WTM/SR/ISD/06/09/2013

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 against Pan Asia Advisors Limited (now known as Global Finance and Capital Limited) and Mr. Arun Panchariya (PAN No. AEVPP6125N).

Appearances –

For Pan Asia Advisors Limited and Mr. Arun Panchariya:	**(i) Joby Mathew, Advocate;** **(ii) Mr. Arun Panchariya;** **(iii) Ms. Mona Vora.**
For SEBI:	**(i) Mr. Biju S, Joint Legal Adviser;** **(ii) Mr. Debashis Bandyopadhyay, Deputy General Manager;** **(iii) Mr. Alvine Ethan Lyngwa, Assistant Legal Adviser;** **(iv) Mr. Anand Ekka, Assistant Manager.**

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received alerts about large scale off-market transactions in its Integrated Market Surveillance System (IMSS) regarding trading in scrips of certain companies. A preliminary examination revealed that certain Foreign Institutional Investors (hereinafter referred to as "**FIIs**")/Sub-accounts were converting the Global Depository Receipts (hereinafter referred to as "**GDRs**") held by them in those companies into equity shares to sell in the Indian markets. It was also observed that such conversions had occurred within a short period after the issue of GDRs by those companies.

2. As *prima facie* manipulative practices were suspected, SEBI vide an ad–interim *ex – parte* Order dated September 21, 2011 (hereinafter referred to as "**Interim Order**") had *inter alia* issued the following directions against Pan Asia Advisors Limited (hereinafter referred to as "**Pan Asia**") and Mr. Arun

Panchariya (hereinafter referred to as "**Panchariya**") in view of the irregularities observed in the issuance of GDRs of Asahi Infrastructure & Projects Ltd. ("**Asahi**"), Avon Corporation Ltd. ("**Avon**"), Cat Technologies Ltd. ("**Cat Technologies**"), IKF Technologies Ltd. ("**IKF**"), K Sera Sera Ltd. ("**K Sera Sera**") and Maars Software International Ltd. ("**Maars**"), (hereinafter collectively referred to as "**Issuer Companies**"), viz. –

i. *"Pan Asia Advisors Ltd and Mr. Arun Panchariya as persons connected to the Indian Securities market are barred from rendering services in connection with instruments that are defined as securities (as in section 2(h) of SCRA, 1956) in the Indian market or in any way dealing with them, with immediate effect.*
ii. *None of the intermediaries registered with SEBI shall deal with Pan Asia and Mr. Arun Panchariya in any capacity with regard to or in connection with the dealing of securities as defined in the Indian market."*

3. While the Interim Order was in force, Pan Asia and Panchariya had filed an appeal (Appeal No. 191 of 2011), before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). The Hon'ble SAT had disposed of the appeal vide its Order dated November 9, 2011, by *inter alia* directing: *"…the Board to pass a final order within four weeks from today on the issues raised by the appellants including the question of jurisdiction."*

4. The abovementioned Interim Order was confirmed on January 17, 2012 (hereinafter referred to as "**Confirmatory Order**"). Subsequent to the Confirmatory Order, Pan Asia and Panchariya had filed an appeal (Appeal No. 68 of 2012), before the Hon'ble SAT. The Hon'ble SAT had disposed of the appeal vide its Order dated September 13, 2012, *"…with a direction to the Board that the process of issuing a supplementary/fresh show cause notice may be completed expeditiously and a final order be passed within six months from today."* Consequent to the aforementioned Order of the Hon'ble SAT, SEBI completed its investigation regarding the role of Pan Asia and Panchariya in the matter of market manipulation using GDR Issues.

5. As per the findings contained in the Investigation Report, I note that –

5.1 Panchariya is shown to be connected *inter-alia* with the following entities, viz. –

a. Alkarni Holdings Ltd. (hereinafter referred to as "**Alkarni**");

b. Alka India Limited (hereinafter referred to as "**Alka**");

c. India Focus Cardinal Fund (hereinafter referred to as "**IFCF**"), a sub-account based in Mauritius;

d. Vintage FZE (hereinafter referred to as "**Vintage**");

e. KII Limited (hereinafter referred to as "**KII**");

f. Oudh Finance and Investment Private Limited (hereinafter referred to as "**Oudh**");

g. Basmati Securities Private Limited (hereinafter referred to as "**Basmati**");

h. SV Enterprises (hereinafter referred to as "**SV**").

5.2 The basis for the abovementioned connection was on account of the following factors, viz. –

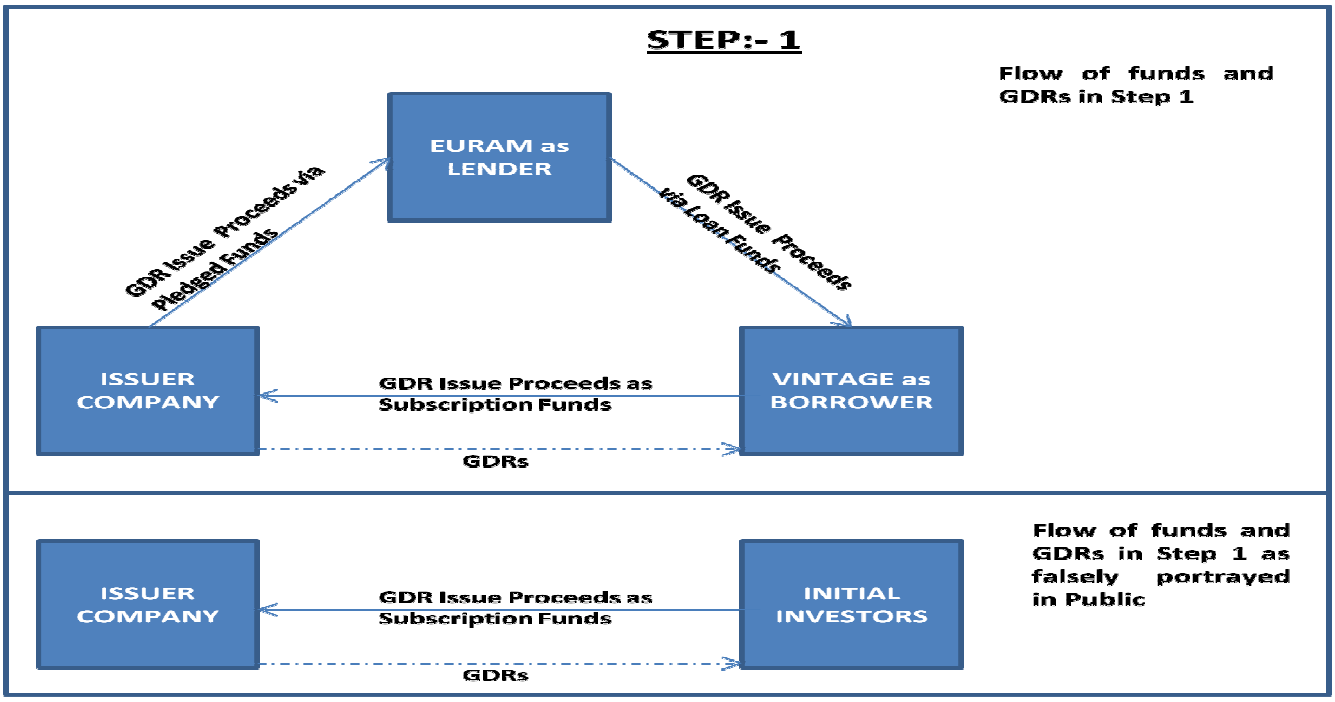
Sr. No.	Name of Entity	Basis of Connection
1.	Alkarni	Panchariya alongwith his family members were shareholders.
2.	Alka	Panchariya along with his family members were Promoters.
3.	IFCF	Panchariya was a 100% shareholder in IFCF indirectly through Cardinal Capital Partners and was its Chief Investment Officer. Further, the major investor in Class A shares of IFCF was Vintage, whose owner was Alkarni. Alkarni has Panchariya and his family members as shareholders.
4.	Vintage	Panchariya controlled Vintage and was its authorised signatory.
5.	KII	Vintage signed a loan agreement with Credo, parent company of KII, wherein it provided loan to Credo to further lend it to KII so that KII can purchase GDRs of Issuer Companies and convert into shares to sell in Indian Markets. According to this agreement signed by Panchariya himself on behalf of Vintage, the market risk of these transactions in GDRs by KII was borne by Vintage.
6.	Oudh	Basmati holds approx. 27% of the capital of Oudh as per Oudh's Annual Return in 2009.
7.	Basmati	Oudh and Alka together hold approx. 29.9% of the capital as per Annual Return of Basmati in 2009.
8.	SV	Panchariya's brother, Ashok Panchariya is the nominee for the demat account of SV.

5.3 Pan Asia and Panchariya had acted fraudulently in scrips of the Issuer Companies. The manner in which the fraud was carried out is explained below –

5.3.1 According to the fraudulent scheme perpetrated, Panchariya arranges loans for the subscription to GDRs, subscribes to GDRs, and sells the GDRs to FIIs / Sub accounts (FIIs) who, in turn, sell shares received from conversion of GDRs in Indian securities market. The GDRs thus issued and

sold to Indian investors through steps explained below are hereinafter referred to as "Structured GDRs" and the complete scheme is referred to as "AP GDR Scheme".

5.3.2 Step 1 – Issuance of GDRs



5.3.2.1 As the Issuer Company is ready to issue GDRs in the Luxembourg market, Vintage (controlled by Panchariya) signs a loan agreement with European American Investment Bank AG (hereinafter referred to as "**Euram**") for issue of loan (Subscription Loan) for the purpose of subscription of GDRs. This loan agreement is signed by Panchariya on behalf of Vintage.

5.3.2.2 The nature and purpose of the agreement states clearly that the loan is being provided to enable Vintage to take down the specified GDR issue of the Issuer Company. Further, according to the Loan Agreement, the amount may only be transferred to the account of that Issuer Company maintained with Euram. The aforesaid account of the Issuer Company mentioned in the Loan Agreement of Vintage is the same account where Issuer Company shows its GDR subscription proceeds as deposited (GDR Account).

5.3.2.3 Simultaneously, the Issuer company also signs a Pledge Agreement with Euram wherein *inter alia*, following is pledged by the issuer company to Euram:

"...all of its right title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account no ... (GDR Account) kept by Bank (Euram) and all amounts credited at any particular time therein."

5.3.2.4 Further, the Pledge Agreement is also part of the Loan Agreement and vice versa. The Pledge Agreement in its preamble states that – *"...The Pledgor (Issuer Company) has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."*

5.3.2.5 The following is also secured as per the Loan Agreement –

- *"...In order to secure all and any of the Bank's claims and entitlements against the Borrower (Vintage)..... it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank.....*
- *Pledge of certain securities held from time to time in the Borrower's account no ... at the Bank as set out in a separate pledge agreement which is attached hereto as Annex which forms an integral part of this Loan Agreement.*
- *Pledge of the GDR Account of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex and which forms an integral part of this Loan Agreement."*

5.3.2.6 The GDR account referred above is the same account wherein the issuer company (Asahi), has deposited the subscription proceeds of the GDR issue. From the above, it is observed that the GDR Account is held in the name of each issuer company while, for all intents and purposes, the actual control of said account ultimately vests with Vintage (effectively Panchariya), as the account is kept as collateral for the loan availed by Vintage.

5.3.2.7 As a result of the Loan Agreement and the Pledge Agreement, the Subscription Loan provided to Vintage by Euram is used to acquire the GDRs of Issuer Company by Vintage. This Subscription Loan is thus deposited as Subscription fund in the GDR Account of Issuer Company which is pledged by the Issuer Company with Euram as security against the Loan provided to Vintage.

5.3.2.8 The Issuer Company then issues GDRs to Initial investors through Overseas Depository Bank. In the cases investigated by SEBI, it is observed that the GDRs were transferred not to the account of initial investors but to the security account of Vintage maintained with Euram. The issuer companies and Pan Asia have provided a list of initial investors to whom GDRs were issued. However, as per documents available with SEBI, it is observed that GDRs have been

credited to the securities account of Vintage held with Euram on the day of GDR issuance and a payment for GDRs is made from the Euram Account of Vintage to the GDR Account of Issuer Company. From the foregoing it is clear that the GDRs were directly issued to Vintage. The list of initial investors of GDRs provided to SEBI by the issuer companies, therefore is a list designed to camouflage the name of the actual investor i.e. Vintage and mislead the shareholders of the company and the market.

5.3.2.9 There is no real or effective movement of funds involved (as observed from Paras 5.3.2.1 to Paras 5.3.2.8). By way of entries in the books of Euram, funds are released from loan account of Vintage to GDR account of issuer company and are kept as collateral with Euram. Thus, without any actual inflow of funds into the company, the issuer Company is successful in issuing large amount of GDRs which gives a respectable appearance to the financial statement of the company, which is misleading. In reality, few book entries result in large surge in the capital of the company. Thus, these GDRs are created without any purchase transactions or for any cost (apart from interest and commission earned by Euram).

5.3.2.10 The initial investors to the GDRs appear to be just fictitious/front entities created by Panchariya and Pan Asia. Efforts to contact these original investors were futile. Emails sent have bounced. Letters sent to these investors have also returned undelivered. SEBI also sought help of regulators of respective jurisdiction where these investors have been stated to be based. Foreign regulators have been unable to locate these investors.

5.3.2.11 Following are the details of the GDRs issued by the companies examined by SEBI.

Sr. No	Issuer	Date of GDR Issue	Pre GDR equity ('000)	Shares issued under GDR ('000)	% GDR to Pre GDR equity	Market Cap prior to GDR issue(Rs Crore)	Capital raised by GDR Issue(Rs. Crore)	% Capital raised to pre GDR Market Cap
1.	IKF	31-03-07	1,06,690	1,32,000	123	79.60	47.96	60.25
2.	CAT	27-07-07	5,750	25,286	440	3.00	26.13	871.20
3.	Maars	10-08-07	66,160	73,800	112	29.71	72.93	265.02
4.	K Sera	26-10-07	19,513	47,619	244	71.02	98.42	138.58
5.	Asahi	29-04-09	37,196	2,99,100	804	2.64	32.99	1137.94
6.	IKF	15-05-09	2,68,190	1,62,391	61	79.66	54.44	68.35
7.	Avon	19-06-09	16,580	48,000	289	14.71	48.13	327.19
8.	K Sera	16-10-09	67,131	1,34,257	200	137.95	138.73	100.57
9.	CAT	06-11-09	31,576	47,860	152	50.81	46.83	92.17

5.3.2.12 From the above table, it is clear that the amount of capital raised via issuing GDRs is significantly large when compared to existing capital of the companies.

5.3.2.13 For the purpose of subscription of the GDRs of the aforementioned Issuer Companies, loan agreements were signed by various entities with the banks. This loan was then utilised for subscribing to the GDRs of the Issuer Companies.

5.3.2.14 Following are the details of loan agreements signed for the purpose of subscription of GDRs of Issuer Companies.

Sr. No.	Issuer	Date of GDR Issue	GDR Issue Size ($ '000)	Borrower	Loan Amount ($ '000)	Date of Loan Agreement	Lender	Date of Pledge Agreement
1	IKF	31-03-07	11,000	Seazun	14,000	27-03-07	Banco	27-03-07
2	CAT	27-07-07	6,457	Vintage	6,457	23-07-07	Euram	20-07-07
3	Maars	10-08-07	17,933	Vintage	17,933	27-07-07	Euram	27-07-07
4	K Sera	26-10-07	25,000	Vintage	25,000	30-10-07	Euram	30-10-07
6	Asahi	29-04-09	5,982	Vintage	5,982	21-04-09	Euram	21-04-09
7	IKF	15-05-09	10,988	Vintage	10,988	28-04-09	Euram	28-04-09
8	Avon	19-06-09	10,000	Vintage	10,000	10-06-09	Euram	10-06-09
9	K Sera	16-10-09	29,984	Vintage	29,984	06-10-09	Euram	06-10-09
10	CAT	06-11-09	10,003	Vintage	10,003	27-10-09	Euram	27-10-09

5.3.3 Step 2 – Cancellation of GDRs and Sale of Resultant Shares by Sub-Accounts

5.3.3.1 The GDRs created at the end of Step 1 were transferred to the account of Vintage held with Euram. Subsequently, Vintage through over the counter transactions, sold the GDRs to FIIs such as IFCF and KII for the purpose of purchasing GDRs. The GDRs were then converted into underlying shares and these shares were sold in the Indian market.

5.3.3.2 Financial Market Authority (Austria) (hereinafter referred to as "**FMA**"), vide its letter dated March 27, 2012 informed SEBI that the major investor in Class A shares of IFCF was Vintage, whose owner was Alkarni Holdings Ltd. Alkarni Holding Ltd has Panchariya and his family members as shareholders.

5.3.3.3 Arrangements between Credo, KII and Vintage for dealing in GDRs of Issuer Companies have been observed. Vintage signed a loan agreement with Credo, wherein it provided loan to Credo to further lend it to KII so that KII can purchase GDRs of Issuer Companies and convert into

shares to sell in Indian Markets. According to this agreement signed by Panchariya himself on behalf of Vintage, the market risk of these transactions in GDRs by KII was borne by Vintage. Thus, the dealings of KII in the GDRs of Issuer Companies were financed and controlled by Panchariya.

5.3.3.4 It is observed that IFCF and KII started dealing in the GDRs of Issuer Companies from June 2009 and after that no other FII/Sub-Account has cancelled GDRs of Issuer Companies except KII and IFCF. Following table provides details of cancellation of GDRs of Issuer Companies done by KII and IFCF as on June 30, 2012.

GDR Issue	Date	Total GDRs Issued	Total GDRs Cancelled till June 30, 2012	GDRs cancelled between June 01, 2009 to June 30, 2012	GDRs cancelled by IFCF	GDRs cancelled by KII	% of GDRs cancelled by IFCF & KII to total GDRs cancelled	% of GDRs cancelled by IFCF & KII to total GDRs cancelled between June 01, 2009 to June 30, 2012
Asahi	29-04-09	29,91,000	15,14,450	15,14,450	13,81,000	1,00,000	97.8	97.8
Avon	19-06-09	16,00,000	16,00,000	16,00,000	14,44,000	1,56,000	100.0	100.0
CAT	27-07-07	43,04,348	25,80,000	1,95,000	1,20,000	75,000	7.6	100.0
CAT	06-11-09	15,95,333	13,685	13,685	13,685	0	100.0	100.0
IKF	31-03-07	1,10,00,000	1,10,00,000	0	0	0	0.0	0.0
IKF	15-05-09	54,13,048	10,34,000	10,34,000	9,89,000	45,000	100.0	100.0
K Sera	26-10-07	47,61,900	47,61,900	33,41,900	13,96,757	19,45,143	70.2	100.0
K Sera	16-10-09	44,75,238	12,35,500	12,35,500	7,58,500	4,77,000	100.0	100.0
Maars	10-08-07	73,80,000	57,92,800	15,77,800	11,27,800	4,50,000	27.2	100.0

5.3.3.5 From the above table, it is clear that from June 01, 2009, the activity of cancelling GDRs and converting to shares by IFCF and KII was done entirely under direct control of Panchariya.

5.3.3.6 To summarise, the funds for the purchase of GDRs are provided by Panchariya to FIIs, either by direct investment in the fund like IFCF or by entering into contractual agreement and providing loan to FIIs/Sub-Accounts (e.g. KII, etc). In reality, funds have only moved from one Panchariya controlled company (IFCF, KII) to another Panchariya controlled company (Vintage) and vice versa.

5.3.3.7 These Sub-Accounts then dump the shares of the Issuer companies received post cancellation in Indian Stock Markets and realize the proceeds. The sale of such shares by Sub-Accounts in

Indian Markets is the only step where funds/proceeds have been provided by entities not under control of Panchariya i.e. Indian investors. Thus, it is the Indian Investors, and not the foreign investors, who have ultimately paid for the GDRs.

5.3.3.8 Investigations have revealed that all the Issuer Companies have utilised majority of the GDR issue proceeds through their foreign subsidiaries in other countries. Majority of these foreign subsidiaries have following common aspects –

a. Most of these are based in free zones of U.A.E.
b. In almost all the case, the major portion of the GDR issue (100% in one of the case viz. CAT) is directly transferred to foreign subsidiary and is not repatriated to India.
c. Mostly, these have been incorporated during or after the period of GDR issue.
d. These are mostly trading companies generally dealing in commodities/ products unrelated to the business of parent company.
e. They have financial transactions with Vintage, Initial investors of GDR issues of other companies and foreign subsidiaries of other companies which have issued GDRs managed by Panchariya and Pan Asia.

5.3.3.9 None of the Issuer Companies have provided SEBI with adequate explanation of the transfer of funds to their foreign subsidiaries. Due to the non cooperation by companies, many aspects like bank accounts, financial transactions, nature of business and dealings with Panchariya connected entities of foreign subsidiaries of Issuer companies could not be investigated in detail by SEBI. However, from the limited documents and material available with SEBI, it is revealed that foreign subsidiaries are being used to make payments to Panchariya/Panchariya related entities. The rationale for such transaction has not been explained to SEBI. However, in light of the findings of the investigation indicating that Panchariya/Panchariya related entities have colluded with the companies to issue GDRs fraudulently, it is probable that the financial transaction between the foreign subsidiary and Panchariya/Panchariya related entities could possibly be a route for the issuer company to compensate Panchariya for services rendered by him.

5.3.3.10 Some of the additional details in respect of the Issuer Companies as detailed in the Investigation Report are given below:

a. In the case of Asahi, an agreement dated April 21, 2009, was signed between Euram and Vintage (controlled by Panchariya) on April 22, 2009. As security for the said loan, Asahi had pledged money received through issuance of GDRs to secure rights of Euram against the loan given by Euram to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage). This guarantee by Issuer Company for the loan taken by subscriber to its GDRs added to common ownership of a bank account that belongs to both the borrower- subscriber and the Issuer Company in which the GDR proceeds are received or cross-referencing of bank accounts in each of the agreements with the bank, are the central and determining features of this scheme to fraudulently raise capital by the Issuer Company. Euram disbursed the loan to Vintage after the pledge agreement was executed between Euram and Asahi.
b. After the issuance of GDRs, Vintage became the sole holder of the GDRs issued, thereby becoming the majority share holder of Asahi. As on April 29, 2009, Vintage held 29,91,000 GDRs of Asahi, which implies that Vintage held 88.94% of the capital of the company.
c. These GDRs were then transferred to IFCF and KII (both connected to Panchariya) through over the counter transactions. Much of these GDRs were converted by IFCF and KII into shares and sold in the Indian markets.
d. Majority of the GDR proceeds were transferred by Asahi to its foreign subsidiary and thereafter the same was routed back to Panchariya related entities. It appears probable that due to reasons explained above, Asahi FZE (the foreign subsidiary of Asahi) was used by Panchariya to route funds back to Vintage and other Panchariya entities.
e. Similar loan and pledge agreements were observed in the case of IKF, Maars, Avon, K Sera Sera and CAT Technologies wherein the GDR proceeds were kept as collateral for the loan extended by Euram to Vintage.
f. On June 19 2009, Vintage was holding 16,00,000 GDRs of Avon, which means it held 74.34% of the capital of the company. 100% of these GDRs issued were transferred to IFCF and KII ; till September 21, 2011 , IFCF and KII had sold 4,78,00,000 shares out of 4,80,00,000 shares they received post cancellation of GDRs; Total proceeds they received post sale of these shares is Rs. 30,41,38,287 i.e. money for the GDRs were paid by investors in the Indian securities market.
g. In the case of some other companies, only a part of the GDRs had been cancelled; this portion had thereafter been sold by Panchariya entities such as IFCF and KII to investors in Indian securities markets.

6. On the basis of findings made in the aforesaid Investigation Report, a Show Cause Notice dated May 16, 2013 (hereinafter referred to as "**SCN**"), was issued to Pan Asia and Panchariya under sections 11, 11B and 11(4) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") read with regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), calling upon it to show cause as to why suitable directions should not be passed for the violations alleged in the SCN. In the SCN, the following charges were made against Pan Asia and Panchariya –

a. As the authorised signatory and while in control of Vintage, Panchariya signed Loan Agreement with Euram. This loan was collateralized by way of a pledge of the GDR proceeds by the issue company. Vintage thus effectively became the sole subscriber of the GDR issuances of the Issuer Companies. This fraudulent arrangement resulting in full subscription of GDRs of the Issuer Companies acted as an inducement for other persons to offer to buy the shares of the Issuer Companies in the Indian securities market.
b. Pan Asia deliberately provided false information that certain foreign investors other than Vintage were the initial investors to the aforesaid GDR issues. The addresses of some of these initial investors were found to be invalid by the foreign regulators in those jurisdictions. Panchariya and Pan Asia has therefore caused false information to be published and disclosed to the stock exchange (the BSE Ltd. in the instant case) in India that GDR issuances were successfully subscribed by foreign investors, and used this artifice and misleading information to induce the investors in India to deal in the shares of Issuer Companies.
c. After subscribing to GDRs through a fraudulent arrangement with the Issuer Companies as described above, Panchariya (through Vintage), employed certain sub-accounts viz. India Focus Cardinal Fund (hereinafter referred to as "**IFCF**") and KII Ltd. that received the GDRs from Vintage and thereafter converted those GDRs into underlying shares, which were then sold in the Indian securities markets.

d. As a consequence of the said fraudulent arrangement perpetuated by Panchariya (AP GDR Scheme), the Indian investors upon buying shares converted from GDRs, unknowingly assisted the Issuer Companies to release the GDR subscription proceeds from encumbrance/pledge.

Therefore, instead of capital being raised from foreign investors through issuance of the GDRs, the Indian investors ultimately paid for part of GDRs after the said GDRs were converted into underlying shares which were then sold in the Indian securities market to the investors. This, in turn defeated the purpose of issuance the GDRs, which is to raise finance from foreign investors.

e. Pan Asia has failed to provide information regarding names of the initial investors of all the GDR issues managed by you as sought vide summons dated January 13, 2012.
f. Panchariya, on behalf of IFCF was alleged to have made had false submissions.
g. The assertions made by Panchariya in his replies dated December 5, 2011 and November 29, 2011 are prima-facie false.

6.1 In view of the above, Pan Asia and Panchariya were asked to show cause as to why suitable directions should not be passed under sections 11, 11(4) and 11B of the SEBI Act, 1992 read with regulation 11 of the PFUTP Regulations for violation of section 12A of the SEBI Act read with regulations 3 and 4 of the PFUTP Regulations. Along with the above show-cause notice, the relevant extracts of the Investigation Report were annexed inter-alia describing the AP GDR scheme.

7.1 Pan Asia and Panchariya had filed their individual reply to the SCN vide separate letters dated May 29, 2013. Subsequent to the filing of replies to the SCN by Pan Asia and Panchariya, an opportunity of personal hearing was granted to Pan Asia and Panchariya on June 17, 2013. In their aforementioned replies and during the aforesaid hearing, the authorised representative of Pan Asia and Panchariya, had *inter alia* made the following submissions –

7.2 Submissions made by Pan Asia –

7.2.1 Pan Asia believes and affirms that SEBI does not have the jurisdiction to issue any show cause notice or to pass Orders against Pan Asia. It is apparent that the *'jurisdictional fact'* that ought to have been established for SEBI to issue any Show Cause notice or pass Orders against Pan Asia has not been established.

7.2.2 The functions undertaken by Pan Asia have no relevance or connection with the Indian securities market. Pan Asia merely advises various companies (including Indian companies) at the time of the listing of GDRs on stock exchanges outside India and leads such issues under mandate (contract for services). Pan Asia was duly approved by and regulated by all relevant regulators outside India at the time of such issuance of GDRs and it still is.

7.2.3 Vintage is a separate independent legal entity. Therefore, Pan Asia has no capacity to comment thereon save that it is aware of Panchariya having various other declared business interests/involvements.

7.2.4 SEBI's finding that Vintage was the sole subscriber to the GDR Issues of the Issuer Companies is erroneous and unsubstantiated. The GDRs were in fact issued to the account of initial investors, who had all duly confirmed their subscription to the GDR issue as confirmed/directed to the escrow bank upon receipt of confirmation of the GDR subscription proceeds from them, and not to Vintage. Merely because Vintage may have subsequently acquired the GDRs cannot give rise to any conclusion that the GDRs were directly issued to Vintage and that it became the sole subscriber.

7.2.5 SEBI appears to have approached regulators in various jurisdictions to verify addresses of investors who subscribed to GDR issues made in 2007-2009. This method of verification appears to be inadequate because, such investors are often Special Purpose Vehicles (SPVs) incorporated for the purpose of making the investment and disbanded thereafter.

7.2.6 Dealings between Panchariya and other third parties do not concern Pan Asia, which is an independent separate legal entity.

7.2.7 With regard to the charge that Pan Asia failed to provide names of initial investors as sought vide SEBI summons dated January 13, 2012, Pan Asia stated that it is under no duty and/or obligation to provide any information whatsoever to SEBI , nevertheless it has provided all information in a spirit of cooperation. Pan Asia has not received any communication from SEBI since January 12, 2012 when an order confirming the ex–parte ad–interim order against Pan Asia was passed.

7.3 Submissions made by Panchariya –

7.3.1 Panchariya is a Non Resident Indian and not a person associated with the Indian securities market. He is in the business of advising companies in relation to their investment decisions and his

business is conducted entirely outside the territory and jurisdiction of India. Considering that Panchariya has no role to play in relation to the issue after the listing of GDRs abroad, he does not fall under SEBI's regulatory ambit. Panchariya is not connected to any person or entity named in the Investigation Report in the manner alleged therein. Panchariya is not a person associated with the securities market. SEBI has no jurisdiction to pass orders against Panchariya as powers of SEBI are restricted within limits of Indian territory.

7.3.2 The mandates in relation to the GDR Issues outside India are granted to Pan Asia. Pan Asia is a distinct and separate legal entity, which has its own management and decision making. Panchariya had, as a part of the team at Pan Asia, undertaken the various functions in relation to the issues of GDRs. Panchariya has now resigned from Pan Asia and is not presently a part of its management team.

7.3.3 Neither Pan Asia nor Panchariya have any role to play in relation to any dealing in relation to the shares of the issuer companies mentioned in the Order.

7.3.4 Due to nature and geographical location of Pan Asia and its business model, there is no requirement for Pan Asia to register in any manner with SEBI (or any Indian regulatory authority and/or body). Pan Asia also is not a person associated with the securities market and does not fall within the jurisdiction of SEBI.

7.3.5 Panchariya has no control over the various entities and persons mentioned in the Investigation Report who are alleged to have dealt in the shares of the companies issuing GDRs.

7.3.6 The process of issuance of GDRs is governed by the Issue of Foreign Currency Convertible Bonds and Ordinary shares (through Depository Receipt Mechanism) Scheme, 1993 and this Scheme does not confer any jurisdiction in relation to issuance of GDRs upon SEBI. Passing of the Order by SEBI amounts to impinging on the exclusive jurisdiction of Reserve Bank of India.

7.3.7 The investigation report alleges that GDRs of six Issuer Companies were bought by certain initial investors and there was alleged manipulation in relation to the conversion of the GDRs into shares and the subsequent trading thereafter. As the International corporate advisor for these issues, Panchariya and Pan Asia advised the Issuer Companies in relation to the non-Indian aspects of their GDR offerings and apart from that, Panchariya and Pan Asia had no illegal or improper connection or interaction with the issuer companies.

7.3.8 In relation to IFCF, it is alleged that Panchariya was one of the directors of IFCF until October 2010. However, the same does not mean in any manner that Panchariya exercised any control over

IFCF. At the point of time when Panchariya was a director, the investment decisions of IFCF were taken collectively by its Board of Directors and accordingly the orders for the trades would be placed with the brokers.

7.3.9 Panchariya resigned from the board of directors of Alka as long back as the year 2001. Apart from his holding 2.08% shareholding in Alka, he has no connection with Alka. Although, brother of Panchariya is a director in board of Alka it does not mean that Alka is under control of Panchariya as alleged by the Interim Order or otherwise. Further, the reason Basmati and Oudh are alleged to be connected to Panchariya is on account of alleged cross-shareholding between Alka, Basmati and Oudh. A company holding some shares in another company does not in any manner mean that it exercises control over the day to day working of such companies. Further, there is nothing to demonstrate that apart from such cross-holdings there were any connections between Alka, Basmati and Oudh themselves.

7.3.10 There is no illegal or improper connection between Panchariya and the FIIs/entities who are alleged to have traded in the scrips of the Issuer Companies.

7.3.11 The speculation in the investigation report that financial transactions between issuer companies and entities where Panchariya has a shareholding could *"possibly be a route for the issuer company to compensate Panchariya for the services rendered by him"* is baseless, erroneous and irrelevant. Services were rendered to the issuer companies by Pan Asia for a fee as per mandate letters issued by the issuer companies.

7.3.12 It is submitted that while the fact that Panchariya is a shareholder, director and authorized signatory of Vintage, a Dubai incorporated Company registered with Jebel Ali Free Zone is a matter of record, it is also pertinent to note that SEBI has no jurisdiction over Vintage and that no adverse action has been taken against Vintage by the competent authority or regulator till date.

7.3.13 There was no illegality in the loan agreements entered into between Vintage and European American Investment Bank AG (hereinafter referred to as "**Euram**") in respect of the GDR issues by the six companies mentioned in the SCN. The Loan raised by Vintage to *"takedown"* the GDRs issued by the Issuer companies is in compliance with the applicable Banking law of Austria and was granted by Euram based on the financial strength of Vintage. SEBI appears to have failed to appreciate the objective of the loan i.e. to take down the GDR issue.

7.3.14 *"Takedown"* is not the same as subscription to the GDR issue. Takedown is a financial term, which means the price that members of an underwriting syndicate pay for a new issue. The amount by which the underwriter's selling price exceeds the takedown represents the profit on the placement

of the new issue. The amount by which the underwriter's selling price exceeds the takedown represents the profit on the placement of the new issue. In this case, Vintage intended to make a profit through a takedown of the GDRs issued by the Indian Companies while at the same time ensuring successful placement of the issue with Investors outside India. To do so, it obtained a loan from Euram. Upon closure of the GDR issue, Vintage paid the takedown amount to the issuer company by transferring the loan proceeds (from Euram) to the Escrow Account of the issuer companies, which was then transferred to the accounts of the issuer companies. The issuer companies agreed to pledge the GDRs issued by them and the proceeds of the GDR issue with Euram Bank as a security for the Loan extended to Vintage since they too benefited from the successful closure of the GDRs and their listing.

7.3.15 The GDRs which were transferred to the account of Vintage were sold by them in Over the Counter (OTC) transactions to Euram, which was a SEBI Registered FII during the investigation period. Euram has sold those GDRs to many Funds and/or Institution like IFCF or other funds/Institutions. Vintage still holds GDRs of some of the companies mentioned in the SCN; Vintage also repaid the loans taken from Euram through its own business cash flow. Upon closure of the loan, the pledge on the accounts of the issuer companies was removed.

7.3.16 Takedown and other arrangements are perfectly legal in Austria and Luxembourg and therefore, the Loan Agreements and Pledge Agreements entered into with Euram were bonafide and legal. It is erroneous for SEBI to judge the legality of the above arrangements on the basis of Indian law since Indian law does not apply to transactions outside India and even the application law and jurisdiction agreed to between the parties to the Loan agreement and Pledge agreement is that Austria and Vienna.

7.3.17 Vintage was never the sole subscriber to the GDR issues as falsely alleged or otherwise and only acted in a manner similar to an underwriter taking down a fresh issue.

7.3.18 Vintage never became the shareholder of the issuer companies and never exercised any rights as a shareholder of the issuer companies. Panchariya denied that the above arrangement was fraudulent; it is further denied that such an arrangement acted as an inducement for other persons to buy shares of the issuer companies in the Indian securities market.

7.3.19 Pan Asia denied that as lead manager to the GDR issue of Issuer Companies, deliberately provided false information regarding initial investors in the GDR issues.

7.3.20 SEBI appears to have approached regulators in various jurisdictions to verify addresses of investors who subscribed to GDR issues made in 2007-2009. This method of verification appears to be inadequate because, such investors are often Special Purpose Vehicles (SPVs) incorporated for the purpose of making the investment and disbanded thereafter.

7.3.21 Since disclosures with regard to GDRs are to be made by the issuer companies to the RBI and to the BSE, the allegation that Pan Asia or Panchariya caused false information to be published and disclosed to the BSE that the GDR issues were successfully subscribed by foreign investors is baseless, false and unsubstantiated. The GDR issues were subscribed by foreign/Non Resident investors. Further, the information regarding the subscription to the GDRs, provided by the issuer companies and/or depositories is correct and truthful.

7.3.22 The arrangements between Credo Investment Holdings Limited (hereinafter referred to as "**Credo**") and Vintage and between Credo and KII are not subject to the jurisdiction of SEBI or Indian law and are admittedly not in violation of applicable laws. Panchariya denies that he used KII to cancel and dump the shares obtained from the conversion of the GDRs on Indian Investors. KII purchased the shares from Euram, which was a SEBI Registered FII during the investigation period and converted the GDRs into shares following all the prescribed procedures for the same.

7.3.23 While it is true that entities promoted by or related to Panchariya sold some of the shares of the six companies mentioned in the said Show Cause Notice on Indian Stock Exchanges and received consideration, it is false to state that the said money was used to release the pledge made in favour of Euram by the issuer companies. The loans taken by Vintage were repaid within the stipulated time using the proceeds of sale of GDRs to Euram (FIls) (not all of whom are promoted by or related to Panchariya) and by own funds of Vintage; SEBI has not shown any correlation between the sale of shares by the FIIs in India and the release of pledge by Euram; Vintage still holds GDRs of some of the companies while the loan availed by Vintage to takedown the GDR issues of the respective company is not outstanding and there is no pledge on the GDR Subscription Money; that the purported *'Panchariya GDR Scheme'* set out in paragraphs 14 to 22 of the Investigation Report is mere conjecture and surmise.

7.3.24 Pan Asia has provided all the relevant details regarding initial investors to the GDR issues and that the same are true and correct as per records available with them.

7.3.25 All investors in IFCF are Non Residents; like the stock exchange systems in India, EUROCLEAR does not disclose the details of counterparties to OTC trades conducted on it. Therefore, Panchariya's statement that IFCF was not aware of the seller is true and correct.

7.3.26 IFCF, Vintage and other entities that have dealt in GDRs or shares of Indian Companies are distinct and separate corporate bodies run by their respective Board of Directors. Investment decisions in the said companies are taken by the Board of Directors or by an empowered committee of the Board and not taken by an individual.

7.3.27 Pan Asia's role in the GDR issues concluded with the listing of the GDRs on the Luxembourg Stock Exchange. As a director of Pan Asia and otherwise, Panchariya's role in the GDR issue also concluded with the listing.

8. I have considered the SCN issued to Pan Asia and Panchariya alongwith the Investigation Report provided therein, their replies to the same alongwith the submissions made during the personal hearing before me and all other relevant material available on record. In light of the same, I shall now proceed to deal with the charges levelled against Pan Asia and Panchariya in the SCN.

Consideration of Issues and Findings –

9. I note that in their replies, Pan Asia and Panchariya have *inter alia* submitted that SEBI does not have jurisdiction over them and neither of them can be termed as *"persons associated with the securities market in India"*. 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 the stocks of the companies trading in Indian market. I further note that the underlying security of the GDRs are Indian securities and the two–way fungibility scheme for GDRs allows for conversion of GDRs in Indian market and vice versa, and the impact of such issuance, cancellation/conversion and sale/transfer of shares so converted has direct bearing on the securities market in India.

ii. The Hon'ble Gujarat High Court in the matter of *Karnavati Fincap Limited vs. Securities and Exchange Board of India [1996 87 Comp Cas 186 Guj]* had observed: *"The words "other persons associated with the securities market" have not been defined in the Act. The question then arises whether "persons associated with the securities market" takes its colour from persons enumerated in clause (ba). If one has to go by the literal meaning, the interpretation which restricts the meaning of "persons associated with the securities market" to the persons enumerated in clause (ba) is not acceptable. In ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries."Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market…".* From the above, I observe that a person need not necessarily be an intermediary or registered with SEBI in any capacity to fall within the ambit of *"persons associated with the securities market"*. In view of these observations, I do not find any merit in the contention of Pan Asia and Panchariya that because they are not intermediaries or were registered with SEBI, they are not subject to SEBI's jurisdiction. Rather, I observe that the activities of Pan Asia and Panchariya have had a direct connection on the securities market in India as amply brought out in the Investigation Report and in the SCN and therefore they certainly fall within the ambit of *"persons associated with the securities market"*.

iii. 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."*

Thus, it is clear from the observations of the Hon'ble Supreme Court that any actions/omissions, etc. by any entity which affects the interests of, welfare of, wellbeing of, or security of inhabitants of India, and Indians is subject to Indian jurisdiction. In the instant case, I find that Panchariya and Pan Asia have engaged in fraudulent activities adversely affecting the well being of investors in the Indian securities market. In view of the foregoing, I am of the considered view that SEBI has full jurisdiction to issue directions against Pan Asia and Panchariya. For similar reasons, in the context of the instant matter, I also find that SEBI has jurisdiction over entities controlled by Panchariya.

10. I note that in his reply, Panchariya has *inter alia* submitted that he was not connected to any person or entity named in the Investigation Report in the manner alleged therein. In this regard, I note that: –

i. As per the findings contained in the Investigation Report, the Financial Market Authority (Austria) (hereinafter referred to as "**FMA**"), vide its letter dated March 27, 2012, had informed SEBI that the major investor in Class A shares of IFCF was Vintage. I note that Vintage was controlled by Panchariya who was its beneficial owner. Further, as per the Know Your Client documents furnished by Euram through the FMA, Panchariya was revealed to be the authorised signatory of Vintage. I note that in his reply, Panchariya has admitted that he was a 100% shareholder of Vintage till November 2010.

ii. I note that while Panchariya has also admitted that he was one of the directors of IFCF until October 2010 (i.e. during the period of issuance of GDRs), he has nonetheless submitted that such fact would not mean that he exercised any control over IFCF and that the investment decisions were taken by the Board of Directors. In this context, I note that Panchariya was the Chief Investment Officer of IFCF and also 100% shareholder of Cardinal Capital Partners Ltd. ("**CCPL**") which in turn held 100% shareholding of IFCF. I am therefore of the considered view that Panchariya was beyond doubt in a position to control the decisions of IFCF.

iii. Similarly, in case of Alka, Panchariya has submitted that he holds just 2.08% shares. However, I observe from BSE web-site that the promoter group of Alka predominantly consists of family members of Panchariya, whose shareholding constitutes approximately 14% of the total shareholding in such company.

iv. Further, I note that during the hearing before me, Panchariya has admitted that he was 100% shareholder of Pan Asia at the time of issuance of GDRs by the Issuer Companies.

v. I also note from the findings of the Investigation Report that Panchariya was connected to other entities viz. Alkarni, Oudh, Basmati and SV, who were the counterparties for large portion of shares sold by FIIs/Sub-Accounts subsequent to cancellation of GDRs issued by the Issuer Companies.

vi. From Panchariya's reply, I note that he has submitted that the arrangements between Credo and Vintage and between Credo and KII were not subject to the jurisdiction of SEBI or Indian law and were admittedly not in violation of applicable laws. I am unable to accept that this was a mere commercial arrangement without any sinister motive. On the contrary, I observe that as per the Agreement between Credo and Vintage, the loan was extended to Credo for further on-lending to KII with an explicit provision that the market risk was ultimately borne by Vintage. I thus find that the arrangement between Panchariya and Credo (and thereby with KII) was carried out with a sinister motive to enable KII to somehow sell the shares arising out of the conversion of GDRs in the Indian securities market.

vii. I find that the submissions made by Panchariya in his reply appear contradictory since on the one hand he has submitted that he was not connected to any person or entity named in the Investigation Report in the manner alleged therein, on the other hand he has however, himself admitted his connection with certain entities viz. Vintage, IFCF, Alka and Pan Asia. In view of the foregoing paragraphs wherein the basis of connection of Panchariya with Vintage, IFCF, Alka, Pan Asia, Alkarni, Oudh, Basmati, KII and SV, has been brought out, I am inclined to believe that Panchariya was in a position to exert substantial influence on the activities of these entities. Panchariya's influence is clear at every stage from the issuance of

GDRs to the sale of the converted shares to the Indian investors as amply brought out in the Investigation Report and the SCN.

11. I note that in his reply, Panchariya has submitted that there was no illegality in the Loan Agreement entered into between Vintage and Euram in the six GDR issues that were examined. In this regard, I note that –

i. Panchariya has submitted that the Loan Agreement and Pledge Agreement, which were signed between the Issuer Companies and Euram, were legal in Austria and that it is erroneous for SEBI to judge the legality of such arrangement on the basis of Indian law since the same does not apply to transactions outside India and even the law and jurisdiction agreed to between the parties to the Loan Agreement and Pledge Agreement is that of Austria and Vienna. Whether or not the above arrangement is legal in Austria or which jurisdiction would be attracted in case of a dispute between the parties to the arrangement, is not the material issue. The material issue is whether such an arrangement involving an Indian company issuing GDRs and creating a pledge on the proceeds thereof to enable Euram to lend to Vintage for subscribing to the GDR issue is legal or not under Indian law. Furthermore, the GDRs have their underlying as Indian shares. For the aforementioned reasons, I am fully convinced that SEBI has full jurisdiction over the matter.

ii. Panchariya has also contended that the objective of the Loan Agreement and Pledge Agreement was simply to take down the GDR issue which is a legitimate practice in the jurisdiction where the transaction was entered into viz. Austria. During the course of the hearing, it was contended that the Loan Agreement and Pledge Agreement were independent agreements which are mutually exclusive. To illustrate the contention, Panchariya submitted that in the case of Asahi, the Loan Agreement was executed on April 22, 2009, while the Pledge Agreement was executed on April 28, 2009. However, during the hearing, Panchariya, in response to a query on when the disbursement of loan to Vintage had taken place, clarified that the disbursement of loan by Euram had actually occurred immediately subsequent to the execution of Pledge Agreement by Asahi i.e. on April 28, 2009. In view of the same, it is very

clear that the Loan Agreement and Pledge Agreement draw strength from each other and are so intimately connected that they cannot be viewed separately in isolation.

iii. It was further contended that the release of pledge occurred subsequent to repayment of loan by Vintage. In case of Asahi, the loan amount was paid in three installments i.e. on December 16, 2009; December 18, 2009 and December 21, 2009. During the hearing, on being asked as to when Asahi finally received the funds, Panchariya replied that it was immediately after the pledge was lifted. Thus, it is apparent that because of the pledge so created by Asahi through the Pledge Agreement, Asahi was not in a position to utilise the GDR proceeds in any manner till the loan by Vintage to Euram was repaid. This process took almost a full eight months.

iv. The same modus operandi was observed in respect of the other Issuer Companies too. This is clear from the details provided below –

Name of scrip	**Date of Loan Agreement (on execution)**	**Date of Pledge Agreement (on execution)**	**Date of disbursement of funds**	**Loan Amount (in USD)**	**Date of repayment of loan**
IKF Technologies	28-Apr-09	28-Apr-09	14-May-09	10,98,84,878.44	25-Jul-11
Avon	12-Jun-09	12-Jun-09	19-Jun-09	1,00,00,000.00	27-Apr-10
CAT Technologies	28-Oct-09	27-Oct-09	06-Nov-09	1,00,02,737.91	11-Jan-10
K Sera Sera	08-Oct-09	06-Oct-09	15-Oct-09	2,99,84,094.60	05-Oct-10
Maars Software	31-Jul-07	01-Aug-07	11-Oct-07	1,79,33,400.00	16-Sep-08

v. In light of the above, it is clear that the Loan Agreement entered into between Vintage and Euram form an inseparable element of another Bi-partite agreement viz. Pledge Agreement, whereby the Issuer Companies, in turn, pledged the proceeds of GDR subscription as collateral for the loan availed by Vintage from Euram. Such arrangement is specifically prohibited under Indian laws. In this regard, I note that section 77(2) of the Companies Act, 1956, states: *"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". Further, I 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 PFUTP Regulations. I, therefore, find no merit in the submission of Panchariya that there was no illegality in the Loan Agreement entered into between Vintage and Euram since the same when viewed in light of the Pledge Agreement would indicate that Panchariya has violated the provisions of PFUTP Regulations. Incidentally, Regulation 3 of the Foreign Exchange Management (Guarantees) Regulations, 2000 (hereinafter referred to as "**FEMA Regulations**"), stipulates that *"save as otherwise provided in those regulations, or with the general or special permission of the RBI, a person resident in India is prohibited from giving a guarantee in respect of a transaction which has the effect of guaranteeing a debt, obligation or other liability, incurred by a person resident outside India."*

vi. As the lead manager to the issue of GDRs, Pan Asia and Panchariya would most certainly be aware of the applicable Indian laws. Further, Vintage, which was controlled by Panchariya, would have also been aware of the illegality of the arrangement. It was admitted during the hearing by Panchariya that the funds were disbursed to Vintage by Euram only after the Pledge Agreements were executed by the Issuer Companies. Since the Pledge Agreement and Loan Agreement are inextricably linked, the nexus between Panchariya and the Issuer Companies to enter into a prohibited arrangement is very obvious. As such, by entering into such a prohibited arrangement alongwith the promoters of the Issuer Companies, Panchariya has connived in this fraudulent arrangement and that this arrangement, by no stretch of imagination, can be termed as a simple take down transaction.

vii. The existing shareholders and prospective investors were aware of the positive news that the Issuer Companies had raised foreign capital through GDRs but equally they were completely unaware of the activities of Panchariya alongwith the connected entities, in such GDR issues. The fact that the GDRs were issued pursuant to a fraudulent arrangement entered into by Panchariya through Vintage and that the initial investors as declared by Pan Asia/Issuer

Company largely did not exist was not in the public domain. As a result, the investors in India were lulled into thinking that stocks of the Issuing Companies have been highly valued by foreign investors. The Indian shareholders, investors, etc. were therefore adversely affected by misleading signals of Panchariya alongwith the connected entities providing exit to the Sub-Accounts. Panchariya has thereby committed a fraud at every stage of the GDR process to the ultimate detriment of investors in Indian securities market. As a consequence, I find merit in the charge contained in the SCN that the fraudulent arrangement resulting in full subscription of GDRs of the Issuer Companies had acted as an inducement for other persons to offer to buy the shares of the Issuer Companies in the Indian securities market.

12. In response to the charge of furnishing false information to SEBI, it is clear that IFCF's assertion as articulated by Panchariya that all its investors are non-Indian is false as Panchariya holds an Indian passport. I, therefore, find that Panchariya as Chief Investment Officer of IFCF has therefore tried to mislead SEBI in this regard.

Consideration of Issues specific to Pan Asia –

13. Further, with regard to Pan Asia's submission that it is not under any duty/obligation to SEBI to furnish details of initial investors to SEBI, I find that SEBI has jurisdiction over Pan Asia as adequately explained in preceding paragraphs in respect of Panchariya. Further, Pan Asia's submission that it had not received the communication from SEBI seeking details of initial investors is contrary to facts as I observe that it had furnished certain other information with regard to the same summons but failed to furnish details of the initial investors.

14. SEBI obtained the information regarding the initial investors in GDRs from the Issuer Companies who in turn had received the same from Pan Asia. These details of initial investors were found to be false. Pan Asia, however in its submission denied that as lead manager to the GDR issue of Issuer Companies, it had deliberately provided false information regarding initial investors in the GDR issues. Panchariya, on the other hand, contended that the information regarding the subscription to the GDRs, provided by the issuer companies is correct and truthful since Vintage was not the sole subscriber to the GDR issues. In this regard, I note that the Loan and Pledge

Agreement make it clear that Vintage alone was the sole initial subscriber to the GDR issues. As such, portraying or otherwise causing to portray other investors as initial investors would amount to furnishing incorrect information. From the submissions made by the Issuer Companies to BSE and to SEBI, I find that completely different investors other than Vintage, were shown as initial investors. I therefore find that Pan Asia has caused false information to be published and disclosed to the stock exchange.

15. Further, the SCN has charged that the addresses of some of these initial investors provided by Pan Asia through the Issuer Companies were found to be incorrect by the foreign regulators in those jurisdictions. In this connection, Panchariya has questioned the methodology adopted by SEBI for verifying the address of the initial investors from foreign regulators. Panchariya has submitted that such methodology was inadequate because the initial investors were often special purpose vehicles incorporated for the purpose of making the investment and thereafter disbanded. I find, however, from the replies that in some cases, the foreign regulators have stated that the address itself does not even exist. For example, I quote from the reply given by Monetary Authority of Singapore vide e-mail dated July 27, 2012: *"For Tradetec's address at Prudential Tower, there is no level 47(the highest floor is level 30) and Tradetec is not listed in the office directory. For Knightsbridge's address at Ngee Ann City Tower A, we discovered that #12-01 does not exist; the first unit on the 12th floor is #12-02. … Knightsbridge is also not listed in the office directory"*. Similarly, Financial Services Authority vide its e-mail dated October 10, 2012 has inter-alia stated that there is no entity by the name Figura in the UK's central Companies House Register. The fact that these entities are not even listed in the official directory of their home jurisdictions and that the addresses that have been declared by Pan Asia, exist only in fiction, make it obvious that Pan Asia and Panchariya have been trying to mislead SEBI.

Order –

16. While dealing with a matter of this nature, it would be worthwhile to refer to the following observations made by the Hon'ble SAT in matter of *V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal No.104 of 2011)* wherein it was held: *"… we are satisfied that the provisions of* Regulations 3 and 4 *of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to*

Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities…".

17. 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(1) and 4(2)(c), 4(2)(e)–(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, *inter alia* prohibit indulgence in 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.

18. Given the vital functions of protecting investors and safeguarding the integrity of the securities market vested in SEBI and the commensurate powers given to it under the securities laws, it is necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlies 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 Pan Asia and Panchariya by employing fraudulent arrangement with regard to the subscription

of GDRs and thereafter monetizing those GDRs through the sale of underlying shares of the GDRs have violated the provisions of Section 12A(a) –(c) of the SEBI Act read with Regulations 3(c)–(d), Regulations 4(1) and 4(2)(c), 4(2)(e)–(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, and have acted in a manner which is fraudulent and deceptive and to the detriment of the interest of investors in the Indian securities market.

19. I note that this is not the first time Panchariya has been involved in violating securities laws. I observe that earlier, SEBI had passed an order dated November 13, 2009 imposing monetary penalty for creating false and misleading appearance of trading in Alka and his involvement in publication of premature/misleading positive announcements. In view of the repetitive acts of Panchariya and the gravity of the offence that has been perpetrated by him as brought in the foregoing paragraphs, I am of the opinion that stern measures need to be taken against Panchariya and Pan Asia.

20. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of section 19 read with section 11(4) and 11B of the SEBI Act and regulation 11(1) of the PFUTP Regulations, hereby direct as follows –

    i. Pan Asia and Panchariya as persons connected to the Indian Securities market are barred from rendering services in connection with instruments that are defined as securities (as in section 2(h) of SCRA, 1956) in the Indian market or in any way dealing with them, directly or indirectly, for a period of **10 years,** from the date of this order.

    ii. Pan Asia and Panchariya are prohibited from accessing the capital market directly or indirectly, for a period of **10 years**, from the date of this order.

21. I note that vide the Interim Order dated September 21, 2011 (later confirmed through the Confirmatory Order on January 17, 2012), Pan Asia and Panchariya were *inter alia* barred from rendering services in connection with instruments that are defined as securities in the Indian market or in any way dealing with them, till further orders.

22. In this context, I note that Pan Asia and Panchariya have already undergone the debarment for a period of approximately one year and eight months. In view of this factual situation, it is clarified that the debarment already undergone by Pan Asia and Panchariya pursuant to the aforementioned SEBI Order shall be reduced while computing the period of debarment being imposed vide this order.

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

Place: Mumbai
Date: June 20, 2013

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