

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 11(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, in the matter of alleged market manipulation using GDR Issues.

Background –

1. Vide an *ad interim ex-parte* Order dated September 21, 2011 ("**Interim Order**"), Securities and Exchange Board of India ("**SEBI**") directed Cals Refineries Limited ("**Cals**") not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner till further directions, in view of the irregularities observed in the issuances of Global Depository Receipts ("**GDRs**") of Cals. The aforementioned Interim Order was confirmed as against Cals on December 30, 2011 ("**Confirmatory Order**").

Show Cause Notices –

- 2.1 Subsequently, SEBI completed its investigation in the matter and based on the findings therein, Show Cause Notices ("**SCN**") dated September 19, 2013 and September 25, 2013, were issued to the following entities, viz. –

- I. *Cals Refineries Limited ("**Cals/Noticee no. 1**")*;
- II. *Devanathan Sundararajan ("**Sundararajan/ Noticee no. 2**")*;
- III. *Sarvesh Goorha ("**Goorha/ Noticee no. 3**")*;
- IV. *Ravi Chilikuri ("**Chilikuri/ Noticee no. 4**")*;
- V. *Sanjay Rai Malhotra ("**Sanjay Malhotra/Noticee no. 5**")*;
- VI. *Honor Finance Ltd. ("**Honor/Noticee no. 6**")*;
- VII. *Asia Texx Enterprises Limited ("**Asia Texx/ Noticee no. 7**")*;
- VIII. *Gagan Kumar Rastogi ("**Gagan Rastogi/Noticee no. 8**")*;
- IX. *Bhupendra Kansagra ("**Kansagra/Noticee no. 9**")*;
- X. *Manabendra Guha Roy ("**Guha Roy/Noticee no. 10**")*;
- XI. *M. S. Ramachandran ("**Ramachandran/Noticee no. 11**")*;

- XII. *Deep Kumar Rastogi ("Deep Rastogi/Noticee no. 12");*
XIII. *Mohan Lal Garg ("Mohan Lal/Noticee no. 13");*
XIV. *Gujarat Venture Finance Ltd ("GVFL/Noticee no. 14");*
XV. *Sudhir Kumar Kohli ("Noticee no. 15");*
XVI. *Pradeep Chowdhary ("Noticee no. 16");*
XVII. *Aruna Chowdhari ("Noticee no. 17");*
XVIII. *Deepesh Goorha ("Noticee no. 18");*
XIX. *Divakar Nigam ("Noticee no. 19");*
XX. *B S Panwar ("Noticee no. 20");*
XXI. *Mohinder Parkash ("Noticee no. 21");*
XXII. *Shashi Prakash Chandra ("Noticee no. 22");*
XXIII. *Priyadarshini Nigam ("Noticee no. 23");*
XXIV. *Vidula Balsaver ("Noticee no. 24");*
XXV. *Udhayan Challu ("Noticee no. 25");*
XXVI. *Rajesh Kumar Chhabra ("Noticee no. 26");*
XXVII. *Kingshuk Ghosh ("Noticee no. 27");*
XXVIII. *Ragini Goorha ("Noticee no. 28");*
XXIX. *Rana Ramesh Chowdhary ("Noticee no. 29");*
XXX. *Neha N Mehta ("Noticee no. 30");*
XXXI. *Rajive Chandra ("Noticee no. 31");*
XXXII. *Sanjai Rastogi ("Noticee no. 32");*
XXXIII. *S B Saxena ("Noticee no. 33");*
XXXIV. *Ashok Srivastava ("Noticee no. 34");*
XXXV. *Rachna Bindra ("Noticee no. 35");*
XXXVI. *Vrinda Goorha ("Noticee no. 36");*
XXXVII. *Rita Wadhwa ("Noticee no. 37");*
XXXVIII. *Sudha Bala Gupta ("Noticee no. 38");*
XXXIX. *Ashok Gupta ("Noticee no. 39");*
XL. *Ravi Sharma ("Noticee no. 40");*
XLI. *Rakesh Rihani ("Noticee no. 41");*
XLII. *Puneet Saxena ("Noticee no. 42");*
XLIII. *Poonam Mehta ("Noticee no. 43");*
XLIV. *Girija B Nair ("Noticee no. 44");*
XLV. *Dimpy Malhotra ("Noticee no. 45");*
XLVI. *Kumari Anvita Goorha ("Noticee no. 46");*
XLVII. *Prerna Tondon ("Noticee no. 47");*
XLVIII. *Om Parkash Malhotra ("Noticee no. 48");*

- XLIX. *Sadhna Adarsh* ("Noticee no. 49");
L. *Harish Chandra Jain* ("Noticee no. 50");
LI. *Lucy Jose* ("Noticee no. 51");
LII. *Minakshi Goorba* ("Noticee no. 52");
LIII. *Amod Agrawal* ("Noticee no. 53");
LIV. *K K Lakhani* ("Noticee no. 54");
LV. *Rajesh D Mehta* ("Noticee no. 55");
LVI. *Gita R Mehta* ("Noticee no. 56");
LVII. *Prakash Chandra* ("Noticee no. 57");
LVIII. *Ashok Verma* ("Noticee no. 58");
LIX. *Mitter Sain Chanla* ("Noticee no. 59");
LX. *S K Chopra* ("Noticee no. 60");
LXI. *Ashima Choudhary* ("Noticee no. 61");
LXII. *Satya Pal Bindra* ("Noticee no. 62");
LXIII. *Uma Goorba* ("Noticee no. 63");
LXIV. *A J S Chhatwal* ("Noticee no. 64");
LXV. *B Malia* ("Noticee no. 65");
LXVI. *Sunit Saxena* ("Noticee no. 66");
LXVII. *M P Jain* ("Noticee no. 67");
LXVIII. *Amer Pal Singh* ("Noticee no. 68");
LXIX. *Rajan Jain* ("Noticee no. 69");
LXX. *Gajender Mohan Khare* ("Noticee no. 70");
LXXI. *Manoj Mathur* ("Noticee no. 71");
LXXII. *Benedict Joseph* ("Noticee no. 72");
LXXIII. *Akshil Chowdhary* ("Noticee no. 73");
LXXIV. *Naval Gupta* ("Noticee no. 74");
LXXV. *Brajendra Singh Panwar* ("Noticee no. 75");
LXXVI. *Phool Chand* ("Noticee no. 76");
LXXVII. *Jacob Chacko* ("Noticee no. 77");
LXXVIII. *Ila Ghosh* ("Noticee no. 78");
LXXIX. *Yogesh Kumar Goorba* ("Noticee no. 79");
LXXX. *Utkarsh Joshi* ("Noticee no. 80");
LXXXI. *Bimal Behar Mathur* ("Noticee no. 81");
LXXXII. *Om Prakash* ("Noticee no. 82");
LXXXIII. *Akhilesh Kumar Goorba* ("Noticee no. 83");
LXXXIV. *Uma Mishra* ("Noticee no. 84");
LXXXV. *Vandana Shah* ("Noticee no. 85");

LXXXVI.	<i>Jyotindra Trivedi ("Noticee no. 86");</i>
LXXXVII.	<i>Anita Kapoor ("Noticee no. 87");</i>
LXXXVIII.	<i>J K Mathur ("Noticee no. 88");</i>
LXXXIX.	<i>Triloki Nath Mehtani ("Noticee no. 89");</i>
XC.	<i>Mulraj D Mehta ("Noticee no. 90");</i>
XCI.	<i>A K Sharan ("Noticee no. 91");</i>
XCII.	<i>Rakesh Langer ("Noticee no. 92");</i>
XCIII.	<i>Partha Sarathi Chakrabarty ("Noticee no. 93");</i>
XCIV.	<i>Hari Narayan Choudhary ("Noticee no. 94");</i>
XCV.	<i>Atul Pharasi ("Noticee no. 95");</i>
XCVI.	<i>Ranjit Singh ("Noticee no. 96");</i>
XCVII.	<i>Ram Sagar ("Noticee no. 97");</i>
XCVIII.	<i>Ranbir Singh Sejwal ("Noticee no. 98").</i>

2.2 From the SCNs, it is observed that –

- i. As the authorised signatory of Cals on account of being its Promoter and Director, Goorha/Noticee no. 3 signed an *Account Charge Agreement* with Banco Efisa, a Portugal based bank ("**Banco**"). The aforesaid *Account Charge Agreement* was an integral part of another agreement viz. *Credit Agreement* signed between Honor and Banco. Honor was beneficially owned by Sanjay Malhotra/Noticee no. 5. These Agreements enabled Honor to avail a loan of US \$200 million from Banco for subscribing to the GDR issue of Cals.
- ii. As the authorised signatory and while in control of Honor, Sanjay Malhotra signed a *Credit Agreement* with Banco for availing a loan of \$200 million to subscribe to the GDR issue of Cals.
- iii. In terms of the *Account Charge Agreement*, Cals deposited the GDR subscription proceeds received from the subscriber i.e. Honor, as security for the loan availed by Honor from Banco. The *Account Charge Agreement* contained a clause to the effect that all communications to be given under the *Agreement* were to be addressed to either Goorha or Sundararajan, who were Director of Cals. Goorha and Sundararajan were also authorised signatories for Cals.
- iv. As the *Account Charge Agreement* was expiring, an *Extension Agreement* was signed between Cals and Banco on January 13, 2009. The said *Extension Agreement* was signed by Chilikuri/Noticee no. 4 (Director and authorised signatory of Cals) on behalf of Cals.

- v. The effect of these *Agreements* resulted in Cals itself financing the subscription of its GDR issue and such an arrangement was specifically prohibited under Indian law in terms of Section 77(2) of the Companies Act, 1956 (hereinafter referred to as "**Companies Act**"). Further, this fraudulent arrangement resulting in full subscription of GDRs of the Issuer Company acted as an inducement for other persons to offer to buy the shares of such Company in the Indian securities market.
- vi. Even though the GDR issuance was by means of an illegal and fraudulent arrangement and no genuine capital was raised in the process, Cals informed Bombay Stock Exchange Limited ("**BSE**") that the GDR issue of US \$200 million was fully subscribed. The names of initial investors provided by Cals to BSE and SEBI were false and misleading as the only subscriber to the GDRs issue was Honor.
- vii. Cals made repeated announcements regarding setting up of refinery in India and securing investment from foreign investors for this purpose through GDR issuances. However, the general public was not aware that the GDR subscription proceeds were locked with Banco and utilization of the same by Cals was totally dependent on the repayment of loan by Honor. Cals therefore caused false information to be published and disclosed to the stock exchange (BSE in the instant case) in India that GDR issuances were successful having been fully subscribed by foreign investors, and, used this artifice and misleading information to induce the investors in India to deal in its shares.
- viii. Cals paid US \$92 million to a promoter controlled entity viz. Asia Texx/ Noticee no. 7. The beneficial owner of Asia Texx was Gagan Rastogi/Noticee no. 8, who was one of the Promoters of Cals through his holding in SRM Exploration. Gagan Rastogi is also the son of Deep Rastogi, who was a Director of Cals. However, Cals did not receive any machinery from Asia Texx despite making a payment of US \$92 million to Asia Texx. In reality, the amount of US \$92 million paid by Cals was utilised by way of multilayered transactions to enrich the Promoter of the company i.e. Gagan Rastogi.
- ix. Sundararajan was signatory to the agreement between Cals and Asia Texx for purchase of plants and machinery. Further, as the authorised signatory of the bank account of Cals, Sundararajan also authorised the payment of US \$92 million to Asia Texx from Cals. The transactions between Cals and Asia Texx are summarized below:

Date	Event
05-Feb-2009	Cals signs agreement with Asia Texx for sale of plants and machinery.
26-Mar-2009	Asia Texx purchases 25 million GDRs from Honor for US \$92 million.
27-Mar-2009	Cals pays US \$92 million to Asia Texx ostensibly for purchase of refinery equipments.
27-Mar-2009	Honor receives US \$92 million from Asia Texx and repays the outstanding loan amount of approximately US \$92 million to Banco.
09-Jul-2009	Asia Texx transfers 25 million GDRs to Gagan Rastogi free of cost.

- x. The above transaction between Cals and Asia Texx was fraudulent as the transaction was structured to enrich the promoter of Cals at the expense of other investors. Gagan obtained 25 million GDRs of Cals by using the funds of Cals. No refinery equipments have been received from Asia Texx. The money was ultimately used by Honor (owned by Sanjay Malhotra – Promoter of Cals) to repay the outstanding loan to Banco. The entire transaction effectively amounted to siphoning of funds of Cals into the account of the promoter under the pretext of payment for refinery parts. The transaction between Cals and Asia Texx was structured to settle the outstanding liability of Honor to Banco using funds of Cals.
- xi. Sundararajan appeared on behalf of Cals in response of summons of SEBI. Admittedly, Sundararajan was responsible for completing the GDR process. In his statement dated April 3, 2012, he had concealed several facts to mislead SEBI. The summary of misleading submissions by Sundararajan is given below:
- The submission by Sundararajan regarding agreement between Asia Texx and Cals for purchase of refinery is completely false as the payment of US \$92 million was done to enrich one of the promoters of Cals (Gagan Rastogi) and settle the outstanding liability of another promoter (Sanjay Malhotra).
 - The fact that the transaction with Asia Texx was a related party transaction was concealed by Sundararajan while providing information on this transaction.
 - Sundararajan also tried to mislead SEBI by stating that the promoters/directors of Cals did not have any agreement with the initial investors of the GDR issue even though the investigation revealed that the promoters/directors of Cals had entered into a fraudulent arrangement with the initial investor of the issue viz. Honor.

- 2.3 As regards the SCN dated September 19, 2013 (including the Supplementary SCN dated October 11, 2013), against Cals/Noticee no. 1, the same was disposed of vide SEBI Order dated October 23, 2013, wherein that entity was directed "*not to issue equity shares or any other instrument convertible into equity shares or any other security, for a period of **ten years.***"
- 2.4 In addition to the above, Sundararajan, Goorha, Chilikuri, Sanjay Malhotra, Honor, Asia Texx and Gagan Rastogi were alleged to have *prima facie* violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations.
- 2.5 In addition, Sundararajan was also alleged to have failed to provide correct information in response to the summons issued under Section 11C(3) of the SEBI Act.
- 2.6 Replies to the SCN were received by SEBI from Sundararajan, Goorha, Gagan Rastogi, Deep Rastogi, Asia Texx and various other entities. However, no reply to the SCN was received from Chilikuri, Sanjay Malhotra and Honor.
- 2.7 As regards the entities mentioned at paragraph 2.1 of this Order i.e. Noticees 9 – 98, from the SCN it was observed that they were alleged to have violated the following provisions of law –
- i. As per the quarterly shareholding pattern available on the BSE web-site i.e. www.bseindia.com, it was observed that Noticees no. 14 to 98 i.e. 85 entities, were Promoters of Cals at the relevant time. It was also observed that Noticees no. 9 to 13 were Directors of Cals.
 - ii. Under Section 27 of the SEBI Act, 1992 ("**SEBI Act**"), where an offence under the SEBI Act has been committed by the company, and it is proved that the offence 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 guilty of the offence and shall be liable to be proceeded against and punished accordingly. As such, the aforementioned entities *prima-facie* controlled Cals and were therefore, responsible for the conduct of business of Cals. On account of the same, the aforementioned entities were thereby liable to be proceeded against for having *prima-facie* violated Section 12A(a)–(c) of the SEBI Act read with Regulations 3 (c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

- 2.8 It is observed that out of the abovementioned 97 entities, SCN was delivered by SEBI to 54 entities, viz. Noticees no. 2 -3, 7-15, 21-22, 26-28, 30-31, 33, 35, 37-40, 42-44, 49-50, 53, 55-60, 62-67, 70, 74, 78, 80-81, 84, 87-88, 90-91, 97-98.
- 2.9 As regards the remaining 43 entities where SCN could not be delivered by SEBI at their last known address, it is observed that the same alongwith hearing notices were made available on the SEBI website under the heading "***Unserved Summons/Notices***". In addition, an advertisement was published in leading regional and national dailies on January 1, 2014, for the aforementioned 43 entities whereby they were informed that their reply should reach SEBI within 14 days from the date of publication of the said advertisement and that the hearing before the Whole Time Member, SEBI, for such entities was scheduled on January 24, 2014.
- 2.10 Reply to the SCN was received by SEBI from/on behalf of 59 entities, viz. Noticees no. 2 – 3, 7 – 19; 22 – 25; 28; 30; 32; 37 – 39; 42 – 43; 45 – 46; 49; 52 – 53; 55 – 61; 63 – 64; 66; 69; 73; 79; 80 – 81; 83; 86 – 87; 90 – 98.

Hearing –

- 3.1 An opportunity of personal hearing was granted to Sundararajan, Goorha, Chilikuri, Sanjay Malhotra, Honor, Asia Texx and Gagan Rastogi on October 11, 2013. However, SCNs issued to Chilikuri, Sanjay Malhotra and Honor, were returned undelivered.
- 3.2 Sundararajan, Goorha, Asia Texx, Deep Rastogi and Gagan Rastogi availed of the hearing on October 11, 2013. Goorha was granted an additional opportunity of personal hearing on January 22, 2014.
- 3.3 Kansagra (Noticee no. 9) was granted an opportunity of personal hearing on February 20, 2014.
- 3.4 Out of the 54 entities to whom the SCN was served, opportunity of personal hearing to six of the entities was provided as mentioned above. Hearing to the remaining 48 entities was scheduled on March 12, 2014. The same was availed by Guha Roy (Noticee no. 10), Ramachandran (Noticee no. 11), Gujarat Venture Finance Ltd. (Noticee no. 14), Bimal

Behari Mathur (Noticee no. 81) and A. K. Sharan (Noticee no. 91). Noticee no. 91 also made representations at the hearing on behalf of 12 other Noticees i.e. Noticees no. 28, 30, 31, 37, 39, 42, 43, 55, 56, 66, 90 and 98. Ramachandran was granted an additional opportunity of personal hearing on April 10, 2014.

- 3.5 As regards the 43 entities to whom the SCN could not be delivered, the hearing was scheduled on January 24, 2014. SEBI received replies from 19 entities, however, all such entities requested to be exempted from the hearing. Replies from 3 more entities, viz. Ashima Choudhary/Noticee no. 61, Rakesh Langer/Noticee no. 92 and Akhil Choudhary/Noticee no. 73, were received on January 25, 2014, after the hearing date.

Submissions made by Sundararajan –

- 4.1 In his reply dated October 7, 2013, Sundararajan made the following submissions –

- i. Sundararajan denied all knowledge of *Account Charge Agreement*. He submitted that it is patently illogical and unfair to assume that he had knowledge of an agreement merely because it mentioned his name since no one can control what names are mentioned in documents which are not seen or signed by them. He had not signed the said agreement.
- ii. Sundararajan received no communication whatsoever from Banco as regards this alleged *Account Charge Agreement*.
- iii. SEBI has not produced any evidence whatsoever connecting Sundararajan to the credit agreement. Sundararajan was unaware of the subscription (if any) by Honor to the GDR issue or of Honor's beneficial ownership
- iv. He did not furnish any wrong or misleading statements to SEBI. Regarding list of initial investors, Sundararajan's responses to the investigating authority were based on information supplied by the lead manager. Sundararajan had no responsibility in law or in normal market practice to independently verify the identity and beneficial ownership of its investors in a GDR issue
- v. The transaction between Cals and Asia Texx Enterprises Pvt. Ltd. was not a related party transaction. Even assuming that the transaction between Cals and Asia Texx was a related party transaction, Sundararajan was not aware of Gagan Rastogi's interest (if any) in Asia Texx. Hence, Sundararajan has not misled SEBI in this regard. In any case, as SEBI had never put the question to Sundararajan explicitly, there was no question of Sundararajan to volunteer this information which would be material only if the transaction were not on arm's length basis. Merely because Sundararajan had signed the

agreement with Asia Texx on behalf of Cals, it would be wrong to assume that he was aware of the relationship between Gagan Rastogi and Asia Texx, if any.

- 4.2 Sundararajan appeared for personal hearing before me at SEBI on October 11, 2013 and reiterated the written submissions already made by him
- 4.3 Supplementary SCNs were issued to Sundararajan vide letters dated October 18, 2013 and October 28, 2013, with the following charges:
 - i. Sundararajan was asked to provide his comments on the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Cals Refineries Limited on October 30, 2007. The said extract authorized Goorha and Sundararajan to sign, execute any application, document on behalf of Cals. The extract also authorized Banco to use the funds deposited in bank account as security in connection with loans, if any. SEBI had also received this extract from Goorha as well as Banco.
 - ii. On examining the debits made from the bank account of Cals maintained with Banco, it is observed that Cals had always withdrawn money after repayment of an installment of loan by Honor. At no point of time was Cals able to withdraw money in excess of the amount repaid by Honor to Banco further evidencing that the withdrawal of GDR proceeds by Cals was dependent on the loan repayment by Honor.
- 4.4 Sundararajan furnished his reply vide email dated October 21, 2013 and October 30, 2013, in response to the aforesaid supplementary SCNs and made the following submissions:
 - i. The board resolution is a standard format required by Banco as part of their account opening process.
 - ii. The Board Meeting held on Oct 30, 2007 discussed among other things the progress of GDR issue and the documentation/approvals etc., required for the same. Sundararajan got the account opening form of Banco immediately after the meeting. He also requested the then Company Secretary assisting Mr. Sarvesh Goorha to include the account opening resolution in the same Board meeting. This was to be done after taking concurrence from the Chairman and other members of the Board. Sundararajan signed this document acting in good faith expecting that the resolution in question would be included into the minutes book of the Company. That inclusion did not take place due to an oversight by the then company secretary. Sundararajan realised this only after receiving communication from us.

- iii. The subject resolution in the standard format was intended to cover security for any loans that the Company may avail from Banco from time to time. Since no such loan was availed, there was no occasion for the resolution to ever be acted upon. Certainly this was not intended to cover any third party loan from Banco as the wordings for the same would be different.
- iv. The withdrawals made by Cals from the GDR proceeds deposited with Banco were dictated by the regular business needs of Cals and were not linked with the alleged repayment of any loan taken by Honor.
- v. The role of Sundararajan in Cals was limited to i) conducting a due diligence of Cals for a possible investment by Spice Energy group and ii) assisting in the GDR process. Sundararajan also assisted in further resource mobilization for Cals through FCCB issue and domestic debt syndication. Mr. Sundararajan was initially an employee of SRM Exploration and then served with Spice Energy Pvt Ltd.
- vi. The Cals project team was led by its CEO (Mr. M Guha Roy) and its advisor (Mr. P.N. Devarajan). This team was functioning independently in separate premises. Sundararajan was not connected with its day-to-day project activities. Goorha and Sundararajan were the authorized signatories on behalf of Cals for the bank account with Banco in which the GDR proceeds were parked. Sundararajan's signatures were obtained for authorizing withdrawals corresponding to the payment obligations of Cals for genuine business transactions.
- vii. Once a Whole-time Director designated as CFO was appointed by Cals in January 2009, Sundararajan did not attend any of Cals' Board meetings' after January 2009 and resigned from Board.
- viii. Sundararajan was not connected with the personal finances of Sanjay Malhotra and had no knowledge of how or when he acquired Cals' GDRs. The submissions of Sundararajan to BSE/RBI/ED/SEBI were solely based on the certificates furnished by the Lead Manager to the GDR issue.

Supplementary SCN issued to Goorha –

4.5 Supplementary SCN was issued to Goorha vide letter dated October 28, 2013, with the following charges:

- i. Goorha was asked to provide his comments on the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Cals on October 30, 2007. The said extract authorized Goorha and Sundararajan to sign, execute any application, document on behalf of Cals. The extract also authorized Banco to use the funds deposited in bank account as security in connection with loans, if any. SEBI had also received this extract from Goorha as well as Banco.
- ii. On examining the debits made from the bank account of Cals maintained with Banco, it is observed that Cals had always withdrawn money after repayment of an installment of loan by Honor. At no point of time was Cals able to withdraw money in excess of the amount repaid by Honor to Banco further evidencing that the withdrawal of GDR proceeds by Cals was dependent on the loan repayment by Honor.

Submissions made by Goorha –

5. During the hearing before me and in his replies dated October 15, 2013, October 31, 2013 and January 22, 2014. Goorha made the following submissions –

- i. Assuming without admitting that Goorha executed the alleged *Account Charge Agreement*, he did so on the instructions of the company. Any documents in relation to the notary public could only have been on November 19, 2007, while date of the *Account Charge Agreement* is December 11, 2007, when he was not in London but in India.
- ii. Though he was on the Board till May 2008 as a Promoter/Director, he had a limited role to play in the day to day management and decision making since July 2007 i.e. when SRM group made a strategic investment in Cals.
- iii. He had no effective role to play in the GDR process, except to the extent of signing and executing certain documents in relation thereto upon the instruction and as was desired by Cals.
- iv. During the Board meeting held on October 30, 2007, he alongwith Sundararajan were specifically authorized to open a bank account with Banco and to sign any application, confirmation, declaration and any other papers from time to time. He has enclosed a copy of the said Board Resolution in support of his contention.

- v. He was made to sign certain documents hurriedly at the notary's office in London on November 19, 2007. These issues were coordinated by Sundararajan and Chilikuri.
- vi. He was never the intended signatory but merely a fill-in for Sundararajan and acted on the instructions of the Directors and management of Cals.
- vii. Assuming without admitting that Goorha executed *Account Charge Document*, there would have been no basis to impute any illegality to the document.
- viii. Goorha was merely acting on the instructions of Cals. Assuming without admitting that any wrongdoing can be attributed to Goorha, the same is unwitting and would have happened without any knowledge or intention of Goorha.
- ix. The lead manager to the issue informed the details of the initial subscribers and the same was tabled in the Board meeting dated December 12, 2007. Goorha had no legal or moral responsibility to either verify the identity or beneficial ownership of the subscribers to the GDR issue. He was not aware that Honor was the only subscriber to the GDR issue.
- x. SEBI has provided illegible copies of Annexure 6 and Annexure 11 of the SCN.
- xi. He is unable to comment on the *Extension Agreement* for lack of knowledge.
- xii. Section 77 of Companies Act applies to shares and not to GDRs.
- xiii. He was not aware that the GDR subscription proceeds of Cals were locked with Banco and that the utilization of the same was dependent on repayment of loan taken by Honor.
- xiv. He had no knowledge of Gagan Rastogi being the beneficial owner of Asia Texx. He did not have any knowledge of any structured transaction between Cals and Asia Texx to settle liability of Honor to Banco.
- xv. The Account Charge Agreement was signed by Goorha reluctantly and without any knowledge of its contents only because Sundararajan had requested him to do so.
- xvi. The fact that on December 28, 2007, Euro 40 million of the GDR proceeds were deployed by Cals, indicates that the allegation that no genuine capital was raised does not appear to be correct.
- xvii. The Noticee is being made a scapegoat for the misdeeds of other directors viz. Kansagra, Chilikuri, Guha Roy and Sundararajan.

Submissions made by Deep Rastogi –

- 6. During the hearing before me and in his reply dated October 9, 2013, Deep Rastogi made the following submissions –

- i. Deep Rastogi was neither a director nor promoter at the time of GDR issue. He was appointed on January 19, 2008 i.e. after the GDR issue. It was Sanjay Malhotra who was managing the affairs of the company. Deep Rastogi had no role to play in GDR Issuance.
- ii. Deep Rastogi had no knowledge of Credit agreement or *Account Charge Agreement*. The agreements neither bears his name nor bears his signature. The list of initial subscribers was as given by lead manager and Deep Rastogi had no responsibility to verify the same.
- iii. SEBI's assertion that the transaction with Asia Texx is a related party transaction is incorrect. The SCN does not throw light why it should be so. In terms of Accounting Standard 18, Cals Refineries had no significant influence over Asia Texx when the contract was signed. It is denied that Gagan Rastogi was in control of Cals or otherwise in management of Cals.

Submissions made by Gagan Rastogi –

7. In his reply dated October 9, 2013, Gagan Rastogi made the following submissions –

- i. He is the son of Deep Rastogi and is a resident of Singapore.
- ii. Sanjay Malhotra and not Gagan Rastogi or his family, was managing the affairs of Cals during the GDR issue, at the time of the alleged account charge agreement with Banco and on February 5, 2009 when the contract between Cals and Asia Texx was executed.
- iii. Gagan Rastogi had nothing to gain from the GDR issuance to Honor.
- iv. Neither Gagan Rastogi nor Asia Texx has ever converted even a single GDR of the Cals into equity shares; he continues to hold GDRs at considerable personal expense
- v. The fact that GDRs have not been converted has at least two very important implications –
 - a. The transaction between Asia Texx and Honor has no connection with India (much less with Indian capital markets) at all.
 - b. It completely belies any suggestion that Gagan Rastogi or Asia Texx had any ulterior motive in acquiring the GDRs.
- vi. Gagan Rastogi infused funds into Cals to keep the company afloat even after Sanjay Malhotra and Chilikuri stopped funding Cals.
- vii. Gagan Rastogi had no knowledge of the credit agreement signed between Honor and Banco. He had no role to play in the GDR issuance or otherwise in the operations or affairs of the Cals at the time of GDR issuance.
- viii. It is denied that the transaction between Cals and Asia Texx was a related party transaction. Even by SEBI's own case, Cals had no significant influence over Asia Texx

- at the time of contract between the two. SEBI's assertion that the transaction with Asia Texx is related party transaction is incorrect in terms of Accounting Standard 18.
- ix. The agreement between Cals and Asia Texx was an arm's length transaction for a genuine requirement of the company in the ordinary course of business.
 - x. In any event, even assuming (but not conceding) that the relationship between Asia Texx and Gagan Rastogi should have been disclosed to BSE and/or stock exchanges, Gagan Rastogi is not liable for the disclosure obligations of Cals.
 - xi. Paragraph 4(v) of the SCN suggests that the transaction between Asia Texx and Cals was undertaken only to enable Honor to repay Banco. SEBI's own record will demonstrate the fallacy of this suggestion:
 - a. The borrower of money from Banco was Honor (and not Gagan Rastogi or Asia Texx);
 - b. The sole owner of Honor was Sanjay Malhotra (and not Gagan Rastogi or Asia Texx);
 - c. It is not alleged that Gagan Rastogi or Asia Texx had any obligation toward Banco.
 - xii. The fact of the matter is that the agreement between Cals and Asia Texx was an arm's length transaction for a genuine requirement of the company in the ordinary course of business. The only reason why equipment has not been supplied by Asia Texx to Cals is that Cals has not paid Asia Texx the remaining amounts due under the contract, which is because SEBI prevented Cals from raising capital by its Interim Order dated September 21, 2011.
 - xiii. The contract between Asia Texx and Cals, which was executed two years after the GDRs cannot be clubbed with the GDR issuance.
 - xiv. Even SEBI does not allege that the Asia Texx transaction was contemplated at the time of GDR issuance. The PFUTP Regulations are very clear that they apply only when the fraud relates to the securities market.
 - xv. It is alleged that Gagan Rastogi acquired the GDRs using funds of the company i.e. Asia Texx. Asia Texx is entitled to use its money in whichever way it wants.
 - xvi. When Asia Texx acquired the GDRs, the underlying shares of Cals were trading at approximately 50 paise. There is no question of Gagan Rastogi or Asia Texx having acquired the GDRs to profit themselves using the funds of Cals.
 - xvii. It is expressly asserted that Asia Texx is a separate legal person and he disclaims any liability under any theory of law for any acts or omissions of Asia Texx.
 - xviii. PFUTP Regulations would apply only when the action has occurred in connection with purchase or sale of securities listed or proposed to be listed on a recognized stock exchange. GDRs are not securities or proposed to be listed on a recognized stock exchange. Even otherwise, the mere acquisition of GDRs using proceeds of an alleged

fraud cannot suffice to bring the fraud within the ambit of PFUTP Regulations. The SCN does not provide any price volume information which indicates that the transaction between Cals and Asia Texx had any effect whatsoever on the price .

Submissions made by Asia Texx –

8. In its reply dated October 9, 2013, Asia Texx made the following submissions –

- i. Asia Texx had no influence or control over Cals at any time and vice versa.
- ii. Asia Texx had no connection to or had nothing to gain from the GDR issuance to Honor.
- iii. Asia Texx has never converted even a single GDR of the Cals into equity shares.
- iv. The fact that GDRs have not been converted has at least two very important implications –
 - a. The transaction between Asia Texx and Honor has no connection with India (much less with Indian capital markets) at all.
 - b. It completely belies any suggestion that Asia Texx had any ulterior motive in acquiring the GDRs.
- v. The proceeds from the sale of GDRs acquired from Honor have all been used for funding Cals.
- vi. Asia Texx has never enriched itself at the expense of investors.
- vii. Asia Texx had no knowledge of the credit agreement signed between Honor and Banco. It had no role to play in the GDR issuance or otherwise in the operations or affairs of the Cals at the time of GDR issuance.
- viii. It is denied that the transaction between Cals and Asia Texx was a related party transaction. Even by SEBI's own case, Cals had no significant influence over Asia Texx at the time of contract between the two. SEBI's assertion that the transaction with Asia Texx is related party transaction is incorrect in terms of Accounting Standard 18.
- ix. The agreement between Cals and Asia Texx was an arm's length transaction for a genuine requirement of the company in the ordinary course of business.
- x. Paragraph 4(v) of the SCN suggests that the transaction between Asia Texx and Cals was undertaken only to enable Honor to repay Banco. SEBI's own record will demonstrate the fallacy of this suggestion:
 - a. The borrower of money from Banco was Honor (and not Gagan Rastogi or Asia Texx);
 - b. The sole owner of Honor was Sanjay Malhotra (and not Gagan Rastogi or Asia Texx);

- c. It is not alleged that Gagan Rastogi or Asia Texx had any obligation toward Banco.
- xi. The fact of the matter is that the agreement between Cals and Asia Texx was an arm's length transaction for a genuine requirement of the company in the ordinary course of business. The only reason why equipment has not been supplied by Asia Texx to Cals is that Cals has not paid Asia Texx the remaining amounts due under the contract, which is because SEBI prevented Cals from raising capital by its Interim Order dated September 21, 2011.
 - xii. The contract between Asia Texx and Cals, which was executed two years after the GDRs cannot be clubbed with the GDR issuance.
 - xiii. Even SEBI does not allege that the Asia Texx transaction was contemplated at the time of GDR issuance. SEBI lacks jurisdiction over the contract. The Asia Texx transaction does not violate the PFUTP Regulations because the transaction has nothing to do with the Indian securities market. The PFUTP Regulations are very clear that they apply only when the fraud relates to the securities market.
 - xiv. It is incorrect to state that that Gagan Rastogi acquired the GDRs using funds of the company. Firstly, Asia Texx (and not Gagan Rastogi) acquired the GDRs from Honor. The GDRs were held in Gagan Rastogi's name only because Asia Texx has no Euroclear account in its name. Asia Texx is entitled to use its money in whichever way it wants.
 - xv. When Asia Texx acquired the GDRs, the underlying shares of the company were trading at 51 paise. Hence, there is no question of Gagan Rastogi and Asia Texx having acquired the GDRs to profit themselves using funds of the company.
 - xvi. Section 77 of the Companies Act deals with shares and not GDRs. Merely using funds of the Company to buy GDRs would not amount to violation of PFUTP Regulations or the SEBI Act.
 - xvii. It is expressly asserted that Asia Texx is a separate legal person and it disclaims any liability under any theory of law for any acts or omissions of Mr. Gagan Rastogi.

Common submissions –

- 9. Sundararajan, Goorha, Asia Texx, Gagan Rastogi and Deep Rastogi also submitted that SEBI does not have any jurisdiction to investigate or impose any penalty in relation thereto. They stated that this has been conclusively held by the SAT in *Pan Asia Advisors and Arun Panchariya v. SEBI (SAT order dated 30 September 2013)* (the "**Arun Panchariya Decision**").

Submission of Ramachandran (Noticee No. 11) –

- 10. Ramachandran has made the following submissions:

- i. He was appointed as a Non-Executive Chairman of Cals w.e.f. 17/10/2007 upon the proposal of the then Chief Technical Advisor of the company, Mr. P. N. Devarajan and resigned from the company w.e.f. 18/01/2011.
- ii. He was neither involved in the day-to-day affairs and management of the company nor was in control of the same.
- iii. He was not responsible for the conduct of the company nor involved or connected in any manner whatsoever with the issue of GDRs or any transaction connected thereto.
- iv. Insofar as the issuance of GDRs is concerned, it is relevant to mention that \$200 Million were in fact raised by the company and all corporate action as required was validly approved by the company. The GDRs were raised following due process and there was no material, fact, information or documentation placed before the Board or brought to the Board's attention that may have raised a doubt or suspicion to the purpose for which such GDRs were raised.
- v. In regard to the '*related party transaction*', the decisions were taken by the Board based on the information and materials placed before the Board. He chaired the Board Meetings once each quarter in accordance with the law and acted with prudence and in good faith.
- vi. As such, on the basis of information provided, the Board acted in the best interests of the Company. No disclosures to this effect were advised to him as Chairman of the Board. The Audit Committee of the Board has not brought out anything as alleged by SEBI to my notice.
- vii. He as non-Executive Chairman of the Company can only know of facts brought to the attention of the Board and have no control or knowledge of any acts allegedly committed by persons named in the Show-Cause Notice.
- viii. The only allegation against the Noticee in the SCN was that he has been charged under Section 27 of the SEBI Act.
- ix. He submits that Section 27 of the SEBI Act is mis-applied to his case for the following reasons –
 - a. that he neither consented, connived at commission of any offence by the company nor any act of negligence is attributable in such connection.
 - b. That the most important ingredient of Section 27 i.e. proof of any such consent, connivance, or negligence is totally non-existent.
 - c. Neither in the investigation report or in the SCN, any material or circumstance is brought out to prove the indulgence of this noticee in the commission of alleged offences by the company.

- x. He being non-executive director was not involved in the day to day affairs of the company and in the absence of any knowledge of the alleged actions of the company or certain individuals; this noticee cannot be made liable.
- xi. The legal position on the vicarious liability of the Directors is well pronounced by Apex Court as well as various High Courts of the country and he humbly submits that his case does not fall under the parameters for making the director of the company vicariously liable for the acts of the company.
- xii. The main and serious allegations against the company and certain individuals are the dubious manner in which the GDR issue was managed and the unethical way in which the proceeds of GDR were pledged as a security to the foreign bank which sanctioned a loan of equivalent amount to the subscriber of GDR. The second allegation is about company's transaction with Asia Texx which turned out to be a related party.
- xiii. Crux of both the above allegations were never to the knowledge of the Noticee. The Board was only informed that the GDR issue was fully subscribed and hence, Board permitted the closure of the GDR issue. The Board was never informed of opening of an account with Banco or giving proceeds of the GDR as security to the loan availed by the subscriber to the GDR from Banco.
- xiv. The resolutions extracted from the minutes of Board meeting dated 30/10/2007 and used for opening account with Banco etc are totally manipulated and they are not a part of the Board record. The said extract was alleged to have been certified by Sundararajan who was none other than the alleged signatory of the security documents with Banco and Banco allegedly relied upon the certification of Sundararajan.
- xv. As he is not a party to such manipulated extract of the resolutions, and is not even aware of the existence of such manipulated minutes, he cannot be held liable for the mischief played by some other director.
- xvi. In the Board meeting dated 30/10/2007, Sundararajan only informed the Board about the total cost of the project and the raising of \$200 million through GDR issue and that the GDR issue was tied up and that there was commitment from the investors of subscribing GDR issue. In fact, Ramachandran suggested to the members of the Board that there is a need to be extra careful in making statements in the offering circular of GDR and the company should take Director's liability insurance coverage to protect them, as may be seen from the Board minutes.
- xvii. In the Board meeting dated 12/12/2007, execution of the documents pertaining to GDR issue was discussed and minuted. What was authorised by the Board by any director was for execution of a) Placement agreement, b) Director's Responsibility letters, c) Deposit agreement, d) form of Master – GDR and e) all additional necessary documents.

- xviii. From the minutes of the Board meeting held on 12/12/2007, it is seen that the Board had authorised its directors to sign the documents related to GDR issue. But it is denied that the authorization extended to the execution of extension agreement between Cals and Banco and which was illegally signed by Chilikuri. Ramachandran refutes the contention that the board had authorised Goorha and Sundararajan for signing the Account Charge Agreement for opening the Bank account or otherwise. Quarterly unaudited/audited financial results were periodically placed before the Board which showed the utilization of the proceeds of the GDR issue. From such statements nothing can be suspected.
- xix. With respect to the allegation regarding transaction with Asia Texx being a related party transaction, such fact was never brought to the notice of the Board. Board was informed that it was a usual transaction for supply of refinery machinery and it was never informed about the relation of promoter of Asia Texx with the promoters/directors or any people connected with Cals. As per the SCN, agreement was entered into with Asia Texx on 05/02/2009. The board was, in fact informed in its meeting dated 30/04/2009 that during the period from 16/01/2009 to 28/04/2009 the company has not entered into any contract with any company in which directors of the company are interested.
- xx. It is submitted that when the Audit Committee of the Board as well the statutory auditors, who scrutinize day to day affairs of the company could not notice the alleged irregularities, it is farfetched to think that this noticee, who is not at all concerned with the day to day conduct of the company's business could have noticed the alleged irregularities.
- xxi. SCN is required to be specific and explicit as to the nature of allegations and should be definite and coherent as to the role played by this noticee with respect to the allegations in the SCN
- xxii. In *SMS Pharmaceuticals vs. Neeta Bhalla* (2005) 8 SCC 89) it is observed that simply because a person is a director in the company, he would not be presumed to be discharging a particular function on behalf of the company. It may be that the Board of directors may appoint sub-committees consisting of one or two directors out of the Board of Directors of the company who may be made responsible for the day to day functioning of the company.
- xxiii. There should be clear description and also allegations that the offence was committed with their knowledge and that they had not exercised due diligence to prevent the commission of such offence.

Submission of Mohan Lal (Noticee No. 13)

11. In his reply dated October 18, 2013, Mohan Lal made the following submissions –

- i. Mohan Lal was only an independent Director of the company and was in no manner whatsoever whether directly or indirectly ever involved in the day to day affairs of the company nor was he responsible for the conduct of the management of the company.
- ii. In 1999, he was requested by Cals to come and join as an independent Director and he served on the Board until January, 2008. Somewhere between 2004-05 he underwent a cardiac surgery and due to health concerns had begun spending more time with his son in Singapore. In and around August, 2006 he was more or less staying in Singapore. Even whilst on the Board, Mohan Lal on account of his health was able to attend only a few meetings of the company.
- iii. He had come in as independent director because he was known to Sarvesh Goorha. With the investment of SRM, the management had begun to change hands. Compounded with his poor health, his name came for very few Board meetings and then finally resigned on January, 2008.
- iv. He had no role to play in the affairs of the company. He was neither in control nor responsible for the conduct of the company.
- v. He was further not involved nor connected thereto with the issue of GDR or any transaction of the company nor was he a promoter of the company.

Submission of Guha Roy –

12. In his reply dated October 8, 2013 and April 10, 2014, Guha Roy made the following submissions –

- i. He has not been involved in any market manipulation and there are no specific allegations against him.
- ii. He was appointed as a Director on 23.07.2007 and only from 19.01.2008, he was appointed as a Whole Time Director ("**WTD**") designated as Chief Executive Officer ("**CEO**") of Cals. Thus, before he was made CEO of Cals, the whole process of GDR had concluded. Thus during the relevant period, he was only a Director of Cals and he had no role in the alleged manipulation of GDR, if any.
- iii. He was appointed as a Director of Cals on 23.07.2007 by virtue of his employment with SRM Exploration, which acquired 14.50% of the total equity capital of Cals. He was

- appointed as an Executive Vice President (Projects) of SRM in July 2007 specifically for implementing project of setting up Oil Refinery Plant ('Refinery Plant') in India.
- iv. Throughout the whole process of GDR issue carried out by Cals in the year 2007, he was not working for them and he was not in their employment but was holding position as a Director w.e.f. 23.07.2007 on behalf SRM solely with an intent, object and singular purpose of implementing project of setting up Refinery Plant in India.
 - v. The GDR issue/ transaction was being looked after and dealt with exclusively by Sundararajan, Sanjay Malhotra and Chilikuri. The underlying share certificates in respect of the GDR allotment were not signed by me
 - vi. During the relevant period i.e. from 17.10.2007 to 19.01.2008, he attended 4 board meetings of Cals in his capacity as a Director and had deliberated only on issues relating to setting up Refinery Plant. At the relevant time, he had no role or concern on any other issue including in the process of issue of GDR by Cals.
 - vii. He had no knowledge, role, involvement or concern particularly on all the issues and concerns now raised in the SCN under reply. Indeed, it is pertinent to mention that all the allegations and accusations as made in the SCN have no relevance or application to him.
 - viii. He was not in charge of, and was not responsible for the conduct of business for Cals, particularly pertaining to issuance of GDR in the year 2007
 - ix. The alleged offence, if any, committed by Cals or the persons connected to Cals, was committed absolutely without my knowledge and that, he was not a party to any of the transactions.
 - x. He had no occasion to exercise any due diligence so as to prevent the execution or commission of any event, occurrence or happenings as alleged in the SCN.
 - xi. SRM group had tied up with Cals hence he was nominated as a Director on the board of Cals. However, he remained in the employment of SRM up to December 2007 and was attending meeting of the Board of Directors ("BOD") of Cals to update about technical progress made by SRM during the relevant period.
 - xii. Thus, he was not an employee of Cals during the year 2007 when GDR issue was considered and its allotment was made by Cals. He joined the services of Cals only from January, 2008.
 - xiii. He joined Cals only after ensuring that entire proceeds of GDR issue made on 12.12.2007 had been deposited in the bank account and all the relevant information & compliance relating to GDR transactions was completed with the concerned authorities.
 - xiv. As on January 2010, Cals had outstanding bills due to which the civil work at the site had to be stopped and the progress of the project started slowing down due to

insufficient cash flows. The chance of collapse of the Refinery Project was brought to the notice of the Promoters by him through his e- mails.

- xv. On 26.07.2010, he submitted his resignation to the Chairman of Cals as he could not continue to work under then prevailing uncertain future of Cals with no sign of additional equity tie-up and requested to be relieved by 31.08.2010. His resignation was accepted in the meeting of the Board of Directors on 24.01.2011 and he was relieved on 25.01.2011.
- xvi. In the meeting of the Board of Directors held on 30.10.2007, Sundararajan who was in-charge of GDR issue submitted the updates to the Board regarding the same. In the meeting of the Board of directors held on 12.12.2007, the then Company Secretary of Cals informed the Board that the GDR issue has been opened and been fully subscribed. Thereafter, it was resolved that the Share Certificate in respect of aforesaid allotment of shares be issued under Common Seal of the Company and the same be signed by Ramachandran, Chairman and Sarvesh Goorha, Director of the Company and countersigned by Mr. S. R. Jain, Company Secretary of the Cals. Thus it is clear that he had no role, involvement or participation on the issuance of GDR by Cals.
- xvii. Sundararajan has confirmed under oath before SEBI that he was Director in Cals from 23.07.2007 to 28.07.2009 and his role was taking over Cals and completing GDR process, FCCB marketing and domestic debt syndication. He resigned from Cals as Director since Cals appointed WTD designated as CFO. Thus admittedly, he has owned up his liability on issuance of GDR by Cals. On this ground alone, the present SCN issued to Guha Roy deserves to be withdrawn.
- xviii. Additionally, in every Board meeting, he had submitted only technical progress report of Refinery Project.
- xix. During his tenure as WTD of Cals, true and correct Shareholding Statement disclosing promoter holding through GDRs has been filed with the Stock exchange for quarter ending December 2010 in compliance to the then amendment to the listing agreement.
- xx. On knowing that Cals had received a legal notice from R.P. Explorer Master Fund on 6.02.2010 about GDR issue, he asked all the three Promoters viz. Deep Rastogi s/o Mr. Gagan Rastogi and Chilikuri to issue Letter of Indemnity to him. Accordingly, the Letter of Indemnity, sent from the Mumbai office of Cals, was duly signed by the Promoters on 29.04.2010 after the Board of directors meeting conducted at his office in Delhi/Gurgaon.
- xxi. The Letter of Indemnity confirms that all his action as Chief Executive were in the interest of the Company and with their concurrence and he was not associated with raising of GDR funds. They also confirmed that execution of all the major contracts, utilization of GDR funds etc were with their due approval.

- xxii. He had not received any communication during the course of investigation carried out by SEBI. In fact, the SEBI's Summons had been issued in the name of Managing Director of Cals who had, it appears, furnished the information to SEBI and only his statement was recorded by SEBI.
- xxiii. He has no financial association, save and except as aforesaid, with the Promoters of SRM/Cals. He, his spouse or any person dependent on him do not hold any shares and have not traded even for a single share of Cals.
- xxiv. Assuming that one is a director of the companies during the period under investigation, the SCN still needs to explain the exact role played by the director in the alleged irregularity as stated by Hon'ble Supreme Court in the following matters
 - a. *PepsiCo India Holdings Private Limited vs. Food Inspector and Another (2011)*;
 - b. *Katta Sujatha vs. Fertilizers & Chemicals Travancore Ltd & Anr (2003)*;
 - c. *SMS Pharmaceuticals v. Neeta Bhalla & Anr (2002)*.
- xxv. Therefore, he denies all the charges made in the alleged SCN.

Submission made by Kansagra (Noticee No. 9) –

13. In his reply dated October 18, 2013, Kansagra made the following submissions –

- i. He was appointed as an additional director of the Company on July 23, 2007. It is further submitted that immediately in the next annual general meeting of the Company, He did not make himself available for reappointment and thus chose to cease to be a director of Cals with effect from July 29, 2008.
- ii. He was on the Board of Cals in a non-executive capacity and completely independent to and with any shareholders and the Board of the Company. He was not served with any agenda papers for any meeting that the Company conducted during his tenure; thereby preventing him from having any knowledge about the Board or committee meetings or any proceedings the Company conducted thereof.
- iii. He did not attend any meetings of the Board of the Company during his tenure on the Board as is evidenced by the minutes of the meetings of the Board of the Company provided to him during inspection of documents carried out by us at SEBI Office.
- iv. He was not aware of the actual consummation of the GDR Issue as well as the underlying transactions or the intent behind them which have been set out in the SCN.
- v. He was not privy to the conduct of any meetings of the Board of the Company and therefore could not attend the same. In light of the above, he could not have voted in favour of or against any decisions taken by the Board nor was ever an authorised signatory to any documents on behalf of the Company.

- vi. He denies there being any arrangement with Sanjay Malhotra or any other person to act with him and/or as part of the 'Spice Energy Group'.
- vii. He is not aware of any aspects of SRM Exploration which is indicated as the promoter of the Company nor of Mr. Sanjay Malhotra being the beneficial owner of Honor.
- viii. He also denies any knowledge of the averment that Honor availed a loan from Banco to subscribe to the GDR Issue and Cals depositing the GDR subscription proceeds, received from Honor, as security for the loan availed by Honor from Banco in terms of an account charge agreement. He cannot comment on the extension of this account charge agreement on December 15, 2008 or the other transaction as set out in the SCN as he was not associated with the Company during that time.
- ix. He states that he has no knowledge of the identity of the subscribers of the GDR Issue or the information filed by Cals
- x. He denies any knowledge of other transactions/ information given in Annexures of the SCN and therefore cannot comment on the same.

Submissions made by other Noticees (Noticees No 14 – 98: Alleged promoters) –

- 14. In their reply to the SCN and during the hearing before me, the following entities made submissions as under –
- 15. GVFL/Noticee no. 14 ("**GVFL**") made the following submissions –
 - i. A venture capital fund named as Gujarat Venture Capital Fund 1990 was launched vide a Trust Deed dated November 8, 1990. GVFL was the Trustee Manager of the aforesaid fund.
 - ii. From the said fund a sum of ₹ 128.50 Lakhs was invested in equity and fully secured convertible debentures ("**SFCD**") in Computer Aided Learning Systems (which subsequently changed its name to Cals.
 - iii. The SFCDs were subsequently converted to shares and GVFL was allotted a total of 12,85,000 shares of Cals in the years 1992, 1993, and 1995. GVFL was never in control of the company and its shareholding was shown as a part of promoter holding at that time for the purpose of meeting the promoter shareholding at the time of initial public offer.
 - iv. A total of 7,00,000 equity shares were locked-in up to November 30, 1999. The rest 5,85,000 shares were free to be traded and GVFL divested these 5,85,000 equity shares through open market sale during the years 1997-98, 1998-99 and 1999-2000. Subsequently, the balance 7,00,000 shares upon getting unlocked were sold in the open

market through various brokers and share certificates were handed over vide letters dated January 3, 2000 and January 6, 2000. GVFL received its sale consideration from the brokers in due course of time and was left with no equity shares of Cals from that date.

- v. The shareholding of GVFL in the Cals returns might be because of non-submission of transfer request to the company by the concerned purchaser/transferee(s) of the shares from GVFL. GVFL has no relation with Cals as a shareholder after the sale of shares.
 - vi. As per their records, GVFL has not received any dividend on the sold shares post January 2000.
 - vii. GVFL mentioned that Cals vide letter dated October 7, 2013, submitted to SEBI that Noticees from serial nos. 14 to 98 were not in control of the company, not involved in the day-to-day affairs of Cals and not responsible for the conduct of the business of Cals, whether directly or indirectly at the time of the GDR issuance or thereafter.
- 16.1 Noticee nos. 16 – 19, 23 – 25, 30, 32, 37, 39, 42 – 43, 45 – 46, 52 – 53, 55 – 56, 61, 66, 73, 79, 80, 83, 86, 90 – 96 and 98 *inter-alia* made the following common submissions –
- i. Whilst being shareholders holding just a few shares allotted to them in 1993-1994, they were never named as Promoter or Director of the company.
 - ii. They were never involved in control of the company nor responsible for its conduct thereof, whether directly or indirectly at any time including at the time of the GDR issuance or thereafter.
 - iii. They understood from the company that the returns filed to BSE gave a consolidated list of all the Promoters, persons acting in concert and shareholders who had offered their shares in the '*lock-in*' period, as per SEBI Guidelines prevalent in 1994. However, the same did not make them Promoters of the company.
 - iv. Cals vide letter dated October 7, 2013, has already informed SEBI that Noticees from serial nos. 14 to 98 were not in control of the company, not involved in the day-to-day affairs of Cals and not responsible for the conduct of the business of Cals, whether directly or indirectly at the time of the GDR issuance or thereafter.
- 16.2 In addition to the above, the following individual submissions were made –
- i. A. K. Sharan (Noticee no. 91) further submitted that he and other Notices whom he represented during the hearing were merely ordinary shareholders in Cals with a few shares. Cals went through a financial crisis in 1997 due to blockage of large funds in Central and State government projects and had to stop manufacturing. Most of the old

company employees had left or resigned and taken up jobs/assignments at different places. Since they were employees more than 18 to 20 years ago, some of them do not have any specific records of their employment now. However, he submitted copy of the appointment letter of Ms. Rita Wadhwa (Noticee no. 37), increment letter of Mr. Puneet Saxena (Noticee no. 42) and his own experience letter pertaining to the period between 1988 to 1998. Hence, though some of them were junior employees 20 or 25 years ago, they were never involved in the management of the company. The same does not have any relevance to the period 2007 and onwards or to the period mentioned in the SCN.

- ii. Neha N. Mehta (Noticee no. 30), Mulraj D. Mehta (Noticee no. 90), Gita R. Mehta (Noticee no. 56), and Rajesh D. Mehta (Noticee no. 55) submitted that they have sold their shares in the year 2000. Rajesh D. Mehta sold a further 700 shares of Cals on January 8, 2008. They further submitted that they were not shareholders of Cals after selling of those shares and have no knowledge of the activities of Cals.
- iii. Anita Kapur (Noticee no. 87) *inter-alia* submitted that she recollects subscribing to some shares of Computer Aided Learning Systems Ltd, which was later renamed as Cals. However, she has no connection with the management or working of Cals and has not been able to even trace the 100 shares despite trying her best. She has never been a part of the Board of Directors or the management in any capacity.
- iv. Ashok Verma (Noticee no. 58) *inter-alia* submitted that though he received share certificates of 500 shares of Computer Aided Learning Systems in 1992, he did not recall receiving any notices or annual reports. He was never a Director or part of management of the company and has no knowledge about what happened in the company over the years.
- v. Bimal Behari Mathur (Noticee no. 81) submitted that he was a merely a public shareholder holding shares worth ₹2000 and constituting 0.000024% of the equity share capital of the company and his investment in the company was in the year 1995 or earlier. He did not provide any documents to Cals or any regulatory authority in the capacity of being a promoter nor had he conducted himself in a manner attributable to that of a Promoter of that company.
- vi. Jyotindra Trivedi (Noticee no. 86) submitted that he was holding just 100 shares allotted to him in 1993-94 and never held out as a Promoter of Cals. He was one of the four Directors nominated by GVFL to the Board of Cals, from which he resigned after the IPO in 1997. The matters under investigation seem to have taken place a decade after he resigned from the board of the company.
- vii. S. K. Chopra (Noticee no. 60) submitted that he had only purchased shares for ₹5,000 and that he was neither a member of the Board of Directors nor looking after the affairs

- of the company. He had no knowledge of alleged manipulations by the directors or persons managing the affairs of the company.
- viii. Sudhir Kohli (Noticee no. 15) submitted that no specific averments/allegations were made against him in the SCN or in the Investigation Report, which indicate that the control of Cals' business by him at the time of issuance of the GDRs. He was neither a Director of Cals and was at no point of time involved in the conduct and business of the company.
 - ix. A J S Chhatwal (Noticee no. 64) inter alia submitted that he purchased 500 shares of Cals Ltd. in 1992 and the current value of the investment is Rs. 500. He has no interaction with Cals or with its Director, nor was he involved in the day to day functioning of the company.
 - x. Mitter Sain Chawla (Noticee no. 59) inter-alia submitted that he has no knowledge about Cals Refineries Ltd.
 - xi. Rajan Jain (Noticee no. 69) inter-alia submitted that he alongwith his late father had purchased 1000 equity shares of Computer Aided Learning Systems Ltd. in March 1993. The shares have been lying in his demat account as junk considering their negligible value. Apart from the above, he has never had any interest or involvement in the company.
 - xii. Sudha Bala Gupta (Noticee no. 38) inter-alia submitted that she was allotted 1500 shares in 1993-94. No consent was taken from her for being part of any promoter group. She had bought the shares from the company prior to its IPO, and accordingly the shares were locked as per SEBI guidelines. She was at no stage involved in the management of the company directly or indirectly.
 - xiii. Ram Sagar (Noticee no. 97) and Ragini Goorha (Noticee no. 28) inter-alia submitted that they were in no manner whatsoever involved in the day to day affairs of the company nor were responsible for the conduct of the management of the company. They were allotted a few shares of the company in 1993-94 and they have never traded in the shares of Cals Ltd.
 - xiv. Cals vide its letter dated October 7, 2013, had mentioned that it understands that Noticees nos. 22, 26, 33, 57, 62, 63 76 and 89 are deceased. These Noticees are respectively – Shashi Prakash Chandra, Rajesh Kumar Chhabra, S B Saxena, Prakash Chandra, Satya Pal Bindra, Uma Goorha, Phool Chand and Triloki Nath Mehtani. A reply was received from one Mrs. Ragini informing that she was the daughter of Prakash Chandra and Shashi Prakash Chandra and that both her parents had passed away. One Mrs. Chitra Bisariya informed SEBI that one of the Noticees who was her mother i.e. Uma Goorha, had passed away.

Consent applications filed by Sundararajan, Goorha, Asia Texx, Gagan Rastogi and Deep Rastogi –

- 17.1 I note that consent applications in terms of the SEBI Circular No. CIR/EFD/1/2012 dated May 25, 2012, were filed by the following entities, viz. –
- i. Sundararajan vide application dated December 10, 2013;
 - ii. Goorha vide application dated January 16, 2014;
 - iii. Asia Texx vide application dated December 12, 2013;
 - iv. Gagan Rastogi vide application dated December 11, 2013;
 - v. Deep Rastogi vide application dated December 11, 2013.
- 17.2 However, consent was rejected by the High Powered Advisory Committee in its meeting held on March 20, 2014. Thereafter, a Letter of Rejection communicating rejection of consent application was forwarded to the aforesaid entities vide SEBI letters each dated June 10, 2014 (which was received by those entities on June 11 – 12, 2014).

Consideration of Issues and Findings –

18. I have considered the material available on record i.e. Investigation Report and SCNs dated September 19, 2013 and September 25, 2013, issued to the entities mentioned at paragraph 2.1 (alongwith Supplementary SCNs in respect of Sundararajan, Goorha and Chilikuri), their replies to the SCN (and Supplementary SCNs in respect of Sundararajan) alongwith the submissions made during the personal hearing before me. In light of the same, I shall now proceed to deal with the charges levelled against them in the SCN.

SEBI does not have any jurisdiction to investigate or impose any penalty in relation to GDR Issues.

19. In their replies, Sundararajan, Goorha, Asia Texx, Gagan Rastogi and Deep Rastogi submitted that SEBI does not have any jurisdiction to investigate or impose any penalty in relation to GDR issues. In this regard, I note that –
- i. The issuance of GDRs is from the authorised share capital of a company listed in Indian stock exchanges. Any structuring or manipulation related to GDRs has a direct impact on securities of companies trading in Indian market. Further, the underlying security of GDRs are shares of Indian companies with two-way fungibility, which allows for

conversion of GDRs in Indian market and vice versa. Hence, the impact of such issuance, cancellation/conversion and sale/transfer of shares so converted has a direct bearing on the securities market in India. Such issuance, etc. of GDRs by Indian companies also greatly influences decision-making by investors in the securities market. In view of the same, it is seen that the issuance of GDRs, which are '*marketable securities*' under Section 2(h) of the Securities Contracts (Regulation) Act, 1956, cannot be regarded as an exclusive activity totally insulated from and not impacting the securities market in India.

- ii. Under the SEBI Act, SEBI has been mandated with the task of investor protection alongwith the development and regulation of the securities market. In furtherance of the aforesaid mandate, powers have been conferred upon SEBI *inter alia* under the SEBI Act to prevent any fraudulent or manipulative activity being carried out which is detrimental to interests of investors in India. If any such activity is observed by SEBI, then it would be justified in invoking various powers conferred under such Act, Rules and Regulations made thereunder and take appropriate measures as it deems fit. Considering the same, any manipulation through issuance of GDR by a listed Indian Company with underlying shares will impact the Indian securities market. In such cases, SEBI indeed has full jurisdiction to look into the matter.
- iii. I note that the Hon'ble SAT in the Arun Panchariya decision held that SEBI does not have any jurisdiction to investigate or impose any penalty in relation to Issue of GDRs. In this regard and with due respect to the Order passed by the Hon'ble Tribunal, it is pertinent to mention that as the matter has raised important questions of law which has a bearing on many matters before SEBI including the instant matter, SEBI has filed an appeal against the Arun Panchariya decision in the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide its Order dated December 13, 2013, has stayed the operation of the aforesaid Order of the Hon'ble SAT.
- iv. Reliance is also placed on the observations of the Hon'ble Supreme Court in the case of *Sahara India Real Estate Corporation Ltd. & Ors. vs. SEBI* reported in (2013) 1 SCC 1, wherein it *inter alia* held: “303.1 Subsection (1) of Section 11 of the SEBI Act casts an obligation on SEBI to protect the interest of investors in securities, to promote the development of the securities market, and to regulate the securities market, “by such measures as it thinks fit”. It is therefore apparent that the measures to be adopted by SEBI in carrying out its obligations are couched in open ended terms having no prearranged limits. In other words, the extent of the nature and the manner of measures which can be adopted by SEBI for giving effect to the functions assigned to SEBI have been

left to the discretion and wisdom of SEBI. It is necessary to record here that the aforesaid power to adopt “such measures as it thinks fit” to promote investors’ interest, to promote the development of the securities market and to regulate the securities market, has not been curtailed or whittled down in any manner by any other provisions under the SEBI Act, as no provision has been given overriding effect over subsection (1) of Section 11 of the SEBI Act.”

- v. Further, in the matter of *GVK Industries Limited & Anr. vs. the Income Tax Officer & Anr.* [(2011) 197 Taxman 337 (SC)], while deciding as to whether the laws enacted by the Parliament can have extra-territorial effect, the Hon'ble Supreme Court had observed: *“...the Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes, - events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like, that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes, only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, wellbeing of, or security of inhabitants of India, and Indians.”* In accordance with these observations, where the impact of actions/omissions, etc. of an entity are felt in the securities market in India, such entity would be subject to regulatory jurisdiction of SEBI.
- vi. In view of the above, I am of the considered view that SEBI has full jurisdiction to issue directions in the instant matter if it has reason to believe that the Noticees acted fraudulently to the detriment of investors in the Indian securities market.

Section 77 of the Companies Act applies only to shares and not to GDRs.

20. In his reply, Goorha and Asia Texx have submitted that Section 77 of the Companies Act applies only to shares and not to GDRs. In this regard, I note that –
 - i. As per Section 77(2) of the Companies Act, *“No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company”*. From the preceding paragraphs, it is clear that the *Account Charge Agreement* entered into between Cals and Banco form an integral

part of the other Bi-partite agreement viz. *Credit Agreement* entered into between Honor and Banco. The arrangement resulting from the aforesaid *Agreements* allowed for Cals to effectively finance the purchase of its own shares since it deposited the proceeds of GDR subscription as collateral for the Dollar term facility provided by Banco to Honor. Such arrangement is specifically prohibited under Indian laws in view of Section 77(2) of the Companies Act.

- ii. If Goorha and Asia Texx's submission that Section 77(2) of the Companies Act is limited only to shares (to the exclusion of GDRs) were to be accepted, it would imply that any company would be able to finance the purchase of its own shares through issue of GDRs in contravention of the aforesaid provision. In my view, since the underlying of the GDRs are equity shares and issue of GDRs would also result in an increase in capital of the company, the provisions of Section 77(2) of the Companies Act would clearly be attracted in any issue of GDRs.
- iii. In this regard, I also note that in the matter of *Gammon India Limited vs. SEBI (Order dated June 20, 2008)*, the Hon'ble SAT had observed that providing funds to entities by the company for the purpose of buying its own shares amounted to a violation of the PFUTP Regulations.
- iv. I, therefore, find no merit in Goorha's and Asia Texx's submission that Section 77 of the Companies Act applies only to shares and not to GDRs.

Material discrepancies in the *Account Charge Agreement* and legibility of evidence.

- 21. In his reply, Goorha has submitted that there were material discrepancies in the *Account Charge Agreement* since even though the same was notarized in London on November 19, 2007 and apostilled on November 20, 2007; it was however dated December 11, 2007. In this regard, I note that –
 - i. The *Account Charge Agreement* was notarized and apostilled only in respect of the signature of Goorha. I find it is possible that the *Account Charge Agreement* between Cals, an Indian Company and Banco, acting through its branch in Portugal, was given effect subsequently on the date Banco signed such Agreement i.e. December 11, 2007, despite Goorha having signed the same on behalf of Cals, on an earlier date i.e. November 19, 2007. The aforesaid also gains credence from the *Account Charge Agreement*, which

provided that the date of its execution was only on the date set out therein. I, therefore, fail to see any discrepancy in the *Account Charge Agreement*.

- ii. Goorha has also stated that Annexures 6 and 11 of the SCN were not legible. I note that additional copies were thereafter provided to Goorha's counsel on October 11, 2013. In this context, I note that Annexure 11 of the SCN does not pertain to Goorha. Regarding Annexure 6 of the SCN, it is observed from the SCN that the inference drawn from the said Annexure is that Goorha was one of the authorized signatories of the bank account of Cals with Banco. I note that this fact has not been contested by Goorha.

No knowledge of the Account Charge Agreement.

22.1 In their replies, Sundararajan and Goorha have denied any knowledge of the *Account Charge Agreement*. In this regard, I note that –

- i. An *Account Charge Agreement* was executed between Cals and Banco. As per the aforesaid *Account Charge Agreement*, –
 - a. Cals shall deposit in its designated account with Banco, an amount not exceeding US \$200 million as security for all the obligations of Honor under the *Credit Agreement* (which was signed between Banco and Honor by which Banco agreed to lend Honor the maximum amount of US \$200 million), which amount shall in turn be assigned and charged in favour of Banco as a continuing security for the due and punctual payment and discharge of the aforementioned obligations of Honor, subject to the terms of the *Account Charge Agreement*.
 - b. Upon payment of all or part of the amounts due under the *Credit Agreement*, Cals may withdraw from the Account the equivalent amount.
 - c. Each and every notice or other communication to be given under the Agreement shall be made by letter or fax to:

Cals Refineries Ltd.,
Address: E44/13, Okhala Phase 2 New Delhi 110020, India.
Attention: Mr. Sarvesh Kumar Goorha or Mr. Devanathan Sundararajan.
 - d. The *Account Charge Agreement* was signed on behalf of Cals by Goorha.

- ii. The obligations of Honor under the *Credit Agreement* were secured by Cals through the *Account Charge Agreement* whereby it deposited an amount of US \$200 million with Banco

i.e. GDR subscription proceeds received from the subscriber – Honor, which amount was assigned and charged in favour of Banco as a continuing security. Further, on examining the debits made from the said bank account of Cals and Honor, it is found that it was only after part payment by Honor of the amounts due under the *Credit Agreement* that Cals was able to withdraw funds from its bank account with Banco, in accordance with the terms of the *Account Charge Agreement*. The series of transactions in the account of Cals clearly indicate that Cals was never able to remit any amount from its account in excess of the amounts repaid by Honor to Banco. Therefore, the remittance by Cals always followed repayment of loan by Honor and never preceded it. This is a clear indication that the withdrawal of GDRs proceeds by Cals was entirely dependent on the repayment by Honor under the *Credit Agreement*. This is illustrated in the table on the following page:

Date	Loan repaid by Honor (\$)	Amount utilised by Cals in (\$)	Cumulative Loan repaid by Honor as on date (\$)	Cumulative Amount utilised by Cals as on date (\$)
27-12-2007	65,000,000		65,000,000	
28-12-2007		49,351,000	65,000,000	49,351,000
28-12-2007		8,709,000	65,000,000	58,060,000
02-01-2008	25,000,000		90,000,000	58,060,000
03-01-2008		100,000	90,000,000	58,160,000
03-01-2008		25,000	90,000,000	58,185,000
03-01-2008		75,000	90,000,000	58,260,000
31-01-2008		4,445,400	90,000,000	62,705,400
11-02-2008		7,270,000	90,000,000	69,975,400
29-02-2008		15,250,000	90,000,000	85,225,400
04-03-2008	3,500,000		93,500,000	85,225,400
11-03-2008		1,135,000	93,500,000	86,360,400
09-04-2008		1,135,000	93,500,000	87,495,400
05-05-2008	850,000		94,350,000	87,495,400
18-06-2008	3,500,000		97,850,000	87,495,400
19-06-2008		1,135,000	97,850,000	88,630,400
11-07-2008	100,000		97,950,000	88,630,400
22-07-2008	7,950,000	7,955,000	105,900,000	96,585,400
05-09-2008	2,300,000	150,000	108,200,000	96,735,400
12-09-2008		133,534	108,200,000	96,868,934
27-03-2009	91,800,000	92,000,000	200,000,000	188,868,934
Total	200,000,000	188,868,934		

- iii. I am of the opinion that the test whether Sundararajan and Goorha were aware of the *Account Charge Agreement* or were directly/indirectly involved in execution of the *Account Charge Agreement* has to be measured by their conduct and their role in Cals and the documents signed by Sundararajan as Director responsible for the GDR issuance and later as Managing Director of the company and Goorha as Promoter Director of Cals. In this regard upon perusing the evidence before me, I am of the opinion that Sundararajan and Goorha were very much involved in the signing and execution of the *Account Charge Agreement* because of the following reasons:
- a. From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Cals held on October 30, 2007 (*certified by Sundararajan, then a Director*

and subsequently Managing Director), which was received from Banco, the following is observed:

"RESOLVED THAT a bank account be opened with Banco Efisa S. A. Lisbon ("the Bank") or any branch of Banco Efisa S. A. including Offshore Branch outside India for the purpose of receiving subscription money in respect of Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Sarvesh Goorha, Director and Mr. D. Sundararajan, Director be and are hereby severally authorised to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and any 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 Mr. Sarvesh Goorha, Director and Mr. D. Sundararajan, Director be and are hereby severally authorised to draw cheques and other documents and to give instructions from time to time as may be necessary to the said Banco Efisa S. A. or any other branch of Banco Efisa S. A., Lisbon including Offshore Branch, for the purpose of operation of and dealing with the said account and carry out other relevant and necessary transactions and generally to take all such steps and to do such things as may be required from time to time on behalf of the Company.

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

- b. Sundararajan has admitted to signing the aforesaid minutes of the meeting which clearly establishes beyond any reasonable doubt the authenticity of this document which made Sundararajan and Goorha, authorised signatories of Cals' account with Banco. Further, as Banco has provided this document to SEBI, it is clear that for Banco, Sundararajan and Goorha were authorised representative of Cals on the basis of this Board Resolution.
- c. I note that while Cals has denied any knowledge of the abovementioned resolutions since they were not in the minutes book of the company, it is clearly evident from the document furnished by Goorha and Banco i.e. the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Cals held on October 30, 2007, that the Board of Directors of Cals had authorized Sundararajan and Goorha to sign the *Account Charge Agreement* and to use the funds so deposited in its bank account with Banco, as security in connection with loans. In addition, I note that the wording in the aforesaid extract [paragraph 22.1(iii)(a)] makes it clear that

Cals had authorized Banco to use the funds deposited in the bank account as security in connection with loans. From the certified copy of the Minutes of the Meeting of the Board of Directors of Cals held on December 12, 2007 (provided by Cals to SEBI), I note that its Board had also authorized its Directors to sign the documents related to GDRs. As stated in the preceding paragraphs, events subsequent to the execution of the *Account Charge Agreement* revealed that Cals did use the funds deposited in its bank account as security for obligation of Honor. Considering the aforesaid, the inescapable conclusion that can be drawn is that Goorha and Sundararajan were indeed the authorized signatories for Cals in respect of the *Account Charge Agreement* for operating the bank account otherwise there was no reason for Cals to act as per the terms of such Agreement.

d. In addition to the above, I note that –

- From the Deposit Account Application and other Client Documents in respect of Cals' bank account with Banco, the authorised signatories for the operation of Cals' bank account with Banco were Goorha and Sundararajan, who were Directors of Cals.
- Further, Goorha and Sundararajan had irrevocably authorised Banco, on behalf of Cals, to carry out instructions transmitted by Telephone, Telefax and/or email, without waiting for a written confirmation by letter thereof.
- Each and every notice or other communication to be given under the Agreement shall be made by letter or fax to Goorha or Sundararajan.
- The withdrawal of GDRs proceeds by Cals from its bank account with Banco was dependent on the repayment by Honor under the *Credit Agreement*.

22.2 Sundararajan has himself admitted in his statement dated April 03, 2012, that he was Director in charge of completing the GDR process. As is evident from the SEBI investigation, the issuance of GDRs was dependent on loan taken by Honor which in turn was dependent on Cals depositing the GDR proceeds as collateral with Banco. As such, it is impossible to believe that Sundararajan, as a Director responsible for completion of GDR issuance, was unaware of the *Account Charge Agreement* and *Credit Agreement* as these two *Agreements* were the sole reason and only basis on which the GDRs of Cals was issued and subscribed. Similarly, it is observed that Goorha was Promoter as well as Director of Cals during the relevant period and had signed the *Account Charge Agreement*. Goorha was also the authorised signatory of the account maintained by Cals with Banco. As such, I am of the considered view that Goorha was well aware of the contents of the *Account Charge Agreement*.

- 22.3 This is further buttressed by the finding that Sundararajan is one of the Noticees in the *Account Charge Agreement* for any communication to be sent by Banco. Sundararajan himself admitted that he had the responsibility of GDR issuance by Cals but then contradicts his statement by stressing on the fact that he has not signed the *Account Charge Agreement* and that merely because his name was included in the said *Agreement* cannot mean that he was aware of the same. It is clear to me that the *Account Charge Agreement* entered into between Cals and Banco would not have mentioned Sundararajan as one of the Noticees for any communication sent by Banco unless Sundararajan was aware of the said *Agreement*. I therefore am of the opinion that Sundararajan was very much aware of the *Account Charge Agreement* and was in fact intrinsically linked to the *Account Charge Agreement*.
- 22.4 Further, the series of transactions in the account of Cals maintained with Banco indicates that at no time Cals remitted any money from its account in excess of the amount paid by Honor to Banco. Remittance by Cals always followed repayment of loan by Honor and never preceded it. This is a clear indication that the withdrawal of GDR proceeds by Cals was dependent on the loan repayment by Honor. Sundararajan and Goorha were the authorised signatories of Cals and remittance of funds of Cals was dependent on their signatures. As such, Sundararajan and Goorha could not have been ignorant of the fact that Cals could not remit more than the amount repaid more by Honor to Banco [paragraph 22.1(iii)(a)].

No false information regarding initial subscribers to the GDR Issue of Cals, was submitted to SEBI.

23. In their replies, Sundararajan and Goorha have submitted that no false information regarding initial subscribers was submitted to SEBI. In this regard, I note that –
- i. The *Credit Agreement* between Honor and Banco was an integral part of the *Account Charge Agreement* and Sundararajan and Goorha were aware of the *Account Charge Agreement*. Therefore, it is evident that Sundararajan and Goorha were aware of *Credit Agreement* and that Honor was the sole subscriber to the GDR Issue. I find from the *Account Charge Agreement* that Cals had deposited in its designated account with Banco an amount of US \$200 million as security in respect of all the obligations of Honor under the *Credit Agreement*. In the information provided to BSE and SEBI, Cals had submitted a list of initial subscribers to its GDR Issue. It is pertinent to note that in the aforesaid list provided by Cals, the name of Honor was not mentioned. However, as stated

before, Honor was the initial subscriber to the GDR Issue of Cals by virtue of the *Credit Agreement* and *Account Charge Agreement*. Goorha has admitted that the matter of list of initial subscribers was discussed in the Board meeting dated December 12, 2007. Yet, in spite of his knowledge of the *Account Charge Agreement*, he apparently did not raise any objections to Cals filing false information regarding list of initial investors. Hence, Sundararajan and Goorha's submission that Honor was not the initial subscriber to the GDR Issue is incorrect. In view of the same, I find that Sundararajan and Goorha had indeed provided false information in respect of the initial subscribers to the GDR Issue of Cals.

Transaction between Cals and Asia Texx was a related party transaction.

24. In their replies, Sundararajan, Deep Rastogi, Gagan Rastogi and Asia Texx have denied that the transaction of Cals with Asia Texx was a related party transaction as defined in Accounting Standard 18 ("**AS-18**"). In this regard, I note that –

i. Under Clause 32 of the Listing Agreement, Cals was liable to disclose to the exchanges the related party transaction of US \$92 million between Asia Texx and Cals. However, Cals failed to disclose the same to the exchanges. Clause 32 of the Listing Agreement provides that: *"Companies shall be required to make disclosures in compliance with the Accounting Standard on 'Related Party Disclosures' in the Annual Report"*.

ii. I note that Paragraph 3(a) to 3(e) of AS-18 defines the applicability of related party relationships. Paragraphs 3(c) to Paragraphs 3(e) of AS-18 reads as follows:

"3(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;

(d) key management personnel and relatives of such personnel; and

(e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise."

iii. From the above, it is clear that if one person (Deep Rastogi, Director of Cals) has a significant influence or is responsible for directing the reporting enterprise (Cals) and the other party (Asia Texx) is an enterprise controlled by his relative (Gagan Rastogi - Deep Rastogi's son), such relationships would surely come under the ambit of related

party relationships. On perusal of the Annual Report of Cals for the year 2008-2009, I find that it is Cals' admitted position that Deep Rastogi, as Director had significant influence over Cals at the time the Agreement with Asia Texx was signed. It is also not in dispute that Gagan, son of Deep Rastogi, was the beneficial owner of Asia Texx. In my view, Asia Texx was clearly an enterprise owned and significantly influenced by relative of the Director and key management personnel of Cals viz. Deep Rastogi and thus the transaction between Cals and Asia Texx clearly meets the definition of '*related party*' as defined in AS-18 read with Clause 32 of the Listing Agreement. Cals was therefore required to disclose the '*related party transaction*' but failed to do so. Instead such transaction was falsely portrayed as a normal arms length commercial transaction.

- iv. Asia Texx and Gagan Rastogi in their reply have *inter-alia* stated that since Asia Texx had not converted the GDRs obtained from Honor, it implies that the transaction has nothing to do with Indian securities market. Asia Texx has further stated that the transaction is a commercial transaction between two companies and the mere fact that one of the companies is listed does not confer jurisdiction on SEBI. They have questioned the jurisdiction of SEBI and have stated that the PFUTP Regulations do not apply in this situation. I am unable to accept these contentions. I note that upon perusal of the bank statement of Asia Texx, it is obvious that Asia Texx did not have any money of its own to purchase the GDRs from Honor. The money to purchase these GDRs from Honor came from Cals itself. It is evident that the transaction was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. The effect of the abovementioned transaction was to enrich the promoter, Gagan Rastogi – son of Deep Rastogi who gained 25 million GDRs at the expense of Cals and thus at the expense of the other investors. The entire transaction effectively amounted to siphoning funds of Cals into the account of promoter under the pretext of payment for setting up '*Refinery Project*'. I am of the opinion that the issue of enriching its own promoter by a listed company through fraudulent means clearly falls in SEBI's jurisdiction.
- v. Gagan Rastogi and Asia Texx have claimed that the transaction between Cals and Asia Texx was at an arm's length basis and that it could not pay the entire money to Asia Texx due to SEBI's Interim Order dated September 21, 2011, barring Cals from raising money through further equity. I observe that the Agreement with Asia Texx was dated February 5, 2009 and that Cals was required to pay the entire amount of US \$290 million to Asia Texx within 180 days of the Agreement i.e. by August 4, 2009. In this context, I note that SEBI's Interim Order was dated September 21, 2011 i.e. more than

two years later. In light of the same, I find that the aforesaid contention is beyond any acceptable logic and cannot be accepted.

- vi. Gagan Rastogi has further stated that at the time of acquiring the shares, the underlying shares were trading at 50 paise and hence they have not profited from the transaction. I find this contention strange and untenable. As clearly seen, Gagan Rastogi received the GDRs free of cost using funds of Cals. It is absolutely clear that shares which cost around 50 paise were obtained by the promoter of Cals free of cost. As is clear from the Investigation Report and the SCN, the effect of the abovementioned transaction was to enrich the promoter (Gagan Rastogi – son of Deep Rastogi) at the expense of the innocent gullible investors. The said transaction also enabled Honor (held by another promoter- Sanjay Malhotra) to repay the loan to Banco. I am therefore of the opinion that Deep Rastogi, Gagan Rastogi, Asia Texx and Sanjay Malhotra have acted fraudulently to the detriment of the innocent gullible investors.
- vii. As regards Sundararajan's assertion that he was not aware of the beneficial ownership of Asia Texx, I am of the opinion that there exists enough circumstantial evidence to substantiate that Sundararajan was aware that Asia Texx was beneficially held by Gagan Rastogi (Promoter of Cals). Admittedly, Sundararajan as Director of Cals was responsible for completing the GDR process and was also the authorized signatory of Cals for the bank account maintained with Banco. As is clear from the investigation, the transaction between Cals and Asia Texx is inextricably linked to the GDR process as the entire transaction was structured to enable Honor to repay the loan to Banco. Further, he was the signatory to the agreement between Cals and Asia Texx. As such, it is reasonable to infer that Sundararajan was indeed aware that Asia Texx was beneficially held by Gagan Rastogi (promoter of Cals) and the purpose of the said transaction was in order to enable Honor to repay loan to Banco and to enrich Gagan Rastogi at the expense of the other investors.
- viii. I also find it strange regarding Sundararajan's assertion that he has not concealed information regarding transaction between Cals and Asia Texx. His assertion that he had not volunteered information as SEBI never asked him whether the said transaction between Cals and Asia Texx was a related party transaction cannot be accepted. On perusal of his statement dated April 3, 2012, before the Investigating Authority, I note that SEBI had clearly asked him about the purpose of the transaction between Cals and Asia Texx. At the time this question was asked, Sundararajan was also the Managing Director of Cals. To portray the said transaction as a normal commercial transaction

when it was not so clearly amounts to concealment of information and an attempt to mislead SEBI. For a Managing Director of Cals to claim ignorance of the antecedents of Asia Texx, counterparty to a transaction where almost 40% of the GDR proceeds were paid, cannot by any stretch of imagination, be accepted.

Siphoning of funds by Cals to its Promoter Gagan Rastogi and Asia Texx.

25. As has been shown above, the transaction between Cals and Asia Texx was a related party transaction. In this regard, it may be reiterated that –

- i. The *Account Charge Agreement* alongwith the *Credit Agreement* [signed between Honor (beneficially owned by Sanjay Malhotra) and Banco] enabled Honor to avail a loan of US \$200 million from Banco for subscribing to the GDR issue of Cals.
- ii. Subsequently, Asia Texx, an entity controlled by Gagan Rastogi – one of the Promoters of Cals through his holding in SRM Exploration and also the son of Deep Rastogi, a Director of Cals, purchased 25 million GDRs from Honor for US \$92 million.
- iii. Cals paid US \$92 million to Asia Texx ostensibly for purchase of refinery equipments.
- iv. As a result, Honor received US \$92 million from Asia Texx and repaid the outstanding loan amount of approximately US \$92 million to Banco.
- v. The above transactions are explained below:

Date	Event
05-Feb-2009	Cals signed agreement with Asia Texx for sale of plants and machinery.
26-Mar-2009	Asia Texx purchased 25 million GDRs from Honor for US \$92 million.
27-Mar-2009	Cals pays US \$92 million to Asia Texx ostensibly for purchase of refinery equipments.
27-Mar-2009	Honor received US \$92 million from Asia Texx and repaid the outstanding loan amount of approximately US \$92 million to Banco.
09-Jul-2009	Asia Texx transferred 25 million GDRs to Gagan Rastogi free of cost.

- vi. The bank statement of Asia Texx clearly reveals that the company did not have any money to purchase GDRs from Honor. The money to purchase these GDRs from Honor came from Cals itself. Further, Cals did not receive any machinery from Asia Texx despite making the payment of US \$92 million to Asia Texx. Such transactions

were structured to settle the outstanding liability of Honor to Banco using the funds of Cals, which had the resultant effect of enriching the promoter, Gagan Rastogi, who gained 25 million GDRs at the expense of Cals and thus at the expense of the other investors. This effectively amounted to siphoning funds of Cals into the account of Promoter under the pretext of payment for setting up '*Refinery Projects*'.

- vii. In view of the above, it is clear that Gagan Rastogi and Asia Texx were recipients of wrongful/ill-gotten gains of US \$92 million in the manner stated above.

No knowledge of the beneficial owner of Asia Texx.

- 26. In his reply, Goorha has stated that he was not aware that the that the beneficial owner of Asia Texx was Gagan Rastogi. In this regard, I note that –
 - i. No direct evidence has been brought forth to indicate that Goorha was aware of the beneficial ownership of Asia Texx. Further, I observe that the SCN has not charged Goorha of any wrongdoing on this count. In view of the same and also in the absence of any direct evidence against him, I am inclined to accept his contention.

Non-compliance with Section 11(C)(3) of the SEBI Act, by Sundararajan.

- 27.1 As per the SCN, Sundararajan failed to provide correct information in response to the summons issued under Section 11C(3).
- 27.2 In this regard, I note that Sundararajan, on behalf of Cals, in his statement to SEBI on April 3, 2012, informed that a payment of US \$92 million to Asia Texx was done for purchase of various refinery units to expand the total capacity of refineries planned by Cals. However, Sundararajan concealed the fact that the transaction with Asia Texx was a related party transaction. He also stated in his statement to SEBI that the Promoters/Directors of Cals did not have any agreement with the initial investors of the GDR issue. However, as described above, the Promoters/Directors of Cals had entered into a fraudulent arrangement with the initial investor of the issue viz. Honor, to the detriment of the investors. I note that in his statement to SEBI, Sundararajan has admitted that he was responsible for completing the GDR process. Thus, as Director in charge of the GDR process and also signatory to the agreement between Cals and Asia Texx, he was aware of the fraudulent transaction between Cals and Asia Texx and Honor through the GDRs were issued and also the subsequent

fraudulent transaction between Cals and Asia Texx. Nevertheless, Sundararajan concealed this material information and tried to mislead SEBI.

- 27.3 From the above, I note that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished correctly by Sundararajan. Since information was not disclosed correctly by Sundararajan, I am satisfied that he did not co-operate with the Investigating Officer and hampered the investigations in the instant proceedings. Sundararajan indeed tried to mislead SEBI in this regard thereby violating the provisions of Section 11(C)(3) of the SEBI Act.

Role of Sanjay Malhotra and Honor.

- 28.1 Sanjay Malhotra, one of the promoters of SRM Exploration was the beneficial owner of Honor. The SCN issued to Sanjay Malhotra and Honor was made available on the SEBI website under the heading "*Unserved Summons/Notices*". In addition, an advertisement was published in leading regional and national dailies on January 1, 2014, for the aforementioned entities whereby they were informed that their reply should reach SEBI within 14 days from the date of publication of the said advertisement and that the hearing before SEBI to these entities was scheduled on January 24, 2014. In spite of the above, Sanjay Malhotra did not avail of the opportunity of hearing. It was alleged in the SCN that Sanjay Malhotra as the authorised signatory and while in control of Honor, signed a Credit Agreement with Banco for availing a loan of US \$200 million to subscribe to the GDR issue of Cals. The *Credit Agreement* (signed between Honor and Banco) and *Account Charge Agreement* (signed between Cals and Banco) enabled Honor to obtain loan from Banco to subscribe to GDR issue of Cals. The effect of these *Agreements* resulted in Cals itself financing the subscription of its own GDR issue. Such an arrangement is illegal and fraudulent in terms of Section 77(2) of the Companies Act and PFUTP Regulations. Honor, thus, effectively became the sole subscriber of the GDR issue of Cals. By means of aforesaid agreements, Sanjay Malhotra, through Honor became the holder of majority of capital of Cals as the GDRs accounted for a major portion (99.24%) of the capital.
- 28.2 Subsequently, part of the loan (US \$92 million) taken by Honor from Banco towards subscription of GDRs of Cals, was repaid on account of the transactions pursuant to the Agreement for purchase of refinery equipments between Cals and Asia Texx (reference table at page 6 of this Order). As is evident, the transaction was structured to enrich one of the promoters of Cals at the expense of the genuine gullible investors and Honor alongwith Sanjay Malhotra were beneficiaries of the fraudulent transaction.

- 28.3 I have perused the evidence available on record. I am of the considered view that the evidence against Sanjay Malhotra is sufficient to conclude that Sanjay Malhotra and Honor acted fraudulently.

Role of Ravi Chilikuri –

- 29.1 The *Account Charge Agreement* between Cals and Banco had enabled Honor to obtain loan from Banco in order to subscribe to the GDR issue of Cals. As the *Account Charge Agreement* was expiring, an *Extension Agreement* was signed between Cals and Banco on January 13, 2009. The said *Extension Agreement* was signed by Chilikuri (Director and authorised signatory of Cals) on behalf of Cals. In accordance with the *Extension Agreement*, Cals agreed to extend and continue the *Account Charge Agreement* and the Agreement was henceforth to expire on June 15, 2009. The *Extension Agreement* re-validates the commitment by Cals to Banco in pledging the GDR proceeds as security for the loan taken by Honor. The SCN dated September 25, 2013, could not be delivered to Chilikuri at his address as available in the records. A supplementary SCN dated October 28, 2013, was also issued to him seeking his reply on the repayment of loan by Honor to Banco and the remittance of funds by Cals from its Banco account. The supplementary SCN was sent through email on October 29, 2013 to his email id - 'ravikuri@gmail.com'. However, no response was received in the matter.
- 29.2 The SCN issued to Chilikuri was made available on the SEBI website under the heading "*Unserved Summons/Notices*". In addition, an advertisement was published in leading regional and national dailies on January 1, 2014, for the aforementioned entities whereby they were informed that their reply should reach SEBI within 14 days from the date of publication of the said advertisement and that the hearing before SEBI to these entities was scheduled on January 24, 2014. However, no reply was received from Chilikuri, nor was the hearing opportunity availed by him.
- 29.3 In this regard, I observe that Chilikuri has not availed the opportunity of hearing granted to him. I am of the opinion that since the *Extension Agreement* has been signed by Chilikuri (Director and authorised signatory of Cals) on behalf of Cals, it clearly reveals that Chilikuri knew and participated in the illegal and fraudulent arrangement perpetrated by Cals and Honor and has thus acted fraudulently.

Role of other Directors –

- 30.1 I note that the Directors in the company viz. Ramachandran, Guha Roy, Mohan Lal and Kansagra, have been charged as liable for offences under Section 27 of the SEBI Act. I have already noted in my Order dated October 23, 2013, that Cals had perpetrated fraud upon Indian investors through issuance of GDRs in a fraudulent and illegal manner and by siphoning of funds to the foreign companies owned by its promoters. The aforementioned Noticees have *inter-alia* stated that no proof of consent or connivance in the fraudulent scheme has been presented by SEBI.
- 30.2 In this regard, I note that the abovementioned Directors have not signed the *Account Charge Agreement* or the *Extension Agreement* nor were they the authorized signatories on behalf of Cals for its bank account with Banco. Further, I note that the aforementioned Directors have not signed the *Agreement* entered into between Cals and Asia Texx (which resulted in the related party transaction). I also note that sufficient proof has not been made available to show their direct involvement in the GDR fraud perpetrated by Cals or the related party transaction with Asia Texx. However, I note that being Directors of Cals, the aforementioned entities cannot be said to have been unaware of the activities of Cals.

Role of Promoters of Cals – Noticees No. 14 – 98.

- 31.1 As per the SCN, the abovementioned 85 entities have been charged as liable for offenses committed by Cals under Section 27 of the SEBI Act, 1992, as they were Promoters of Cals at the time of GDR Issue. Accordingly, they have been charged for violation of Section 12A(a)–(c) of the SEBI Act read with Regulations 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.
- 31.2 I note that the entities have all submitted that they were allotted shares by Cals during the period 1992–1995. I note that Cals was then known as Computer Aided Learning Systems Ltd and the entities had invested in that company. From the quarterly shareholding pattern of Cals from the BSE website, it is observed that out of the 85 entities who were classified as Promoters, 74 entities were holding less than 4000 shares while the remaining 11 held upto 45,900 shares. However, many of the entities are seen to be holding a small number of shares. All the entities, except one (viz. Jyotindra Trivedi - Noticee No. 86), in their replies have submitted that they were not part of the Board of Directors or part of the management of Cals. With their small shareholdings, they were even remotely not in control of Cals and

not involved in the affairs of the company. I also note that the Noticees have contended that they had given their shares for lock-in at the time of allotment and this is the main reason leading them to be considered as Promoters.

- 31.3 One of the Noticees, Jyotindra Trivedi, contended that he was a part of the Board of Directors of Cals as he was one of the four Directors nominated by GVFL, then one of the largest shareholder of Cals, into the Board.
- 31.4 From the submissions of some of the abovementioned entities, I also note that while some of the entities have submitted that they were employees in Cals, they resigned or left Cals prior to 1998 as the company went through a financial crisis.
- 31.5 I have noted the preliminary findings made by SEBI in respect of the matter relating to market manipulation using GDRs Issues. It is observed that the scrip of Cals was earlier under examination by SEBI for fraud perpetrated by its Promoters/ Directors. Considering the magnitude of the alleged market manipulation through the GDR Issues, SEBI was justified in issuing an SCN against the abovementioned 85 Noticees who were shown as Promoters by Cals in its quarterly shareholding pattern filed with BSE. However, at this stage of final disposal of the proceedings, I am of the view that sufficient facts have not been brought out to show that the aforesaid 85 Noticees were indeed in control of the activities or actions of the company at the time of the GDR Issue i.e. 2007. Having arrived at this finding, I am of the view that the SCN against the aforesaid 85 Noticees i.e. Noticees nos. 14 to 98, needs to be disposed of.

Conclusion –

32. On careful consideration of the issues, I find that the violations alleged against Sanjay Malhotra, Honor, Chilikuri, Sundararajan, Goorha, Deep Rastogi, Asia Texx and Gagan Rastogi, stand fully established for the following reasons –

i. Sanjay Malhotra and Honor –

- a. Sanjay Malhotra as the authorised signatory and while in control of Honor, signed a *Credit Agreement* with Banco for availing a loan of \$200 million to subscribe to the GDR issue of Cals. The *Credit Agreement* (signed between Honor and Banco) and *Account Charge Agreement* (signed between Cals and Banco) enabled Honor to obtain loan from Banco to subscribe to GDR Issue of Cals. The effect of these *Agreements*

resulted in Cals financing the subscription of its own GDR issue, which amounted to a company financing the purchase of its own shares. Such an arrangement is illegal and fraudulent in terms of Section 77(2) of the Companies Act and PFUTP Regulations. Thus, Honor effectively became the sole subscriber of the GDR Issue of Cals. By means of the aforesaid *Agreements*, Sanjay Malhotra, through Honor, became the holder of majority of capital of Cals as the GDRs accounted for a major portion (99.24%) of the capital.

- b. Subsequently, part of the loan (US \$92 million) taken by Honor from Banco towards subscription of GDRs of Cals, was repaid on account of the transactions pursuant to the Agreement for purchase of refinery equipments between Cals and Asia Texx. As is evident, the transaction was structured to enrich the Promoter of Cals at the expense of the genuine gullible investors and Honor was a beneficiary of the fraudulent transaction.
- c. Sanjay Malhotra and Honor also failed to submit a reply to the charges levelled against them in the SCN despite the fact that sufficient opportunities to do so were granted to them.

ii. Chilikuri –

- a. As the *Account Charge Agreement* was expiring, an *Extension Agreement* was signed between Cals and Banco on January 13, 2009. The said *Extension Agreement* was signed by Chilikuri (Director and authorised signatory of Cals) on behalf of Cals. In accordance with the *Extension Agreement*, Cals agreed to extend and continue the *Account Charge Agreement* and the *Agreement* was henceforth to expire on June 15, 2009. The *Extension Agreement* re-validates the commitment by Cals to Banco in pledging the GDR proceeds as security for the loan taken by Honor.
- b. Chilikuri also failed to submit a reply to the charges levelled against him in the SCN despite the fact that sufficient opportunities to do so were granted to him.

iii. Sundararajan and Goorha –

- a. Sundararajan admittedly was a Director of Cals in charge of completing the GDR process. Similarly, Goorha was also a Director of Cals during the GDR Issue. It was in that capacity that they were authorised by the Board of Directors of Cals during the meeting held on October 30, 2007, to be signatories to the *Account Charge Agreement* on behalf of that company. As has been detailed in paragraph 22, the issuance of GDRs was dependent on the loan taken by Honor, which in turn

was dependent on Cals depositing the GDR proceeds as collateral with Banco. In other words, the obligations of Honor under the *Credit Agreement* were secured by Cals through the *Account Charge Agreement* whereby it deposited an amount of US \$200 million with Banco i.e. GDR subscription proceeds received from the subscriber – Honor and the said amount was assigned and charged in favour of Banco as a continuing collateral/security. Further, on examining the debits made from the said bank account of Cals and Honor, it is found that it was only after part payment by Honor of the amounts due under the *Credit Agreement* that Cals was able to withdraw funds from its bank account with Banco, in accordance with the terms of the *Account Charge Agreement*. Sundararajan and Goorha were authorised signatories to the bank account of Cals maintained with Banco. Goorha was also the signatory of the *Account Charge Agreement* and all communication in this regard could be sent to Sundararajan as well as Goorha. Sundararajan and Goorha, therefore, played an important part in the fraud perpetrated in the GDR Issue of Cals.

- b. Sundararajan was also responsible for submitting false information to SEBI regarding the initial subscribers to the GDR Issue of Cals.
- c. It is also pertinent to mention that Sundararajan was a signatory to the Agreement between Cals and Asia Texx for purchase of refinery equipments. Further, as the authorised signatory of the bank account of Cals, Sundararajan also authorised the payment of US \$92 million to Asia Texx. He was also aware that Asia Texx was beneficially held by its Promoter i.e. Gagan Rastogi, who is the son of one of the Directors of Cals i.e. Deep Rastogi. The transaction between Cals and Asia Texx was fraudulent and was inextricably linked to the GDR process since it was structured to enrich Gagan Rastogi who was able to obtain 25 million GDRs of Cals, from Honor, by using the funds of that Company under the pretext of payment for refinery equipment (no machinery equipment was received from Asia Texx) and also enabled Honor to repay the entire loan to Banco.
- d. Sundararajan also failed to co-operate with SEBI in its investigation regarding the GDR Issue of Cals. Sundararajan had concealed the fact that the Promoters/Directors of Cals did not have any agreement with the initial investors of the GDR Issue even though the investigation revealed that the Promoters/Directors of Cals had entered into a fraudulent arrangement with the initial investor of the GDR Issue viz. Honor. Further, Sundararajan had also concealed the fact that the transaction between Cals and Asia Texx was a related party transaction.

iv. Deep Rastogi, Asia Texx and Gagan Rastogi –

- a. Deep Rastogi was a Director of Cals during its GDR Issue. As per the Annual Report of Cals for the year 2008-2009, as a Director of Cals, Deep Rastogi admittedly had significant influence over that company at the time the Agreement with Asia Texx was signed.
 - b. As has been stated earlier, Gagan Rastogi who was the beneficial owner of Asia Texx is the son of Deep Rastogi. Asia Texx, therefore, was clearly an enterprise owned and significantly influenced by relative of the Director and key management personnel of Cals viz. Deep Rastogi.
 - c. The transaction between Cals and Asia Texx pursuant to the Agreement between them for purchase of refinery equipments, which was portrayed as a commercial transaction, was clearly a '*related party*' transaction in accordance with AS-18 read with Clause 32 of the Listing Agreement. The entire transaction effectively amounted to siphoning of funds by Cals to the account of its Promoter under the pretext of payment for refinery parts.
 - d. The entire transaction was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. Asia Texx has thus acted fraudulently in the matter. Gagan Rastogi (son of Deep Rastogi) was clearly the beneficiary of the fraudulent transaction. Deep Rastogi was Director of Cals at the relevant time and is thus liable for the offences of Cals.
33. As noted above, the *modus operandi* adopted by Sanjay Malhotra, Honor, Chilikuri, Sundararajan, Goorha, Deep Rastogi, Asia Texx and Gagan Rastogi in conceiving the fraudulent arrangement of GDR issue to defraud investors alongwith subsequent arrangements between Asia Texx and Cals for facilitating the unjust enrichment of the promoter of Asia Texx at the expense of investors has been fraught with mala fides at every stage of its execution. The consequences resulting from violations committed by Sanjay Malhotra, Honor, Chilikuri, Sundararajan, Goorha, Deep Rastogi, Asia Texx and Gagan Rastogi are of very grave nature and are prejudicial to the interests of investors in the securities market. In view of the same, I am of the view that stringent measures are warranted in the instant case for dealing with such violations. Accordingly, the measures must be commensurate with the gravity of the violations so that it would act as an effective deterrent.
34. I note that the provisions of Section 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) of the PFUTP Regulations, *inter alia* prohibit buying, selling or dealing in securities in a

fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulations 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, *inter alia* prohibit fraudulent and unfair trade practices in securities through various acts, omissions stated therein. In my view, any fraudulent or deceptive device, scheme, act, omission, etc. which has the potential to *inter alia* induce sale/purchase of securities of any company; influence investment decisions of investors in such company; or result in wrongful gain, etc. would be covered within the prohibition under the aforementioned provisions of law.

35. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. In this case, I find that Sundararajan, Goorha, Sanjay Rai Malhotra and Chilikuri have aided Cals in the fraudulent arrangement with Honor with regard to the subscription of the GDR Issue and thereafter, mislead investors by making false announcements regarding '*successful*' subscription of GDRs. Sundararajan had concealed the '*related party transaction*' (which resulted in enriching the Promoter at the cost of the other investors) and submitted false information to SEBI. Asia Texx and Gagan Rastogi have also benefitted from the fraudulent arrangement for purchase of refinery equipments. All the aforementioned entities have clearly acted in a manner which is fraudulent and deceptive and hence, detriment to the interests of investors in the Indian securities market. I am also of the view that no person can be allowed unjust enrichment by way of wrongful/ill-gotten gains made on account of fraudulent and deceptive trade practices.
36. I note that the proceedings in the instant matter had commenced pursuant to the issuance of SCN dated September 19, 2013 and September 25, 2013, to a total 98 Noticees (as referred to in paragraph 2.1). Thereafter, an opportunity of hearing (including additional opportunity of hearing) was granted to all the aforesaid Noticees on various dates i.e. October 11, 2013; January 22, 2014; January 24, 2014; March 12, 2014 and April 10, 2014. I also note that during the intervening period, consent applications in terms of the SEBI Circular dated May

25, 2012, were filed by 5 of the aforementioned 98 Noticees (as referred to in paragraphs 17.1–17.2). I note that a Letter of Rejection communicating rejection of consent application was forwarded to such Noticees vide SEBI letters each dated June 10, 2014. I note that in order to ensure compliance with the principles of natural justice and for meeting the ends of justice, a collective view in the instant proceedings having regard to the number of Noticees i.e. 98 Noticees, was possible only on completion/conclusion of hearings (alongwith consent proceedings, where applicable) in respect of such Noticees and thereafter, examination and consideration of each of their replies (wherever made) to the SCN(s) issued to them.

Order –

37. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11, 11(4) and 11B of the SEBI Act and Regulation 11(1) of the PFUTP Regulations, 2003, hereby direct as under –

- i. The following entities are 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 **10 years** from the date of this Order, –
 - a. *Shri Devanathan Sundararajan (PAN: AAVPS8671G);*
 - b. *Shri Sarvesh Goorba (PAN: AAGPG8310D);*
 - c. *Shri Ravi Chilikuri (DIN: 02076802);*
 - d. *Shri Sanjay Rai Malhotra (PAN: AAQPM1219H);*
 - e. *Honor Finance Ltd.;*
 - f. *Asia Texx Enterprises Limited;*
 - g. *Shri Gagan Rastogi (PAN: AAFPR0532F);*
 - h. *Shri Deep Rastogi (PAN: AAAPR5029C).*
- ii. *Asia Texx Enterprises Limited* and *Shri Gagan Rastogi* shall disgorge jointly and severally, the unlawful gain of US \$92 million. *Asia Texx Enterprises Limited* and *Shri Gagan Rastogi* shall also pay simple interest at the rate of 6% per annum for the period from March 27, 2009 – December 31, 2014, on the unlawful gain of US \$92 million. *Asia Texx Enterprises Limited* and *Shri Gagan Rastogi* shall pay the aforesaid amount within 45 (forty five) days from the date of this Order by way of crossed Demand Draft drawn in favour of 'Securities and Exchange Board of India', payable at Mumbai.

iii. The following entities are hereby warned to ensure that all their future dealings in the securities market be done strictly in accordance with law, –

- a. *Shri Bhupendra Kansagra (DIN: 1897676);*
- a. *Shri Manabendra Guba Roy (PAN: AAIP0192M);*
- b. *Shri M. S. Ramachandran (PAN: AGJPM9097J);*
- c. *Shri Mohan Lal Garg (PAN: AASPG9086E).*

iv. I hereby also dispose of the SCN dated September 19, 2013 and September 25, 2013, issued to the 85 entities i.e. Noticees no. 14 – 98 mentioned at paragraph 2.1, without any further directions.

38. This Order shall come into force with immediate effect.

39. This Order shall be served on all recognized stock exchanges and depositories to ensure necessary compliance.

Place: Mumbai
Date: December 31, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA