WTM/GM/EFD/01/2019–20

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

FINAL ORDER

UNDER SECTIONS 11(4) AND 11B 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 BY CAT TECHNOLOGIES LIMITED –

IN RESPECT OF –

	ENTITY	PAN
1.	CAT TECHNOLOGIES LIMITED	AABCC9026E
2.	DHIRAJ KUMAR JAISWAL	ACLPJ8528K
3.	LAXMI PERSHAD JAISWAL	ADTPB3843L
4.	DINESH KUMAR JAISWAL	ABSPJ3747J
5.	DHADUVAI VENKATRAM	AFEPD8264J
6.	KESAVA MALLIKARJUNA PRASAD CHIVUKULA	ADCPC3929K
7.	NAMRATHA MURALIDHAR	–
8.	ESPIRIT TECHNOLOGIES PRIVATE LIMITED	AACCE0781B
9.	NAMRITHA JAISWAL	–
10.	NISHA JAISWAL	–
11.	ASHOK KULKARNI	NOT AVAILABLE

BACKGROUND –

1. In view of certain irregularities observed in the issuance of Global Depository Receipts ("**GDRs**") by CAT Technologies Limited ("**CAT Technologies**"), Securities and Exchange Board of India ("**SEBI**") vide an *Ad Interim Ex-Parte* Order dated September 21, 2011 ("**Interim Order**"), directed that company –

   "… not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner till further directions."

2. The Interim Order was confirmed against CAT Technologies on December 30, 2011 ("**Confirmatory Order**").

SHOW CAUSE NOTICE DATED DECEMBER 18, 2014 –

3. SEBI completed its investigation in the matter and based on the findings contained therein, a Show Cause Notice ("**SCN**") dated December 18, 2014, was issued to the Noticees mentioned above. The SCN issued under Sections 11, 11B and 11(4) of the SEBI Act, 1992

("**SEBI Act**") read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations, 2003**"), related to the *GDR Issues* made by CAT Technologies on July 27, 2007 ("***GDR Issue I***") and November 6, 2009 ("***GDR Issue II***") –

GDR ISSUE I – JULY 27, 2007

4. In *GDR Issue I*, Vintage FZE (now known as Alta Vista International FZE) ("**Vintage**"), an entity under control of Arun Panchariya, was the original subscriber of GDRs. However, vide letter dated April 28, 2011, CAT Technologies informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –

   a. Rexflex Limited;
   b. Futura Group Limited;
   c. Imagination Network Inc.
   d. Tradetec Corporation;
   e. Trend Setter Enterprises Corp.

5. As the authorised signatory for CAT Technologies, Dhiraj Kumar Jaiswal (Managing Director of CAT Technologies) signed a *Pledge Agreement I* dated July 20, 2007, with European American Investment Bank AG ("**Euram**"). Dhiraj Kumar Jaiswal was also the authorised signatory for CAT Technologies' bank account with Euram. The Resolution conferring the aforesaid authority on Dhiraj Kumar Jaiswal was approved by the Board of Directors of CAT Technologies in a meeting held on April 30, 2007, which was attended by Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal, Kesava Mallikarjuna Prasad Chivukula, Dhaduvai Venkatram and Ashok Kulkarni.

6. The *Pledge Agreement I* (signed between CAT Technologies and Euram) was an integral part of another agreement viz. *Loan Agreement I* dated July 23, 2007, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of USD 6.45 million from Euram for subscribing to the GDR Issue of CAT Technologies on July 27, 2007.

7. In terms of the *Pledge Agreement I*, CAT Technologies deposited the GDR subscription proceeds received from the subscriber i.e. Vintage, as security with Euram for the loan availed by that very same Subscriber.

8. These *Agreements* i.e. *Loan Agreement I & Pledge Agreement I,* effectively resulted in CAT Technologies itself financing the subscription of its GDR Issue. Such an arrangement is specifically prohibited under Indian law in terms of Section 77(2) read with Section 77(4)

of the Companies Act, 1956 ("**Companies Act**"). Further, this fraudulent arrangement resulting in full subscription of GDRs of the Issuer Company acted as an inducement for other investors to buy the shares of CAT Technologies in the Indian securities market.

GDR ISSUE II – NOVEMBER 6, 2009

9. In *GDR Issue II*, Vintage was the original subscriber of GDRs. However, vide letter dated April 28, 2011, CAT Technologies informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –

   a. Futura Group Limited;
   b. Tradetec Corporation;
   c. Trend Setter Enterprises Corp.

10. As the authorised signatory for CAT Technologies, Dhiraj Kumar Jaiswal (Managing Director of CAT Technologies during GDR Issue in November 2009) signed a *Pledge Agreement II* dated October 27, 2009, with Euram. As stated earlier, Dhiraj Kumar Jaiswal was the authorised signatory for CAT Technologies' bank account with Euram. The Resolution conferring the aforesaid authority on Dhiraj Kumar Jaiswal was approved by the Board of Directors of CAT Technologies in a meeting held on August 28, 2009. The aforesaid resolution bore the signature of Kesava Mallikarjuna Prasad Chivukula.

11. The *Pledge Agreement II* (signed between CAT Technologies and Euram) was an integral part of another agreement viz. *Loan Agreement II* dated October 27, 2009, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of USD 10 million from Euram for subscribing to the GDR Issue of CAT Technologies on November 6, 2009.

12. In terms of the *Pledge Agreement II*, CAT Technologies deposited the GDR subscription proceeds received from the subscriber i.e. Vintage, as security with Euram for the loan availed by that very same Subscriber.

13. These *Agreements* i.e. *Pledge Agreement II & Loan Agreement II,* effectively resulted in CAT Technologies itself financing the subscription of its GDR Issue and such an arrangement is specifically prohibited under Indian law in terms of Section 77(2) read with Section 77(4) of the Companies Act. Further, this fraudulent arrangement resulting in full subscription of GDRs of the Issuer Company acted as an inducement for other investors to offer to buy the shares of such Company in the Indian securities market.

GDR ISSUES I AND II –

14. As a result of the *Loan Agreements (Vintage with Euram)* and *Pledge Agreements (CAT Technologies with Euram),* CAT Technologies did not have any free capital available from the aforementioned *GDR Issues I & II* since the capital raised through these two Issues were provided as security against loans taken by Vintage from Euram, respectively. However, CAT Technologies concealed this crucial information and portrayed that *GDR Issues I & II* were successfully subscribed by a few foreign investors thereby giving the impression that the Company had access to funds to the tune of USD 6.45 million at the time of *GDR Issue I* and USD 10 million at the time of *GDR Issue II*.

15. The total capital raised through *GDR Issue I* and *GDR Issue II* was also routed to CAT Technologies' foreign subsidiary, viz. CAT Technologies FZE ("**CAT FZE**"). In order to examine the utilization of the GDR proceeds, SEBI had sought information from CAT Technologies vide Summons dated January 12, 2012 and April 20, 2012. However, CAT Technologies kept on furnishing incorrect submissions and also concealed material information from SEBI. Further, Dhiraj Kumar Jaiswal did not appear for recording of statement as sought vide SEBI letter dated April 16, 2012.

16. CAT Technologies funded its Promoters, viz. Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited, for purchase of its shares worth ₹91.96 Lakhs in March 2009.

17. From the SCN, it is noted that the position of Noticees in CAT Technologies is as shown below –

TABLE I		
	NAME	DESIGNATION
1.	DHIRAJ KUMAR JAISWAL	PROMOTER AND MANAGING DIRECTOR
2.	LAXMI PERSHAD JAISWAL	PROMOTER AND DIRECTOR
3.	DINESH KUMAR JAISWAL	PROMOTER AND DIRECTOR
4.	DHADUVAI VENKATRAM	DIRECTOR
5.	KESAVA MALLIKARJUNA PRASAD CHIVUKULA	DIRECTOR
6.	NAMRATHA MURALIDHAR	DIRECTOR
7.	ESPIRIT TECHNOLOGIES PRIVATE LIMITED	PROMOTER
8.	NAMRITHA JAISWAL	PROMOTER
9.	NISHA JAISWAL	PROMOTER
10.	ASHOK KULKARNI	DIRECTOR

18. As per the SCN –

i. CAT Technologies was alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 and Section 77(2) and 77(4) of the Companies Act.

ii. Dhiraj Kumar Jaiswal (signatory to the *Pledge Agreement I* in 2007 and *Pledge Agreement II* in 2009), was alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003.

iii. CAT Technologies and Dhiraj Kumar Jaiswal were alleged to have violated Section 11(C)(3) of the SEBI Act on account of failing to provide correct information *inter alia* in response to the Summons dated January 12, 2012, April 16, 2012 and April 20, 2012, as issued by SEBI.

iv. CAT did not disclose information regarding *'related party transactions'* to BSE in contravention of Clause 32 of the Listing Agreement.

v. Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited purchased shares of that company from the secondary market while using the funds provided by CAT Technologies itself. CAT Technologies violated Section 77(2) of Companies Act and Regulation 3 of the PFUTP Regulations, 2003. Therefore, Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited violated Regulation 3(a), 3(b), 3(c), 3(d) of the PFUTP Regulations, 2003.

vi. As per Section 27 of the SEBI Act, Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal, Dhaduvai Venkatram, Kesava Mallikarjuna Prasad Chivukula, Namratha Muralidhar and Ashok Kulkarni, being Directors of CAT Technologies, were liable to be proceeded against. Accordingly, they were alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Directors of CAT Technologies.

vii. Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal, Espirit Technologies Private Limited, Namritha Jaiswal and Nisha Jaiswal, being Promoters of CAT Technologies, controlled CAT Technologies and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Promoters of CAT Technologies.

19. Subsequent to issuance of SCN, an opportunity of personal hearing was granted to the Noticees on various occasions and such dates along with details of appearances/responses are listed out hereunder –

a. **May 23, 2017 –** Noticees 1–11 of SCN dated December 18, 2014, did not appear for the hearing.

b. **June 7, 2017 –** Noticees 1–11 of SCN did not appear for the hearing.

c. **December 19, 2018 –**
   i. Noticees 1–4 of SCN requested for an adjournment, which was granted by SEBI.
   ii. Noticees 5–11 of SCN did not appear for hearing.

d. **January 22, 2019 –**
   i. Noticees 1–11 of SCN appeared for the hearing.
   ii. Noticees 1–4 of the SCN were granted time till January 31, 2019 (extended to February 7, 2019) to file additional written submissions before SEBI including in respect of the end–use of the GDR proceeds, recovery of such proceeds, etc.
   iii. Joby Mathew Advocate, who is also the authorised representative for Noticees 5–11 of the SCN, was granted time till January 31, 2019 (extended to February 7, 2019), to file the relevant Vakalatnama(s) and written submissions, if any, before SEBI, on behalf of the aforesaid Noticees. However, no such Vakalatnama or written submissions were filed with SEBI in respect of the aforementioned Noticees.

REPLIES TO THE SCN AND SUBMISSIONS PURSUANT TO HEARING –

20. **Noticees 1–4 of the SCN –** Vide reply dated June 7, 2017 and additional submissions dated February 7, 2019, CAT Technologies, Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal and Dinesh Kumar Jaiswal while denying the violations alleged in the SCN have *inter alia* submitted as under:

a. *"In the absence of the original document, which is the primary evidence and in the absence of a certified copy or a statement from the executors, the said Pledge Agreement cannot be accepted by SEBI as evidence of creation of a pledge over the proceeds of the Noticee's GDR Issues in 2007 and 2009. Since the allegation of creation of a pledge over the properties of the Notice as security for a loan given by Euram*

Bank for subscription of GDRs issued by the Noticee is not proved, the allegation that the Noticee acted in violation of Section 77 (2) and (4) of the Companies Act, 1956 are erroneous, false and unsubstantiated.

b. *The Company came out with 2 issues of GDRs, one in July 2007 and the other in November 2009. Through the said 2 GDR Issues, the Company raised a total capital of USD 16.45 million. In accordance with the procedure set out in the offer documents, the proceeds of the said 2 GDR Issues were credited to an Escrow Account opened and maintained with Euram. Also in accordance with the provisions of the Guidelines issued by the Government of India regarding GDR Issues and the Regulations of the Reserve Bank of India ("**RBI**"), funds were transferred to the bank account of Company in India and to the subsidiary of the Company registered in Dubai, CAT FZE; the Company and CAT FZE then utilized the funds for the objects/purposes of the issues.*

c. *We deny that the proceeds of the GDR Issues were pledged to Euram against loans given by the said bank to Vintage or any other entity or person as falsely alleged or otherwise. No proposal for such a Pledge Arrangement with Euram Bank was placed before the Noticee's Board of Directors or approved by them. Copies of the minutes of all board meetings during the relevant time i.e. Financial Years 2006–07, 2007–08, 2008–09 and 2009–10 have already been provided to SEBI. In this connection, we deny that we approved or authorized the execution of the purported Pledge Agreement.*

d. *With regard to the resolutions of the Board of Directors of the Noticee on April 30, 2007 and August 28, 2009, respectively, authorizing the Bank to use the funds deposited in an account to be opened with them in connection with the GDR Issue towards loans if any, cannot be construed as having authorised the creation of a pledge as set out in the purported Pledge Agreement executed on July 20, 2007 and October 27, 2009 especially considering that the no particulars of any pledge were placed before the Board and the Pledge Agreements itself were allegedly executed more than 2 months after the said Board Resolution was passed in connection with opening a bank account. The said resolutions can at best be considered as confirmations of the Bank's general lien over the Noticee's monies in case of default in repayment of loans taken by the Noticee and not by a third party.*

e. *The Pledge agreement refers to a Loan agreement dated July 20, 2007, a copy of which has allegedly been received by the Noticee; however, the copy of the Loan Agreement provided to the Noticee along with the Show Cause Notice dated December 18, 2014 is clearly dated July 23, 2007. Furthermore, the said copy of the Loan Agreement refers to funding enabling Vintage FZE to take down GDR Issue of Kohinoor Broadcasting Corporation Limited and which funds are to be transferred to Euram Account No. 540013. There is no reference in the Loan Agreement to the GDR Issue of the Noticee.*

f. *It is not alleged that either of the aforesaid GDR Issues were carried out in violation of the guidelines set out by the Government of India or the RBI or SEBI in respect of the aforesaid GDR Issues. In this regard, it is pertinent to note that at the relevant time, SEBI did not regulate or oversee the issue or the allotment of GDRs and the RBI has not found any irregularity in the GDR Issues made by us.*

g. *With regard to the allegation that Vintage was the original subscriber to the GDR Issues that were made by us in 2007 and 2009, we submit as under:*

i. *GDRs are placed by the Placing Agent i.e. Pan Asia Advisors Limited ("**Pan Asia**"), and not by us.*

ii. *In the normal course, the Placing Agent informs the Depositories which in our case was Deutsche Bank Trust Company Americas ("**Overseas Depository Bank**") and not us of the list of places. It is only on a specific query by the BSE and on a specific query by us for replying to the query of the BSE that we were provided a list of allottees by the said placing agent.*

iii. *At the time of allotment, only Pan Asia and the Overseas Depository Bank were aware of the identity of the places/subscribers to the GDR Issues.*

iv. *Thus … until SEBI passed the Ad Interim Ex Parte Order we were never aware that Vintage was the subscriber to the GDR Issued by us.*

v. *As set out in the offer document and the various agreements entered into by the Noticee with the Lead Manager, the Overseas Depositary Bank and Euram Bank, the Noticee only allotted a Master GDR to the Overseas Depositary Bank, which in turn made allotments of GDRs to subscribers in consultation with the Lead Manager. Therefore, the Noticee was aware of the identity of the GDRs only to the extent provided by the Lead Manager and the Overseas Depositary Bank. At the time of providing the information regarding allottees (which was based on the information provided by the Lead Manager at the time of closing the issue) to SEBI in 2012, which was 3 years after the second GDR Issue, the Noticee had no reason to suspect the correctness of the information provided to it by the Lead Manager.*

h. *Without prejudice to the above submission and without admitting to the contents of any document provided by SEBI, it appears from the copies of the Loan Agreements entered into between Vintage and Euram Bank that the loans were provided to Vintage to 'take down' GDR Issues and not for subscription to the same. The Noticee understands that a 'take down' usually involves payment of subscription money on behalf of the initial subscribers so that GDRs are allotted to the entity doing the take down. Thus, it is possible that while the initial subscribers were in fact the entities whose names were provided by the Lead Manager to the Noticee (and by the Noticee to SEBI), upon take down, the GDRs were allotted by the Overseas Depositary Bank to Vintage. SEBI has not considered this possibility in its investigation.*

i. *We further deny that as a result of the aforesaid Agreements, free capital was not available to us. In fact the proceeds of the GDR Issues were transferred to our bank account in India and to that of our subsidiary from time to time as is seen from the Bank account statement provided by Euram.*

j. *We deny that we have acted fraudulently or in violation of Regulations 3 and 4 of the PFUTP Regulations, 2003.*

k. *We deny that we did not comply with the summons or that we did not provide information to SEBI or that we concealed information from SEBI, as falsely alleged or otherwise.*

l. *We correctly informed SEBI that we did not have any arrangement with Vintage or Arun Panchariya.*

m. *We deny that we have not provided SEBI with the complete statement of accounts relating to our bank account with Euram; the said SCN does not mention why and in what manner, the bank account statement provided by us is incomplete.*

n. *In and around financial year 2007-08, the Noticee set up a subsidiary viz. CAT FZE in Dubai, United Arab Emirates (UAE). The said subsidiary had been set up to explore the promising opportunity for the Noticee's business in the middle-east. The proceeds of the GDR Issues of the Noticee in 2007 and 2009, less the fee payable to Lead Managers and other expenses incidental to the GDR Issues, were transferred to the Noticee's said subsidiary to meet its working capital requirements. CAT FZE, UAE subsidiary was incorporated in the financial year 2007-08 with capital of 150,000 Dirham and remaining part of GDR–1 proceeds to the extent of 13,320,896 Dirham were transferred to UAE Subsidiary in 2007 was reflected as Loans under 'Current liabilities' head in the Books of Accounts of CAT Technologies Limited, India (please refer financials 2007-08). Further in financial year 2009-10 part of proceeds of GDR II issue to the extent of 34,143,824 Dirham were transferred to UAE subsidiary and amount was reflected under 'Loans and Advances' head until financial year 2012-13. Later in 2013, loans were converted into equity and Share Capital of UAE subsidiary was increased to 45,900,000 Dirhams. As per the legal norms of UAE, a local agent was appointed to take care of the operations of the said subsidiary of the Noticee and initially i.e. during the period 2007 to 2013, the operations of the said subsidiary were satisfactory, however, the local agent misappropriated funds and even refused to hand over documents and records relating to the said subsidiary to the Noticee. All efforts by the Noticee in this regard were unsuccessful.*

o. *One of the Noticee's promoters, Mr. Dinesh Jaiswal incorporated and promoted a company in the United States of America (USA), named CAT Technology Inc. USA ("**CAT USA**"). The Noticee carried on its business in the USA through CAT USA. The Lead Manager to the GDR Issues, Pan Asia advised the Noticee to acquire CAT USA so that business and revenues could be consolidated into the Noticee's accounts. Accordingly, the Board of Directors of the Noticee in the meeting held on May 12, 2005 decided to acquire CAT USA for a sum of USD 1 Million and the said decision was approved by the shareholders in the 10th AGM of the Noticee held on September 12, 2005. CAT Technologies did not have sufficient funds to immediately pay Mr. Dinesh Jaiswal for the equity shares of CAT USA and at their request he agreed to the Noticee's request for a deferred payment. Accordingly, the said purchase consideration of USD 1 Million was shown in the books of the Noticee as an unsecured loan from Mr. Dinesh Jaiswal. The said unsecured loan was repaid to Mr. Dinesh Jaiswal or his assignees/ nominees over the period 2008 to 2014. The assignees included Espirit Technologies Pvt. Ltd. CAT Technologies is not concerned with and cannot be held responsible for the use of the loan repayments by Mr. Dinesh Jaiswal and/or Espirit Technologies Pvt. Ltd.*

p. *CAT Technologies paid rent to Mr. Laxmi Pershad Jaiswal for the office premises located at H No. 5-4-736, Nampally Station Road, Hyderabad – 500 001 in terms of lease agreement. CAT Technologies is not concerned with and cannot be held responsible for the use of the rent so paid.*

q. *It is thus evident that the Noticee did not provide any funds to Mr. Dinesh Jaiswal or Espirit Technologies Pvt. Ltd or Mr. Laxmi Pershad Jaiswal for the purpose of purchasing its shares; legitimate business transactions between the Noticee and the said persons/entities cannot be construed as being made for the purpose of purchase of its securities as falsely alleged or otherwise."*

21. **Noticee 6 of the SCN –** Vide a reply dated January 23, 2015, Kesava Mallikarjuna Prasad Chivukula stated that he was appointed as a Whole Time Technical Employee Director in the year 2000 and had resigned as a Director in 2012, while continuing to remain as an employee and technical head of CAT Technologies.

22. **Noticee 7 of the SCN –** Vide a reply dated May 28, 2015, Namratha Muralidhar stated that she had joined CAT Technologies in 1988 as a faculty to teach computer courses and was promoted as an Employee Director in 2000 without any administrative, financial or secretarial powers. She also submitted a letter dated February 6, 2015, from CAT Technologies stating that she was not involved in the affairs of the Company or its governance. She submitted that her responsibilities were to monitor functions related to computer education, recruitment and training.

23. I note that Noticees 5 and 8–11 of the SCN viz. Dhaduvai Venkatram, Espirit Technologies Private Limited, Namritha Jaiswal, Nisha Jaiswal and Ashok Kulkarni, have not filed any reply to the SCN or made any submission for consideration during the course of these proceedings. Even though they remained *ex parte*, I find it relevant that I should be guided by the documents available on record as laid down by the Hon'ble SAT in its Order dated May 12, 2017 in the matter of ***Shri B. Ramalinga Raju vs. SEBI (Appeal No. 286 of 2014)***.

PRELIMINARY OBJECTIONS – In their replies, Noticees 1–4 have raised preliminary objections relating to the jurisdiction of SEBI, reliability of the *Pledge* and *Loan Agreements* in the absence of original copies and in light of inconsistencies in such Agreements, which are dealt with as under –

24. Noticees 1–4 of the SCN have contended that at the relevant time, SEBI did not regulate or oversee the issue or the allotment of GDRs and the RBI has not found any irregularity in the GDR Issues made by CAT Technologies. It may be pertinent to note that the Hon'ble SAT vide its Order dated September 30, 2013 in *Appeal No. 126 of 2013*, had earlier set aside the SEBI Order dated June 20, 2013, on the ground that SEBI had no jurisdiction to initiate action against Arun Panchariya and Pan Asia in relation to GDRs issued outside India. Thereafter, in an Appeal filed by SEBI against the aforementioned SAT Order, the Hon'ble Supreme Court vide an Order dated July 6, 2015 in *Civil Appeal No. 10560/2013* reversed the decision of the SAT and held that SEBI has jurisdiction in such cases to pass debarment order if the allegations levelled against the aforementioned entities fall within the scope of Section 12A(a), (b) & (c) of SEBI Act and under the PFUTP Regulations, 2003 and to determine the aforesaid question, the Hon'ble Supreme Court remanded the matter to SAT, which vide an Order dated October 25, 2016 in *Appeal No. 126 of 2013*, upheld the aforementioned SEBI Order (The aforementioned Orders are discussed at paragraph 42 of this Order).

25. In the instant proceedings, an Interim Order was issued by SEBI against CAT Technologies and its Directors/Promoters on September 21, 2011. The aforesaid Interim Order was confirmed on December 30, 2011. Thereafter, an investigation was conducted in the matter and pursuant to its completion, SCN was issued against the Noticees therein. At that stage, no reply to the SCN was filed by the Noticees before SEBI nor did SEBI receive any request for inspection of documents relied upon in the SCN, from them. Notwithstanding the aforesaid, an opportunity of hearing was granted to the Noticees on May 23, 2017 and June 7, 2017. However, on both the aforesaid dates, none of the Noticees had appeared for the hearing. However, through a reply dated June 7, 2017, CAT Technologies and its Director, Dhiraj Kumar Jaiswal, merely asserted that the delay in filing of reply to the SCN, etc. occurred on account of the inability to seek proper legal advice due to financial constraints and absence of records, etc. without any real or cogent evidence to substantiate such assertion. In addition, the aforementioned entities had requested for inspection of documents which was granted on January 18, 2018. Subsequent to the aforesaid, Noticees 1–4 of the SCN have contended that no original or certified copies of the *Pledge Agreements* and *Loan Agreements* were made available to them for inspection and in the absence of such original/certified copies of documents, the aforementioned *Agreements* cannot be accepted by SEBI as evidence of creation of a pledge over the proceeds of CAT Technologies *GDR Issues* in 2007 and 2009. I note that all relevant and available documents as obtained by SEBI and which were relied upon in the SCN dated December 18, 2014 or referred to in the Investigation Report, were either provided to the Noticees along with the said SCN or thereafter, during the course of inspection of documents as requested by them.

26. As regards the objections raised with respect to the admissibility of photocopies of the *Pledge Agreements* and *Loan Agreements*, it is stated that these documents were officially obtained by SEBI from Euram through the Financial Market Authority, Austria ("**FMA**"), for the purpose of investigation of *GDR Issues* wherein entities controlled by/connected to Arun Panchariya were involved. The original copies of the *Pledge Agreements* and *Loan Agreements* will be available with the Lender Bank or the signatories to such *Agreements*. In this context, reliance is also placed on the observations of the Supreme Court in ***Dhakeswari Cotton Mills Limited vs. Commissioner of Income Tax, West Bengal, 1955 SCR (1) 941*** to the extent that the *administrative and quasi–judicial tribunals are not fettered by technical rules of evidence and pleadings and that they are entitled to act on material which may not be accepted as evidence in a Court of law.*

27. Having dealt with the objections on the admissibility of the alleged *Loan* and *Pledge Agreements*, I would like to examine, on merits, the reliability of these documents so as to see whether the case alleged in the SCN is met. Firstly, I note that the resolutions passed by the Board of Directors of CAT Technologies on April 30, 2007 and August 28, 2009 are not in dispute.

The case of the Noticees is that the authorisation given to Euram to use the funds deposited in an account to be opened with them in connection with the *GDR Issues* towards loans, cannot be construed as an authorisation to create a pledge. Further, there was no authorisation for creation of a pledge by the Board of Directors of CAT Technologies and the same was allegedly executed more than two months after the aforementioned Board resolutions. It is the Noticees' plea that, at best, the Board resolutions can only be considered as confirmations of the Euram's general lien over CAT Technologies' monies in case of default in repayment of loans taken by them and not by a third party.

28. In addition, Noticees 1–4 have submitted that for GDR Issue I, the *Pledge Agreement* refers to a *Loan Agreement* dated July 20, 2007; however, the copy of the *Loan Agreement* provided to the Noticee along with the SCN is clearly dated July 23, 2007. Furthermore, Noticees 1–4 have submitted that the said copy of the *Loan Agreement* refers to funding enabling Vintage FZE to take down GDR Issue of *Kohinoor Broadcasting Corporation Limited ("**Kohinoor Broadcasting**")* and which funds are to be transferred to Euram Account No. 540013 and there is no reference in the *Loan Agreement* to the GDR Issue I of CAT Technologies.

29. I have perused Annexures 3 (*Loan Agreement* entered into between Vintage and Euram in July 2007) and 4 (*Pledge Agreement* entered into between CAT Technologies and Euram in July 2007) of the SCN. It may be mentioned that even in the Investigation Report, SEBI had noted that several typographical errors were observed in the *Pledge Agreement* and *Loan Agreement,* which were ignored by the signatories to such *Agreements*. While the aforementioned *Pledge Agreement* makes a reference to a *Loan Agreement* dated July 20, 2007 whereby Euram granted a loan to Vintage amounting to USD 6.45 million, the *Loan Agreement* dated July 23, 2007 annexed at Annexure 3 of the SCN states that such amount was to provide funding enabling Vintage to take down GDR Issue of *Kohinoor Broadcasting's* Luxemburg public offering. However, it may be noted that the *Loan Agreement* also states that such GDR proceeds may only be transferred to Euram Account no. 540013 for CAT Technologies Limited, which Account as per the *Pledge Agreement* was pledged with Euram in order to secure any and all obligations of Vintage towards Euram under the *Loan Agreement*. The very same account opened by CAT Technologies with Euram for the receipt of GDR proceeds being mentioned in the *Loan Agreement* between Euram and Vintage cannot be a matter of mere coincidence. Moreover, I curiously note that the amount of the two *GDR Issues* exactly matched with the amounts shown in the two *Loan Agreements* and *Pledge Agreements*.

30. I note that the Noticees 1–4 have not brought out any circumstance under which the signature of the Managing Director of CAT Technologies got affixed on the *Pledge Agreements* and *Loan Agreements* though they have denied the execution of such documents. They have also admitted that the Board resolutions dated April 30, 2007 and August 28, 2009 authorized

Euram to use the funds deposited in an account to be opened with them in connection with the *GDR Issues* towards loans, if any. I note that the signatures of Dhiraj Kumar Jaiswal appearing in the *Loan/Pledge Agreements* are similar to his signature contained in respect of the Corporate/Trust Account opened with Euram (Annexure 5 of the SCN) and the letter dated April 28, 2011, sent to SEBI by CAT Technologies (Annexure 10 of the SCN). Noticees 1–4 have also failed to show any action that they have taken against Euram or Vintage in respect of the allegations that SEBI had made out against them.

31. In this context, I find that the intention of the *Loan Agreement* i.e. to enable Vintage to take down the GDR Issue of *Kohinoor Broadcasting's* Luxemburg public offering, is not borne out by the subsequent actions of the contracting party to such Agreement i.e. Vintage, which from the material available on record as discussed in the subsequent paragraphs, had utilized the amount of USD 6.45 million to subscribe to the *GDR Issue I* of CAT Technologies. Admittedly, CAT Technologies had also received the GDR proceeds of *GDR Issue I* in the aforementioned Account no. 540013. It is also pertinent to note that the Account no. 540013 was also mentioned as the account of the Borrower/Vintage/Subscriber in the *Loan Agreement*. Therefore, there was common ownership of the Account no. 540013 by both the Borrower/Vintage/Subscriber and the Issuer Company/CAT Technologies. Further, the withdrawal of GDRs proceeds of *GDR Issues* by CAT Technologies from its bank account with Euram was dependent on the repayment by Vintage under the *Loan Agreements*. I also note that the GDR Issue of *Kohinoor Broadcasting* which closed on July 20, 2007, was also managed by Pan Asia (the Lead Manager for the GDR Issues CAT Technologies) and the capital raised therein was USD 7 million as opposed to the size of *GDR Issue I* of CAT Technologies i.e. USD 6.45 million. Having regard to the aforementioned, I am unable to accept the technical objections raised by Noticees 1–4 with respect to the admissibility of the documents, in the absence of original and certified copies.

CONSIDERATION ON MERITS –

A. Violation of Section 77(2) read with Section 77(4) of the Companies Act by CAT Technologies and role of Dhiraj Kumar Jaiswal.

GDR Issues I and II –

32. A *Loan Agreement I* dated July 23, 2007, was executed between Vintage and Euram, whereby Vintage availed a loan of USD 6.45 million from Euram for subscribing to the *GDR Issue I* of CAT Technologies on July 27, 2007. A *Pledge Agreement I* dated July 20, 2007, was also executed between CAT Technologies and Euram. Similarly, a *Loan Agreement II* dated October 27, 2009, was executed between Vintage and Euram, whereby Vintage availed a

loan of USD 10 million from Euram for subscribing to the *GDR Issue II* of CAT Technologies on November 6, 2009. A *Pledge Agreement II* dated October 27, 2009, was also executed between CAT Technologies and Euram.

33. As per the aforementioned *Pledge Agreements*, –

a. The Preambles of the *Pledge Agreements* make a reference to the *Loan Agreements* signed between Vintage and Euram. They further mention that *"The Pledgor has received a copy of the Loan Agreement … and acknowledges and agrees to its terms and conditions"*.
b. In accordance with the *Pledge Agreements,* CAT Technologies agreed to pledge securities and funds lying in the account where GDR proceeds from *GDR Issue I and II* have been deposited.
c. The *Pledge Agreements* state: *"In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations."*
d. The *Pledge Agreements* were signed on behalf of CAT Technologies by Dhiraj Kumar Jaiswal.

34. The *Pledge Agreements* were an integral part of the *Loan Agreements.*

35. From the Account Application and other Client Documents in respect of CAT Technologies' bank account with Euram, it is observed that the authorised signatory for the operation of the bank account was Dhiraj Kumar Jaiswal (Managing Director/Promoter of CAT Technologies during *GDR Issues* in June 2007 and November 2009). The resolutions conferring the aforesaid authority on Dhiraj Kumar Jaiswal was approved by the Board of Directors of CAT Technologies in meetings held on April 30, 2007, which was attended by Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal, Kesava Mallikarjuna Prasad Chivukula, Dhaduvai Venkatram and Ashok Kulkarni and August 28, 2009, which bore the signature of Kesava Mallikarjuna Prasad Chivukula.

36. Upon a consideration of the above mentioned paragraphs, the following is noted –

a. The obligation of Vintage under the *Loan Agreements* was secured by CAT Technologies through the *Pledge Agreements* whereby it deposited an amount of USD 16.45 million, with Euram i.e. GDR subscription proceeds received from the Subscriber – Vintage, which amount was assigned and charged in favour of Euram as a continuing security. Further, on examining the debits made from the said bank account of CAT Technologies and Vintage, it is found that it was only after part payment by Vintage of the amounts due under the *Loan Agreements* that CAT Technologies was able to withdraw funds from its bank account with Euram, in accordance with the terms of the *Pledge Agreements*. The series of transactions in the account of CAT Technologies clearly indicate that CAT Technologies was never able to remit any amount from its account in excess of the amounts repaid by Vintage to Euram. The remittances by CAT Technologies always therefore, followed repayment of loan by Vintage and never preceded it. This is a clear indication that the withdrawal of GDRs proceeds by CAT Technologies was entirely dependent on the repayment by Vintage to Euram under the *Loan Agreements*.

b. From the certified true copy of the resolution passed at the meeting of the Board of Directors of CAT Technologies held on April 30, 2007 and extracts of the minutes of the meeting of the Board of Directors of CAT Technologies held on August 28, 2009, which were received from Euram, the following is observed:

*"RESOLVED THAT a bank account be opened with Euram Bank ("**the Bank**") or any branch of Euram Bank including Offshore Branch outside India for the purpose of receiving subscription money in respect of Global Depository Receipt issue of the Company.*
RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director, be and is hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and any other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.
RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director, be and are hereby severally authorised to draw cheque and other documents and to give instructions from time to time as may be necessary to the said Euram Bank or any other branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said account and carry out other relevant and necessary transactions and generally to take all such steps and to do such things as may be required from time to time on behalf of the Company.
RESOLVED FURTHER THAT the Bank be and is hereby authorised to use the funds so deposited in the aforesaid bank account as security in connection with loans, if any, as well as to enter into any Escrow Agreement or similar arrangements if and when so required."

37. As stated in the preceding paragraphs, events subsequent to the execution of the *Pledge Agreements* clearly reveal that CAT Technologies did indeed use the funds deposited in its bank account as security for obligation of Vintage under the *Loan Agreements*. Considering the aforesaid, the irrefutable conclusion that can be drawn is that CAT Technologies had in fact authorized Dhiraj Kumar Jaiswal for signing the *Pledge Agreements* for operating the

bank account as otherwise there was no reason for it to act as per the terms of such *Agreements*.

38. In addition, CAT Technologies was very much aware of the *Pledge Agreements* as is evident from its conduct. In this regard, it is reiterated that –

a. From the Account Application and other Client Documents in respect of CAT Technologies' bank account with Euram, the authorised signatory for the operation of CAT Technologies' account with Euram was Dhiraj Kumar Jaiswal, Managing Director of CAT Technologies during *GDR Issues* in July 2007 and November 2009.
b. The withdrawal of GDRs proceeds by CAT Technologies from its bank account with Euram was dependent on the repayment by Vintage under the *Loan Agreements*.

39. It is pertinent to note that a company does not have a mind of its own but rather acts through its Board of Directors or authorised representatives. Dhiraj Kumar Jaiswal was the *Authorised Person* on behalf of CAT Technologies for execution of *Pledge Agreements (with Euram)* and other documents in relation to the *GDR Issues*. It was he who signed the *Pledge Agreements* and other documents in relation to *GDR Issues*. Similarly, Dhiraj Kumar Jaiswal was the Managing Director/Promoter of CAT Technologies. It is evident from the stature of Dhiraj Kumar Jaiswal that he was hugely important in the hierarchy of CAT Technologies. For the company to know anything, it could well be said that it had to be known to him, who was the signatory to the *Pledge Agreements*. It is significant to note that all the actions of CAT Technologies have been in accordance with the terms of the aforementioned *Pledge Agreements* and hence, the evidence available in the matter fully corroborates the fact that CAT Technologies was very much aware of such *Agreements*.

40. In view of the above, I find that the arrangement resulting from the *Pledge Agreement I and II (CAT Technologies with Euram) & Loan Agreement I and II (Vintage with Euram),* which allowed CAT Technologies to effectively help finance the purchase of its own shares (since it deposited the proceeds of GDR subscription as collateral for the loan provided by Euram to Vintage) was specifically prohibited under Indian laws in view of Section 77(2) of the Companies Act. I therefore, find that CAT Technologies violated Section 77(2) read with Section 77(4) of the Companies Act 1956.

41. In addition, I find that the execution of the *Pledge Agreement I and II* when viewed in the context of the *Loan Agreement I and II,* clearly shows that CAT Technologies violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations, 2003. As the Managing Director/Promoter and authorised signatory for the *Pledge Agreement II,* I find that Dhiraj

Kumar Jaiswal also violated the aforementioned provisions of the SEBI Act read with the PFUTP Regulations, 2003.

42. In this regard, I also note –

a. Vide the SEBI Order dated June 20, 2013, Pan Asia and Arun Panchariya were, as persons connected to the Indian Securities Market debarred from rendering services in connection with instruments that are defined as '*securities*' under Section 2(h) of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") for a period of 10 years and further were prohibited from accessing the capital market directly or indirectly for a period of 10 years.

b. On an appeal by Pan Asia and Mr. Arun Panchariya (collectively referred to as "**Appellants**") against the aforementioned SEBI Order dated June 20, 2013, the Hon'ble SAT vide an Order dated September 30, 2013 in *Appeal No. 126 of 2013*, allowed the appeal and set aside the aforesaid Order on the ground that SEBI had no jurisdiction to initiate proceedings against the appellants in relation to the role played by them as Lead Managers to the GDRs issued by several Indian Companies outside India.

c. On appeal against the Hon'ble SAT Order dated filed by SEBI September 30, 2013, the Hon'ble Supreme Court vide a judgment dated July 6, 2015, in the matter of *SEBI vs. Pan Asia Advisors Limited and Another (Civil Appeal No. 10560/2013)*, set aside the decision of the Hon'ble SAT and held that SEBI had jurisdiction to initiate proceedings against the appellants if the appellants as Lead Managers to the GDRs had violated the provisions of SEBI Act and the Regulations framed thereunder and remanded the matter for fresh decision on merits in respect of the appeal filed by the appellants against the SEBI Order dated June 20, 2013.

d. Thereafter, vide an Order dated October 25, 2016 in *Appeal No. 126 of 2013*, the Hon'ble SAT while dismissing the appeal filed by the appellants therein, *inter alia* observed as under –

18. "Question then to be considered is, whether SEBI is justified in holding that the appellants have committed fraud on the investors in India. Admittedly, PAN Asia was appointed as a Lead Manager to the GDR Issue and as a Lead Manager it was the duty of PAN Asia to make reasonable endeavours to procure investors outside India and inform the ESCROW agent in writing of any deposit made by the investors in the ESCROW account. It is not in dispute that prior to the issuance of GDRs of Asahi, AP as a Managing Director and Authorized Signatory of Vintage had entered into a Loan Agreement dated 21.04.2009 with Euram Bank and had *obtained loan of 10 million USD to take down the GDRs of Asahi. Thus, AP on the one hand as Managing Director of PAN Asia got the GDRs of Asahi issued for subscription by foreign investors and on the other hand as Managing Director of Vintage took loan to take down entire GDRs of Asahi.*

19. *Apart from taking loan of 10 million USD from Euram Bank under the Loan Agreement dated 21.04.2009, a Pledge Agreement dated on 21.04.2009 was executed between Asahi and Euram Bank, wherein Asahi agreed to abide by the terms and conditions of the Loan Agreement dated 21.04.2009 between Euram and Vintage and further agreed to pledge all its right, title and interest in and to the securities deposited in the pledged securities account and Pledged Time Deposit account so as to secure the present and future obligation of Vintage to the Euram Bank to the Extent of 10 million USD or any other amount that may thereafter become payable by Vintage to Euram Bank.*

20. *In the reply to the show cause notice issued by SEBI, AP had categorically stated that Vintage intended to make profit through a takedown of the GDRs issued by the Indian Companies and at the same time ensure successful placement of the GDRs with the investors outside India. It is further stated by AP that for the aforesaid purpose Vintage took loan from Euram Bank and upon closure of the GDR Issue, Vintage paid the take down amount to the issuer companies by transferring the loan proceeds from Euram Bank to the ESCROW accounts of the issuer companies which was then transferred to the accounts of issuer companies.*

21. *Thus, instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 10 million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 10 million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.*

…

27. *It is equally important to note that immediately after subscribing to the GDRs, Vintage (controlled by AP) sold some of the GDRs to FIIs/sub accounts such as IFCF & KII which were also controlled by AP. IFCF & KII admittedly converted GDRs into underlying equity shares of the issuer companies from the domestic custodian bank in India and sold the said shares on the Stock Exchanges in India. It is also recorded in the impugned order that the shares sold by IFCF and KII were bought by entities such as Alka, Oudh, Basmati & SV with which AP*

was connected. Thus, at every stage of the GDR Issue i.e. from the stage of issuing GDRs, subscribing to the GDRs, transferring the GDRs to FII/sub accounts for conversion of GDRs into equity shares and acquiring the said shares through the Stock Exchanges in India, Managing Director of PAN Asia was involved. In other words, apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage, AP ensured that the GDRs were sold by Vintage to the entities controlled by AP and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which AP was connected. Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted.

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

43. In the instant proceedings, I note from the Investigation Report that –

a. After the issuance of GDRs, Vintage became the sole holder of the GDRs issued by CAT Technologies and thereby the majority shareholder of CAT Technologies (prior to *GDR Issue I,* CAT Technologies had 57,50,400 fully paid–up equity shares; in *GDR Issue I,* 43,04,348 GDRs representing 2,58,26,088 equity shares were allotted to Vintage, an Arun Panchariya owned entity).

b. The abovementioned GDRs were then transferred to FIIs (connected to Arun Panchariya) mostly through over–the–counter transactions. This was followed by cancellation of such GDRs from December 20, 2007 and continued till November 20, 2009 (*GDR Issue I*) and on January 12, 2010 (*GDR Issue II*). Subsequently, equity shares from such cancelled GDRs were released into the demat accounts of Sub–Accounts in India by Custodian of shares. The shares thus received were then sold by FIIs in the Indian securities market where the counterparties were also found to be connected to Arun Panchariya.

44. Having regard to the findings at paragraphs 32–41 of this Order and also placing reliance on the observations of the Hon'ble SAT at paragraph 42 read with paragraph 43 above, I find no merit in the contentions raised by Noticees 1–4 of the SCN.

B. Furnishing false information regarding initial subscribers to GDR Issues.

45. As per the SCN, CAT Technologies and Dhiraj Kumar Jaiswal are alleged to have misled SEBI by stating that the following entities were the original subscribers of:

GDR Issue I – July 27, 2007, viz. –

a. Rexflex Limited;
b. Futura Group Limited;
c. Imagination Network Inc.
d. Tradetec Corporation;
e. Trend Setter Enterprises Corp.

GDR Issue II – November 6, 2009, viz. –

a. Futura Group Limited;
b. Tradetec Corporation;
c. Trend Setter Enterprises Corp.

46. Further –

a. In the information provided to BSE and SEBI, CAT Technologies submitted a list of initial subscribers to the *GDR Issues I and II*. Dhiraj Kumar Jaiswal, Managing Director/Promoter of CAT Technologies in 2007 and also 2009, submitted the misleading declarations regarding initial subscribers of GDRs to the concerned Stock Exchange, on behalf of CAT Technologies. It is pertinent to note that in the aforesaid lists provided by CAT Technologies, the name of Vintage was not mentioned. However, as stated before, Vintage was the initial subscriber to the *GDR Issue* of CAT Technologies by virtue of the *Loan Agreements* and *Pledge Agreements*.

b. As noted from the Investigation Report, all the above subscribers were also stated to be investors in several other *GDR Issue*s of Indian companies, which were managed by Pan Asia, also the Lead Manager for *GDR Issue* of CAT Technologies. All attempts made by SEBI to contact these subscribers were unsuccessful.

Further, even efforts made by respective financial market regulators regulating the region where these subscribers were located, were not successful. Replies received by SEBI from the said regulators indicated that the address provided by these subscribers did not exist.

c. The observations of the Hon'ble SAT in its Order dated October 25, 2016 in *Appeal No. 126 of 2013*, are also reproduced below –

24. *"It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were non-existent entities because, e-mails and summons issued to those entities were returned back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. …*

… Even in case of other Issuer Companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted.

25. *It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted.*

26. *Argument of the appellants that due to efflux of time the initial subscribers might have changed their address is unsustainable, because, it is established beyond doubt that some of the addresses of the alleged initial subscribers itself do not exist. If the address itself is not existent it obviously means that even the initial subscribers were non-existent. Apart from above, it is established by SEBI through the Regulatory Authorities of the Countries in which the alleged initial subscribers were situated that the names of those initial subscribers do not exist in the official directory of those Countries. These facts conclusively establish that Vintage was the initial subscriber to the GDRs*

and names of fictitious entities were introduced only to make it appear that the GDRs have been subscribed by various foreign investors."

47. In view of the above observations, I find that CAT Technologies and Dhiraj Kumar Jaiswal had indeed provided false information in respect of the initial subscribers to *GDR Issues* of CAT Technologies.

C. Inadequate response to Summons.

48. SEBI had noted that the total capital raised through *GDR Issue I* and *GDR Issue II* was also routed to CAT Technologies foreign subsidiary, viz. CAT FZE. In order to examine the utilization of the GDR proceeds, SEBI sought information from CAT Technologies vide Summons dated January 12, 2012 and April 20, 2012. Further, a similar request was also made to the Noticees during the hearing held on January 22, 2019.

49. In its reply dated February 21, 2012 to the Summons issued by SEBI dated January 12, 2012 and in the statement recorded on April 13, 2012 during the course of investigation, CAT Technologies denied the following –

    i. Having any agreement with Euram for any other services except for Escrow Agreement.
    ii. Having any agreement with any entity regarding financing for the purpose of subscription by initial investors of GDRs.
    iii. Having any agreement with Vintage.
    iv. That there were any conditions imposed on it for withdrawal of funds from its account held with Euram.

50. The abovementioned denial was misleading as CAT Technologies concealed information regarding the *Pledge Agreements* with Euram. Further, the *Loan Agreements* signed between Vintage and Euram was an integral part of the *Pledge Agreements* signed between CAT Technologies and Euram. It was clearly mentioned in the *Pledge Agreements* that *the Pledgor i.e. CAT Technologies, received the Loan Agreements and agrees to its conditions.* CAT Technologies' withdrawal of funds was conditional and was dependent on loan repayment by Vintage.

51. Dhiraj Kumar Jaiswal, Managing Director/Promoter of CAT Technologies did not appear for recording of statement as sought vide SEBI Summons dated April 16, 2012.

52. CAT Technologies was specifically advised by SEBI's e–mail dated April 20, 2012, to provide details of payments done by CAT FZE of above USD 25,000.

53. With regard to the information regarding CAT FZE sought by SEBI, CAT Technologies provided partial information to SEBI but failed to provide crucial information regarding the utilisation of funds by CAT FZE. Following information was not provided by CAT Technologies to SEBI –

i. Complete Bank Account Statements of CAT Technologies with Euram.
ii. Bank Account Statements of CAT FZE required for examining the utilisation of GDR proceeds.
iii. Details of nature of business and Audit reports of CAT FZE.
iv. Details like name of entities involved, amount used, and purpose behind the purchases, expenses and payments done by CAT FZE.
v. Address, contact person and contact number of CAT FZE.
vi. Details of payments made to Pan Asia and Arun Panchariya.

54. As seen from the abovementioned facts, CAT Technologies failed to comply with the aforesaid Summons issued by SEBI as it did not furnish any information and therefore, concealed material information from SEBI.

55. From the above, I find that material information, which was necessary to carry out investigations in the instant proceedings, was not furnished or were concealed by CAT Technologies. As a Director of CAT Technologies to whom the Summons were issued and from whom statement was recorded by SEBI, Dhiraj Kumar Jaiswal was under an obligation to ensure that correct information was provided promptly by CAT Technologies to SEBI. However, Dhiraj Kumar Jaiswal failed to ensure co-operation by CAT Technologies with the Investigating Officer and hampered investigations in the instant proceedings.

56. Incidentally, during the hearing held on January 22, 2019, Noticees 1–4 of the SCN were granted time till January 31, 2019 (extended to February 7, 2019) to file additional written submissions before SEBI including in respect of the end–use of the GDR proceeds, recovery of such proceeds, etc. However, vide additional written submissions dated February 7, 2019, Noticees 1–4 of the SCN were still not able to provide any satisfactory explanation regarding the utilization of GDR proceeds by its subsidiaries and they merely submitted (without sufficient documentary evidence): *"CAT FZE, UAE subsidiary was incorporated in the financial year 2007–08 with capital of 150,000 Dirham and remaining part of GDR–1 proceeds to the extent of 13,320,896 Dirham were transferred to UAE Subsidiary in 2007 was reflected as Loans under 'Current liabilities' head in the Books of Accounts of CAT Technologies Limited, India (please refer financials 2007–08). Further in Financial Year 2009–10 part of proceeds*

of GDR II issue to the extent of 34,143,824 Dirham were transferred to UAE subsidiary and amount was reflected under 'Loans and Advances' head until Financial Year 2012–13. Later in 2013, loans were converted into equity and Share Capital of UAE subsidiary was increased to 45,900,000 Dirhams. As per the legal norms of UAE, a local agent was appointed to take care of the operations of the said subsidiary of the CAT Technologies and initially i.e. during the period 2007 to 2013, the operations of the said subsidiary were satisfactory, however, the local agent misappropriated funds and even refused to hand over documents and records relating to the said subsidiary to the Noticee. All efforts by the Noticee in this regard were unsuccessful."

D. Purchase of shares by the Promoters of CAT Technologies through funds received from the Company.

E. Non–disclosure of information regarding 'related party transactions'.

57. CAT Technologies funded its Promoters, viz. Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited, for purchase of its shares worth ₹91.96 Lakhs in March 2009. The aforesaid purchase of shares of CAT Technologies by Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited was through Trading Member Fortune Equity Brokers (India) Ltd ("**Fortune Equity Brokers**"). The fund flow from CAT Technologies to Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited and then to Fortune is as under –

TABLE II – FUND FLOW

ENTITY 1	DATE	AMOUNT (₹)	ENTITY 2	DATE	AMOUNT (₹)	ENTITY 3	DATE	AMOUNT (₹)	ENTITY 4
CAT TECHNOLOGIES	24.03.09	23,00,000	**DINESH**	25.03.09	22,56,800	**ESPIRIT**	26.03.09	10,00,000	**FORTUNE**
						ESPIRIT	28.03.09	13,04,765	**FORTUNE**
	30.03.09	10,00,000	**ESPIRIT**	30.03.09	10,00,000	**FORTUNE**			
	30.03.09	10,00,000	**ESPIRIT**	31.03.09	10,00,000	**FORTUNE**			
	03.04.09	10,00,000	**ESPIRIT**	03.04.09	10,00,000	**FORTUNE**			
	20.04.09	4,00,000	**ESPIRIT**	20.04.09	4,02,125	**FORTUNE**			
	04.03.09	11,00,000	**DINESH**	06.03.09	5,00,000	**FORTUNE**			
				05.03.09	5,00,000	**LAXMI PERSHAD**	06.03.09	5,00,000	**FORTUNE**
	25.03.09	3,32,000	**DINESH**	26.03.09	3,32,767	**FORTUNE**			
	25.03.09	3,32,000	**LAXMI PERSHAD**	26.03.09	3,32,868	**FORTUNE**			

58. The trades of Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited is provided below –

TABLE III – TRADE DETAILS					
DATE	PROMOTER NAME	NUMBER OF SHARES OF CAT PURCHASED	NO. OF SHARES OF CAT SOLD	VALUE OF SHARES OF CAT PURCHASED (₹)	VALUE OF SHARES OF CAT SOLD (₹)
02.03.2009	DINESH	1,50,000	0	3,81,000	0
03.03.2009	DINESH	1,50,000	0	3,91,500	0
06.03.2009	DINESH	1,50,000	0	4,18,500	0
09.03.2009	DINESH	50,000	0	1,23,500	0
06.03.2009	ESPIRIT	86,732	0	2,39,355	0
09.03.2009	ESPIRIT	3,03,268	0	7,49,072	0
17.03.2009	ESPIRIT	5,25,000	0	13,27,548	0
18.03.2009	ESPIRIT	3,15,000	0	8,72,531	0
24.03.2009	ESPIRIT	3,10,000	0	9,45,405	0
25.03.2009	ESPIRIT	3,00,000	0	9,15,000	0
26.03.2009	ESPIRIT	3,00,000	0	8,99,879	0
27.03.2009	ESPIRIT	2,10,000	0	6,18,540	0
02.03.2009	LAXMI PERSHAD	1,50,000	0	3,81,000	0
03.03.2009	LAXMI PERSHAD	1,50,000	0	3,91,500	0
06.03.2009	LAXMI PERSHAD	1,50,000	0	4,18,496	0
09.03.2009	LAXMI PERSHAD	50,000	0	1,23,500	0

59. An analysis of the bank account statements of CAT Technologies and the aforementioned entities reveal that CAT Technologies transferred ₹37.32 Lakhs to Dinesh Kumar Jaiswal, ₹3.32 Lakhs to Laxmi Pershad Jaiswal in March 2009 and ₹34 Lakhs to Espirit Technologies Private Limited. Laxmi Pershad Jaiswal and Dinesh Kumar Jaiswal in addition to being Promoters of CAT Technologies are also occupying position as Director and Chairman, respectively. Dinesh Kumar Jaiswal is the brother of Dhiraj Kumar Jaiswal (Managing Director/Promoter of CAT Technologies) while Laxmi Pershad Jaiswal is his father. CAT Technologies failed to disclose fund transfers to the said entities under the head *'related party transactions'* in its Annual Report for the Financial Year 2008–09.

60. Further, on perusal of the company's Annual Reports for the Financial Year 2008–09 and 2009–10, it is observed that CAT Technologies merely stated that *'related party transactions'* occurred between CAT Technologies and Espirit Technologies Private Limited, contrary to the provisions of Accounting Standard 18 which further mandates a requirement for disclosure in the Annual Report of the nature and volume of such *'related party transactions'*.

61. In their additional submission dated February 7, 2019, the allegation of *'related party transaction'* has been sought to be addressed by Noticees 1–4 by producing the ledger account statement of Laxmi Pershad Jaiswal showing the amount purportedly paid as rent without any corroborating evidence such as the Rent Agreement, bank account statements, etc. Further, their explanations for payments made to Dinesh Kumar Jaiswal and Espirit Technologies Private Limited from 2008 to 2014 that the same was in respect of an

unsecured loan outstanding from the purchase of CAT USA is not acceptable having regard to the proximity of the supposed loan repayment with the immediate purchase of shares of CAT Technologies by them through Fortune Equity Brokers.

62. Upon a consideration of the preceding paragraphs, I find that CAT Technologies did indeed violate the provisions of Sections 77(2) read with 77(4) of the Companies Act read with Regulation 3 of the PFUTP Regulations, 2003 and also Clause 32 of the Listing Agreement. In addition, I find that Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited violated the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) of the PFUTP Regulations, 2003.

F. Role of Directors and Promoters of CAT Technologies.

63. The Board of CAT Technologies comprising of Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal, Kesava Mallikarjuna Prasad Chivukula, Dhaduvai Venkatram and Ashok Kulkarni held meetings on April 30, 2007 and August 28, 2009 approving the authorisation granted to the Managing Director of CAT Technologies i.e. Dhiraj Kumar Jaiswal, to apply to Euram and do the needful with respect to the proposed *GDR Issues*. Accordingly, I note that both *Pledge Agreements* were backed by proper authorisation and the meetings have been attended by the members of the Board of CAT Technologies. Thus, I find that as Directors of CAT Technologies, Laxmi Pershad Jaiswal (also a Promoter), Kesava Mallikarjuna Prasad Chivukula, Dhaduvai Venkatram and Ashok Kulkarni, like Dhiraj Kumar Jaiswal, were aware of the arrangements entered into by the Company with Vintage and Euram through the *Pledge Agreements* and *Loan Agreements,* which violated Sections 77(2) and 77(4) of the Companies Act as well as Regulations 3 and 4 of the PFUTP Regulations, 2003.

64. I have noted the preliminary findings made by SEBI in respect of the matter relating to market manipulation using GDRs Issue. It is observed that the scrip of CAT Technologies was earlier under examination by SEBI for fraud perpetrated by its Promoters/Directors. Considering the magnitude of the alleged market manipulation through the *GDR Issue*, SEBI was justified in issuing an SCN against the aforementioned entities who were either the Directors of CAT Technologies or were shown as Promoters by CAT Technologies in its quarterly shareholding patterns filed with BSE.

65. At this stage of final disposal of the proceedings, I am however, of the view that sufficient facts have not been brought out to show that Namratha Muralidhar (Director), Namritha Jaiswal (Promoter) and Nisha Jaiswal (Promoter) were indeed in control of the activities or actions of the company at the time of the *GDR Issues* in 2007 and 2009. Having arrived

at this finding, I am of the view that the SCN against the aforementioned Directors and Promoters, needs to be disposed of.

CONCLUSION –

66. As noted above, the *modus operandi* adopted by CAT Technologies and its Directors/Promoter in conceiving the fraudulent arrangement of *GDR Issues* to defraud the Indian investors is fraught with mala fides at every stage of its execution. The consequences resulting from violations committed by CAT Technologies and its Directors, etc. are of very grave nature and are prejudicial to the interests of investors in the securities market. When the Directors, etc. of a listed company engage in these types of fraudulent issuances then it is imperative that SEBI, as a regulator, intervenes with appropriate directions to arrest any recurrence and to restore the faith of the public shareholders/investors in the securities market.

67. In this case, I hold that CAT Technologies with the aid of its Directors, etc. had conceived the fraudulent arrangement with Vintage with regard to the subscription of *GDR Issues* and submitted incorrect/concealed information to SEBI. All the aforementioned entities have clearly acted in a manner which is fraudulent and deceptive and hence, detriment to the interests of investors in the Indian securities market. Thus, CAT Technologies and Dhiraj Kumar Jaiswal have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003. In addition, I find that CAT Technologies and Dhiraj Kumar Jaiswal submitted false information to SEBI in respect of the initial investors to *GDR Issue* of CAT Technologies and failed to provide information to/concealed information from SEBI in violation of Section 11C(3) of the SEBI Act. I also find that as Directors of CAT Technologies, Dhiraj Kumar Jaiswal, Laxmi Pershad Jaiswal (also a Promoter), Kesava Mallikarjuna Prasad Chivukula, Dhaduvai Venkatram and Ashok Kulkarni, were aware of the arrangements entered into by the Company with Vintage and Euram through the *Pledge Agreements* and *Loan Agreements,* which violated Sections 77(2) and 77(4) of the Companies Act as well as Regulations 3 and 4 of the PFUTP Regulations, 2003. I also find that CAT Technologies violated the provisions of Sections 77(2) read with 77(4) of the Companies Act read with Regulation 3 of the PFUTP Regulations, 2003 and also Clause 32 of the Listing Agreement in respect of funding its Promoters i.e. Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited, to purchase its shares during March 2009. In addition, I find that Laxmi Pershad Jaiswal, Dinesh Kumar Jaiswal and Espirit Technologies Private Limited violated the provisions of Regulations 3 of the PFUTP Regulations, 2003.

ORDER –

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

i. The following entity shall continue to be prohibited from accessing the capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a further period of **five years** from the date of this Order, –

	ENTITY
1.	CAT TECHNOLOGIES LIMITED

ii. The following entities are prohibited from accessing the capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of **five years** from the date of this Order, –

	ENTITY
2.	DHIRAJ KUMAR JAISWAL
3.	LAXMI PERSHAD JAISWAL
4.	DINESH KUMAR JAISWAL
5.	DHADUVAI VENKATRAM
6.	KESAVA MALLIKARJUNA PRASAD CHIVUKULA
7.	ASHOK KULKARNI
8.	ESPIRIT TECHNOLOGIES PRIVATE LIMITED

iii. I hereby also dispose of the SCN dated December 18, 2014, against the following entities, without any further directions, viz.

	ENTITY
9.	NAMRATHA MURALIDHAR
10.	NAMRITHA JAISWAL
11.	NISHA JAISWAL

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

70. This Order shall be served on all recognized Stock Exchanges and Depositories to ensure necessary compliance.

Place: Mumbai
Date: April 3, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA