,000
3	Sparrow	49,567	9,91,340
4	HBS	4,65,383	93,07,660

TOTAL	6,27,500	1,25,50,000
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64. I Note that, Noticee has contended its connection with Sub-Accounts who cancelled the GDRs into equity shares and then sold it in Indian Markets, in this regard the following paras deal with the connection of Noticee with all these entities and the EURAM Bank, Austria.

65. Information of the registration of FIIs and sub-accounts was submitted by FII sub-accounts and custodians to SEBI during investigation and following is the summary of the registration of FIIs and sub-accounts:

S. No.	Name of sub a/c	Period of registration	Name of FII under which sub a/c is registered	Period of registration with FII
1	IFCF	12/12/2008 to 19/07/2011	Euram Bank	21/11/2008 to 20/11/2011
		20/07/2011 to 19/06/2017	CCP	20/06/2011 to 19/06/2017
2	HBS (previously known as KBC	18/06/2010 to 21/10/2012	KBC Aldini Capital Ltd.	22/03/2010 to 21/03/2016
	Aldini Capital (Mauritius) Ltd.)	22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Ltd.	01/03/2011 to 28/02/2017
3	Leman	17/05/2012 to 03/01/2017	Arcstone Capital Ltd.	17/05/2012 to NA
4	Sparrow	10/08/2009 to 27/07/2014	Sparrow Investment Managers Ltd.	10/08/2009 to NA

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

<b>Table – 15 Name of entity</b>	<b>No. of GDRs converte d</b>	<b>No. of shares received on conversi on of GDRs</b>	<b>Dates of selling shares</b>	<b>Trade value (Rs.) (BSE)</b>	<b>Total trade value (Rs.) (NSE)</b>	<b>Total trade value (Rs.)</b>
IFCF	42,550	8,51,000	August 2012 to June 2014	22,29,62 5	57,47,40 3	79,77,02 8

67. It is seen from the above table that, India Focus Cardinal Fund received 8,51,000 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all 8,51,000 equity shares received by IFCF were then sold by it in the Indian capital market between August 2012 to June 2014 for a total value of Rs. 79,77,028.

68. I note that, IFCF was incorporated on August 22, 2008 in Mauritius and was registered as sub-account of FII-Euram Bank from December 12, 2008 to July 19, 2011. Thereafter, IFCF was granted transferred from Euram Bank to CCP on July 20, 2011 and was registered as sub-account of CCP from July 20, 2011 to June 19, 2017. It is noted that both IFCF and CCP were incorporated on the same day i.e. August 22, 2008 in Mauritius. In this regard, Copies of certificates of Incorporation of IFCF and CCP was provided to Noticee.

69. I note that, Arun Panchariya's email dated July 12, 2010, has stated himself to be the Investment Manager of IFCF and Chief Investment Officer of Cardinal Capital Partners in the year 2010. Further, reference is drawn to letter dated April 02, 2012 addressed by

India Focus Cardinal Fund to SEBI. In the said letter dated April 02, 2012, it has been stated that for the period January 01, 2009 to May 31, 2010, the complete shareholding of IFCF was held by Cardinal Capital Partners and 100% Shareholding of CCP was held by Arun Panchariya (as the information sought by SEBI from IFCF was for the period viz January 01, 2009 to May 31, 2010 only and was sought for the investigation in the matter of other three companies ). I also note that, in the said email dated July 12, 2010 he has mentioned his designation as Chief Investment Officer of CCP and Investment Manger to IFCF. In view of this, it is observed that Noticee was connected to India Focus Cardinal Fund (IFCF).In this regard, I note that Copy of IFCF's letter dated April 02, 2012 and AP's email dated July 12, 2010 evidencing same were provided to Noticee along with the SCN.

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

71. Arun Panchariya in his submissions in the parallel 11B proceedings before Chief General Manager (Final Order in the matter of GDR Issue of Texmo Pipes and Products Limited dated February 28, 2023) has also stated that, Cardinal Capital Partners, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund. Reference is also made to the Administrative Fine Statement passed by the Dubai Financial Services Authority (DFSA), against Arun Panchariya, in which DFSA had imposed a fine of USD 12,000 for non-disclosure of certain directorships that he was holding inter-alia in Pan Asia, Vintage and IFCF, while applying for authorization as a Licensed Director of a Firm in Dubai International Financial Centre(DIFC). Such

information furnished by him, which was false, misleading or deceptive, included *inter alia*, the failure to disclose his directorship/ controlling position in IFCF.

72. Further, I note that the Annexure 28 to SCN also mentions, Noticee to be the Beneficial Owner of IFCF in the account opening application submitted to EURAM Bank, Austria which is duly signed by him. Also, the letter of FSC, Mauritius referred by Noticee in its reply specifically states that beneficial owner of IFCF is Noticee since August 02, 2008 and Cardinal Capital Partners Ltd. is its management shareholder since August 26, 2008.

73. In view of the above, it is seen that, both India Focus Cardinal Fund and Cardinal Capital Partners Ltd. were owned by Arun Panchariya during the period of the acquiring of GDRs by IFCF and conversion of GDRs into Equity shares.

74. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Texmo. It has also been brought out above that, India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) and Cardinal Capital Partners Ltd. were both owned and controlled by Arun Panchariya. Thus, Noticee's owned entities facilitated conversion of GDRs by IFCF into equity shares of Texmo and then selling/holding of the illegally acquired shares of Texmo in the Indian securities market. In view of the same, I am convinced that, Noticee owned/connected entities viz., Cardinal Capital Partners Ltd. worked as a conduit for Arun Panchariya by providing a vehicle through India Focus Cardinal Fund to convert the illegally acquired GDRs into equity shares of Texmo and then selling/holding the illegally acquired shares of Texmo. Thus, in view of the aforesaid facts as brought above, Noticee's contention of connection with IFCF and CCP since 2008 and even post interim order dated September 21, 2011 is untenable.

75. I note that, Noticee has contended its connection with EURAM BANK, Austria. In this regard, I note from the documents which were received from Euram bank through FMA, vide emails dated March 03, 2016, March 01, 2016, February 15, 2016 that, Arun

Panchariya was a director in EURAM Bank Asia Ltd. (which was incorporated in Asia) and it was a joint venture between EURAM Bank and Pan Asia Advisors Ltd., another Arun Panchariya entity making it quite relevant that EURAM Bank Asia Ltd. was also connected to AP. The same is also corroborated with the information available on the website of Dubai International Financial Centre. I also find that in the Pledge Agreement signed between Texmo and EURAM Bank, a stamp mark reads, "*Signature verified Dir. AP*". Another stamp mark on the said Pledge Agreement reads, "*EURAM Bank Asia Ltd., Verified With Original, Name: Arun Panchariya, Date: 12th March, 2011, Reg. No. 0868*". It is quite clear that, there was certainly a relationship between EURAM Bank and Arun Panchariya which existed beyond EURAM Bank Asia Ltd. Further, it has been brought out that during the relevant period the sub-account availing the services of EURAM Bank as an FII happened to be an Arun Panchariya entity.

76. As an FII, EURAM did not make any direct investments in the Indian securities market, but was using its FII status to provide sub-account facilities to its clients to access the Indian securities market. As noted above, IFCF (which was registered as a sub account of FII Euram Bank) converted 42,550 GDRs and sold 8,51,000 shares of Texmo for Rs. 79,77,028 in the Indian securities market. Thus, it cannot be coincidence that the entity availing the sub-account facility happens to be an entity managed and controlled by Arun Panchariya, at a time when EURAM Bank was in a joint venture with him and he was signing the agreements that were being entered into by EURAM Bank. There is a clear and evident nexus between EURAM Bank and Arun Panchariya.

77. Another aspect that draws attention in the aforesaid arrangement, is that the company pledged the GDR proceeds prior to realizing the same, which is in contradiction to the usual pledging mechanism. It is common understanding that to pledge something as security against the loan taken by the borrower, the borrower first need to have the possession of the thing which is to be pledged and thereafter the same can be transferred to the pledgee for the purpose of creation of pledge. However, in the instant matter, I note that the GDRs was issued in April, 2011 and the pledge agreement was

entered into in March, 2011 which is prior to the said issue date and in turn prior to realizing the GDR proceeds. Hence, it can be said that the GDR proceeds were given as security by Company prior to realizing the same and accordingly this establishes that there was meeting of minds between the company, EURAM and Vintage and they all were acting in furtherance of common objective to misled the Indian investors.

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

*“This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.”*

79. Thus, I find Noticee was connected to EURAM Bank and EURAM Bank was acting as a conduit of Arun Panchariya and facilitated India Focus Cardinal Fund to become its sub-account and IFCF became Sub-account of CCPL afterwards and sold the converted shares of Texmo in the Indian securities market. I also note that, Noticee has also accepted the *modus operandi* adopted in GDR issue as mentioned in his submissions.

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

<b>Table – 16 Name of entity</b>	<b>No. of GDRs converte d</b>	<b>No. of shares received on conversi on of GDRs</b>	<b>Dates of selling shares</b>	<b>Trade value (Rs.) (BSE)</b>	<b>Total trade value (Rs.) (NSE)</b>	<b>Total trade value (Rs.)</b>
<b>HBS</b>	<b>4,65,383</b>	<b>93,07,66 0</b>	<b>March 2012 to July 2012</b>	<b>3,27,70,7 17</b>	<b>5,49,77,5 10</b>	<b>8,77,48,2 27</b>

81. It is seen from the above table that Highblue Sky received 93,07,660 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all the 93,07,660 equity shares received by Highblue Sky Fund were then sold by it in the Indian capital market during March 2012 and July 2012 for a total value of Rs. 8,77,48,227. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff. I note that, Noticee has contended its connection with HBS and also cited WTM order dated 06.10.2021. In this respect, following are the facts and documents before me which depicts the connection of Noticee with HBS, Reema Narayan Shetty, Golden Cliff and Anant Kailash Chandra Sharma

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

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

- 83.1. Reema Narayan Shetty was the authorised signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011. It has already been established above that India Focus Cardinal Fund was owned by Arun Panchariya.
- 83.2. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014.
- 83.3. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky Emerging Market Fund, she also became the beneficial owner of Highblue Sky Emerging Market Fund.

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

- 83.4. He joined as a director of Highblue Sky Emerging Market Fund on August 11, 2014.
- 83.5. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 09, 2014.
- 83.6. He also became the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky Emerging Market.
- 83.7. Furthermore, it is seen from the information available on the MCA website that Anant Sharma was a director in the following Companies between 2009 and 2016:

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

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	Sharma	) Private Limited		
4	Anant Kailash Chandra Sharma	Ramsai Investment Holdings Private Limited	01/09/2015	18/03/2016

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

No.	Director	Company	Start Date	End Date
1	Arun Panchariya	Sai Sant Advisory (India) Private Ltd.	31/08/2007	20/10/2010
2	Arun Panchariya	Ramsai Investment Holdings Private Limited	04/02/2008	18/08/2010

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

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

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

Sr. No.	Director	Company	Relevant Period
1	Satish Ramswaroop	Alka India Limited	01/02/2000 onwards

	Panchariya		
2	Ashok Ramswaroop Panchariya	Alka India Limited	29/04/2005 onwards
3	Ashok Ramswaroop Panchariya	Ramsai Investment Holdings Private Limited	17/03/2016 onwards
4	Ashok Ramswaroop Panchariya	Sai Sant Advisory (India) Private Ltd.	17/03/2016 onwards
5	Ashok Ramswaroop Panchariya	Vintage FZE (India ) Private Limited	30/09/2007 onwards

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

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

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

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

90. Also, the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014 was Anant Sharma, by virtue of being the beneficial owner of Golden Cliff, which holds 100% shareholding in Highblue Sky Emerging Market Fund. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff. Golden Cliff, registered FII, facilitated Highblue Sky Emerging Market Fund, their sub-account to sell the illegally acquired shares in the Indian securities market. Golden Cliff and HBS as brought out above were both Arun Panchariya related entities. In view of the same and as brought out above facts it is quite evident that Anant Sharma was also connected to Arun Panchariya.

91. I also note that, during the course of investigation, SEBI obtained the KYC documents of HBS from custodian ICICI Bank Ltd. From the KYC documents received by SEBI, it was observed that HBS had mentioned its registered address as 'C/o Aurisse International Ltd., 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius'. Further, the E-mail address mentioned in KYC documents is 'fundadmin@aurisse.com' and contact no. is mentioned as +2304640077. However, in the records of SEBI, while applying for registration, HBS had mentioned its e-mail id as 'saleem@aurisse.com'. SEBI conducted a Google search regarding Aurisse International Ltd. and it was observed that, it is a company based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Ltd. wherein Mukesh Chauradiya was a director and CFO in 2011. SEBI conducted further examination of the website of Aurisse International Ltd., found out that it shares common address, and contact number with HBS. Though, Noticee has contended the same and his connection with AKS and Reema Shetty, I note that, abovementioned facts makes the connection of HBS with Noticee quite evident and his contention is untenable and it is to be noted that, AKS and Reema Shetty were known to Noticee even before 2014 when

they were holding directorship in companies as mentioned above and thus, the ratio of judgment of WTM order cited by Noticee in this regard is different as abovementioned facts with respect to his connection with AKS and Reema shetty makes the connection of HBS with Noticee quite evident.

92. Following is the summary of the shares received by other 2 sub-accounts viz. Sparrow and Leman upon conversion of GDRs and the sale of those shares is provided hereunder:

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

93. It is seen from the above table that, Sparrow received 9,91,340 equity shares of Texmo upon conversion of GDRs of Texmo. It is also seen from the above table that all the 9,91,340 equity shares received by Sparrow were then sold by it in the Indian capital market during February 2012 to April 2012 for a total value of Rs. 2,17,91,509.

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

95. It was observed that these two FII sub-accounts namely Sparrow and Leman are connected to one another on the basis of common authorized signatory Mr. Nayan

Agarwal and common directors and these two FII-sub-accounts are connected to AP by virtue of connection with Highblue Sky Emerging Market Fund.

96. From the above-mentioned connections between Sparrow and AP such as beneficial owner of Golden Cliff being associates of AP, and the fact that Sparrow received the equity shares after conversion of GDRs (which were issued without consideration), I find that Sparrow was also a participant of the fraudulent scheme of issuance of GDRs and their subsequent conversion into equity shares and sale in the Indian securities market.

97. I note that, SEBI had sought details of investors in Lemna Diversified Fund from its custodian i.e. Deutsche Bank. Deutsche Bank, in its Email dated September 12, 2016, submitted the details of investors in Lemna. As per those details, it is observed that investors of Lemna Diversified Fund *inter-alia* are Al Jalore and Image Securities Ltd. In this regard, it is observed that Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd. and is also director of Aspire Emerging Fund. I also note that one Mr. Aslam Kanowah is also a director of Aspire Emerging Fund. At the same time, from the information received from HBS, vide its Email dated April 29, 2016, I note that Aslam Kanowah was director of HBS. As already established in the pre-paragraphs that, HBS is a connected entity of AKS who himself is allegedly connected to AP and also to Mukesh Chauradiya on account of his employment at Sai Sant Advisory (India) Pvt. Ltd. and Vintage in Dubai and was directly reporting to Mukesh Chauradiya. Thus, Aspire Emerging Fund, an entity owned by Ashish Nanda is also an Arun Panchariya connected entity,

98. In view of the above, I note that two FII sub-accounts namely Lemna Diversified Fund and Sparrow Asia Diversified Opportunities Fund are connected to one another on the basis of common authorized signatory Mr. Nayan Agarwal and common directors. Further, I note that these two FII-sub-accounts are connected to AP by virtue of their connection with HBS.

99. I also note that Leman and Sparrow has been involved in several other fraudulent GDR issues devised by AP and regulatory directions have also been issued against it in several matters.

100. In view of the above connection, I find that, Noticee is connected to Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund and have acted as a conduit to Noticee by selling the illegally acquired shares in the Indian capital market.

101. Thus, the above paras clearly depicts the connection of AP with the entities who were involved in this fraudulent GDR scheme and further with respect to disputing all the documents establishing Noticee's connection especially with PAN ASIA, Vintage and IFCF, I find that no contradictory evidence is put before me by Noticee which shows that he was not the beneficial owner of PAN ASIA, Vintage and IFCF,CCPL during the date of the transactions in March 2011.

102. Noticee, the director and beneficial owner of Vintage was instrumental in the activation of the fraudulent scheme as a consequence of which, it received the GDRs without payment of consideration to the extent of USD 3.49 million and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, , a key manager in Vintage was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of Texmo. Further, Pan Asia Advisors Ltd., the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, Highblue Sky Emerging Market Fund, Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund. These entities and their FIIs were all connected to Arun Panchariya, either by ownership or through business relations. These entities facilitated Arun Panchariya in this fraudulent GDR Scheme and sold shares of Texmo upon conversion of GDRs, in the Indian capital

market and earned Rs. 79,77,028; Rs.8,77,48,227; Rs. 2,17,91,509 and Rs. 3,06,96,039 respectively.

103. The above facts brings out that Arun Panchariya was the principal architect in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Texmo and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through IFCF, HBS, Sparrow and Leman with the intention of making illegal gains. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is concluded that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market and his contention of bias by SEBI is untenable in light of the abovementioned facts.

104. In this context, it is noted that in the matter of **Pan Asia Advisors Limited and Another vs. SEBI (Appeal No. 126 of 2013)**, the Hon'ble SAT, while dismissing the appeal filed by the appellants therein (against the SEBI Order inter alia prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had inter alia held that:

*"... apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by Arun Panchariya.*

*In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted. ...”*

105. Thus, the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage and then offloading the underlying shares through his owned/connected entities in Indian Market. Thus, his contention that, *To hold the underlying shares in India and carry out the conversion of GDR into shares, the Noticee is not a party to this arrangement and that he was not beneficiary* is not tenable in light of the abovementioned facts and judgment passed by Hon'ble SAT in its order dated February 5, 2020 in the matter of **Jindal Cotex Ltd., Vs SEBI (Appeal No. 376 of 2019)**. To put it in nutshell, the issuance of these GDRs was for private gain at the cost of public good resulting into Indian investors becoming ultimate bearer of the cost of these GDRs.

106. Investment in domestic companies by foreign institutional investors is considered positive news. Company informing stock exchange about successful GDR issue tried to give a misleading impression to the investors and to the market at large, about the potential of the Company, without disclosing the actual arrangement undertaken (Pledge Agreement/ collateral security) to ensure successful subscription to its GDR. This fraudulent GDR issue had successfully misled the investors to believe that the shares of the Company have a good market abroad and have been very well received by foreign investors hence, its shares may be of great value in India as well as abroad. Thus, the Fraud in the present case was committed on the investors in India, in two stages.

106.1. Firstly, AP in connivance with the Issuer Company (i.e., Texmo) subscribed to their GDRs through Vintage which was wholly owned by him by obtaining loan from EURAM Bank (connected entity), for which the proceeds of GDRs were pledged by

Texmo by executing a Pledge agreement with EURAM Bank. Thus, the investors in India were falsely made to believe that the foreign investors have shown keen interest in the scrip of Texmo when in fact the GDRs were not subscribed by foreign investors but by AP through Vintage, which was wholly owned by AP.

106.2. Secondly, the GDRs so acquired were then transferred to IFCF, HBSEMF, Leman and sparrow (Owned/connected entities of Noticee), who then converted the GDRs into underlying shares and sold the said shares in the Indian securities market.

107. It is apparent that, the modus operandi adopted by company and Noticee through his owned/connected entities was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold by the entities which were owned/connected by/with Noticee. In these circumstances at every stage of the GDR issue in the instant matter, Noticee's owned/connected entities were involved, right from the lead manager to selling of shares. I note that the Indian investors are ignorant of full market information regarding pre-arrangement for subscription of GDRs and subsequent sale of underlying shares as these transactions gave an impression that the investors in India have started subscribing to the shares of Texmo when in fact the shares were sold by the Owned/connected entities of Noticee. Therefore, I conclude that the scheme articulated, structured and executed by AP constitutes fraud on the Indian investors.

108. It is noted that GDRs finally resulted in substantial conversion and selling of the underlying shares in the Indian securities market. GDR derives its existence from securities listed in Indian Stock markets. The issuance of GDRs are from the authorised share capital (falling under the jurisdiction of SEBI and other Indian regulators) of a company listed in Indian Stock Exchanges. Any structuring or manipulation related to GDRs has a direct impact on the stocks of the companies trading in Indian market. In

view of the flawless collaborative evidence as brought out in the instant Order, I conclude that, Noticee was the key person who through his owned/connected entities committed fraud at every stage of the GDR process to the ultimate detriment of investors in Indian securities market, which had acted as an inducement for other persons to offer to buy the shares of Texmo in the Indian securities market.

109. In this context, I further find it proper to refer to the observations of Hon'ble Supreme Court of India dated July 6, 2015 in the matter of **SEBI vs PAN Asia Advisors Ltd & anr.**, (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, has held the following:

*“the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank.....that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs..... To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none....”*

110. Further, I find it appropriate to refer to the Order of the Hon'ble SAT dated February 5, 2020 in the matter of **Jindal Cotex Ltd., Vs SEBI (Appeal No. 376 of 2019)**, wherein Hon'ble SAT held as under:

*"We do not agree with the submissions made by the learned counsel for the appellants. This Tribunal had passed a number of orders relating to manipulations and fraudulent behaviour from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted. In this context, it is relevant to note that in our order in the matter of PAN Asia Advisors Limited (Supra) (Lead Manager) and Vintage (subscriber) whose beneficial owner was Arun Panchariya were all found to be guilty of the violations of Indian Securities Laws under the PFUTP Regulations. The same has been the modus operandi in respect of Cals Refineries Limited (Supra) though the entities connected therein were different."*

111. The aforementioned act of Texmo and AP through its Owned /connected entities resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to reiterate once again the Order of the Hon'ble SAT in *Pan Asia Advisors Limited vs. SEBI* cited above in para 43 of this order wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it has been held 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.”*

112. Also, I note that the Hon’ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel vs. SEBI** has also observed as under:

*“if Regulation 2(c) of the 2003 Regulations was to be dissected and analysed, 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”.*

113. I note that the Hon’ble Supreme Court in the same judgement has also held that:

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

114. Also, I refer to order of Hon'ble SAT in matter of **V.Natarajan vs. SEBI** (Order dated June 29, 2011 in Appeal No.104 of 2011) wherein it has held that:

*“... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities. ....”*

115. In view of the abovementioned findings and in line with the ratio laid down by the Hon'ble Supreme Court and Hon'ble SAT as mentioned above, I note that all the essential ingredients of fraud as defined in PFUTP Regulations are present in this case and thus, I conclude that the Noticee i.e., Arun Panchariya who was the key person in articulating, devising, structuring and executing the deceptive and manipulative scheme of GDR issue by Texmo through his owned/controlled/connected entities at every stage of GDR Issue in the instant matter, perpetrated fraud on the investors in Indian securities market by way of subscribing to GDRs in fraudulent manner by obtaining loan, defaulting on loan payment, converting GDRs into equity shares and subsequently selling converted shares. Therefore, I find that such acts of the Noticee is

in violation of the provisions of Section 12A(a), (b), (c) of the SEBI Act r/w Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations.

**ISSUE-II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?**

116. It is established that. the Noticee through his owned/controlled/connected entities, perpetrated fraud on the investors in Indian securities market by way of employing fraudulent plan/arrangement, device, artifice and contrivance with regard to the subscription of GDRs, creation of underlying shares using the facade of GDR issue, monetizing those GDRs through the sale of underlying shares of the GDRs and inducing and alluring Indian investors to deal in shares of Texmo. The pre-determined fraudulent and manipulative acts of a few entities damage the integrity of the market. Further, the genuine investors are put at risk because of the fraudulent artifice employed by the entities as observed in this case.

117. Therefore, as the alleged violation against the Noticee stands established, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

**Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices**

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

**ISSUE-III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?**

118. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15J of SEBI Act, which reads as under:

**15J. While adjudging quantum of penalty under Section 15-I of SEBI Act, the Adjudicating Officer shall have due regard to the following factors, namely:**

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

119. It is established that the Noticee i.e., Arun Panchariya devised and structured the fraudulent GDR issue of Texmo through his owned/connected entities at all stages by appointing PAN ASIA as the lead manager to issue and ensuring that AP controlled Vintage subscribed to GDR issue by entering into Loan Agreement, AP connected EURAM Bank extended loan to Vintage, Vintage acquiring GDRs amounting to USD 3.49 million free of cost and then AP controlled/Connected entities namely IFCF, HBS, Leman and Sparrow sold equity shares in the Indian Market to the extent of around Rs. 14.82 Crore. To put it in nutshell, the issuance of these GDRs was for private gain at the cost of public good resulting into Indian investors becoming ultimate bearer of the cost of these GDRs.

120. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of fraudulent scheme devised and executed in Indian Markets, which affected the integrity of markets and resulted in huge loss to Texmo by defaulting the loan repayment by vintage and consequently its shareholders and then Noticee's owned/connected entities selling the converted shares including received free of cost in Indian Market. The consequences resulting from violations committed by the Noticee are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand, then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future. I am of the view that, in order to meet the ends of justice, exemplary penalty is warranted against the

Noticee in terms of Section 15HA of the SEBI Act. I note that numerous orders have been passed by SEBI, both under section 11 and under section 15 of SEBI Act, against the Noticee in matters of GDRs of various other listed companies in the past.

## ORDER

121. In view of the aforesaid paras and considering the fact that, in parallel 11B proceedings in the same matter, Noticee along with its connected entities are directed to disgorge an amount of Rs. 14,82,12,803/-, I, therefore, in exercise of the powers conferred upon me under Section 15-I of SEBI Act r/w Rule 5 of Adjudication Rules, hereby impose the same penalty on the Noticee as was imposed in the erstwhile adjudication order dated June 28, 2022:

Name of the Noticee (PAN)	Penalty amount in ₹ and words	Imposition of penalty under
Arun Panchariya (PAN: AEVPP6125N)	25,00,000 /- (Rupees Twenty Five Lakhs only)	Section 15HA of SEBI Act for violation of the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations

I find that the aforementioned penalty is commensurate with the violations committed by Noticees in this case.

122. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**

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

124. In terms of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and to the Securities and Exchange Board of India.

**Date: July 31, 2023**

**Place: Mumbai**

**VIJAYANT KUMAR VERMA**

**ADJUDICATING OFFICER**