WTM/RKA/ISD/21/2015

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN THE MATTER OF RASOYA PROTEIN LIMITED

In respect of:
(1) Rasoya Protein Ltd.
(2) Mr. Anil Lonkar, Managing Director
(3) Mr. Prashant Duchakke, Executive Director
(4) Mr. Sameer Damle, Executive Director
(5) Mr. Ajay Singh, Executive Director
(6) Mr. Arun Panchariya
(7) India Focus Cardinal Fund
(8) Pan Asia Advisors Ltd (now known as the Global Finance and Capital Limited)
(9) Vintage FZE (now known as the Alta Vista International FZE)
(10) Mr. Mukesh Chauradiya, Managing Director/Manager of Vintage FZE

Appearances:

For Rasoya Protein Ltd and its directors: (1) Mr. Deepak Sanchety, Advocate
(2) Mr. Jaikishan Lakhwani, Advocate
(3) Mr. Nitish Bangera, Consultant

---

1. Vide *ad interim ex-parte order* dated September 24, 2014 (hereinafter referred to as the *'interim order'*), SEBI restrained the below mentioned 10 entities, (hereinafter collectively referred to as the "noticees" or individually by their respective names), from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever, till further directions:

Sl. No.	Name of the entity	PAN/Passport
1	Rasoya Protein Ltd. (RPL)	AABCM1757C
2	Mr. Anil Lonkar, Managing Director, RPL	AAHPL2701Q
3	Mr. Prashant Duchakke, Executive Director, RPL	AEGPD0977B
4	Mr. Sameer Damle, Executive Director, RPL	AFKPD2850C
5	Mr. Ajay Singh, Executive Director, RPL	AMOPS6983Q

6.	Mr. Arun Panchariya	AEVPP6125N
7.	India Focus Cardinal Fund ("IFCF")	AABCI9518D
8.	Pan Asia Advisors Ltd (now known as the Global Finance and Capital Limited) ("Pan Asia")	Not Available
9.	Vintage FZE (now known as the Alta Vista International FZE) ("Vintage")	Not Available
10.	Mr. Mukesh Chauradiya, Managing Director of Vintage	(Passport No: Z2034007)

2. The *interim order* was passed taking into account facts as described therein and summarised *inter alia* as under:-

(a). Mr. Arun Panchariya was the Managing director and 100% shareholder of Pan Asia the Lead Manager to the Global Depository Receipt (GDR) issue of RPL of around USD 32 million. All the GDRs were subscribed by Mr. Arun Panchariya controlled entity, namely, Vintage. Mr. Arun Panchariya was also the beneficial owner and authorised signatory of Vintage which is owned and controlled by Alkarni Holdings Ltd. Mr. Arun Panchariya and his family members held 100% shares of Alkarni Holding Ltd.

(b). As on March 01, 2011, Vintage was allotted 10,44,571 GDRs of RPL. During the period March 17, 2011 to May 16, 2011, Vintage sold 1,54,750 GDRs for USD 79,92,501.19 to a subaccount namely, IFCF entirely owned by Mr. Arun Panchariya. Thus, the GDR issue was managed by entity controlled by Mr. Arun Panchariya and all the GDRs were subscribed by entity controlled by him.

(c). Vintage took a loan from an Austrian Bank, namely, Euram Bank, for the purpose of subscription of such GDRs. At the time of subscription of the GDRs, RPL simultaneously pledged complete subscription funds of USD 32 million, received from Vintage, with the Euram Bank as a collateral against the loan taken by Vintage for subscription of GDRs. While Vintage repaid USD 23 million to Euram Bank, RPL enabled USD 8 million to be transferred from its account to settle the loan taken by Vintage.

(d). RPL and persons in charge of its affairs, created a facade of GDR issuance of around USD 32 million, in connivance/collusion with Mr. Arun Panchariya, Pan Asia, Vintage and Mr. Mukesh Chauradiya wherein GDRs and underlying equity shares were created without receipt of consideration by RPL.

(e). In reality, after receipt of the GDR subscription proceeds, RPL was not capable of utilising the same until the loan was repaid by Vintage. This material information was actively and deliberately concealed from the investors in shares of RPL and the stock exchange and RPL made aforesaid false and misleading disclosures to BSE and general investors in its shares. In fact, in the event of default of Vintage in repayment of loan, the entire GDR subscription proceeds amount lying in the account of RPL with Euram Bank were to be realized by Euram Bank. Thus, GDRs had been issued by RPL without any

cost to the subscriber and without any consideration received by RPL at the time of subscription. However, those GDRs were still available to Vintage for further sale and conversion into underlying shares of RPL.

(f). RPL portrayed a false and misleading picture of availability of the proceeds of its GDR issue at its disposal for utilisation towards further expansion and diversification of its project to its investors and the stock exchange.

(g). The information regarding a GDR issuance is a price sensitive information and GDR issue by any listed company has direct bearing on the trading and prices of shares of the said company in Indian stock exchanges as immediately after the GDR issue of RPL there was spurt both in price and traded volume in its shares on the stock exchange.

(h). As more particularly described in the *interim order,* RPL had deliberately made false/misleading statements, misrepresented, actively suppressed and concealed material facts as part of device to perpetrate fraud on the investors in the Indian securities market.

3. It was, thus, *prima facie* observed that:

   (a) RPL and its directors namely, Mr. Prashant Duchakke, Mr. Anil Lonkar, Mr. Sameer Damle and Mr. Ajay K. Singh actively devised and employed the above observed *prima facie* fraudulent device/scheme in connection with dealing in securities in connivance/ collusion with and active involvement of Mr. Arun Panchariya, Vintage, Mr. Mukesh Chauradia, Pan Asia and IFCF.

   (b) Mr. Arun Panchariya, Mr. Mukesh Chauradia, Vintage, Pan Asia and IFCF also indulged in employing fraudulent plan/arrangement with regard to the subscription of GDRs and thereafter monetizing those GDRs through the sale of underlying shares of the GDRs and have acted in fraudulent and deceptive manner.

   (c) RPL made several false and misleading disclosures and also made misrepresentation of facts to the stock exchange and investors in its shares. It portrayed that GDR subscription proceeds were available with it for utilisation for disclosed objects of GDR issue whereas it had already pledged the said proceeds with Euram Bank to secure the repayment of purported loan of Vintage for subscription of GDRs. It had actively concealed material information with regard to pledge of entire GDR subscription amount.

   (d) Mr. Arun Panchariya using the entities owned/controlled by him was actively involved in the aforesaid *prima facie* fraudulent device/scheme in connection with dealing in securities. Sale of shares acquired by converting the fraudulently issued GDRs/ underlying shares tantamount to fraudulently dealing in securities by Mr. Arun Panchariya.

4. Pursuant to the *interim order*, RPL vide letters dated September 26, 2014 and October 13, 2014 and its directors vide letter dated October 13, 2014, sought inspection of documents that were relied upon for the passing of the *interim order*. The list of documents that RPL and

its directors desired to inspect was provided on October 16, 2014. Accordingly, an inspection was provided by SEBI to the said noticees on October 27, 2014 and various desired documents including KYC documents and account statement available with Euram Bank for Vintage and Pan Asia, Loan Agreement between Vintage and Euram Bank, pledge agreement between RPL and Euram Bank, Bank Statement of RPL with Euram Bank, etc., were provided to the representatives of RPL.SEBI has also provided the copies of the correspondence exchanged with the Financial Market Authority, Austria (FMA).

5. Thereafter, RPL vide letters dated October 29, 2014 and November 03, 2014, stated that certain documents as sought originally were not provided during inspection. Accordingly, a second inspection was provided on November 05, 2014 wherein the following documents pertaining to control of Mr. Arun Panchariya over other entities mentioned in order were provided:

   (a) Email from Mr. Arun Panchariya stating himself to be the Investment Manager to IFCF.
   (b) Extract of letter from IFCF stating its shareholding.
   (c) Copy of register of members of Alkarni Holding Ltd.
   (d) Share certificate of Alta Vista FZE on the name of Alkarni Holding Ltd.
   (e) Extract of letter from Pan Asia stating its shareholding.

6. Pursuant to the above, RPL vide letters dated November 07, 2014, November 11, 2014 and November 13, 2014, sought more information including copies of documents pertaining to correspondence with FMA. Accordingly, SEBI:
   (a) Vide letter dated November 21, 2014 provided further documents and clarified that while certain information had already been provided to RPL during inspections, some of the information sought by it pertained to third party and did not pertain to the current proceedings.
   (b) Vide email dated December 09, 2014 SEBI provided RPL with day wise sale of shares of RPL by IFCF.
   (c) Vide letter dated January 05, 2015, SEBI clarified to RPL that other than the correspondence inspected by RPL, no other request had been made by SEBI to FMA in the matter.
   (d) Provided a copy of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) which included the permissible uses of information and also informed RPL that the MMoU does not envisage any embargo/restriction with regard to the use of information when the same is obtained for conducting enforcement proceedings.

7. RPL and its directors vide subsequent letters had sought personal hearing in the matter. Accordingly, a personal hearing was scheduled in the matter for January 08, 2015 in respect

of all the noticees. Vide letter dated January 07, 2015, RPL and its directors informed SEBI that they have filed an appeal (Appeal no. 59/2015) before the Hon'ble Securities Appellate Tribunal (the Hon'ble SAT) impugning the *interim order* and sought an adjournment of the hearing till the disposal of the said appeal by the Hon'ble SAT. Of the remaining five noticees, four noticees did not confirm their attendance for the personal hearing and one noticee did not accept the notice for personal hearing. The Hon'ble SAT, vide its order dated February 16, 2015, disposed off the said appeal by RPL and its noticee directors with the direction to SEBI to give an opportunity of personal hearing to the appellants therein within 2 weeks' time and pass an appropriate order thereon within two weeks thereafter.

8. SEBI granted another opportunity of personal hearing to the noticees on February 27, 2015. RPL and its directors confirmed their attendance on the said date and vide letters dated February 16, 2015, February 24, 2015 and February 26, 2015 again sought certain information which they consider was not provided by SEBI. IFCF waived its right to personal hearing and submitted its written submission in the matter. Out of the remaining four noticees, three noticees, namely, Mr. Arun Panchariya, Vintage and Mr. Mukesh Chauradiya, in reply to the first notice of hearing, have challenged the jurisdiction of SEBI in this matter and did not attend the second personal hearing. Pan Asia neither replied to the *interim order* nor availed the opportunities of personal hearings despite service of the notices of personal hearing. I find that sufficient opportunities have been granted to these noticees and they are not keen to avail the same. In view of these facts and circumstances, I deem it appropriate to decide the matter in respect of these noticees, namely, Pan Asia, Mr. Arun Panchariya, Vintage and Mr. Mukesh Chauradiya on the basis of material available on record.

Submissions made by the noticees:

I. RPL and its directors:

RPL and its directors made the following submissions vide their letters dated November 27, 2014, November 28, 2014 and February 27, 2015 and made arguments on the same lines, during the personal hearing on February 27, 2015.

(1) After the *interim order* was passed, the authorised representatives of RPL took inspection of documents on October 27, 2014 and November 05, 2014. However, the documents sought in inspection vide letters dated September 26, 2014, October 13, 2014, October 21, 2014, October 29, 2014 , November 03, 2014, November 07, 2014, November 11, 2014 and November 13, 2014 have not been provided yet. Hence, RPL and its directors are deprived of an opportunity of making an effective and meaningful representation against the *interim order*, which is against the principles of natural justice.

(2) When any foreign regulatory authority provides information to SEBI, it is subject to

certain caveats. Details had been sought as to whether FMA had imposed any restrictions on the use of documents in any enforcement or judicial proceedings in inspection. Inspection of the letters received from FMA was essential to establish if the materials could be relied upon by SEBI. By refusing to provide these and other documents sought in inspection, grave prejudice has been caused to RPL.

(3) It is understood that SEBI has obtained information from FMA under the IOSCO Multilateral Memorandum of Understanding. In terms of clause 11(b) of the IOSCO Multilateral Memorandum of Understanding, SEBI is under an obligation to notify FMA prior to complying with any legally enforceable demand for documents and information received under the Memorandum of Understanding. SEBI has not provided a copy of the intimation sent by it to FMA. Moreover, in the present case, there was no "legally enforceable demand".

(4) SEBI has provided only unauthenticated photo copies of the documents purported to have been received from FMA, although a request was made for authenticated/certified copies of these documents. It is incumbent upon SEBI to produce the original documents or provide secondary evidence of the same to establish that the content of these documents is authentic (section 61 of the Indian Evidence Act). Without such proof being available, these unauthenticated photocopies cannot be relied upon by SEBI.

(5) Their reply is filed without prejudice to its position that SEBI does not have jurisdiction and/or authority to pass any order or investigate any alleged irregularities in the issue of Global Depository Receipts. The same has been held in *Pan Asia Advisors vs SEBI* (Appeal No. 126 of 2013, Order dated September 30, 2013) wherein, the Hon'ble SAT has held that:

> *"54. Be that as it may, in our considered opinion, GDRs seem to be sown, nurtured and nourished in countries abroad and right from their conception to their fruition, GDRs exist overseas. By no stretch of the imagination, can it be accepted that GDRs which are issued abroad can come within the purview of the SEBI Act. It would be appropriate to state that the Respondent in this case has, in fact, indulged in hot pursuit of the Appellants to bring them within its clutches without any legal basis for the same. We fail to see how jurisdiction over something brought into existence under a scheme launched by the Ministry of Finance, Government of India and the RBI in the first place can be assumed by the Respondent."*

(6) It cannot be denied that the Ministry of Finance (MoF) and Reserve Bank of India ("**RBI**") have jurisdiction in respect of issuance of GDRs. SEBI's Board Memorandum on 'Voting Rights of GDR/ADR holders' dated May 19, 2010 specifically states that "*it may be noted that the provisions relating to issue of ADRs/GDRs and matters incidental thereto are within the administrative control of the Ministry of Finance/RBI."* Even after SEBI's interim

order dated September 21, 2011 and final order dated September 19, 2014 in the matter of market manipulation using GDR issues, and the *interim order* in the matter of RPL being in the public domain and therefore, in the knowledge of RBI, these two authorities in their wisdom have decided not to initiate any action in the matter. This implies that they have not found any wrongdoing in the issuance of GDRs, which is undoubtedly under their jurisdiction. Moreover, there has been no action taken by any other foreign regulatory authority who have jurisdiction over GDRs.

(7) General Circular No. 43/2014 issued by the Ministry of Corporate Affairs on November 13, 2014 provides that "*The issue of FCCBs and FCBs by companies is regulated by the Ministry of Finance's regulations contained in Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 (Scheme) and Reserve Bank of India through its various directions/regulations. It is, accordingly, clarified that unless otherwise provided in the said Scheme or the directions/regulations issued by Reserve Bank of India, provisions of Chapter III of the Act shall not apply to an issue of a FCCB or FCB made exclusively to persons resident outside India in accordance with the above mentioned regulations.*"

(8) Issue of GDRs was also covered by the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993. Therefore, the Ministry of Corporate Affairs has itself clarified that the provisions dealing with prospectus and allotment of securities are not applicable to issue of GDRs. These are the sections which have been delegated to SEBI under the Companies Act, 2013. Therefore, it has been made clear that SEBI does not have jurisdiction on the issue of GDRs. SEBI is bound by the directions of the Government in this regard.

(9) Although as per the Depository Receipts Scheme, 2014 which came into force on December 15, 2014, any use of depository receipts which has potential to cause abuse of securities markets in India would be considered to be market abuse as per SEBI Act, 1992, the same was not applicable to GDRs under consideration here. Moreover, the GDRs were issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993, and there has been no clarification that market abuse would be as defined under the SEBI Act in that Scheme.

(10) In the case of *D.S.P. vs. K. Inbasagaran,* the Hon'ble Supreme Court while deciding a case relating to the Prevention of Corruption Act, held that when the Income-tax department had accepted the contention of the wife that the income belonged to her and assessed her accordingly, the CBI could not could not now allege that the money recovered from their house was unaccounted gain belonging to the husband, who was an IAS officer.

(11) In the matter of *Pancard Clubs Limited Vs SEBI* (Appeal No 254 of 2014), decided on September 17, 2014, SAT has held that although SEBI does have the power to pass ex-parte interim orders in certain cases, it must do so only upon showing the existence of circumstances which warrant such a drastic measure. However, the aforesaid *interim order* does not demonstrate that there are any circumstances that warrant such a drastic measure being taken against RPL or its directors without even completing the investigation.

(12) The banks and creditors of RPL have stopped providing credit to it, and RPL is unable to carry out its operations. Out of the four plants of RPL, it has been forced to close down three of its plants. Due to the *interim order*, RPL's employees, their families and the shareholders, are suffering critically.

(13) It is not SEBI's case that RPL or its directors hold any GDRs or may make an attempt to convert GDRs. Further, SEBI has not provided any evidence to indicate that Mr. Arun Panchariya, Vintage and/or IFCF were the holders of GDRs on the date of the *interim order* or immediately preceding that date and has also not provided the copies of documents indicating the GDR holding of all the entities mentioned in the *interim order*. Therefore, there is no rationale given in the *interim order* or otherwise for restraining RPL or its directors.

(14) The GDRs issued by RPL are currently listed and traded on the Luxembourg Stock Exchange (LSE) and freely tradeable on the said Exchange. The *interim order* has not put any restrictions on trading and conversion of GDRs into shares. The *interim order* has not stopped the holders of GDRs from cancelling their GDRs and selling them in the Indian Securities market. SEBI has not demonstrated that the *interim order* was served on LSE or the global Depository.

(15) SEBI had received a reference from Income Tax Department in October, 2012 regarding alleged irregularities related to RPL, but it made a reference to FMA in July, 2014. This in itself is sufficient to prove that there was no urgency involved in the matter and hence, SEBI should not have passed *interim order*.

(16) In *Zenith Infotech Ltd. v. SEBI*, Appeal No. 59 of 2013, decided on July 23, 2013, the Hon'ble SAT has held that:

> "27. *We are of the considered opinion that the impugned ad-interim ex-parte order dated March 25, 2013 is not sustainable in the eyes of law as it has been passed in gross violation of the principles of natural justice…We hasten to add that Respondent No. 1 is empowered to pass ex-parte ad-interim orders in urgent cases* ***but this power is to be exercised sparingly in most deserving cases of extreme urgency****. In the case in hand, on its own showing, we note that Respondent No. 1 had knowledge of the matter from the very beginning. Paragraph 8 of*

the impugned order itself makes it abundantly clear that the share price of ZIL fell from Rs. 190/- on September 23, 2011 to Rs. 45/- on November 30, 2011 just in 45 days. In our considered opinion September – October 2011 would have been the right time for SEBI to act, to protect interests of investors, provided it had jurisdiction to do the same in respect of the FCCBs in question. ***This, however, was not done for almost 15 months for reasons not made known to this Tribunal and any sort of urgency having already disappeared****, Respondent No. 1 should have given an opportunity to the Appellants by supplying a copy of the complaint and calling upon them to present their defence.*" (Para 27)

(17) It is settled in law that section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (the SEBI Act) do not empower SEBI to pass orders which are punitive in nature. The order passed against RPL and its directors is punitive and not remedial in nature. Restraining RPL or its directors in the manner stated in the *interim order* does not ensure that Mr. Arun Panchariya, Vintage and IFCF will not be able to convert and sell GDRs.

(18) Mr. Arun Panchariya, Vintage and IFCF were at no point debtors in the standalone or consolidated books of the RPL.

(19) The outstanding GDRs of RPL are as follows:

S. No.	Date	Percentage of Outstanding GDRs
1.	March 31, 2011	36.67%
2.	June 30, 2012	31.89%
3.	September 30, 2012	31.89%
4.	September 30, 2014	26.73%
5.	December 31, 2014	21.44%

(20) In the matter of *Sterlite Industries (India) Ltd v. SEBI*, Appeal No. 20/2001, decided on October 22, 2001, the Hon'ble SAT set aside the ban imposed on the appellant therein, noting that section 11B of the SEBI Act does not even remotely empower SEBI to impose penalties and held as under:

"*In this context, it is to be noted that the charge against the Appellant is of market manipulation. The shares of the Appellant are listed/traded in the stock exchanges even today. That being the case preventing the Appellant raising further capital/offering shares to the public in the next two years cannot serve as a preventive measure to debilitate the Appellant indulging in market manipulation. Similarly, by no stretch of imagination the said direction can be considered even remedial as prospective barring of a public issue cannot remedy an act of market manipulation allegedly indulged for a specific purpose, 3 years ago. A remedial action is normally seen as one intended to correct, remove or lessen a wrong, fault or defect…In my view the impugned order is neither remedial not preventive but punitive in effect as it takes away the Appellant's right to mobilise funds from the public to carry on its business*."

(21) In the matter of *Videocon International Ltd. v. SEBI*, Appeal No. 23/2001, decided on April 19, 2001, the Hon'ble SAT held that:

"*The Respondents have also stated that the impugned direction is issued in the interest of investors. But there is no explanation as to how the said direction is in the interest of investors at this point of time. In fact for the reason stated in the preceding paras issuing such a ban on the Appellant company raising capital for three years is against the interest of the investors and thereby against the purpose for which direction under section 11B is permitted to be issued. The view taken by this Tribunal in Sterlite case extracted above in relation to issuance of directions under section 11 and 11B, in equal force is applicable to the present case also. In the said view of the matter the impugned direction has no legal backing and therefore cannot sustain*."

(22) In the matter of *Roopram Sharma v. SEBI*, Appeal No. 20/2002, decided on September 19, 2002, the Hon'ble SAT held that:

"*In the instant case, I do not find any nexus between the Appellant's action and the direction issued to consider the same as a measure to prevent the Appellant indulging in such action in future or remedying the mischief arisen as a result of the Appellants action. A remedial action is normally seen as one intended to correct, remove or lessen a wrong, fault or defect. The impugned direction is found extraneous to the charge established against the Appellant. In my view the direction tantamounts to imposition of penalty which section 11B does not provide for, as explained in Sterlite (Supra). In this view of the matter I am of the view that the direction has no legal backing and therefore cannot sustain*."

(23) To enforce the *interim order*, it is necessary that a copy of the order is served on the global depositories holding the underlying shares. Despite repeatedly seeking proof from SEBI that the *interim order* has been served on the entities that can effectively enforce it, we have not been given the evidence. Therefore, it is submitted that the *interim order* is a nullity in law, since it cannot be enforced.

(24) In the case of *British India Steam Navigation Co., Ltd. v. Shanmughavilas Cashew Industries And Ors* 1990 SCC (3) 481, Supreme Court observed:

The question of jurisdiction in this case ought not to be determined by the High Court on the basis of the provisions of s. 28 of the Indian Contract Act in the absence of a specific provision making it applicable to transactions in international trade. The effective operation of statutes of a country in relation to foreigners and foreign property, including ships, is subject to limitations. ***In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to that effect is shown.*** *A statute extends to all persons within the country if that intention is shown… If the Parliament legislates in terms which extend to foreign ships or for- eigners beyond the territorial limits of its jurisdiction, the Indian court is of course bound to give effect to such enactment. However, no such provision has been referred to in the impugned judgments.* ***Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction****.*

(25) The Privy Council in *Sirdar Gurdyal Singh v. Rajah of Faridkote*, *[1894] AC 670 (684)* decided that no territorial legislation can give jurisdiction in personal action which any foreign court should recognize against absent foreigners owing no allegiance or obedience to the power which so legislates. Lore Selborne said:

"In a personal action to which none of these causes of jurisdiction apply, ***a decree pronounced in absentem by a foreign court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the courts of every nation except (when authorised by special local legislation) in the country of the forum by which it was pronounced."***

(26) The finding of SEBI that RPL has given, directly or indirectly, loan, guarantee, security, for the purpose of or in connection with the purchase of its shares by persons is incorrect and perverse.

(27) Without prejudice to our submissions, if SEBI's finding that RPL and its directors have contravened section 77(2) of the Companies Act, 1956 is accepted, the punishment for this contravention has to be the one provided under the Act. The punishment provided in section 77(4) of the Companies Act, 1956 is a fine of ₹10,000/- which is a punitive measure, not a preventive or remedial measure. For the alleged contravention of section 77(2) of the Companies Act, 1956, SEBI does not have any authority to restrain RPL and its directors under section 11 and 11B of the SEBI Act, 1992 and in several cases, SEBI has taken the decision not to invoke such directions in such matters.

(28) SEBI has not initiated similar proceedings in cases where there were similar allegations of "*directly or indirectly provided funds to certain entities who made application in its IPO*" against Den Networks Ltd. SEBI had initiated only adjudication proceedings in that case, which is a punitive measure. Since the provisions of law violated in both the cases is the same, SEBI is required to initiate the same proceedings. Moreover, SEBI had settled the adjudication proceeding initiated against Den Networks Ltd. and not passed any *ad-interim, ex-parte* order. In fact, the allegation against Den Networks Ltd. was that it had directly or indirectly provided funds to entities who had applied in the IPO. In the present case, there is no allegation that RPL has provided any funds to the GDR subscribers directly or indirectly.

(29) In the matter of *R.M. Shares Trading Private Limited. v. SEBI* (Appeal No. 204 of 2014, decided on August 7, 2014), the Hon'ble SAT had held that:

"5. In an Adjudication proceedings, if a party relies on adjudication order passed in an another case, then, judicial discipline demands that the Adjudicating Officer considers that order and thereafter passes an order either to follow or distinguish the earlier order or disagree with the order by recording reasons as to how that order is erroneous and ought not to be followed."

(30) In another case involving one of India's largest corporate houses, wherein SEBI investigation had revealed that the company had itself funded promoter entities to

whom warrants were allotted in 1994 by around ₹1000 crore for the purpose of payment of balance at the time of conversion of warrants in 2000. SEBI received complaints in 2000 and initiated investigation in 2002. SEBI never passed any interim order and in 2005, the investigation was completed. SEBI finally decided to initiate only adjudication proceedings in 2010 and even these proceedings are pending even though the Hon'ble SAT had disposed off the objections filed in April 2013 itself.

(31) Judicial discipline demands that SEBI must record reasons and provide a reasonable explanation for following different standards in cases where similar allegations have been made.

(32) In the matter of *India Focus Cardinal Fund vs SEBI* (Appeal No 82 of 2012, order dated June 27, 2012), certain shares mentioned in the order were held by the appellant were not under investigation by SEBI. The Hon'ble SAT allowed IFCF to sell these shares and repatriate the sale proceeds. On request of SEBI counsel, the Hon'ble SAT had stayed this order for 4 weeks to enable SEBI to file an appeal before the Hon'ble Supreme Court but no such appeal seems to have been filed by SEBI. There was no reason for SEBI to allow the sale proceeds as well but SEBI took no action. There was no reason for SEBI to allow IFCF to repatriate the sale proceeds if there was such serious allegations pending against it. By not appealing before the Hon'ble Supreme Court, SEBI itself has ceded ground in the GDR matter. Although scrips mentioned in the appeal were not subject matter of investigation by SEBI, SEBI could have used the sale proceeds from the sale of these shares to offset the penalty imposed on IFCF or to ensure that monies go to the company concerned.

(33) As regards the reference received by SEBI from the Income Tax Department ("IT"), RPL made the following submissions:

(a). Although IT reference states that the investor companies are not known to RPL and the investment has been arranged by the Lead Manager, namely, Pan Asia, SEBI has decided to adopt only those allegations that support its version.

(b). While IT has stated that the investment in GDRs has been made by investor companies of Australia, Singapore, Hong Kong and New Zealand, SEBI has chosen not to believe the same.

(c). IT has stated that no returns have been earned by these investor companies on their investment in the GDRs of RPL till date. It is possible that none of the GDR holders have sold their GDRs and hence, have not earned any returns. This in fact shows that the GDR holders have faith in the Company's future and are holding the GDRs to sell them at a later point of time.

(d). IT has stated that RPL has invested the entire amounts in Fixed Deposits in Euram Bank and is earning interest on the same. This clearly shows that amounts

had come to RPL after the GDRs were issued and it was earning interest on it as well, which were shown as interest in the accounts of RPL and these accounts have already been accepted by the Income-tax department. Therefore, SEBI does not have jurisdiction to question the GDR funds.

(e). RPL did not have strong financials and impressive financial statements to raise such large magnitude of GDR issuance, which was several times the size of the issued capital. It is not up to the Income-tax department or SEBI to judge the investment motives of the GDR holders and there are many companies in which investors invest based on future prospects of the company.

(34) RPL and its directors have prayed:

(a). to immediately withdraw the *interim order* with respect to RPL and its directors; and

(b). to provide all the documents/information sought under inspection at the earliest.

(35) RPL has undertaken on behalf of Mr. Anil Lonkar, Mr. Prashant Duchakke, Mr. Sameer Damle, Mr. Ajay Singh and itself that they will not access the securities market or buy, sell or deal in securities or any instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever for a period of three months (ending on May 31, 2015) so that investigation can be completed in this matter.

(36) In the interests of public shareholders of RPL, without admitting the allegations, it is willing to settle the matter as was done in the matter of Den Networks Ltd.

(37) RPL reserves its right to file additional submission, produce documents, seek documents under inspection and additional personal hearing in the matter, as may be required.

II. **IFCF:**

With respect to the personal hearing scheduled on January 08, 2015, IFCF vide email of the same date had sought additional time for appearing for the hearing. Thereafter, in reply to the second notice of personal hearing on February 27, 2015, IFCF vide email dated February 26, 2015 replied that it does not desire a personal hearing and submitted its written submission vide email dated March 04, 2015:

(1) IFCF is a limited liability company incorporated under the laws of the Republic of Mauritius and is duly registered with SEBI as a Sub-account of European American Investment Bank (Euram Bank) which is a Foreign Institutional Investor (FII) registered with SEBI. Its business is equivalent to that of a mutual fund/hedge fund with its investors being foreign corporates and institutional investors, none being Indians or Non Resident Indians (NRI). Its investors are entitled to redeem their

investment as and when desired.

(2) They cater to only those investors who are willing to invest a minimum amount of US$100,000/- Even in the case of existing shareholders, additional investment can be only for a minimum amount of US$50,000/-. They have different schemes of investment, referred to as Classes wherein Class A pertains to Arbitraging (i.e. Buying Global Depository Receipts (GDR's) and cancelling and selling the converted shares).

(3) IFCF while seeking registration as a Sub Account with SEBI had specifically informed that its investment objective is *inter alia* availing arbitrage opportunities such as the use of ADR's, GDR's, convertible arbitrage and capital structure arbitrage, subject to Indian Regulatory restrictions.

(4) Their major investment strategy in the said Class A scheme is arbitraging between GDR's prices and the underlying share price. They, therefore, as a regular permissible strategy, purchase GDR's in foreign stock exchanges where the same are listed, then cancel the GDR's and converts the same into equity shares and sells the said equity shares in the Indian secondary market vide screen based platform/trading system of Indian stock exchanges.

(5) They comply with all applicable laws, rules, regulations, etc. and have never defaulted in meeting payment/delivery obligation.

(6) They deny all allegations made in the *interim order* and submit that some are mere conjectures and surmises based in an incorrect understanding/assumption that they alongwith other entities were controlled by Mr. Arun Panchariya.

(7) They are not concerned with issue of GDRs by RPL as they have not subscribed to it.

(8) They are not aware of and were not involved in arranging loans for subscription of the GDRs of RPL. The allegation that RPL in turn pledged the subscription proceeds received from Vintage for loan availed by Vintage from Euram Bank for subscription of GDR issue of RPL, is denied for want of knowledge.

(9) The allegation that RPL was not capable of utilizing the subscription proceeds and the said information was not available to investors in India, is denied for want of knowledge.

(10) IFCF is not aware of any price manipulation or false or misleading disclosures made by RPL and about any transfer of funds of RPL.

(11) IFCF bought GDRs in Over the Counter (OTC) transactions and not from Vintage as alleged. They still hold huge quantities of shares which have resulted out of conversion of GDRs.

(12) As per its investment strategy specifically disclosed to SEBI in 2008, it was open for the GDR subscribers to sell the GDRs whenever they wanted and IFCF would buy the same and convert it into shares. Therefore, the said transactions were completely *bona fide*, legitimate and permitted.

(13) IFCF is not related to Mr. Arun Panchariya and Vintage. Mr. Arun Panchariya was one of the directors of IFCF until October 28, 2010. However, the investment decisions would be taken only collectively by the board of directors and therefore it is incorrect to allege that IFCF was under the control of Mr. Arun Panchariya. In any case, Mr. Arun Panchariya was neither the whole time director nor the managing director of IFCF.

(14) IFCF is not aware that Mr. Arun Panchariya was the Managing Director and was holding 100% shares of Pan Asia and is not concerned with the same in any manner.

(15) SEBI's allegation that Mr. Arun Panchariya controlled Vintage and was also its authorized signatory, is denied for want of knowledge.

(16) IFCF denies that it indulged in employing fraudulent plan/arrangement regarding subscription of GDRs and, thereafter, monetizing the same through sale of underlying shares of GDRs.

(17) GDRs were acquired by IFCF in Over the Counter Transaction and therefore, it is impossible for us to be aware of the counter party to our transaction. Hence, the allegation that GDRs were transferred from Vintage is incorrect and baseless.

(18) The allegation that GDRs and the underlying shares were created without receipt of consideration by RPL and such facade enabled them to induce and allure the Indian investors to buy more equity, is denied for want of knowledge.

(19) Before the *ad-interim ex parte* dated September 21, 2011 passed by SEBI, no order was ever passed/issued by any regulatory authority against IFCF. The SEBI order dated September 21, 2011 was confirmed by SEBI vide its order dated December 30, 2011, which was disposed of by the Hon'ble SAT vide order dated June 27, 2012.

III. Mr. Arun Panchariya, Mr. Mukesh Chauradiya and Vintage:

(1) In reply to the first notice of personal hearing, the entities hace contented that SEBI

does/did not regulate and does/did not have any role to play in relation to the activity of the issuance of GDRs and that RBI is/was the regulator that regulates the Indian aspects of such issuances of GDRs. Further, it has been contended that SEBI cannot have any jurisdiction over any of the activities related to the issuance of the GDRs and the same has been held by the Hon'ble SAT in the matter of *Pan Asia and others Vs SEBI* in its majority judgment dated September 30, 2013. As SEBI appeal against the SAT order in Hon'ble Supreme Court is pending as on date, the matter is *sub judice*.

(2) No reply has been received from these noticees in respect of the second notice of personal hearing dated February 18, 2015.

9. I have carefully considered the allegations in the *interim order*, their replies/submissions and the relevant material available on record. I note that the *interim order* was passed against the entities therein on the basis of same facts, same set of transactions in the same scrip, during the same investigation period. In view of the nature of alleged transactions, connections/relations and other attendant facts and circumstances of this case, I deem it appropriate to deal with the replies/submissions of all the noticees herein by way of this common order. I also note that sufficient opportunities have been granted to the all the noticees to submit their replies to the *interim order*. However, only some of the noticees have filed their replies in the matter and/or availed the opportunity of personal hearing. The remaining have not availed the opportunity personal hearing despite service of the notices of personal hearing on them. In my view sufficient opportunities have been granted to such noticees and they are not keen to avail the same and as such the principles of natural justice have been duly complied with. In view of these facts and circumstances, I deem it appropriate to decide the matter in respect of these noticees, namely, Pan Asia, Mr. Arun Panchariya, Vintage and Mr. Mukesh Chauradiya on the basis of material available on record.

10. Before dealing with submissions of the noticees on merit, I deem it necessary to deal with the preliminary objections raised by RPL and its directors regarding non-furnishing of documents by SEBI. RPL and its directors have contended that they have not been provided with copy of the intimation sent by SEBI to FMA prior to using the information provided by the latter and that only unauthenticated copies of documents received from the latter have been provided to them. I note that RPL and its directors have been given inspection of the documents relied upon for passing the *interim order,* and copies thereof on various dates, viz. October 27, 2014 and November 05, 2014. SEBI has also provided to RPL copies of the correspondence exchanged with FMA and other documents as available on record and relied upon for passing the *interim order*. Further, several other documents, as mentioned in para 6 above, have been furnished to RPL and its noticee directors. SEBI has also provided copy of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) to RPL which includes the

permissible uses of information exchanged between member countries. SEBI has also informed RPL that the MMoU does not envisage any embargo/restriction with regard to the use of information when the same is obtained for conducting enforcement proceedings. I, therefore, find that principles of natural justice have been duly complied with in this regard.

11. RPL has repeatedly sought documents in support of Mr. Arun Panchariya being in control over Vintage, IFCF and Pan Asia. These documents have been provided by SEBI to RPL during inspection. RPL has also sought copies of file notings pertaining to investigation carried out in the matter. I note that vide letter dated November 21, 2014, it has already been clarified to these noticees that vide the *interim order* SEBI has authorised investigation in the matter and the same is self-explanatory.

12. I note that some of the information/documents sought by RPL and its directors pertained to third party and/or did not concern the instant proceedings and as such have not been provided to them. Further, RPL and its directors have not been able to demonstrate as to how non-furnishing of these documents would cause prejudice to them. In this regard, I note that in the case of *M/s. Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9)SCC31] the Hon'ble Supreme Court had observed that -"*the theory of reasonable opportunity and principle of natural justice have been evolved to uphold the rule of law and to assist the individual to indicate his just rights. Whether, in fact, prejudice has been caused to an employee or not on account of denial to him of the report has to be considered on the facts and circumstances of each case. Even in cases where procedural requirements have been complied with, action cannot be ipso facto illegal or void, unless it is shown that non-observance has prejudicially affected the delinquent."*

13. In view of the above, I find that all the documents that were relied upon for passing the *interim order* has already been furnished to RPL and its directors and no injustice whatsoever has been caused to them.

14. I now proceed to deal with the contention of the noticees regarding jurisdiction and powers of SEBI as contended by the noticees. RPL has relied upon the order of the Hon'ble SAT in the matter of *Pan Asia Advisors Vs SEBI* (Appeal No. 126 of 2013, Order dated September 30, 2013) and has contended that only the MoF and RBI have jurisdiction in respect of issuance of GDRs. I note that SEBI has filed an appeal against the said order of the Hon'ble SAT before the Hon'ble Supreme Court, which has stayed the operation of the said order.

15. It is common knowledge that when a listed Indian company (RPL in the instant case) issues GDRs, the underlying security of such GDRs are the shares of the said listed company. Such GDRs can be exchanged with the underlying shares forming part of authorised share capital of the listed company. After exchange/conversion of GDRs, such shares of listed companies are marketable in the Indian securities market and as such GDRs have direct bearing on the securities of such company. Further, the information pertaining to a GDR issuance is price

sensitive information and greatly influences decision-making by investors in the securities market. In the instant case, on March 01, 2011, RPL had made a disclosure to BSE that its board of directors at its meeting held on March 01, 2011, *inter alia,* had transacted the business of closure of GDR issue and allotment of 2,08,91,420 equity shares representing 10,44,571 GDRs and that RPL had raised capital amounting to US$ 3,19,95,209.73 (equivalent to ₹145 crore) through such issuance.

16. The *interim order* has not attempted to enforce issuance of GDRs or to regulate the same. The *interim order* clearly brings out the reasons for passing the directions contained therein. It is very clear from the *interim order* that SEBI has not sought to initiate action for the contravention of the provisions of the Foreign Currency Convertible Bonds Scheme, 1993 (FCCB Scheme, 1993) by way of issuance of GDRs by RPL rather, it deals with the *prima facie* fraudulent activities relating to the securities market which are prohibited under the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (the PFUTP Regulations). The prime intention of the *interim order* is the protection of the interests of investors in securities including the shareholders of RPL and integrity of the securities market which are within the exclusive domain of SEBI under the SEBI Act as far as a listed company like RPL is concerned. In the instant case, RPL and persons in charge of its affairs, created a facade of GDR issuance in connivance/collusion with Mr. Arun Panchariya, Pan Asia, Vintage and Mr. Mukesh Chauradiya wherein GDRs and underlying equity shares were created without receipt of consideration by RPL. As discussed in the *interim order,* the noticees had not only entered into a pledge agreement with Euram Bank to secure the loans granted by Euram Bank to Vintage but also partly paid back the said loan. Such facade apparently enabled them to induce and allure the Indian investors to buy additional equity created in the form of underlying equity shares. Further, the deliberate false/misleading statements, misrepresentations of the material facts and active suppression and concealment of material facts as *prima facie* found in this case amount is a facet of *'fraud'* as defined in regulation 2(1)(c) of the PFUTP Regulations and would exclusively fall within the domain of SEBI in view of provisions of section 11(2)(e) and 12A of the SEBI Act. I, therefore, reject the contentions of the noticees and find that SEBI has jurisdiction to issue directions in the instant matter if it has reason to believe that the noticees have acted fraudulently to the detriment of investors in the Indian securities market.

17. With regard to the contentions of the noticees as to scope and ambit of powers of SEBI under section 11(1), 11(4) and 11(B) of the SEBI Act, I note that the scheme of the Act is very clear. It is pertinent to mention the relevant provisions which are as under:

Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in

securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

.....

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

……..

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Power to issue directions.

11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

18. It is settled position that the above provisions are unambiguous with respect to scope and ambit of SEBI's jurisdiction, and power to issue *interim* as well as final directions under

section 11 and 11B of the SEBI Act, pending inquiry or investigations. It is also settled position that both the sections are interconnected and co-extensive and the provisions of those sections are enabling provisions for the purpose of protection of interests of investors in the securities and the securities market. Further, the power conferred under those sections is of widest possible amplitude. In this regard, I deem it relevant to refer to few judgments of the Hon'ble SAT, the Hon'ble High Courts and the Hon'ble Supreme Court in the following paragraphs:-

(a). In *Bank of Baroda Limited* v. *SEBI(*2000) 26 SCL 532, the Hon'ble SAT held that:

"*Section 11 and 11B are interconnected and co-extensive as both these sections are mainly focused on investor protection. On a careful perusal of the said section 11 it could be seen that the SEBI has been in no uncertain terms mandated to protect the interest of the investors in securities by such measures as it thinks fit. However, the power under Section 11 is not unlimited. The Legislature has circumscribed this power, by putting the caveat that these measures are subject to the provisions of the Act. The ambit of power is contained within the framework of the Act. But within the statutory framework such power reigns.*"

(b). In the matter of *Ramrakh R. Bohra* v. *SEBI* [1999] 96 Comp Cas 623 (Bom) the Hon'ble Bombay High Court held as under :-

"Section 11B is an enabling provision enacted to empower SEBI to protect interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations inter alia by brokers. Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it.

The said power to issue directions under Section 11B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective including the power to pass interim orders in aid of the final orders. ....."

In this case, the Hon'ble Bombay High Court further held that -

"28. If one has regard to the aforesaid principles, it would follow that the power which has been conferred by Section 11B to issue directions are of the widest possible amplitude and are exercisable in the interest of investors and in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interests of the investors or the securities market. The said power to issue directions under Section 11B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these posers fully effective including the power to pass interim orders in aid of the final orders."

(c). In the matter of *Anand Rathi & Others Vs. SEBI (2002 (2) Bom CR 403)*, the Hon'ble Bombay High Court has upheld the powers of SEBI to pass such orders under sections 11 and 11B of the SEBI Act as under:-

" While considering the question as to whether the SEBI has authority of law under Sections 11 and 11B to order interim suspension, we have to bear in mind that SEBI is invested with statutory powers to regulate securities market with the object of ensuring investors protection, orderly and healthy growth of securities market so as to make SEBI's control, over the capital market to be effective and meaningful. It cannot be gainsaid that SEBI has to regulate speculative market and in case of speculative market varied situations may arise and looking into the exigencies and requirements, it has been entrusted with the duty and functions to take such measures as it thinks fit. Section 11B is an enabling provision enacted to empower the SEBI Board to regulate securities market in order to protect the interest of the investors. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is well settled principle of statutory construction that it is the duty of the Court to further Parliament's aim of providing of a remedy for the mischief against which enactment is directed and the Court should prefer construction which will suppress the mischief and advance remedy and avoid evasions for the continuance of the mischief."

(d). In the matter of *Karvy Stock Broking Ltd. Vs. SEBI.* Appeal No.92 of 2006 the Hon'ble SAT held as under:

"The introduction of sub section (4) in section 11 and various other provisions like section 11B is indicative of the legislative intent. These provisions are meant to arm the Board with authority so as to be able to effectively exercise power and achieve the declared objectives of the Act.

..……

We cannot lose sight of the fact that the Board has to regulate a speculative market and in such a market varied situations may arise all of which cannot be envisaged and there may be an urgent need to pass an order even when an inquiry or investigation is pending. ……..

On an examination of the provisions as noticed above, we find that the legislative scheme is clear. The provisions of the Act are basically intended to protect the interests of the investors and to promote the market. However, the Act as initially enacted provided primarily for taking promotional or protective measures. The power to take preventive or punitive measures was implicit

…….....……

Now it has been expressly extended to taking even the preventive or punitive measures. Without doubt, these, too, are ultimately aimed at achieving the basic objectives of investor protection and promotion of the development and regulation of the securities market as contained in the preamble.

……

In view of the above, we hold that the word 'inquiry' used in section 11(4) refers to the inquiries held under sections 11, 11B, also to the enquiry under the inquiry regulations framed under section 12(3) and also to the inquiry held under Chapter VIA and it is during the pendency of any of these inquiries that an interim order could be passed with a view to protect the interests of investors or in the interest of the market."

(e). The Hon'ble Supreme Court in the matter of *SEBI vs Ajay Agarwal* (Civil Appeal No.1697 of 2005) held as under:

" 41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.

42. Keeping this principle in mind if we analyse some of the provisions of the Act it appears that the Board has been established under Section 3 as a body corporate and the powers and functions of the Board have been clearly stated in Chapter IV and under Section 11 of the said Act.

43. A perusal of Section 11, Sub-Section 2(a) of the said Act makes it clear that the primary function of the Board is to regulate the business in stock exchanges and any other securities markets and in order to do so it has been entrusted with various powers.

……. Sub Section (4) of Section 11 of the said Act, which gives the Board the power to restrain persons from accessing the securities market and to prohibit such persons from being associated with securities market to buy and sell or deal in securities."

19. In my view, section 11(1) of the SEBI Act casts the duty on SEBI to protect the interests of the investors, promote development of and regulate the securities market, "*by such measures as it thinks fit"*. Apart from this plenary power, section 11(2) of the SEBI Act enumerates illustrative list of measures that may be provided for by SEBI in order to achieve its objective. One of the measures enumerated in 11(2)(e) is *"prohibiting fraudulent and unfair trade practices relating to securities markets"*. The word *'measure*' has not been defined or explained under the SEBI Act. It is well settled position that this word has to be understood in the sense in which it is generally understood in the context of the powers conferred upon the concerned authority. According to *Corpus Juris Secundum, 'measure '* means- *'anything desired to be done with a view to the accomplishment of a purpose, a plan or course of action intended to obtain some object, any course of action proposed or adopted by the Government'*. Measure is also understood *'as a means to an end'*. From the provisions of section 11, it is clear that the purpose of section 11(2)(e) of the SEBI Act is to prohibit all fraudulent and unfair trade practices relating to the securities market and the Board may take any '*measures'* in order to achieve this purpose.

20. On a careful reading of the above provisions of the SEBI Act, I note that the only circumference around SEBI's powers under sections 11 and 11B is the SEBI Act itself. The *'measures'* and the directions under section 11 and 11B of the SEBI Act can be taken/issued for prohibiting the fraudulent and unfair trade practices relating to securities market and achieving the objective of investor protection, and promotion of and regulation of the securities market. Though section 11(4) lists certain specific measures that may be taken either pending investigation or inquiry or on completion of such investigation or inquiry, its provisions are without prejudice to the provisions of sub-sections (1), (2), (2A), (3) and section 11B. Thus, the provisions of section 11(4) are clarificatory and do not limit or restrict the scope of power under section 11 and 11B of the SEBI Act. From the scheme of the SEBI Act and above referred judgments it is very clear that the provisions of section 11 and 11B are not limited as sought to be contended by the noticees. It is also pertinent to mention that the *interim order* has been passed in the course of preliminary inquiry and the investigation in the matter is ongoing. Based on the *prima facie* findings in the matter and in order to protect the interest of investors in the securities market, SEBI had issued directions vide the *interim order*. I note that RPL and its directors have cited certain other instances of

similar allegations, wherein SEBI has not initiated similar proceedings, i.e., passing of an *interim order*. I do not agree with these contentions of RPL as facts and circumstances of each case is different and SEBI has to take best possible action for the benefit of the investors and for the securities market. Whether any other enforcement proceedings, including adjudication proceedings, should be initiated in the matter or not is a prerogative of SEBI. Considering the facts and circumstances of this case, the choice of action cannot be challenged merely on the ground that in the facts and circumstances of a particular case, SEBI has taken or decided to take any other enforcement action suitable to that case. In the facts and circumstances similar to the instant case, SEBI has passed interim orders in the matter of market manipulation using GDR issues on earlier instances as well.

21. RPL and its directors have questioned the necessity and effectiveness of the *interim order* considering that no restriction was put on trading and conversion of GDRs into shares and that the *interim order* was not served on LSE, where the GDRs are listed or the Global Depository. I note that the *interim order* has clearly demonstrated how RPL and persons in charge of its affairs, created a facade of GDR issuance in connivance/collusion with Mr. Arun Panchariya, Pan Asia, Vintage and Mr. Mukesh Chauradiya wherein GDRs and underlying equity shares were created without receipt of consideration by RPL. Such facade apparently enabled them to induce and allure the Indian investors to buy additional equity created in the form of underlying equity shares. In effect, RPL substantially used the facade of GDR issue to unload additional equity in the Indian market. Thus, they indulged in employing fraudulent plan/arrangement, device, artifice and contrivance with regard to the subscription of GDRs and creation of underlying shares using the facade of GDR issue, monetizing those GDRs through the sale of underlying shares of the GDRs and inducing and alluring Indian investors to deal in shares of RPL. The *interim order* also held that RPL made several false and misleading disclosures and also made misrepresentation of facts to the stock exchange and investors in its shares. RPL had portrayed that GDR subscription proceeds were available with it for utilisation for disclosed objects of GDR issue whereas it had already pledged the said proceeds with Euram Bank to secure the repayment of purported loan of Vintage for subscription of GDRs. Further, it had actively concealed material information with regard to pledge of entire GDR subscription amount. Considering the fraudulent and manipulative acts of RPL, as mentioned above, its directors along with Arun Panchariya and entities under his control, the genuine investors in the Indian securities market were considered to be at risk. Allowing entities that *prima facie* were found to be involved in such fraudulent, unfair and manipulative transactions to continue to operate in the market was considered to be fraught with danger of immense mischief and incalculable damage to the securities market besides undermining the confidence of the investors in the fairness and integrity of the market and an intervening action, pending detailed investigations, was considered to be imperative. I, therefore, find the above contention of RPL and its directors as irrelevant.

22. RPL has also contended that SEBI did not provide any evidence to indicate that Mr. Arun Panchariya, Vintage and/or IFCF were the holders of GDRs on the date of the *interim order* or immediately preceding that date. I note that the *interim order* was passed on the basis of preliminary examination of the GDR issuances of RPL as well as the role of RPL and other entities related to Mr. Arun Panchariya. The possibility of any subsequent conversion of GDRs by Mr. Arun Panchariya related entities and/or the role of any other entity to whom such GDRs may have been transferred, are a part of the detailed investigation. As an intervening preventive measure, in view of the original subscription made to Vintage through a facade by RPL and Mr. Arun Panchariya, it was considered necessary that any GDRs which may be continued to be held by entities controlled by Mr. Arun Panchariya should not be allowed to flow in to the Indian securities market.

23. RPL and its directors have contended that Mr. Arun Panchariya, Vintage and IFCF were at no point debtors in the standalone or consolidated books of the RPL. In this regard I note that the *interim order* proceeds on the premise that RPL has entered into the Pledge Agreement with Euram Bank to secure the loan taken by Vintage from Euram Bank which has not been refuted by RPL or its directors. I, therefore, reject these contentions of RPL and its directors.

24. RPL and its directors have contended that considerable time has passed between the Income Tax Department's reference in October 2012 and the passing of *interim order* in September 2014. In this regard, I note that an examination of alleged fraud(s) related to GDR issuances by Indian listed companies, where the parties concerned are mostly based outside India and information has to be sought through foreign regulators, can be time consuming. In the present matter, I also observe during preliminary examination by SEBI, RPL allegedly did not furnish information with regard to veracity of its claim about transfer of GDR subscription proceeds to its Sharjah based wholly owned subsidiary and also did not cooperate with inquiry. Hence, based on its independent examination, including the information provided by FMA, SEBI has passed the *interim order*.

25. As regards the observation of RPL that SEBI chose to adopt only those findings of IT Department which supported its version, I find no merit in the same as SEBI arrived at the *prima facie* finding in the *interim order* only after conducting an independent examination of its own.

26. RPL has also contended that SEBI does not have the authority to restrain any company and its directors for contravention of section 77(2) of the Companies Act, 1956. I note that the charge of alleged violation of section 77(2) in the *interim order* is only incidental to the charges made in respect of the provisions of the PFUTP Regulations.

27. I have noticed that there were a spate of GDR issuances made by several companies through

Mr. Arun Panchariya and his related entities. Many of these GDR issuances were made without actually receiving adequate consideration and without disclosing the details of utilization of proceeds. The main purpose of these GDR issuances was for a private gain at the cost of public good. In the instant case as well, GDRs for the value of at least USD 8,035,209.73 had been issued by RPL without consideration as it had itself paid the subscription amount by using the above described *modus operandi* and the equity shares underlying the equivalent number of GDRs were also issued without consideration. Thus, in effect, consideration for the shares underlying these GDRs issued by RPL was paid by RPL itself and as such RPL and its directors contravened the provisions section 77(2) of the Companies Act, 1956 (as applicable at the relevant time).

28. It is trite to say that section 11 of the SEBI Act, sets out what are the powers and functions of the Board and are unambiguous with respect to scope and ambit of SEBI's jurisdiction, and power to issue *interim* as well as final directions under section 11 and 11B of the SEBI Act, pending inquiry or investigations. It is also settled position that both the sections are interconnected and co-extensive and the provisions of those sections are enabling provisions for the purpose of protection of interests of investors in the securities and the securities market. Further, the power conferred under those sections is of widest possible amplitude and duty is on the Board to protect the interest of investors in securities and to promote and regulate the securities market, by such measures as it thinks fit. The present case before me is one of such cases where RPL had issued GDRs by dubious methods and perpetrated a fraud injuring the interests of investors by making several false and misleading disclosures and misrepresentation of facts to the stock exchange and investors in its shares regarding GDR subscription proceeds and utilization thereof for disclosed objects of GDR issue. In the interest of investors in the Indian securities market, it, therefore, becomes imperative that such fraudulent malpractices are curbed and effective measures are taken against perpetrators of such fraud. Considering the peculiar facts and circumstances of this matter SEBI has taken suitable enforcement action. In view of these facts, I reject the contention of RPL and its directors that the directions in the *interim order* for the alleged violation of section 77(2) are not justified.

29. RPL has made reference to the decision of Hon'ble SAT vide order dated June 27, 2012 wherein IFCF was allowed to sell shares of scrips which were not under investigation by SEBI and to repatriate the sale proceeds. It has also contended that in spite of the order of the Hon'ble SAT granting a stay over the aforesaid decision to enable SEBI to file an appeal in Hon'ble Supreme Court, no such appeal was made and thus IFCF was a genuine buyer of GDRs and the said decision to allow repatriation of proceeds should be followed here also. I have perused the said order of the Hon'ble SAT and note that IFCF was permitted by the said order of the Hon'ble SAT to repatriate the sale proceeds of the shares that were not part of investigation. The said order of the Hon'ble SAT does not give any finding on the merits

of the SEBI order against IFCF. I, therefore, reject these contentions of RPL.

30. I note that RPL and its notice directors have undertaken not to access the securities market for a period of three months, so that investigation can be completed in the matter. I find it interesting that the said noticees have set a time-period for SEBI to complete the investigation when they have not offered any plausible argument against the allegations made in the *interim order*. It cannot be denied that any examination of GDR issuances of this nature involves details examination of the role of the listed company and other entities, most of whom are based outside India. Hence, I do not think a definite timeline can be assigned for investigation of this nature. In any case, it is not noticees' prerogative to suggest any timeline for completion of investigation by SEBI.

31. IFCF has denied any knowledge of the allegations made in respect of Mr. Arun Panchariya and his connections with other entities and IFCF in the *interim order*. Further, it has denied any knowledge of the Loan and Pledge Agreements alleged to have been entered by Mr. Arun Panchariya and RPL. Although it has not denied purchasing GDRs, the same has been stated to be Over the Counter transaction and hence, it is stated that it was not possible to know the counterparty. However, I do not find any merit in the submissions made by IFCF for the reasons and evidence cited in the *interim order*. I note that considering both IFCF as well as Vintage were in control and influence of Mr. Arun Panchariya, the contentions of IFCF are not tenable.

32. I note that Pan Asia has not made any submissions with regard to the allegations against it in the *interim order*.

33. Apart from the arguments cited and dealt with in the aforementioned paragraphs, I note that none of the noticees have replied to the *interim order* on merits and to the specific charges made therein. There has been an attempt by the noticees especially, RPL and its directors, to circumvent the actual issue of defrauding the Indian investors through entering into Loan and Pledge Agreements with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of RPL by deliberately making false/misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at RPL's disposal when in fact GDR issuance was just a facade to create underlying equity shares created without receipt of consideration. I view of these facts, the GDR issuance should not be seen in isolation but must be seen as a part of the device to create underlying equity shares of RPL without the receipt of consideration and thereafter selling them, directly or indirectly, to other investors in the Indian securities market. Considering the above, I find that none of the notices have been able to make their case on the merits of the *interim order* and hence the arguments made by the noticees are hereby disposed off. In view of these facts and circumstances of the case, I

find that the noticees have not been able to make out a *prima facie* case for revocation or modification of the *interim order* and the material available on record justifies the continuation of the directions passed against them under the *interim order*.

34. I, therefore, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the ad interim ex-parte order dated September 24, 2014 against the following entities:

Sl. No.	**Name of the entity**	**PAN/Passport**
1	Rasoya Protein Ltd.	AABCM1757C
2	Mr. Anil Lonkar, Managing Director of RPL	AAHPL2701Q
3	Mr. Prashant Duchakke, Executive Director of RPL	AEGPD0977B
4	Mr. Sameer Damle, Executive Director of RPL	AFKPD2850C
5	Mr. Ajay Singh, Executive Director of RPL	AMOPS6983Q
6.	Mr. Arun Panchariya	AEVPP6125N
7.	India Focus Cardinal Fund	AABCI9518D
8.	Pan Asia Advisors Ltd (now known as the Global Finance and Capital Limited)	Not Available
9.	Vintage FZE (now known as the Alta Vista International FZE)	Not Available
10.	Mr. Mukesh Chauradiya, Managing Director / Manager of Vintage FZE	(Passport No: Z2034007)

35. Accordingly, the directions issued vide para 45 of the *interim order* dated September 24, 2014 shall remain in force till further directions. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

Sd/-

DATE: MARCH 23rd, 2015
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA