BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/AE/2021-22/14578-14585)

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Noticeee No.	**Noticee Name**	**PAN**
1	Cals Refineries Ltd	AAACC0069N
2	Devanathan Sundararajan	AAVPS8671G
3	Asia Texx Enterprises Ltd	N.A.
4	Gagan Rastogi	AAFPR0532F
5	Deep Kumar Rastogi	AAAPR5029C
6	Sarvesh Kumar Goorha	AAGPG8310D
7	Ravi Chilikuri	Director Identification No:- 02076802
8	Sanjay Rai Malhotra	N.A.

(hereinafter collectively referred to as "Noticees")

In the matter of

GDR Issues of Cals Refineries Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), conducted investigation in regard to issues of Global Depository Receipts (**GDR**) issue of Cals

Refineries Ltd (hereinafter referred to as “**Cals**” / “**Noticee 1”**). During the course of investigation, it was observed that Cals issued 78,80,000 GDRs (amounting to USD 200 million) and issue closed on December 12, 2007. It is alleged in the Investigation Report (**IR**) that as the authorised signatory of Cals, Sarvesh Goorha (Promoter and Director of Cals) (hereinafter referred to as "**Goorha**") signed an *Account Charge Agreement* with Banco Efisa, a Portugal based bank (hereinafter referred to as "**Banco**"). The aforesaid *Account Charge Agreement* was an integral part of another agreement viz. *Credit Agreement* signed between Honor Finance Limited (hereinafter referred to as "**Honor**") and Banco. Honor was beneficially owned by Sanjay Rai Malhotra (hereinafter referred to as "**Sanjay Malhotra**"). These agreements enabled Honor to avail a loan of US $200 million from Banco for subscribing to the GDR issue of Cals. In terms of the *Account Charge Agreement*, Cals deposited the GDR subscription proceeds received from the subscriber i.e. Honor, as security for the loan availed by Honor from Banco. The *Account Charge Agreement* contained a clause to the effect that all communications to be given under the Agreement were to be addressed to either Goorha or Devanathan Sundararajan (Director of Cals) (hereinafter referred to as "**Sundararajan**"). Goorha and Sundararajan were also authorised signatories for Cals. As the *Account Charge Agreement* was expiring, an *Extension Agreement* was signed between Cals and Banco on January 13, 2009. The said *Extension Agreement* was signed by Ravi Chilukuri (Director and authorised signatory of Cals) (hereinafter referred to as "**Chilukuri**") on behalf of Cals. Even though the GDR issuance was by means of an illegal and fraudulent arrangement and no genuine capital was raised in the process, Cals informed Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") that GDR issue of US $200 million was fully

subscribed. It was observed that the names of initial investors provided by Cals to BSE and SEBI were false and misleading as the only subscriber to the GDRs issue was Honor. It was further observed that Cals paid USD 92 million to a promoter controlled entity viz. Asia Texx Enterprises Limited, Hong Kong (hereinafter referred to as "**Asia Texx**"). The beneficial owner of Asia Texx was Gagan Rastogi (hereinafter referred to as "**Gagan**"), who was one of the Promoters of Cals. Gagan is also the son of Deep Kumar Rastogi (hereinafter referred to as "**Deep Kumar**"), who was a Director of Cals. It was alleged that the above transaction between Cals and Asia Texx was fraudulent as the transaction was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. Gagan obtained 25 million GDRs of Cals by using the funds of Cals. No refinery equipments have been received from Asia Texx. The money was ultimately used by Honor (owned by Sanjay Malhotra- promoter of Cals) to repay the outstanding loan to Banco. Cals had furnished misleading submissions to SEBI and also concealed material information from SEBI.

2. On the basis of the said investigation, it is alleged by SEBI that Cals and the following entities viz. Shri Devanathan Sundararajan (hereinafter referred to as "**Sundararajan**" / "**Noticee 2**"), Honor Finance Ltd(hereinafter referred to as "**Honor**"), Asia Texx Enterprises Ltd (hereinafter referred to as "**Asia Texx**" or "**Noticee 3**"), Gagan Rastogi (hereinafter referred to as "**Gagan**" / "**Noticee-4**"), Deep Kumar Rastogi (hereinafter referred to as "**Deep Kumar**" / "**Noticee-5**") Sarvesh Kumar Goorha (hereinafter referred to as " Goorha" / "Noticee-6"), Ravi Chilukuri (hereinafter referred to as "**Chilukuri**" / "**Noticee-7**"), and Sanjay Rai Malhotra (hereinafter referred to as "**Noticee-8**") have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI**

Act') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it is also alleged that Noticee 1 and Noticee 2 had failed to submit certain information demanded by SEBI and also submitted false information and, by doing so, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. Further, it is also alleged that Noticee 1 has violated Clause 35 of Listing Agreement read with Section 23E of Securities Contracts Regulations Act, 1956 (hereinafter referred to as "**SCRA**"). Accordingly, adjudication proceedings was initiated against the Noticees and Honor under Section 15HA of SEBI Act, Section 15A(a) of SEBI Act, and Section 23E of SCRA, as applicable. Subsequently, vide adjudication order dated January 15, 2021, the adjudication proceedings against Honor was disposed of.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer vide Order dated June 15, 2016 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and Section 23 I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(a) and Section 15HA of the SEBI Act, and Section 23E of SCRA, as applicable, the aforesaid violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated July 05, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. After receipt of certain clarifications from the operational department, a Show Cause Notice ref. A&E/EAD-8/KS/VB/14319/2019 dated June 07, 2019 (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4(1) of SEBI Adjudication Rules and Rule 4(1) of the SCR Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Sections 15A(a) and 15HA of the SEBI Act, and Section 23E of SCRA, as applicable, for alleged violation of the relevant provisions of law.

5. The relevant part of SCN including details in respect of alleged violations by the Noticees are as given below:

   a. It is observed from the Investigation Report (hereinafter referred to as "IR") that Cals issued 78,80,000 GDRs (amounting to US$200 million) and issue closed on December 12, 2007. Further, BBS Capital partners, Switzerland and Invest Bank Montenegro were the Lead Manager of GDR issue of Cals. Summary of the GDR issues as provided by Cals is tabulated below:

GDR issue close date	**No. of GDRs issued**	**Capital raised (US mn.)**	**No. of equity shares underlying GDRs**	**Lead Manager**	**Bank where GDR proceeds were deposited**
December 12, 2007	78,80,000	200	78,80,00,000	BBS Capital partners, Switzerland Invest Bank Montenegro	Banco Efisa, SFE, S.A (**Banco)**

   b. The following were the investors in the GDR issue of Cals as submitted by Cals

Name of Subscriber	**GDRs Subscribed**	**% of total GDR issue**
Investec Bank (Switzerland) AG	13,79,000	17.5
Invest Bank Montenegro	11,82,000	15.0
Swiss Pb AG	9,85,000	12.5
Gemini Financial Services Ltd	7,88,000	10.0
Calixis AG	5,91,000	7.5
Fundabilis GmbH	5,91,000	7.5
Asset Logic Ltd	5,91,000	7.5
Sensalis GmbH	5,91,000	7.5

Board Matters AG	5,91,000	7.5
Contifina Asset Management	5,91,000	7.5
Total	**78,80,000**	**100.0**

Loan & Pledge Agreement signed among Cals, Honor & Banco

c. It is alleged that a Loan Agreement dated December 11, 2007(Annexure-II) was signed between Banco (**as the Bank**) and Honor, a company incorporated in the British Virgin Islands and owned by Noticee-8, one of the promoters of SRM Exploration Pvt Ltd (**SRM**). Noticee-8 was the 100% shareholder of Honor at the time of signing of Loan Agreement with Banco. It is noted that SRM was granted shares of Cals pursuant to preferential allotment prior to the GDR issue. SRM subsequently became the promoter of Cals in June 2008.

d. It is observed that the Loan Agreement (titled as Credit Agreement relating to a dollar term facility of up to $200,000,000") was signed by Noticee 8 on behalf of Honor. The preamble of the Credit Agreement is stated as:
"Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower a Dollar term loan facility in the maximum principal amount of up to $200,000,000."

e. The purpose of the Loan Agreement is stated as *"The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to $200,000,000 issued by Cals on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange."*

f. Further, a Pledge agreement (titled as Account Charge Agreement)(Annexure-II) was signed between Banco and Noticee-1. The agreement was signed by Noticee-6, one of the promoters of Cals on December 11, 2007 on behalf of Cals. The Account Charge in the agreement is stated as below:-

"Account Charge

- *Subject to the terms of this Agreement,* ***Cals deposited in its designated account with the Bank (hereinafter the Account) an amount not exceeding USD200,000,000 as security for all the obligations of Honor under the Loan Agreement (hereinafter the Secured Obligations****), and with full title guarantee ' hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such*

assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.

- *Upon payment of all or part of the amounts due under the Loan Agreement, Cals may withdraw from the Account the equivalent amount.*
- *Cals covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.*
- *Cals hereby irrevocably appoints by way of security the Bank as the attorney of Cals with full power in the name and on behalf of Cals to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Cals to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully -and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realisation of the security hereby created.*

  Cals hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Cals itself and Cals hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

g. It is observed that the Account Charge Agreement contained a clause to the effect that all communication in this regard was to be addressed to either Noticee-6 or Noticee-2 thus indicating that both Noticee-6 and Noticee-2 were aware of this Account Charge Agreement; further it is observed that Noticee-2 and Noticee-6 were the authorized signatories of the bank account of Cals with Banco (Copy of KYC document furnished by Banco is enclosed as **Annexure - III**).

h. The following Resolution was passed by the Board of Directors of Cals at its meeting dated October 30,2007(copy placed at **Annexure– IV**)

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

RESOLVED FURTHER THAT Mr. Sarvesh Goorha. Director and Mr. D. Sundararajan, Director be and are hereby severally authorised to sign, execute, any application,

agreement, escrow agreement, document, undertaking, confirmation, declaration and any other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

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

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

i. It is noted that the Loan provided to Honor by banco for subscription to the GDR issue was transferred to Bank Account of Cals maintained with Banco on December 12, 2007. Banco submitted that the loan granted to Honor was settled throughout the financing period, through earnings received by Honor from the sale of the GDRs of Cals. From the data obtained from Banco, it is observed that Honor sold GDRs to various entities between the period December 18, 2007 and October 7, 2008. However, as on December 15, 2008, an amount of USD 9,18,00,000 was still outstanding in the Loan Account of Honor. Since the expiration date of the Account Charge Agreement signed between Cals and Banco was December 15, 2008, an Extension Agreement **(Annexure-V)** was signed between Cals and Banco for extension of the Account Charge Agreement for three months. The Extension Agreement was signed by Noticee-7 on behalf of Cals. Article II of the said extension agreement, *inter alia*, states that the parties (Cals & Banco), intending to be legally bound, agree as follows:

"the parties have agreed to extend and continue the Agreement for an additional term of three months, commencing upon the expiration of the original term on December 15, 2008 and shall now expire on June 15, 2009, providing as security for Honor Finance Limited the amount US $ 91,800,000."

j. It is noted that since security for the loan amount of $200,000,000 taken by Honor was provided by Cals by depositing with banco, the proceeds of GDR issue amounting to $200,000,000. the proceeds of GDR could be withdrawn by Cals from banco only to the extent of an amount equal to the repayment under the aforesaid Loan Agreement by Honor. It is observed from the records that

the following are the details of utilisation of USD 200 million raised via GDR issue:

Date	Party Name	Amount in USD
28-12-2007	Lohrmann (Euro 34 million @$1.4515)	4,93,51,000
28-12-2007	ATEP (Euro 6 million @$1.4515)	87,09,000
03-01-2008	Bermer Bugmann Seiler Capital Partners AG	1,00,000
03-01-2008	Brunner & Decurtis	25,000
03-01-2008	Invest Banka Montenegro AD	75,000
31-01-2008	ATEP AG Euro 3 million @$1.4818)	44,45,400
11-02-2008	Loxely and Tweedy Limited	72,70,000
29-02-2008	Lohrmann International GMBH (Euro 10 million @1.525)	1,52,50,000
11-03-2008	Ventech	11,35,000
09-04-2008	Ventech	11,35,000
19-06-2008	Ventech	11,35,000
22-07-2008	Lohrmann Consultancy (Euro 5 million @1.591)	79,55,000
05-09-2008	Ventech Relocation Services Inc.	1,50,000
12-09-2008	KBC Advance Technology PTE Ltd. (Euro 95,757.49@1.3945)	1,33,534
27-03-2009	Asia Texx Enterprises Limited	9,20,00,000
	Total	18,88,68,934

k. It is observed from the Bank statement of Honor maintained with Banco Efisa that Honor repaid Banco Efisa in several instalments from the earnings received by Honor from the sale of GDRs of Cals. The table indicating datewise repayment of loan by Honor and utilization of funds by Cals Refineries Limited is given below

Date	Loan repaid by Honor ($)	Amount utilised by Cals in ($)	Cumulative Loan repaid by Honor as on date ($)	Cumulative Amount utilised by Cals as on date ($)
27-12-2007	6,50,00,000		6,50,00,000	
28-12-2007		4,93,51,000	6,50,00,000	4,93,51,000
28-12-2007		87,09,000	6,50,00,000	5,80,60,000
02-01-2008	2,50,00,000		9,00,00,000	5,80,60,000
03-01-2008		1,00,000	9,00,00,000	5,81,60,000
03-01-2008		25,000	9,00,00,000	5,81,85,000
03-01-2008		75,000	9,00,00,000	5,82,60,000
31-01-2008		44,45,400	9,00,00,000	6,27,05,400

11-02-2008		72,70,000	9,00,00,000	6,99,75,400
29-02-2008		1,52,50,000	9,00,00,000	8,52,25,400
04-03-2008	35,00,000		9,35,00,000	8,52,25,400
11-03-2008		11,35,000	9,35,00,000	8,63,60,400
09-04-2008		11,35,000	9,35,00,000	8,74,95,400
05-05-2008	8,50,000		9,43,50,000	8,74,95,400
18-06-2008	35,00,000		9,78,50,000	8,74,95,400
19-06-2008		11,35,000	9,78,50,000	8,86,30,400
11-07-2008	1,00,000		9,79,50,000	8,86,30,400
22-07-2008	79,50,000	79,55,000	10,59,00,000	9,65,85,400
05-09-2008	23,00,000	1,50,000	10,82,00,000	9,67,35,400
12-09-2008		1,33,534	10,82,00,000	9,68,68,934
27-03-2009	9,18,00,000	9,20,00,000	20,00,00,000	18,88,68,934
Total	**20,00,00,000**	**18,88,68,934**		

It is observed from the above table that at no time Cals utilized any money in excess of loan repaid by Honor. This shows that utilization of GDR proceeds by Cals was dependent on loan repayment by Honor.

l. Further, pursuant to signing of the extension agreement as stated above, it is observed that on March 26, 2009, Noticee-3 acquired 2,50,00, 000 GDRs at the rate of USD 3.68 amounting to USD 9,20,00,000 from Honor. Thereafter, Noticee-1 had signed a contract with Noticee-3 (Asia Texx) for acquisition of refinery equipments and paid USD 9,20,00,000 to Noticee-3.(Annexure-VI)

m. The following are the timelines of transactions which resulted in payment of outstanding loan of Honor by Noticee-1

Date	**Event**
05-Feb-2009	Cals signs agreement with Asiatexx
26-Mar-2009	Asiatexx purchases 2,50,00,00 GDRs from Honor for USD 9,20,00,000
27-Mar-2009	Honor repays the outstanding amount of USD 9,18,00,000 to Banco
27-Mar-2009	Cals pays USD 9,20,00,000 to Asiatexx under the pretext of the Agreement to purchase refinery equipments and the payment was forfeited.
09-Jul-2009	Asiatexx transfers 2,50,00,00 GDRs to Mr. Gagan Rastogi free of cost.

n. It is observed that 2,50,00,000 GDRs of Cals purchased by Asiatexx from Honor were transferred to the account of Noticee-4 on July 09, 2009 in Julius Baer Bank Singapore. Thus, Noticee-4 obtained these 25 million GDRs of Cals using the

funds of Cals. Thus, it is alleged that the transaction between Cals and Asiatexx appears to have been structured to settle the outstanding liability of Honor to Banco using funds of Cals. Thus the liability of the promoter of Cals (liability of Mr. Sanjay Malhotra through Honor) was discharged using the funds of Cals.

o. Noticee-5 was a Director of Cals during its GDR Issue. As per the Annual Report of Cals for the year 2008-2009, as a Director of Cals, Noticee-5 admittedly had significant influence over that company at the time the Agreement with Asia Texx was signed. Further, Noticee-4 who was the beneficial owner of Asia Texx is the son of Noticee-5. It is alleged that Asia Texx was significantly influenced by relative of the Director and key management personnel of Cals viz. Noticee-5(Annexure-VII).

p. In view of the above, it is alleged that

- Cals and its Managing Director i.e Noticee-2 haave violated section 12A(a),(b) and (c) of the SEBI Act read with regulation 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations.
- Noticee-6, Noticee-7, Noticee-8 as signatories to the Account Charge Agreement , Extension Agreement and Credit Agreement, respectively have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.
- Honor, Noticee-3, Noticee-4, Noticee-5 as party to the fraudulent arrangement has violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3 (b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.

Non-furnishing of information and misleading submissions by CALS:-

q. In terms of Section 11C(3) read with 11C(6) of the SEBI Act, it is obligatory on any person so summoned to produce the necessary documents / information / appear in person to/ before the Investigating Authority. It is alleged that during the course of investigation, summons were issued under Section 11C(3) read with 11C(6) of the SEBI Act to the Noticee 1 for production of documents regarding utilisation of GDR proceeds by the company.

r. It is observed that Cals did not comply with summons issued by SEBI(Annexure-VIII) as it furnished wrong information and concealed material information from SEBI either in their replies to SEBI or in statements given under oath, in person, before Investigating Authority. It is alleged that Cals tried hamper and mislead the investigation carried out by SEBI. The misleading submissions made by Cals to SEBI in response to summons are given below:

a. In its reply dated January 20, 2012 to the summons issued by SEBI on January 12, 2012, Cals denied having any agreement with Banco for any other services except opening of bank account for keeping GDR proceeds. This statement is misleading as Cals has concealed the information that it had entered into an Account Charge Agreement with Banco. (Copy of summons issued by SEBI and reply of Cals is enclosed as Annexure)

b. Cals specifically stated in its reply dated January 20, 2012 that there were no conditions by Banco on utilization of GDR subscription funds from the account of Cals with Banco. This is misleading because in terms of the Account Charge Agreement, Cals could not utilize any funds till the loan availed by Honor from Banco was repaid by Honor.

c. In its reply dated January 20, 2012, Cals denied having any agreement with any entities regarding the financing of the subscription by initial investors of its GDR issue. This is misleading as in terms of the Account Charge Agreement, Cals was required to deposit in its designated account with Banco an amount not exceeding USD 200 million as security for all obligations of Honor under the Loan Agreement .Cals did not mention the name of Honor in this context and thereby concealed material information.

d. Cals informed BSE regarding the raising of capital through issuance of GDRs for its utilisation. The information was misleading as the capital was raised using loan taken from Banco and was pledged with the same bank itself. The general public was not aware that the GDR subscription proceeds were locked with Banco and utilisation of the same was totally dependent on the repayment of loan by Honor. Cals filed information regarding initial investors of GDR issue with BSE and SEBI. However, as explained earlier, the names of initial investors provided was false as the real subscriber to the GDR issues was Honor.(Copy of information furnished by Cals is enclosed as Annexure – IX).

e. Cals also informed its investors and SEBI that the funds raised through GDRs have been utilised in paying foreign based entities for purchase of refinery equipments. The payment of USD 92 million was found to be routed back to Honor for repayment of loan taken by Honor. Cals concealed information in this regard in its reply dated January 20, 2012 as well as in its annual reports.

s. Noticee-2, on behalf of Cals, in his statement to SEBI on April 03, 2012 has submitted that a payment of USD 92 million to Noticee-3 was done for purchase of various refinery units to expand the total capacity of refineries planned by Cals.Noticee-2 concealed the fact that the transaction with Noticee-3 is a related party transaction. Noticee-2 in his statement has admitted that he was responsible for completing the GDR process. Thus, as director in charge of the GDR process and also signatory to the agreement between Cals and Noticee-4, it is alleged that he was aware of the fraudulent transaction between Cals and Noticee-3. However, Noticee-2 concealed this material information from

SEBI (Copy of statement dated April 03, 2012 by Noticee is enclosed as Annexure X).

t. Further, Noticee-2 in his statement recorded on April 03, 2012 has submitted that the promoters/directors of Cals did not have any agreement with the initial investors of the GDR issue. However, it is alleged that the promoters/directors of Cals had entered into a fraudulent arrangement with the initial investor of the issue viz. Honor. Thus, Noticee-2 mislead SEBI in this regard.

u. In view of the observation(s) mentioned at above paragraph, it is alleged that the Noticee-1 and Noticee-2 have violated the provisions of Section 11C(3) read with 11C(6) of the SEBI Act.

v. It is also alleged that Cals failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE. As per BSE website (www.bseindia.com), the equity held with custodian is shown as nil for Cals during the period June 01, 2009 to September 21, 2011 (Annexure XI – Copy of Shareholding pattern filed with BSE for the Quarter December,2007). Therefore, it is alleged that the Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 23E of SCRA.

w. The alleged violations of the relevant provisions of the Listing Agreement by the Noticee 1 as brought out above, if proved, makes the Noticee 1 liable for monetary penalty under the provisions of Section 23E of SCRA.

6. The SCN was sent to Noticee 1 through Speed Post with Acknowledgement Due and the same delivered, however no reply was received from Noticee 1. Subsequently, vide Hearing Notice dated December 09, 2019, Noticee 1 was granted an opportunity of personal hearing on December 23, 2019. Noticee 1 was also granted opportunity to submit reply to the SCN latest by December 20, 2019. However, the aforesaid Notice dated December 09, 2019 returned undelivered. Subsequently, Hearing Notice dated December 24, 2019 was sent to Noticee 1 at its address – *Unit No. 209, 2nd Floor, Suneja Tower-II, District Centre, Janakpuri, New Delhi – 110058.* In the said letter, the SCN and its annexures were once again enclosed and Noticee 1 was

granted opportunity to submit its reply to the SCN latest by January 10, 2020. Further, Noticee 1 was granted another opportunity of hearing on January 15, 2020. The aforesaid letter also returned undelivered. Further, the Hearing Notice dated December 24, 2019 was also sent to Cals through digitally signed email dated December 24, 2019 at its email id – cs@calsrefineries.com and the said email did not bounce. Also, the Hearing Notice dated December 24, 2019 was enclosed in the letter dated January 23, 2020 and was served on Noticee 1 at the following addresses – (i) 21 Basant Lok Complex, Vasant Vihar, New Delhi - 110057, and (ii) *Unit No. 209, 2nd Floor, Suneja Tower-II, District Centre, Janakpuri, New Delhi – 110058,* through affixture. In the notice, Noticee 1 was granted opportunity to submit its reply latest by February 05, 2020 and an opportunity of hearing on February 14, 2020. However, the said Hearing Notice dated January 23, 2020 was affixed at the abovementioned addresses (i) and (ii) only on February 15, 2020 and February 22, 2020, consequently, one more opportunity for the hearing was given to Noticee vide Hearing Notice dated March 06, 2020 as described subsequently. Further, the Hearing Notice dated January 23, 2020 was also sent to Cals through digitally signed email dated January 29, 2020 at its email id – cs@calsrefineries.com; sharesdept@calsrefineries.com; and info@calsrefineries.com. I note that the said email did not bounce. However, no reply was received from the Noticee. Thereafter, vide Hearing Notice dated March 06, 2020, Noticee 1 was granted final opportunity of personal hearing on March 30, 2020. The said Hearing Notice was served on Noticee 1 through affixture at its abovementioned 2 addresses on March 13, 2020. Further, the Hearing Notice dated March 06, 2020 was also sent to Cals through digitally signed email dated March 13, 2020 at its email id – cs@calsrefineries.com; sharesdept@calsrefineries.com; and

info@calsrefineries.com. However, Noticee 1 neither submitted any reply nor appeared for the said hearing.

7. The SCN was served on Noticee 2, however no reply was received within the stipulated period. Subsequently, vide Hearing Notice dated December 09, 2019, Noticee 2 was granted an opportunity of personal hearing on December 23, 2019. Noticee 2 was also granted opportunity to submit reply to the SCN latest by December 20, 2019. However, the aforesaid Notice dated December 09, 2019 returned undelivered. Subsequently, Hearing Notice dated December 24, 2019 was sent to Noticee 2 at its address – *601, 6th Floor, Griselda, Plot No. 35, 5th Road, Off Bhau Daji Road, Matunga (East), Mumbai - 400019.* In the said letter, the SCN and its annexures were once again enclosed and Noticee 2 was granted opportunity to submit its reply to the SCN latest by January 10, 2020. Further, Noticee 2 was granted opportunity of hearing on January 15, 2020. Vide letter dated January 08, 2020, the Noticee submitted reply to the SCN. The main submissions made therein are summarized as follows –

    i. *Every allegation made against me in your SCN is hereby denied unless specifically and expressly admitted in this response.*
    ii. *The present proceedings are being conducted by SEBI after 12 years of the GDR issue of Cals Refineries Ltd ('Cals') and 5 years after the Order prohibiting the undersigned from accessing the capital markets was passed.*
    iii. *In reply to your SCN, I reiterate my replies already submitted to SEBI in response to its Show Cause Notices dated 25th September 2013, supplementary Show Cause Notices dated 18th October, 2013 and 28th October, 2013. I replied to the said Notices on 7th October, 2013, 21 st*

October, 2013 and 30th October, 2013 respectively. As the same are part of present SEBI's proceedings they are not attached once again and are simply relied upon.

iv. *Preliminary Submissions: It is submitted that the captioned proceedings suffer from enormous laches. Admittedly, the alleged violations pertain to the period 2007. The SCN was issued on June 2019 (i.e. after inordinate delay of 12 years). The inordinate delay of 12 years has not been explained by SEBI. In this regard reliance is placed on the judgement of Hon'ble Securities Appellate Tribunal in the matter of Ashok Shivlal Rupani & Ors v. SEBI (Appeal No. 417 of 2018).*

v. *Background: I am 64 years old and not in any gainful employment since 2013 after resigning from Spice group (consequent to SEBI's order on Cals). I joined the group as 'Group CFO' on 1st June'07 and was an employee of SRM Exploration Pvt Ltd / Spice Energy Pvt Ltd (holding company of Spice Energy group). I had neither drawn any salary from Cals nor held any of its shares. The promoters of Spice Energy (Mr. Deep Rastogi & Mr. Gagan Rastogi) used my services in Cals since Jan/Feb' 11 (besides my other assignment as MD of a power project) as other promoters vanished and almost all directors of Cals resigned. Citing the liquidity problems faced by the group, the promoters (Rastogis) delayed my salary/paid paltry amounts as against my entitlement since 2011. When I resigned in Oct' 13 they agreed to pay me the total arrears of Rs. 4.60 crores but never honoured their commitment. I have filed a suit against them in Bombay High Court which is still going on (Suit No. 966 of 2014).*

vi. *During the course of investigation by SEBI I have explained my role during the period from July 2007 to July 2009 when I was a Director of CALS and subsequently from February, 2011 to October, 2013 when I was Managing Director of CALS. I have without suppressing any information honestly produced all the documents which were in my possession and answered all the questions of the Investigating officers of SEBI with utmost sincerity and earnestness.*

vii. *Based on the SEBI's order on Cals, Ministry of Corporate Affairs had ordered an investigation by SFIO and I have been made as an accused by the agency in their Complaint filed with Company Law Court, Dwaraka, Delhi, in July' 17. The charges are yet to be framed though cognizance has been taken by the Hon'ble Court (Complaint Case No. 452 of 2017). I have been provided the Investigation Report by SFIO which contains some materials which were not considered by SEBI during their investigation. The same are being attached to this submission.*

viii. *Parawise Submissions: The SCN contains allegations against many persons. The allegations against me appear in paragraphs 8, 17, 21, 22 and 23.*

Loan & Pledge Agreement signed among Cals, Honor & Banco

ix. *It is patently illogical and unfair to assume that I had knowledge of an agreement (paragraph 8 of SCN) merely because it mentioned my name for communications since no one can control what names are mentioned in documents which are not seen or signed by him. I never received any communication whatsoever from Banco as regards this alleged Account Charge Agreement.*

x. *SEBI has not produced any evidence whatsoever either connecting me to the Credit agreement or ownership of Honor Finance. Also I was unaware of the subscription (if any) by Honor to the GDR issue or of Honor's beneficial ownership.*

xi. *SEBI never bothered to elicit information directly from the Lead Managers- BBS Capital Partners and Invest Bank Montenegro on how they could certify the initial list of 10 subscribers to the GDR issue of Cals. Nor it made any attempt to contact any of the said 10 subscribers which contained a few well-known names like Investec Bank, Invest Bank Montenegro. It has made a patently bald statement that the initial list of GDR subscribers is false and the GDR was subscribed by only Honor. As the Lead Managers were duly registered with the Swiss financial market supervisory authority, I had no reason to disbelieve their information and/or to call for any further deeper investigation or any further details about the subscribers. It was*

accepted by SEBI officials during personal hearing held in 11 th October, 2013, that SEBI doesn't have any direct evidence either from the Lead Managers or from the investors concerned. The investigation of SEBI was thus incomplete.

xii. *I was asked vide Show Cause Notices dated 18th October, 2013 and 28th October, 2013, about the Board Resolution of Cals dated 30th October, 2007, and the transaction in the Cals' account with Banco. The undersigned has faithfully explained the sequence of events relating to the said Board Resolution (which was inadvertently not included by the Company Secretary of Cals in the Minutes Book) and the withdrawals from Cals' account. The same is reproduced as under:*

a) The board resolution is a standard format required by Banco as part of their account opening process.

b) The Board Meeting held on Oct 30, 2007 discussed among other things the progress of GDR issue and the documentation/approvals etc., required for the same. The undersigned got the account opening form of Banco immediately after the meeting and requested the then Company Secretary assisting Sarvesh Goorha to include the account opening resolution in the same Board meeting. This was to be done after taking concurrence from the Chairman and other members of the Board. The undersigned signed the copy of resolution acting in good faith expecting that the resolution in question would be included into the Minutes book of the Company. That inclusion did not take place due to an oversight by the then company secretary. I realized this only after receiving communication from SEBI asking for copy of all Minutes of Board Meeting/AGM/EGM of Cals since 2007.

c) The subject resolution was made in the standard format sent by Banco. It contained an omnibus clause which was intended to cover security for any loans that the Company may avail from Banco from time to time. Since no such loan was availed, there was no occasion for the resolution to ever be acted upon. Certainly this was not intended to cover any third party loan from Banco as the wordings for the same would be

different. As SEBI is no doubt aware, an Indian company can create a security on its assets only with the prior approval of its board of directors. Even the articles of association do not empower any individual to create a charge on the Company's assets. Since the Articles of association of the Company are available in the public domain, the whole world (including Banco) is deemed to have notice of the same.

d) Besides a specific resolution would be necessary for a third party loan as per the Articles of Association of Cals and also approval from Appropriate Authorities as it involved an off shore transaction. SEBI has not produced any documents from Banco in this regard to cover the loan it had allegedly extended to Honor based on Account Charge Agreement.

e) The withdrawals made by Cals from the GDR proceeds deposited with Banco were dictated by the regular business needs of Cals and were not linked with the alleged repayment of any loan taken by Honor. In fact Banco had sent a Balance confirmation Certificate as at 31 st December, 2008, which didn't indicate any lien on the bank balance of Cals' towards the loan of Honor.

f) My role in Cals was limited to:

- *conducting a due diligence of Cals for a possible investment by Spice group and*
- *Assisting in the GDR process.*

g) I had also assisted in further resource mobilization for Cals through FCCB issue and domestic debt syndication as the Company didn't have a full time CFO. I was initially an employee of SRM Exploration and then served with Spice Energy Pvt Ltd.

h) The Cals project team was led by its CEO (Mr. M Guha Roy) and its advisor (Mr. P.N. Devarajan). This team was functioning independently in a separate premises. I was not connected with its day-to-day project activities. Goorha and I were the authorized signatories on behalf of Cals for the bank account with Banco in which the GDR proceeds were parked. My signatures were obtained for authorizing withdrawals corresponding to the payment obligations of Cals for genuine business transactions.

i) Once a Whole-time Director designated as 'CFO' was appointed by Cals in January 2009, I did not attend any of Cals' Board meetings' after January 2009 and resigned from Board in July 2009.

j) I was not connected with the personal finances of Sanjay Malhotra and had no knowledge of how or when he acquired Cals' GDRs. My submissions to BSE/RBI/ED/SEBI were solely based on the certificates furnished by the Lead Manager to the GDR issue.

xiii. Thus the SCN is based purely on conjecture and falsely implied circumstantial evidences besides erroneously arrived opinions

Non-furnishing of information and misleading submission by CALS:

xiv. In paragraph 21(a) of SCN it has been alleged that Cals concealed the information that it had entered into an Account Charge Agreement with Banco. As already submitted, Cals never authorized execution of Account Charge Agreement. In this connection it is to be noted that the alleged Account Charge agreement signed by Sarvesh Goorha nowhere mentions that the loan to be availed by Honor Finance was for the purpose of subscribing to CALS GDR issue and also the details of ownership of Honor. However, the alleged Loan Agreement signed by Sanjay Malhotra clearly specifies the purpose for which the loan was extended to Honor (whose sole beneficial owner was said to be Sanjay Malhotra). Thus it was Banco and Sanjay Malhotra who had colluded and cleverly drafted the Account Charge Agreement & Loan Agreement in such a way that the person signing Account Charge Agreement on behalf of CALS would not know the purpose of lending to Honor. ***SEBI had not produced any evidence whatsoever to show that the undersigned was aware of the loan agreement executed by Honor Finance with Banco and for that matter he knew about the Sanjay Malhotra's (A-14) ownership of Honor. The whole allegation is based on presuming constructive knowledqe/awareness retrospectively on the part of the undersigned based on the exposure brought in by SEBI during Oct'13 regarding alleged structured Cals' GDR issue (based on just two documents received from Banco). Thus the allegation that the undersigned***

furnished wrong information/concealed material information in Jan'12 is absolutely groundless*.*

xv. In paragraph 21 (b) it has been alleged that Cals wrongly informed that there were no conditions by Banco on utilization of GDR proceeds. As already stated that Balance confirmation provided by Banco never indicated any lien in favour of the loan allegedly availed by Honor. Hence the submission to SEBI was based on records available with Cals and no wrong information was furnished.

xvi. In paragraph 21 (c) it has been alleged that Cals had wrongly denied any agreement with any entities regarding financing of the subscription by the initial investors and didn't mention the name of Honor. Again this allegation is purely based on assumptions, presumptions and conjectures. As there is no evidence whatsoever to link the undersigned/Cals to the Account Charge Agreement to secure the alleged loan availed by Honor from Banco, the allegation is a bald one and baseless.

xvii. In paragraph 21 (d) it has been alleged that Cals had misled the public regarding GDR subscription and the list of initial investors was false as Honor was the real subscriber. As already submitted SEBI never produced any direct evidence either from the Lead Managers or from any of the entities named in the initial subscribers list that the list was false. SEBI has also not produced any response from Banco on the initial GDR subscribers list. The allegation is purely based on linking the two documents supplied by Banco without any other direct evidence whatsoever and hence baseless.

xviii. In paragraphs 21 (e) and 22 it has been alleged that Cals has misrepresented that the GDRs had been utilized to pay for purchase of refinery equipment whereas US $ 92 mn was used to pay off the loan taken by Honor besides the transaction of Asia Texx was a related Party transaction. The alleged payment of US $ 92 mn by Asia Texx (allegedly owned by Gagan Rastogi) to Honor Finance was a deal structured amongst the promoters (Sanjay Malhotra & Rastogis) and linking the

undersigned to the same is farfetched. In this connection I would like to state as follows:

(i) I was never involved in the due diligence or negotiation of the proposal and finalization of the Draft Agreement with Asia Texx. The undersigned was neither informed nor aware about the background and whereabouts of Asia Texx.

(ii) The said agreement was approved by the Board of Cals unanimously and I was only one of the authorised signatories for executing the Agreement. I was only carrying out a ministerial function in signing the contract. I had been unnecessarily burdened with the onus or responsibility of the said contract alone; whereas the board of Cals is collectively responsible. Incidentally SEBI had not proceeded against then Chairman, CEO or CFO of Cals in this regard which is arbitrary and malafide.

(iii) The CEO and CFO along with the promoters of the Company are responsible for all the major decisions taken in the Board meeting and the day-to-day operation of the Company. For the collective decision of the Board, the undersigned can't be made a scapegoat.

(iv) It is strange that just because the undersigned was a director of Cals, it can be assumed as a matter of fact and law that the alleged knowledge of beneficial ownership of Asia Ten, which is a separate legal entity. Besides, SEBI failed to appreciate the fact that on January 23, 2009, when the said contract with Asia Texx was approved by the Board of Cals, the undersigned was only a Non-Executive Director of the Company. The Company had Whole-time CEO & CFO who attended the meeting besides the Company Secretary. Moreover, Mr. Deep Rastogi, father of Mr. Gagan, a promoter Director of Cals attended the said Board meeting besides Sanjay Malhotra who was the 'Advisor to the Board' and the lead Promoter of Spice Group. It was the CEO, Mr. Guha Roy, who piloted the said resolution to approve the said contract and the CFO who circulated justification note to the members of the Board as asked by the Chairman

of the Board. The exact reproduction of the said resolution appearing in the minute book of the Company is as under:

> *"AGREEMENT FOR PURCHASE AND SALE OF EQUIPMENT FOR PHASE II OF THE PROJECT:*
>
> *The Chief Executive Officer informed the Board that the Company has entered an agreement with Asia Texx Enterprises Limited for purchase of process units, equipment and all engineering, design pertaining to the IRL oil refinery project. The draft agreement was placed on the table for the perusal of the Board. Thereafter the Board passed the following resolution".*
>
> *RESOL VED THA T the Company do enter into agreement with Asia Texx Enterprises Limited for purchase of process units, equipment and all engineering, design pertaining to the IRI- oil refinery project.*
>
> *RESOLVED FURTHER THAT Mr. D. Sundararajan, Director, Mr. Guha Roy, Chief Executive Officer, Mr. Ramesh Bhosale, Chief Finance Officer be and are hereby authorized severally to sign, execute agreements, papers, documents, deeds and to do all such acts, deeds, things, etc., as may be necessary in this connection on behalf of the Company. "*

(v) SEBI has erred in holding that there exists enough circumstantial evidence to substantiate that the undersigned was aware that Asia Texx was beneficially held by Gagan Rastogi. But it has failed to explain as how the undersigned as the Director of Cals was aware of the beneficial ownership of Asia Texx.

(vi) SEBI has failed to appreciate that the decisions transaction with Asia Texx were taken by the Board based on the information and materials placed before the Board as submitted by Mr. M.S. Ramachandran, the Chairman of Cals to SEBI. Mr. M. S Ramachandran chaired the Board Meeting which approved the contact with Asia Texx.

(vii) SEBI has failed to appreciate that the question of related party transaction was never raised to the undersigned during the Investigation, and when the same was raised the undersigned had provided with the

requisite information. Thus the same shows that the undersigned had not concealed any fact from SEBI. The following is the exact reproduction of the written statement of the undersigned on 3rd April, 2012, in respect of Asia Texx:

> *"11. Explain purpose of all the agreements with respect to Asia Texx Enternrises Ltd and Amber Enerii Makina Logistic Ltd. Provide the status of the same.*
>
> *The contract with Asia Texx was to get another set of refinery equipments to take the capacity to 10m tons. As we are not able to pay the entire price consideration, we have re-negotiated to purchase equipment worth the advance already paid by us and which will work with equipment being bought from Hardt group. Asia Texx has signed a Novation agreement with Amber Enerji Makina wherein advance paid to Asia Texx by Cals shall be assigned to Amber Enerji. "*

(viii) Never during the interaction, had Investigating Officer asked the undersigned about the ownership of Asia Texx. Hence there was no concealment by the undersigned. As regards to the disclosure of this transaction as Related Party transaction in the Annual Report of Cals in the Financial Year 2008-09, the undersigned was not the right person as there were Whole-time Directors and Company Secretary of the Company to take care of the same. In any case the undersigned never attended any Board meeting of Cals post Jan 23, 2009 and resigned in July 2009. In particular, the undersigned had not attended the Board Meeting of Cals which approved the financial statements for the Financial Year 2008-2009.

(ix) As submitted above, the undersigned has been provided the Investigation Report by SFIO in which it has produced the mail correspondence (2 pages) between Banco and one Mr. Jagdish Lavekar on how the Asia Texx transaction was to be structured and how the loan of Honor to be squared off (copy enclosed). It is obvious from the same that the promoters of Cals viz., Mr. Sanjay Malhotra and Rastogis were part of the conspiracy and the undersigned was not in picture at all. This will conclusively prove the innocence of the undersigned.

(x) Thus, the allegation that the undersigned concealed material information from the investigating officer of SEBI is groundless.

xix. *In paragraph 23 it is alleged that the undersigned mislead SEBI regarding the promoters having any arrangement with the initial subscribers to the GDR issue. This allegation has been already dealt above. The allegation is purely on conjecture and SEBI has not produced any evidence to show that the initial list provided by the Lead manager was false and Honor was the sole subscriber who had an arrangement for financing with Banco*

xx. *Thus, it can be seen that the undersigned has been penalized already by SEBI based on baseless allegations. SEBI has once again sent a show cause notice for levying penalty under various sections as outlined in the SCN to the undersigned who has hugely suffered already as a victim of circumstances.*

xxi. *While considering my submissions, following mitigating and extenuating factors be also taken into consideration:*

i) Consequent to the passing of the SEBI Order dated December 31, 2014, wherein SEBI has debarred me from the securities market for a period of 10 years I have suffered heavily. As a result of the debarment by SEBI I have suffered both reputationally and financially.

ii) Consequent to the directions in the said Order, whole of my professional career, from where I earn my living, has come to a standstill as no company will hire me as an employee or as a consultant.

iii) That over a period of 40 years, I have built a very strong professional reputation with sustained good work, conduct and sound integrity. The captioned proceedings have caused considerable mental agony/ pain and also considerably eroded my reputation.

iv) I have an impeccable track record, and no history of non-compliance. Save and except the captioned matter, never in the past any action has been taken against me by any regulatory body/authority including SEBI.

v) That I have never indulged in any fraudulent practices relating to the securities. I have not made any gains or derived unfair advantage as a result of falsely alleged violations. Admittedly, there is no allegation in the

SCN that I have gained/profited in any manner consequent to the alleged violations.

vi) That I have never received any monetary benefit while working for Cals. I did not make any disproportionate gains or gained any unfair advantage personally and have also not caused any loss to investors or anybody.

xxii. In the facts and circumstances, any imposition of penalty on me would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed.

xxiii. I would like to submit that I had fully co-operated with SEBI during the investigation producing all the documents asked for and also submitting the correspondences with RBI & ED besides project details on my own to put the matter in the right perspective. I had neither prevented any information from being known to SEBI nor deliberately concealed any facts as alleged.

8. A personal hearing was held in respect of Noticee-2 on January 15, 2020, wherein Noticee 2 reiterated the submissions made by him in his reply dated January 08, 2020. Accordingly, the hearing proceedings were concluded and the Noticee sought no further hearing in the matter. Subsequently, vide email dated November 18, 2021, Noticee 2 informed about the change in his address and provided the details of his new address.

9. The SCN sent to Noticee 3 (Asia Texx) at its following address as per records – *Suite 2205, Kinwick Centre, 32, Hollywood Road, Central Hong Kong*, returned undelivered. Subsequently, the copy of the SCN along with the annexures was sent to the following address of Noticee 3 – *Suite 2006, 20th Floor, Central Queens Road, Hong Kong*, however the same returned undelivered. Thereafter, vide letter dated December 06,

2019, copy of the SCN along with the annexures was sent to Noticee 3 at the following address – *1805, Harbour Industrial Center, 10 Lee Hing Street, Ap Lei Chau, Hong Kong*, however the same could not be delivered. Thereafter, the assistance of the foreign regulator viz. Securities and Futures Commission (**SFC**), Hong Kong, was sought in delivering the SCN to Noticee 3. However, the same could not be delivered at the above mentioned 3 addresses as they were either closed or occupied by other companies. Further, since the company secretary of Noticee 3 was Wisemax Corporate Services Ltd, the same were contacted. Subsequently, vide email dated December 15, 2020 received from Mr. Vikrant Singh Bloria, Law Chambers of Ayush Agrawal it was informed that Noticee 3 was their client and a copy of the SCN dated June 07, 2019 along with annexures was requested. Vide email dated December 16, 2020, a copy of the SCN and its annexures was provided to the above representatives of Noticee 3. Further Noticee 3 was granted opportunity to submit reply to the SCN and an opportunity of personal hearing on December 30, 2020. Reply dated December 23, 2020 was received from the above mentioned representative of Noticee 3 wherein it was submitted as follows - "*We are concerned for our clients, M/s. Asia Texx Enterprises Limited ("our client"). We have perused the Show Cause Notice (SCN) bearing ref. A&E/EAD-8/KS/VB/14319/2019 dated 07 June 2019 along with annexures. We have also perused the reply of Mr. Gagan Rastogi submitted by him to the SCN. We are writing to inform you that after perusing the response of Mr. Gagan Rastogi, our client wishes adopt to his response, which was submitted to your good office as their own response and we request your good office to treat the said response as the response of our client, M/s. Asia Texx Enterprises Limited. We further*

wish to inform you that since our client is adopting the response of Mr. Gagan Rastogi, we do not require a personal hearing in the matter."

10. The SCN sent to Noticee 4 (Gagan Rastogi) at his London address, as available in records, returned undelivered. Subsequently, vide letter dated December 06, 2019, the SCN was sent to Noticee 4 at his Singapore based address, however, the same also returned undelivered. Thereafter, an email dated December 27, 2019 was received from Vikrant Singh Bloria, (Law Chambers of Ayush Agarwal, C-574, Defence Colony, New Delhi – 110024) wherein it was informed that their client, Mr. Gagan Rastogi, son of Mr. Deep Kumar Rastogi had not been served with the copy of the SCN, however he had come to know about the present proceeding through his family. Further, 2 weeks' time was requested to file detailed response to the SCN. Further, it was requested to confirm that the contents of the SCN and annexures same for both Mr. Gagan Rastogi and Mr. Deep Kumar Rastogi. The same was confirmed to Noticee 4 vide email dated January 10, 2021, and further Noticee 4 was granted time till January 24, 2020 to submit reply to the SCN. Subsequently, Noticee 4 submitted reply to the SCN vide letter dated January 24, 2020. The main submissions made therein are summarized as follows –

    i. *I, Gagan Rastogi S/o Mr. Deep Kumar Rastogi, am a resident of 325 River, Valley Road, Unit 01-08, Singapore – 238357.*
    ii. *At the outset, I deny all the averments, statements, contentions, allegations made in the notice under reply.*
    PRELIMINARY SUBMISSIONS
    iii. *Background –*
    iv. *I state that in order to explain as to how I got involved in the Cals Refinery Ltd.'s ("Cals") transaction with my company Asiatexx Enterprise Limited/ ("Asiatexx"), it*

is imperative to give a brief background of my relationship with Mr. Sanjay Malhotra. Mr. Sanjay Malhotra was introduced to my father (Mr. Deep Rastogi) through a common friend in or around 2003 where he asked him to invest in SpiceJet which Mr. Sanjay Malhotra said he was setting up. Mr. Deep Rastogi declined to make any investments in Spice Jet as the quantum of funds involved were way beyond our family's means. Later, he was offered certain Oil blocks which were available for sale during a visit to Nagaland. In or around 2005, Mr. Sanjay Malhotra visited Mr. Deep Rastogi's office again with the common friend and when Mr. Deep Rastogi informed him about the oil blocks. Mr. Sanjay Malhotra mentioned that he and his partners from SpiceJet were also looking at establishing an Oil and Gas company. Mr. Sanjay Malhotra asked Mr. Deep Rastogi to contribute the Nagaland project to the new venture and come in as an investor. Initially, Mr. Deep Rastogi and his other family members decided not to invest, but Mr. Sanjay Malhotra kept approaching Mr. Deep Rastogi regularly, insisting that he becomes an investor. Mr. Sanjay Malhotra visited the office frequently thereafter and introduced Mr. Deep Rastogi to various people, including Mr. Ajay Singh, Mr. Bhupender Kansagra, Mr. Mohinder Verma, Mr. Ravi Chilukuri, etc. Finally, my family decided to invest in the Venture, but with the caveat that we would only contribute funds and would not be involved in the operations of the companies, mostly due to the lack of our experience.

v. *Over the next 2 years, Mr. Sanjay Malhotra setup various projects within the group ranging from Retail of fuels to hotel projects. Each member of the group was required to put in capital for the various projects. All day to day operations of the group were looked after by Mr. Sanjay Malhotra and Mr. Ravi Chilukuri.*

vi. *Since I and my brother had just returned to India after our education abroad and did not have much experience in running a business, Mr. Sanjay Malhotra decided to send us both to London for learning under Mr. Ravi Chilukuri.*

vii. *In mid-2007 Mr. Sanjay Malhotra approached my family informing us that he wanted to setup a refinery project in Haldia at a project cost of USD 1 Billion ("Project"). Hearing the cost of the project, Mr. Deep Rastogi told Mr. Sanjay Malhotra that we would not participate in the project as the cost was extremely high and that our family had no experience in such kinds of projects.*

viii. *Mr. Sanjay Malhotra hired various competent professionals and consultants and took over Cals which was a shell company to implement the Project. He identified*

equipment which was to be installed and got the necessary land allocated in Haldia.

ix. *In December 2007, Mr. Sanjay Malhotra informed Mr Deep Rastogi that he had successfully raised USD 200 Million from foreign investors for the Project and would now work on raising the balance 200 million equity (the balance 600 million was to be raised in debt). He again offered my family to participate in the Project and come on board as a promoter. However, Mr. Sanjay Malhotra, was quite insistent and finally, Mr. Deep Rastogi decided to go ahead and participate in the Project, after seeing the success of his capital raised.*

x. *Since I had invested (as loan) on behalf of my family in the various projects (through the group company SRM Exploration), all my pending loans were converted to equity shares at a significant premium to other promoters (Rs. 130 per share) on 17 December 2007. Documents pertaining to the same have been enclosed and marked as Annexure 1.*

xi. *Even though, my father was extremely reluctant, Mr. Sanjay Malhotra insisted that he come on the board of Cals as a director. Mr. Deep Rastogi was appointed as an independent director whilst Mr. Sanjay Malhotra appointed himself as an advisor to the board on 19 January 2008.*

xii. *All decisions for the Project were taken by Mr. Sanjay Malhotra along with Mr. Ravi Chilukuri and Mr. D. Sundararajan (CFO of Cals). I or my family were not involved in the day-to-day functioning or the management of the company and never undertook any meetings or negotiations.*

xiii. *Work had already started at the site, and in early 2009, Mr. Sanjay Malhotra, approached Me and my father and told us that he was under tremendous pressure from the Government of West Bengal to announce the second phase of the refinery and to also become the anchor investor in the newly announced Petroleum, Chemicals Petrochemical Investment Region (PCPIR) Zone of Nayachar. He informed us that he had committed the same to the then chief minister. He also visited Japan and Korea with a state delegation to promote and seek investments for Cals and to promote the PCPIR Zone. Documents pertaining to the same have been enclosed and marked as Annexure 2.*

xiv. *Mr. Sanjay Malhotra informed us that he had already identified the equipment for the second phase of the refinery and had signed up the same in a SPV of his (namely Honor Finance Limited) with Ventech (a supplier of refineries). He said that he needed to pay advance to Ventech to secure the refinery. He said that*

since the plant was old, the refinery had asbestos lining in it which needed to be removed, and no American or Canadian contractors was ready to undertake the contract for the removal of Asbestos due to its hazardous nature.

xv. *He asked me to take up the job of Asbestos (my family business) removal due to my experience and contacts in the field. He suggested that I, through one of my companies in Hong Kong (viz Asiatexx Enterprises) enter into an agreement with Cals for the turnkey supply of a refinery which was to be dismantled, shipped and cleaned of Asbestos residue.*

xvi. *Mr. Sanjay Malhotra said that his SPV (Honor) would assignee the contract to Asiatexx Enterprises once the payment was made from Asiatexx to Honor, by the funds received as advance (USD 92 Million) from Cals. I was never in any doubt of Mr. Malhotra's intentions, since Mr. Sanjay Malhotra had always been in complete control of the company and I was made to believe that the refinery was a genuine need of the company. Even so, I questioned Mr. Sanjay Malhotra as to why the refinery could not be supplied directly to Cals by Honor, to which he told me that Cals needed to receive the equipment by way of a turnkey contract so that the company would not have to get involved with multiple contractors. Since, Mr. Sanjay Malhotra had previously also signed the first phase equipment in one of his companies (namely SRM Refineries) and then assigned the same to Cals, a precedent for the same had already been set, therefore I did not doubt the same.*

xvii. *Mr. Sanjay Malhotra in order to provide comfort to me informed me that he was holding certain GDRs of Cals (to the tune of 27.5 million) which he had purchased personally by selling shares of SpiceJet (of which he was a promoter) and that he would give that as security to me until the refinery was assigned to Asiatexx by Honor. The GDRs were to be returned to him once the assignment was complete.*

xviii. *Sanjay made Mr. D. Sundararajan (then CFO of Cals) in-charge of completing all the paperwork for the transaction. I had various correspondences (emails) between me, Mr. D. Sundararajan and Mr. Jagdish Lavekar which were exchanged for the purpose of completing the Asiatexx transaction.*

xix. *Mr. D. Sundararajan insisted that Asiatexx's bank account be opened in Banco Efisa, since Cals' account was also at the same bank and it would ease the entire process of effecting the transfer. On 30 January 2009, Mr. D. Sundararajan sent me a list of all KYC documents (which he had received from Mr. Jagdish Lavekar*

who I was made to believe was a person coordinating with the bank) to the company secretary of Asiatexx. Documents pertaining to the same have been enclosed and marked as Annexure 3.

xx. *On 02 February 2009, certain clarifications were sought from me by Mr. Jagdish Lavekar in respect of the KYC documentation, along with a prefilled KYC declaration form which was to be signed on behalf of Asiatexx. Documents pertaining to the same have been enclosed and marked as Annexure 4.*

xxi. *The contract between Asiatexx and Cals was prepared by Mr. D. Sundararajan and was sent to me around 04 February 2009.*

xxii. *During the process of preparing the paperwork for the account opening, there was a requirement for getting certain documents, notarized and legalized. I and Mr. D. Sundararajan, along with the company secretary visited a local law firm to complete the formalities. On completion, the same were sent to Mr. Jagdish Lavekar and Mr. D. Sundararajan on 10 February 2009. One of the documents also included an introduction letter from Cals (signed by Mr. D. Sundararajan) for opening the account of Asiatexx at Banco Efisa. Documents pertaining to the same have been enclosed and marked as Annexure 5.*

xxiii. *On 26 February 2009, an email was sent by Mr. D. Sundararajan to me and Mr. Jagdish Lavekar which included a prefilled form for foreign payments from Asiatexx to Honor Finance Limited. Within 45 minutes of receiving the above email, I signed the prefilled form and sent the same to Mr. D. Sundararajan and Mr. Jagdish Lavekar.*

xxiv. *A few minutes later Mr. D. Sundararajan sent in another email, for my signature, a pre-prepared invoice of USD 90 Million addressed to Cals on behalf of Asiatexx for the purchase and sale of the equipment, according to the contract dated 05 February 2009. An invoice of USD 2 Million was also included for the additional services (removal of Asbestos) to be rendered by Asiatexx. Documents pertaining to the same have been enclosed and marked as Annexure 6.*

xxv. *Approximately a month later (24 March 2009), a few clarifications were sought from me by Mr. D. Sundararajan via email regarding my correct passport copy, IT Returns as well as my UK address. Documents pertaining to the same have been enclosed and marked as Annexure 7.*

xxvi. *On 26 March 2009, I again received emails from both Mr. Jagdish and Mr. D. Sundararajan separately with an attachment of the foreign remittance form. One*

of the forms was a typed form whereas the other was a hand-written form. 2 hours later, I signed the form and sent it back to Mr. Jagdish Lavekar.

xxvii. *Soon after this, sometime in mid-2009, my father visited the Spice Group office in Gurgaon where Mr. Sanjay Malhotra used to sit. He was shocked to see that Mr. Sanjay Malhotra's room was completely empty and all his belongings were removed. When my father contacted Mr. Sanjay Malhotra, Sanjay informed him that he was in Dubai and trying to raise funds for the group.*

xxviii. *On the 09 July 2009, after talking to Sanjay regarding the security which he was to provide against the payment made to Honor by Asiatexx, Mr. Jagdish Lavekar sent me a format of a letter to be sent to affect the transfer of GDRs to me (since I was to hold these GDRs on behalf of Asiatexx as the company did not have a Euroclear account available). Documents pertaining to the same have been enclosed and marked as Annexure 8.*

xxix. *Since Mr. Sanjay Malhotra had not returned from Dubai, my father again tried to contact Mr. Sanjay Malhotra, and Mr. Sanjay Malhotra informed him that he had been diagnosed with lung cancer and that he would remain in Dubai for a little longer. This was the last time they spoke. Mr. Sanjay Malhotra, thereafter, became completely unreachable and untraceable.*

Agreement between Asiatexx and Cals

xxx. *I state that I believed the agreement dated 05 February 2009 ("Agreement") entered between Asiatexx Enterprises Limited. / ("Asiatexx"), and Cals Refineries Ltd. ("Cals") was a genuine one. Asiatexx and Cals had entered into the Agreement for purchase of refinery plant and machinery for a total consideration of USD 290 million. By way of this agreement Asiatexx agreed to supply refinery as well as perform dismantling and asbestos removal services. In terms of this agreement, Asiatexx was also to receive an advance of USD 90 million and 2 million respectively which was then to be given to Honor Finance Limited, which in turn would assign the refinery equipment to Asiatexx.*

xxxi. *I state that there was no reason for me to believe that the transaction between Cals and Asiatexx to not to be completely genuine also for the fact that Cals had announced that it was acquiring a refinery from a company called Petro Canada at Oakville, Ontario, Canada with a plan to relocate the plant to Haldia. This agreement was in addition to an earlier agreement signed by Cals in 2008 to acquire the Bayernoil refinery at Ingolstadt, Germany and bring it to Haldia which was expected to be operational in the first half of 2010. This news being published*

in a national newspaper did not leave room for any suspicion regarding the transaction between Cals and Asiatexx. A copy of the Telegraph news article dated 09 February 2009 is enclosed and marked as Annexure 9.

xxxii. *Believing the said transactions between Cals and Asiatexx was genuine, at that time I was not aware that the aforesaid arrangements were made only to settle the outstanding loan of Honor Finance Limited with the Banco Efisa and discharge the liability of Mr. Sanjay Malhotra through Honor. It was only after receiving the show cause notice of SEBI in October 2013 that this was revealed to me.*

GDRs

xxxiii. *I state that the 25 million GDRs (which SEBI alleges – actually 27.5 million) were never purchased by Asiatexx or by me from Honor Finance Ltd. ("Honor Finance") albeit were only received as a security from Honor Finance to hold until the refinery was assigned to Asiatexx from Honor Finance. Further, I came to hold these GDRs as only in trust for Asiatexx since Asiatexx never had the necessary "Euroclear Account" to receive GDRs. In fact, I still hold the underlying shares of the said GDRs (22.2 million GDRs ~ 110 Crore Shares) except to the extent of 5.3 million GDRs which were sold by me on 14.10.2009, 13.11.2009 and 20.01.2010 to realize a sum of USD 1.696 Million (INR 7.84 Crores at the time) which was infused into Cals for meeting its emergent funding operations. No money was ever retained by me. Documents pertaining to the same have been enclosed and marked as Annexure 10.*

xxxiv. *On 27 March 2009, by way of multiple entries, an amount of USD 92 million was transferred by Cals to Asiatexx account under the Agreement which was then further transferred to Honor Finance Ltd. ("Honor Finance") for assignment of the refinery. It is submitted that the transaction of the USD 92 million was made on trust, faith and after relying upon representations and assurances made by Mr. Sanjay Malhotra. It is pertinent to mention that at the time I was unaware that Mr. Sanjay Malhotra through Honor was in fact the primary subscriber to the GDR issue of Cals.*

xxxv. *It is submitted that the GDRs were only transferred to me on 09 July 2009, i.e. over three months later, on instructions of Honor to Banco and were transferred free of payment which leaves no doubt for the fact that these GDRs were received as security till the time the refinery was assigned by Honor to Asiatexx.*

Banco's Charge on the USD 92 million:

xxxvi. *It is found in SEBI's investigation report that Honor Finance was the sole subscriber of the GDR and obtained a loan of USD 200,000,000 from Banco Efisa by signing a Loan Agreement. Cals in turn signed an Account Charge Agreement between Cals and the Bank and pledged all the proceeds of the GDR with the bank, against the loan obtained by Honor. With these arrangements the GDR proceeds of the Cals was pledged with the Banco Efisa against the Loan obtained by Honor Finance.*

xxxvii. *It is found that Honor was settling its loan through earnings received by it from the sale of GDRs. The said loan was settled through the financing period. On December 15, 2008, an amount of USD 91.80 million was still outstanding as payable from Honor to Banco. It is also established by SEBI that Cals could only utilise the GDR proceeds to the extent of the repayment of the loan by Honor. The Account Charge agreement was ending on 15th December 2008, hence an extension agreement was signed by Ravi Chilukuri (on behalf of Cals) for three months.*

xxxviii. *It was found that the Cals paid USD 92 million as advance to Asiatexx on 27 March 2009 under an agreement for purchase of the requisite machinery. However, the aforesaid funds, even though locked by way of the account charge agreement, were made available to Cals by Banco.*

xxxix. *The funds which were made available to Cals by Banco were transferred to the Asiatexx on 27 March 2009, and at very same instance transferred to Honor Finance which in turn used these to clear its pending loan of USD 92 Million with the bank. It is evident that the only purpose of this transaction was to settle the Honor / Sanjay's liability with the Bank. Banco Efisa in its reply to a proceeding in the UK courts has stated under oath that:*

"It is admitted that Efisa knew that the sum of US$ 92 million to be paid to Asiatexx by Cals would subsequently be paid to Honor Finance and in part used by Honor Finance to repay Efisa. It is further admitted that Efisa would not otherwise have been willing to permit the payment of CALS' funds subject to the Account Charge Agreement".

Detailed Investigations by the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs on the subject matter

xl. *The Serious Fraud Investigation Office ("SFIO") completed a detailed investigation on the subject matter, analyzing different aspects of the GDR issue and prepared an exhaustive investigation report dated 30 March 2017 ("SFIO*

Report"). I would like to place the said report on record. The report is attached and marked as Annexure 11.

xli. *It is submitted that the perusal of the SFIO Report makes it evident that I was never aware about the transaction between Banco Efisa, Honor Finance, Cals etc. and the whole transaction was hatched at the instance of Mr. Sanjay Malhotra, Shri Jagdish Lavekar and Banco with the sole purpose of extinguishing the liability of Honor of the outstanding loan amount of USD 92 million with Banco Efisa.*

xlii. *The SFIO Reports makes a categorical recording of the following facts (Page 130 and 131 of the SFIO Report):*

"In January 2009, Shri Sanjay Malhotra was unable to off load the GDRs of "CALS" lying with him, as the investors had realized that even after one year i.e. from 12.12.2007, the refinery project did not take off. On the other hand, "Banco" was pressing hard to settle the pending loan of US$ 91,8000,000 standing against 'Honor', as the 'loan agreement' was to expire on 15th June 2009.

In order to settle the outstanding loan, Shri Sanjay Malhotra, Shri Ravi Chilukuri, Shri D. Sundararajan, Shri Jagdish Lavekar and Ms. Catarina Saragoca Lopes da Luz of "Banco" ("Conspirators") hatched final plan and send an email dated 26.02.2009 to Sh. Jagdish Lavekar regarding squaring up the loan of US$91.80 million outstanding against "Honor" with the following components:

STEP-I

Shri Ravi Chilukuri signed 'Extension Agreement' on 13th January 2009 on behalf of "CALS" related to "Loan Agreement" of "Honor".

Shri Ravi Chilukuri was never authorised by "CALS" to sign the agreement.

STEP-II

"Asiatexx" would enter into a contract with "CALS" for supply of plant and machinery to "CALS" worth US$290 million.

STEP-II

"CALS" would make advance payment of US$92 million to "Asiatexx".

STEP-III

"Honor" would sell 25 million GDRs at a cost of US$3.68 million per GDR and receive US$92 million from "Asiatexx"

STEP IV

"Honor" would make repayment of outstanding loan of US$91.80 million to "Banco"

The above plan was implemented as per the proposal suggested by Ms. Catarina:

- *"Asiatexx" opened a Bank account with "Banco" on 25.03.2009.*
- *A series of circular transactions were made in accounts of "CALS", "Asiatexx" and "Honor" with "Banco" without actual movement of cash, resulting in squaring up of the loan account of "Honor" bearing no. 634418940001 with "Banco". The loan account was closed on 27.03.2009. The security account of "CALS" bearing no. 634428625006 was also simultaneously closed on 27.03.2009.*
- *The bank account of "Asiatexx" bearing no. 6387742.15.002 was also closed on 27.03.2009 after making two bank entries on the same day. "The conspirators" devised a plan by executing a sham agreement between "CALS" and "Asiatexx" knowing that neither "CALS" nor "Asiatexx" had any intention to purchase/supply any equipment. They know that the payment of US$ 92 from "CALS" to "Asiatexx" was made in order to repay "Banco" and not for the purpose of the refinery project or "CALS" business."*

xliii. THE SFIO Report at Page 73 further records that:

"Jagdish Lavekar knew that Shri Sanjay Malhotra has entered into

"Loan Agreement" with "Banco" for subscribing of GDRs of "Cals". When Shri Sanjay Malhotra unable to pay back the loan amount of

US$92 million to "Banco", Caterina Saragocaluz vide email dated 26.02.2009 suggested a model of structured transactions through which "Honor" not only settled its balance loan and disposed off the GDRs of "Cals" but also put the burden of non-existing US$92 million of GDRs proceeds on the one of the promoters of 'Cals'. The structured transaction was arranged as under: -

Step No.1: Cals will enter into Contract with "Asiatexx for supply of

Plant and machinery

Step No.2: Cals will make payment of USD 92 million to "Asiatexx"

Step No.3: "Asiatexx" will buy the GDRs from "Honor" and pay USD 92 million to "Honor".

Step No.4: "Honor" will pay USD 92 million to "Banco" as repayment of loan

Step No. 5: "Banco" will release USD 92 million to "Cals"

xliv. *The SFIO Report at page 131 and 132 also records that:*

"Shri Sanjay Malhotra projected before "CALS" that he had raised fund amounting to US$200 million but large quantum of which i.e. US$108 million was siphoned off by him through various sham transactions/contracts. Shri Sanjay Malhotra knew that no funds were available which could be siphoned off further as he was unable to sell 101.48 million GDRs lying with him. On the other hand an amount of US$92 million was still outstanding against his company i.e. "Honor" which was nothing but a book entry. By adopting the above artifice i.e. agreement between "CALS" and "Asiatexx", he settled the book entry of outstanding loan of US$92 million by various entries involving bank accounts of "CALS', "Honor" and "Asiatexx". On 09.07.2009, "Banco" transfer 27 million GDRs in the name of Sh. Gagan Rastogi free of cost. In this way, Shri Sanjay Malhotra fraudulently shifted the burden of non-existing US$ 92 million and non-saleable 27 million GDRs of "CALS" on Shri Gagan Rastogi.".

xlv. *The SFIO Report at Page 132 and 133 further makes the observation that:*

"Shri Sanjay Malhotra after sale of GDRs squared off loan of US$108 million, but he was not able to clear the outstanding loan of US$91.80 million, as he was unable to find any investor. Shri Sanjay Malhotra, Shri Ravi Chilukuri, Shri D. Sundararajan and Shri Jagdish Lavekar along with "Banco" at aforementioned time and place dishonestly and fraudulently structured a deal between "Asiatexx" and "CALS" to set off the outstanding loan of "Honor" and caused a hole of US$92 million in the capital of "CALS". In this artifice, Shri Sanjay Malhotra not only squared off his outstanding loan but also off-loaded the nonsaleable GDRs of "CALS" to Shri Gagan Rastogi, son of one of the Directors of "CALS", only to intertwine involvement of "CALS" in the

conspiracy of manipulations in GDRs. Shri Sanjay Malhotra made false documents related to sale of 25 million GDRs to Shri Gagan Rastogi at @ US$3.68 to set off the outstanding loan of US$92 million of "Banco", whereas all the GDRs were transferred to Shri Gagan Rastogi free of payment. Further, Shri D. Sundararajan, another conspirator, was well aware that the agreement between "Asiatexx" and "CALS" for purchase of plant and machinery was sham, which had been created only to set off the outstanding loan at US$91.80 million. Shri Sanjay Malhotra set off the outstanding loan only through the forged book entries which can be carried out with the help of the shell company, but he along with Shri Ravi Chilukuri, Shri D. Sundararajan and Shri Jagdish Lavekar induced Shri Gagan Rastogi to entered into contract through a shell company only for setting off the outstanding loan of "Honor". During the course of depositions of Shri Sanjay Malhotra and Shri D. Sundararajan they knowingly not disclosed the material fact related to "Asiatexx", knowing it to be material. Shri Ravi Chilukuri fraudulently signed the "Extension Agreement" on behalf of "CALS" without any authorization. Further, the accused persons Shri Sanjay Malhotra, Shri Ravi Chilukuri, Shri D. Sundararajan, Ms Catarina Saragoca Lopes Da Luz and Shri Jagdish Lavekar dishonestly and fraudulently made false/fabricated transactions in the accounts of "CALS' and "Asiatexx" and thereby committed the forgery for the purpose of cheating and thereby committed an offence punishable under section 468 of IPC."

xlvi. *The SFIO Report referring to a letter issued by Honor Finance dated 25 March 2009 at Page 62 further records that:*

"The rate of GDR at @USD 3.68 was fixed only to arrive at outstanding loan of USD 92,000,000. On 23.03.2009, "Honor" sold 1632000 GDRs to Sun Global Investments Ltd. at total consideration of USD 310,080 (circa USD 0.19)."

"Further, though instruction to transfer 25,000,000 GDRs to Asiatexx" was given to "Banco", but it was not transferred as per the above-mentioned letter dated 26.03.2009, it was only to camouflage the loan settlement transactions between "Honor" and "Banco".

However, it was only on the instruction of "Honor" 2,70,00,000 GDRs of CALS each, was transferred directly to Shri Gagan Rastogi and Shri Ravi Chilukuri free of payment on 09.07.2009…"

xlvii. *The SFIO Report at Pg. 135 records that:*

"The sham agreement was executed only at the instance Shri Sanjay Malhotra, Shri Jagdish Lavekar and "Banco" in order to repay the outstanding loan amount of US$92 million outstanding in the name of "Honor". Though Shri Gagan Rastogi was not aware of the structured entries being made into the accounts of "Cals, "Honor" and "Asiatexx", but at all the material time he was well aware that "Asiatexx" was not in position to supply the plant and machinery as mentioned in the agreement dated 5th February 2009"

xlviii. *The SFIO Report at page 158 further states that:*

"On 05.02.2009, "Cals" signed with "Asiatexx", an entity controlled by his son Shri Gagan Rastogi, for sale of plant and machinery. On 27.03.2009, US$92 million was routed through banking entries into the accounts of "Honor", "Cals" and "Asiatexx", just to settle the outstanding loan of "Honor" and shifting the burden of non-existing US$ 92 million on "Asiatexx", a company controlled by son of the directors of "Cals", namely Shri Deep Rastogi. Though there was no movement of funds but "Cals" entered into an agreement with "Asiatexx" for purchase of Plant and Machinery."

xlix. *It is evident from the SFIO Report that the plan to settle the outstanding liability of Honor with Banco was hatched by Mr. Sanjay Malhotra, Honor Finance, Jagdish Lavekar, D. Sundararajan along with Banco Efisa with a sole purpose of discharging the Loan liability of Honor Finance with Banco. These facts can be substantiated by the SFIO Report. It is not out of place here to state that I or Asiatexx never really received USD 92 million since these were all structured paper entries to square off the liability of Honor Finance / Mr. Sanjay Malhotra.*

l. *It is further submitted that the above stated excerpts of the SFIO Report shows that I was never aware or party to the fraudulent transaction and I myself am a victim of the fraud. I believed all the transactions between Asiatexx, Cals, Honor to be genuine and true and also acted in accordance to it with a bonafide intent.*

E-mail dated 26 February 2009 between Catarina Saragoca Lopes da Luz to Jagdish Lavekar with the subject "Honor's operation(s) plan":

li. It is submitted that the entire conspiracy was hatched by Mr. Sanjay Malhotra, Jagdish Lavekar in connivance with Banco Efisa with respect to the Asiatexx transaction. This is evident from an e-mail dated 26 February 2009 between Catarina Saragoca Lopes da Luz, the director of Banco Efisa and Jagdish Lavekar giving a detailed plan devised to offload the liability of $92 million of Honor Finance Limited / Mr. Sanjay Malhotra with Banco Efisa by roping in Asiatexx and Gagan Rastogi. Copy of e-mail dated 26 February 2009 from Catarina Saragoca Lopes da Luz is enclosed and marked as Annexure 12.

Statement of Mr. Sanjay Malhotra to Serious Fraud Investigation Office (SFIO)

lii. It is submitted that Mr. Sanjay Malhotra had conveniently not participated in the earlier SEBI investigations etc. During the investigation conducted by SFIO in the very same transaction, Mr. Sanjay Malhotra gave his statement on 15 February 2016. A perusal of his statement made to SFIO shows that all his responses were evasive and vague. Copy of the statement of Mr. Sanjay Malhotra is enclosed and marked as Annexure 13.

Statement of Jagdish Lavekar to SFIO

liii. Jagdish Lavekar in his statement with SFIO regarding Asiatexx and Gagan Rastogi stated that:

"I have to state that the loan outstanding at $92 million. Mr. Malhotra approached to clear loan facility and gave structure to so the facility will be cleared. He informed to assist them in opening bank account of new company Asiatexx to which documentation will be executed by Mr. Gagan Rastogi. The structure suggested by Mr. Malhotra to the bank has confirmed by mail which narrated the transaction. As the structure suggested by Mr. Malhotra the transaction was accommodative transaction to clear the transaction…"

liv. Mr. Jagdish Lavekar in his statement with SFIO stated regarding the transaction to clear Honor Finance/Sanjay Malhotra's liability with Banco Efisa:

"In the month of January 2009, Sanjay Malhotra informed me loan of $92 million need to be cleared and funding was not available and required structured entries. As already explained in question no. 13 a mail was received from Catarina Sargoca Luiz which sent a proposal for clearing of Honor's loan. This was structure they were presenting to the Board of Bank. Since we had association into Banco, we

were able to co-ordinate issues. As per the email dated 26/02/2009, as per the arrangement, the Cals will enter into contract with Asiatexx and pay contract value.

- *Asiatexx will buy the GDRs from Honor and pay money to Honor.*
- *Honor will pay to Bank as repayment of loan.*
- *Banco will release the funds to Cals Refineries.*

I further state that the entries are accommodation entries in the loan taken by Honor was settled and GDR of Cals transferred to Asiatexx/Gagan Rastogi without any cost…"

Copy of the statement of Mr. Jagdish Lavekar is enclosed and marked as ***Annexure 14.***

Complaint filed with the Economic offence Wing (EOW), New Delhi:

lv. *Upon receiving the Show Cause Notice dated 25 September 2013 from SEBI and during the depositions conducted during the SFIO Investigations, I came across various documents and the details of the conspiracy hatched against me and my father Mr. Deep Kumar Rastogi. After which, I filed a detailed complaint against Mr. Sanjay Malhotra, Ravi Chilukuri, D. Sundararajan and Honor Finance Limited with the Economic Offences Wing (EOW). Copy of the Complaint filed with EOW is enclosed and marked as Annexure 15.*

Beyond Reasonable Time

lvi. *In addition to the aforementioned submissions, it is humbly submitted that the allegations made in the present notice under reply relate to the alleged transaction which purportedly took place in 2009. Thus, it is respectfully submitted that the notice under reply is highly belated (almost 10 years) and is beyond reasonable time. Further, no new information has been produced by SEBI and reliance is placed on the same investigation report which was produced in 2013.*

PARA WISE REPLY

lvii. *The contents of Para 1, save as matters of record, are wrong and hence denied. It is denied that I (Noticee No. 5) have violated Section 12(a), (b) and (c) of the*

SEBI Act 1992 read with Regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, as alleged or at all. The Preliminary Submissions made hereinabove are reiterated.

lviii. *The contents of Para 2 to 13 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

lix. *The contents of Para 14, save as matters of record, are wrong and hence denied. It is denied that Asiatexx purchased 25,000,000 GDRs from Honor, as alleged or at all. It is denied that Asiatexx transferred 25,000,000 GDRs to me, as alleged or at all, as the GDRs never came to Asiatexx. The Preliminary Submissions made hereinabove are reiterated.*

lx. *The contents of Para 15, save as matters of record, are wrong and hence denied. It is denied that Asiatexx purchased 25,000,000 GDRs from Honor, as alleged or at all. It is denied that Asiatexx transferred 25,000,000 GDRs to me, as alleged or at all, as the GDRs never came to Asiatexx. The Preliminary Submissions made hereinabove are reiterated.*

lxi. *The contents of Para 17, save as matters of record, are wrong and hence denied. It is denied that I (Noticee No. 5) have violated Section 12(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, as alleged or at all. The Preliminary Submissions made hereinabove are reiterated.*

lxii. *The contents of Para 18 are a matter of record and hence warrant no reply. The Preliminary Submissions made hereinabove are reiterated.*

lxiii. *The contents of Para 19, save as matters of record, are denied. The Preliminary Submissions made hereinabove are reiterated.*

lxiv. *The contents of Para 20-21 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

lxv. *The contents of Para 22, save as matters of record, are denied. It has been rightly stated that D. Sundararajan (Noticee No. 2) had not disclosed that the Asiatexx and Cals transaction was a related party transaction even when he was completely aware of my and Mr. Deep Kumar Rastogi's relationship with Asiatexx and its structure. However the SFIO in its findings has clearly established that he along with Sanjay Malhotra, Jagdish Lavekar, Ravi Chilukuri and Banco Efisa, were well aware that the agreement between "Asiatexx" and "CALS" for purchase of plant and machinery was created only to set off the outstanding loan at US$91.80 million of Honor and to shift the burden of the liability of USD 92.00*

million on Asiatexx and me. The Preliminary Submissions made hereinabove are reiterated.

lxvi. *The contents of Para 23-24 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

lxvii. *The contents of Para 25, save as matters of record, are denied. The Preliminary Submissions made hereinabove are reiterated.*

lxviii. *The contents of Para 26-27 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

lxix. *The contents of Para 28-30 do not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

11. Noticee 4 was granted an opportunity of personal hearing on February 26, 2020. Vide email dated February 24, 2020 received from Mr. Vikrant Singh Bloria, Law Chambers of Ayush Agrawal, it was informed that Mr. Vishal Rastogi, brother of Noticee 4, who was to attend the hearing on behalf of Noticee 4 would not be in a position to attend the hearing, accordingly, it was requested to reschedule the personal hearing. Vide email dated February 27, 2020, Noticee 4 was granted an opportunity of personal hearing on March 04, 2020. In the personal hearing held on March 04, 2020, Mr. Vishal Rastogi, authorized representative (AR) appeared on behalf of Noticee 4 and reiterated the submissions made by Noticee 4 in his reply dated January 24, 2020. The hearing proceedings were concluded and the AR sought no further hearing in the matter.

12. The SCN was delivered to Noticee 5 (Deep Kumar Rastogi) at the following address as available in records – 21, Basant Lok Complex, Vasant Vihar, New Delhi, 110057, however no reply within the stipulated time was received. Subsequently, vide letter dated September 30, 2019, Noticee 5 was granted opportunity to submit reply to the SCN latest by October 14, 2019. Further, Noticee 5 was granted opportunity of

personal hearing on October 17, 2019. Vide letter dated October 11, 2019, Noticee 5 stated that he was not in receipt of the SCN dated June 07, 2019 and requested for copy of the same. Accordingly, vide letter dated December 03, 2019, Noticee 5 was once again provided with the copy of the SCN along with its annexures and Noticee 5 was granted time till December 18, 2019 to submit his reply to the SCN. Further, Noticee 5 was also granted opportunity of personal hearing on December 20, 2019. Vide email dated December 09, 2019 received from received from Mr. Vikrant Singh Bloria, Law Chambers of Ayush Agrawal, it was informed that the compact disk which was received with the SCN was in broken condition, accordingly, the annexures were requested to be sent through email. In reply, vide email dated December 10, 2019, the scanned copy of the annexures to the SCN were sent through email. Vide letter dated December 19, 2019 Noticee 5 submitted reply to the SCN. The main submissions made therein are as follows -

i. *I, Deep Rastogi S/o Mr. Ram Saran Rastogi, am a resident of 1/25, Shanti Niketan, New Delhi-110021.*

ii. *At the outset, I deny all the averments, statements, contentions, allegations made in the notice under reply.*

PRELIMINARY SUBMISSIONS

Not a director of Cals during the GDR Issue

iii. *In the notice under reply it has been wrongly stated that I (Noticee No. 6), was a director of Cals Refineries Ltd. ("Cals") during the GDR issue.*

iv. *The GDR issue of closed on 12 December 2007. I had joined the Board of Cals as an Independent and Non-executive director only on 19 January 2008 i.e. after more than 1 month of the closing of GDR issue. Thus, the allegation upon me being the director of Cals during the GDR issue is incorrect. I was not related or had any role in the GDR issue of Cals. Form-32 filed with the Registrar of Companies (ROC) w.r.t the above appointment as director in the Company is enclosed and marked as Annexure-I. It may be noted that I had no role in the GDR issue of Cals.*

Agreement between Asiatexx and Cals

v. *In the notice under reply, the only allegation against me is that I was a director of Cals and had significant influence at the time of the agreement between Cals and Asiatexx Enterprises Limited ("Asiatexx").*

vi. *I state that Mr. D. Sundararajan, the Managing Director of Cals who signed the agreement with Asiatexx on behalf of Cals, and other directors of the Company were well-aware about my relationship with Mr. Gagan Rastogi. They were also aware of the structure of Asiatexx. At the time of the Asiatexx agreement, I was only a director of Cals with no shareholding in the company, further I was neither a director of Asiatexx nor did I have any shareholding in the company. Hence, effectively I did not have significant influence over it. Further, it was D. Sundarajan who was responsible for the entire regulatory and compliance requirements of Cals. It was his responsibility to ensure that the disclosure requirements, if any, with respect to the Asiatexx agreement was obtained and disclosed further.*

vii. *Prior to being inducted as a director in Cals in January 2008, I had no experience of being a director in a listed Company. I had only been associated with closely held private limited companies which had minimal statutory and compliance requirements as compared to a public listed company like Cals. Further, since I had never been a director in a public listed company and had no experience with securities of the company listed on the stock exchange, I was not aware of the various compliance under different laws. In fact, I have never actively dealt in any listed securities including stock and mutual funds. Though in case of any doubt, I had always relied on the advice and suggestions of the professionals in the board of Cals working in different capacities.*

viii. *It may be noted that I was never inclined to be on the board of Cals due to the lack of my experience as a director in a listed company, and was only appointed on the board of Cals on the insistence and personal request of Sanjay Malhotra who was the original promoter of "Spice" and "SRM" Group. Even then, I was never involved in the day to day activities and business decisions of the Cals since there was a professional team who was taking instructions directly from Mr. Sanjay Malhotra.*

ix. *Further, it is humbly submitted that I did not have any influence over Asiatexx at the time when the agreement was entered. I was neither a director nor a*

shareholder of Asiatexx. I believed the Asiatexx transaction to be a genuine and was to fulfill the equipment requirements of Cals.

x. *It may be noted that since I had joined the board after the closure of the GDR issue, I was unaware that Honor Finance Ltd (the company owned and controlled by Sanjay Malhotra) was the sole subscriber to the GDR issue and Honor's Loan arrangement with Banco Efisa (the bank) as well as the Account Charge agreement between Cals and Banco. I only became aware of the same upon receiving the show cause notice dated 19 September 2013 (under section 11B ofthe SEBI Act) from SEBI.*

xi. *Believing the said transactions between Cals and Asiatexx was genuine, I was never aware that the aforesaid arrangements were made only to settle the outstanding loan of Honor Finance Limited with the Banco Efisa and discharge the liability of Sanjay Malhotra through Honor. In fact, it is my family and I who were defrauded by Sanjay Malhotra and D. Sundararajan with the help of Jagdish Lavekar. As a result of their actions, my family has lost enormous amounts of money and good will and have had to face multiple investigations and prosecutions, whilst Sanjay Malhotra has conveniently disappeared and not participated in any forum.*

Detailed Investigations by the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs on the subject matter

xii. *The Serious Fraud Investigation Office ("SFIO") has completed a detailed investigation on the subject matter, analyzing different aspects ofthe GDR issue and prepared an exhaustive investigation report dated 30 March 2017 ("SFIO Report"). I would like to place the said report on record. The report is attached and marked as Annexure-2.*

xiii. *The SFIO Report has clearly outlined the fact that the alleged fraud was manifested by Mr. Sanjay Malhotra (Noticee-8). This is evident from the perusal of the section titled "**Findings, Charges and Recommendations**" of the SFIO report under Chapter- IV which state that:*

"Shri Sanjay Malhotra, was the main person who was pulling the string ofthis group ("Spice ") through Companies namely SRMExplorations, SRM Refineries and SRM Infra controlled and owned by his parents

Shri Shoukat Rai Malhotra and Smt. Meenakshi Malhotra."

(Page 109 of the Report)

xiv. *Further the said "**Findings, Charges and Recommendations**" of the SFIO Report under Chapter-IV, has opening remarks which form the foundation of the Conspiracy by outlining the fact that:*

"Shri Sanjay Malhotra, hisparents Shri Shoukat Rai Malhotra and Snat. Meenakshi Malhotra, Shri Ravi Chilukuri, Shri D. Sundararajan, Shri Sarvesh Goorha, Shri Jagdish Lavekar, Shri M Guharoy and Banco (each such person "a conspirator" and together "the Conspirators ") entered into a criminal conspiracy with the object to cheat general investors in India and abroad and in pursuance of same, they used various corporate entities including "CALS" entered into various fabricated and sham transactions.

(Page 108 of the Report)

xv. *It is evident from the SFIO Report that the plan to settle the outstanding liability of Honor with Banco was hatched by Sanjay Malhotra, Honor Finance, Jagdish Lavekar, D. Sundararajan along with Banco Efisa with a sole purpose of discharging the Loan liability of Honor Finance with Banco. These facts can be substantiated by the SFIO Report, specifically by referring the page nos. 57-64 under the heading of **'Plan for settlement of outstanding loan of Honor**' under Chapter-Ill of the '**Factual Matrix**'.*

xvi. *Further, under 'Finding No. 5: Manipulations in the settlement of outstanding loan with Banco — Culmination of the conspiracy', the SFIO report on Page 131 & 132 arrives at a conclusion that:*

"Shri Sanjay Malhotra projected before "CALS" that he had raised fund amounting to US$200 million but large quantum of which i.e. US$108 million was siphoned off by him through various sham transactions/contracts. Shri Sanjay Malhotra knew that no funds were available which could be siphoned off further as he was unable to sell 101.48 million GDRs lying with him. On the other hand an amount of US$92 million was still outstanding against his company i.e. "Honor" which was nothing but a book entry. By adopting the above artifice i. e. agreement between "CALS" and "Asiatexx", he settled the book entry of outstanding loan ofUS$92 million by various entries involving bank accounts of "CALS', "Honor" and "Asiatexx.

Page 131-132

"Shri Sanjay Malhotra after sale of GDRs squared of floan of US$108 million, but he was not able to clear the outstanding loan of US$91.80 million, as he was unable to find any investor. Shri Sanjay Malhotra, Shri Ravi Chilkuri, Shri D.

Sundararajan and Shri Jagdish Laveker along with "Banco " at aforementioned time and place dishonestly and fraudulently structured a deal between "Asiatexx" and "CALS" to set off the outstanding loan of "Honor" and caused a hole of US$92 million in the capital of "CALS". In this artifice, Shri Sanjay Malhotra not only squared off his outstanding loan but also off-loaded the non-saleable GDRs of "CALS" to Shri Gagan Rastogi, son of one of the Directors of "CALS", only to intertwine involvement of "CALS" in the conspiracy of manipulations in GDRs. "

Allegations have been adjudicated multiple times by various for a

xvii. *It is submitted that all the allegations in the notice under reply have already been adjudicated by SEBI vide its order dated 31 December 2014 wherein a ban has already been imposed upon me as a penalty to not to deal with securities for 10 years. There are no new allegations raised against me in the current show-cause notice under reply which have not been adjudicated earlier.*

xviii. *Further, the SFIO proceeding is also pending against me at Dwarka District Court, New Delhi on the same subject matter.*

xix. *Adjudication and imposition of penalties for a third time on the same issue would be unjust and cause a lot of hardship to me and would amount to double jeopardy.*

Beyond reasonable time

xx. *In addition to the aforementioned submissions, it is submitted that the allegations made in the present notice under reply relate to the alleged transaction which purportedly took place in 2009. Thus, it is respectfully submitted that the notice under reply is highly belated (almost 10 years) and is beyond reasonable time. Further, no new information has been produced by SEBI and reliance is placed on the same investigation report which was produced in 2013.*

PARA WISE REPLY

xxi. *The contents of Para 1, save as matters of record, are wrong and hence denied. It is denied that I (Noticee No. 6) have violated Section 12(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, as alleged or at all. The Preliminary Submissions made hereinabove are reiterated.*

xxii. *The contents of Para 2 to 15 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

xxiii. *The contents of Para 16, save as matters of record, are wrong and hence denied. It is denied that I (Noticee No. 6) was a director of Cals during its GDR issue, as alleged or at all. It is denied that I (Noticee No. 6), had any influence over Cals or*

Asiatexx at the time the ageement with Asiatexx was signed, as alleged or at all. The Preliminary Submissions made hereinabove are reiterated.

xxiv. *The contents of Para 17, save as matters of record, are wrong and hence denied. It is denied that I (Noticee No. 6) have violated Section 12(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, as alleged or at all. The Preliminary Submissions made hereinabove are reiterated.*

xxv. *The contents of Para 18 are a matter of record and hence warrant no reply. The Preliminary Submissions made hereinabove are reiterated.*

xxvi. *The contents of Para 19, save as matters of record, are denied. The Preliminary Submissions made hereinabove are reiterated.*

xxvii. *The contents of Para 20-22 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

xxviii. *The contents of Para 23-24 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

xxix. *The contents of Para 25, save as matters of record, are denied. The Preliminary Submissions made hereinabove are reiterated.*

xxx. *The contents of Para 26-27 do not pertain to me and therefore does not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

xxxi. *The contents of Para 28-30 do not warrant any reply. The Preliminary Submissions made hereinabove are reiterated.*

13. A personal hearing was held in respect of Noticee-5 on December 20, 2019, wherein Mr. Vishal Rastogi, son of Noticee-5, authorized representative appeared on behalf of Noticee 5 and reiterated the submissions made vide aforesaid letter dated December 19, 2019 along with the findings of Serious Fraud Investigation Office. The AR was inquired about the email dated August 02, 2007 sent by Sarvesh Kumar Goorha to D Sundararajan with a copy to Noticee 5. The AR admitted receiving the said email. Further, the AR was inquired about the resolution of Board of Directors dated December 12, 2007 wherein Noticee 5 was permitted to operate the bank account of Cals Refineries Ltd to be opened with Axis Bank Ltd. The AR admitted that

Noticee 5 was authorized for such operation of bank account. Further, the Noticee was granted time till December 27, 2019 to make additional submissions. The hearing proceedings were thus concluded and the AR sought no further hearing in the matter. Vide letter dated December 24, 2019, the Noticee made additional submissions in the matter. The main submissions made therein are as follows –

i. *This is in reference to the captioned Notice dated 07 June 2019, and my reply dated 19 December 2019. During the personal hearing attended by my attorney on 20 December 2019, I was granted an opportunity to make additional submissions by your good office.*

ii. ***Appointment of Senior officials of Cals by Sanjay Malhotra solely****: It was solely Sanjay Malhotra who had conceptualised the Haldia Refinery Project of Cals ("Project") and was always in complete control of Cals as well as the Project. Sanjay Malhotra was managing all day-to-day activities of the Project as well as that of the larger group (Spice Group). He only had appointed all the senior management and consultants for the implementation of the Project. One of the key management personnel appointed by him was the CEO of Cals - Manabendra Guha Roy in 2007. The appointment letter of Manabendra Guha Roy duly signed by Sanjay Malhotra is attached and marked as Annexure-I.*

iii. ***E-mails showing that other directors were well aware of the structure of Asiatexx:***

iv. *As I had apprised you in my reply dated 19 December 2019 that almost all directors of Cals were well aware about my relationship with Gagan Rastogi and the structure of Asiatexx. I have enclosed herewith a few e-mails which were exchanged between the directors of the Cals and others, which confirms that they were aware about the relationship and structure:*

a. *E-mail dated 27 January 2009 from D. Sundararaian to Patricia Lam (Company Secretary of Gagan Rastogi), Gagan Rastogi and Jadish Lavekar, with the subiect "Account Opening Forms/lnformation": D. Sundararajan had sent this email to complete the documentation and had also attached sample pre-filled forms. Copy enclosed and marked as Annexure-2A.*

b. ***E-mail dated 16 March 2009 from Ramesh Bhosle (the CFO of the Cals) to Gagan Rastogi and D. Sundararaian having subiect "GBDI Transaction":*** *Ramesh Bhosale had sent this email seeking information regarding Asiatexx. Copy enclosed and marked as Annexure- 2B.*

c. ***E-mail dated 14 May 2010 from Manabendra Guharoy to Ravi Chilukuri and other Board Members including the senior officials of the Cals Refineries Limited with the subiect "Ventech's Letter":-*** *Manabendra Guha Roy in this mentions that he was able to get Ventech to issue a letter confirming that it will allow Asiatexx to sell the equipment presently owned by Ventech. Copy enclosed and marked as Annexure-2C.*

News Article regarding Cals procuring refinery equipment

v. *I believed the transaction between Cals and Asiatexx to be completely genuine also for the fact that Cals had announced that it was acquiring a refinery from a company called Petro Canada at Oakville, Ontario, Canada with a plan to relocate the plant to Haldia. This agreement was in addition to an earlier agreement signed by Cals in 2008 to acquire a Bayernoil refinery at Inglostadt, Germany and bring it to Haldia which was expected to be operational in the first half of 2010. This news being published in a national newspaper did not left for room any suspicion regarding the transaction between Cals and Asiatexx. A copy*

of the Telegraph news article dated 09 February 2009 is enclosed and marked as Annexure-3.

E-mail dated 26.02.2009 between Catarina Saragoca Lopes da Luz to Jagdish Lavekar with the subject "Honor's operation(s) plan"*:*

vi. *In my reply dated 19 December 2019, I had stated that the entire conspiracy was hatched by Sanjay Malhotra, Jagdish Lavekar in connivance with Banco Efisa with respect to the Asiatexx transaction. This is evident from an e-mail dated 26 February 2009 between Catarina Saragoca Lopes da Luz, the director of Banco Efisa and Jagdish Lavekar giving a detailed plan devised to offload the liability of $92 million of Honor Finance Limited/Sanjay Malhotra with Banco Efisa by roping in Asiatexx and Gagan Rastogi. Copy of e-mail dated 26 February 2009 from Catarina Saragoca Lopes da Luz is enclosed and marked as Annexure-4.*

Statement of Sanjay Malhotra to Serious Fraud Investigation Office (SFIO)

vii. *In my reply dated 19 December 2019 1 had stated that Sanjay Malhotra had conveniently not participated in the SEBI investigations etc. During the investigation conducted by SFIO in the very same transaction, Sanjay Malhotra gave his statement on 15 February 2016. A perusal of his statement made to SFIO shows that all his responses were evasive and vague. Copy of the statement of Sanjay Malhotra is enclosed and marked as Annexure- 5.*

Statement of Jadish Lavekar to SFIO

viii. *In his statement to SFIO dated 21 July 2016, Mr. Jagdish Lavekar in reply to one of the questions about his consultancy and guidance on the issuance of GDR stated:*

"Mr. Malhotra approached us to help and get assistance for their issue listed in international market. Mr. Malhotra informed that he is promoting a refinery in West Bengal and presented a profile of the company.

It was also given to understand that he has already has investors and their issue is pre-sold hence documentation required to be done with Banks, institutions, lead manager, Depository custodian etc…"

ix. *Mr. Jagdish Lavekar in his statement with SFIO regarding Asiatexx and Gagan Rastogi stated that:*

"I have to state that the loan outstanding at $92 million. Mr. Malhotra approached to clear loan facility and gave structure to so the facility will be cleared. He informed to assist them in opening bank account of new company Asiatexx to which documentation will be executed by Mr. Gagan Rastogi. The structure suggested by Mr. Malhotra to the bank has confirmed by mail which narrated the transaction. As the structure suggested by Mr. Malhotra the transaction was accommodative transaction to clear the transaction."

x. *Mr. Jagdish Lavekar in his statement with SFIO stated regarding the transaction to clear Honor Finance/Sanjay Malhotra's liability with Banco Efisa:*

"In the month of January 2009, Sanjay Malhotra informed me loan of $92 need to be cleared and funding was not available and required structured entries. As already explained in question no. 13 a mail was received from Catarina Sargoca Luiz which sent a proposal for clearing of Honor's loan. This was structure they were presenting to the Board ofBank. Since we had association into Banco, we were able to co-ordinate issues. As per the email dated 26/02/2009, as per the arrangement, the Cals will enter into contract with Asiatexx and pay contract value.

- *Asiatexx will buy the GDRs from Honor and pay money to Honor.*
- *Honor will pay to Bank as repayment of loan.*
- *Banco will release the funds to Cals Refineries,*

I further state that the entries are accommodation entries in the loan taken by Honor was settled and GDR of Cals transferred to Asiatexx/Gagan Rastogi without any cost..."

Copy of the statement of Mr. Jagdish Lavekar is enclosed and marked as Annexure-6

Complaint filed with the Economic offence Wing (EOW), New Delhi:

xi. *Upon receiving the Show Cause Notice dated 25 September 2013 from SEBI and during the depositions conducted during the SFIO Investigations, I came across vanous documents and the details of the conspiracy hatched against me and my son Mr. Gagan Rastogi. After which, I filed a detailed complaint against Sanjay Malhotra, Ravi Chilukuri, D. Sundararajan and Honor Finance Limited with the Economic Offences Wing (EOW). Copy of the Complaint filed with EOW is annexed and Marked as Annexure- 7.*

Audio Transcript, Report and File

xii. *This audio recording was handed over by Mr Ravi Chilikuri when RP Capital, UK filed a case against Cals. This was a part of many other audio recordings of meetings between Sanjay Malhotra, Ravi Chilukuri and RP Capital totalling to about 16 hours. We only heard these recordings as we were looking for evidence against Sanjay Malhotra after the first SEBI Show-Cause Notice dated 25 September 2013 was received by me. In the said audio it is clearly evident that Mr. Sanjay Malhotra is telling Mr. Ravi Chilikuri that it was Mr. Malhotra who had planned the entire GDR Issue and had induced RP Capital to invest in the same. Copy of the Audio Transcript and the forensic report in respect of the Audio file and the Audio File itself is enclosed and marked as Annexure 8.*

14. The SCN sent to Noticee-6 (Mr. Sarvesh Kumar Goorha) was delivered. Vide letter dated July 06, 2019, Noticee 6 requested for extension of time of four weeks for

submitting reply to the SCN. Vide letter dated August 28, 2019, Noticee 6 mentioned a list of documents and sought the same. Vide letter dated September 27, 2019, Noticee 6 was granted opportunity of inspection of documents that were relied upon in the matter. The inspection of documents was carried out on January 09, 2020 by Mr. Shikhar Sthapak, advocate, authorized representative of Noticee 6. Vide letter dated January 10, 2020, Noticee 6 stated that during the course of inspection they were provided the annexures of the SCN (except Annexure VII) for inspection. Further, it was submitted that legible copies of Annexures III and VI was not provided. Further, it was submitted that they be provided with copies of all the documents provided during the course of inspection. Further, it was requested that the list of documents sought vide earlier letter dated August 28, 2019. Vide letter dated March 12, 2019, Noticee 6 repeated his request for documents. Response to the documents sought by Noticee 6 was provided vide email dated March 15, 2021 as follows -

Sl. No.	Documents sought	Response
a.	Legible copies of "Annexure III — copy of KYC documents of Honor Finance Limited, Cals and Asia Texx" and "Annexure VI - Copy of Bank statement of Cals, Honor and Asia Texx"	The said annexures already provided with SCN. The same is attached once again.
b.	Complete Investigation Report for the investigation conducted by SEBI in the GDR issue of M/s Cals Refineries Limited.	Copy of relevant extract of the investigation report already provided as Annexure XII of SCN
c.	Documentary evidence that BBS Capital partners, Switzerland and Invest Bank Montenegro were the Lead Manager of GDR issue of Cals	Copy of statement dated April 03, 2012 of MD of Cals already provided as Annexure X to SCN
d.	Documentary evidence of Bank Statement that the Loan provided to Honor by Banco for subscription to the GDR issue was transferred to Bank Account of Cals maintained with Banco on December 12,2007	Bank statement of Cals, Honor and Asiatexx already provided as Annexure VI to SCN

e.	Copies of correspondence exchanged by SEBI with Banco	Not relied upon
f.	Cross-examination of representatives of Banco and copies of documents obtained from Banco	No statement has been recorded of the representatives of Banco; Relevant documents provided as annexures to SCN
g.	Documentary evidence that proceeds of GDR could be withdrawn by Cals from Banco only to the extent of an amount equal to the repayment under the Loan Agreement by Honor	Bank statements provided as Annexure VI to SCN. Account Charge Agreement and Extension Agreement provided as Annexure II and V to SCN
h.	Documentary evidence of utilization of USD 200 Million raised via GDR issue	Bank statement provided as annexure to SCN
j.	Documentary evidence of contract signed between Noticee-1 and Noticee-4 for acquisition of refinery equipments and proof of payment.	Letter dated March 24, 2012 of Cals (enclosed with this email)
k.	Documentary evidence and copy of agreement between Cals and Asia texx	
m.	Documentary evidence of Honor repaying outstanding amount to Banco	Bank statements enclosed as Annexure VI to SCN
n.	Documentary evidence of payments made from Cals to Asia texx under the pretext of the Agreement to purchase refinery equipments and evidence that payment was forfeited.	Bank statements enclosed as Annexure VI to SCN
i.	Documentary evidence and copy of Bank statement of Honor maintained with Banco Efisa that Honor repaid Banco efisa in several instalments from the earnings received by Honor from the sale of the GDRs of Cals	CMVM's letters enclosed with this email Please note that the information has been exchanged between the regulators and shared with the Noticee in accordance with the IOSCO MMoU and that confidentiality of the information is required to be maintained as per IOSCO MMoU.
l.	Documentary evidence of Asia texx's purchases GDRs from Honor	
o.	Documentary evidence of transfers of GDRs from Asiatexx to Mr. Gagan Rastogi	
p.	Documentary evidence of GDRs of Cals purchased by Asia texx from Honor and transferred to the account of Noticee-5 on July 09, 2009 in Julius Baer Bank Singapore	
q.	Documentary evidence that Noticee 5 obtained 25 million GDRs of Cals using funds of Cals	
r.	Documentary evidence that the liability of the promoter of Cals (liability of Mr. Sanjay Malhotra through Honor) was discharged using the funds of Cals.	Bank statements enclosed as Annexure VI to SCN

s.	Copy of Annual report of Cals Refineries Limited for the year 2008-2009.	Enclosed with this email
t.	Any other documents/material relied upon while issuing the Notice for the alleged violation of the provisions of the Securities law.	Query is general. All the relied upon documents already provided.

15. Noticee 6 was granted opportunity to submit reply to the SCN latest by March 23, 2021 and an opportunity of personal hearing on March 25, 2021. Vide email dated March 22, 2021 inter alia requested for time of 8 weeks for filing reply to the SCN. Noticee 6 along with Mr. Deepesh Goorha appeared for the hearing held on March 25, 2021 and requested for additional time to file reply to the SCN and as per Noticee 6's request time till April 15, 2021 was granted for the same. Vide letter dated April 15, 2021, Noticee 6 submitted reply to the SCN. The main contentions made therein are summarized as follows –

i. The SCN issued by your goodself inter alia alleges violation of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f) and 4(2)(k) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") by Our Client along with others.

ii. The SCN alleges that Our Client who was one of the promoters of Cals had signed an Account Charge Agreement (hereinafter referred to as "Agreement") dated December 11, 2007 on behalf of Cals.

iii. In pursuance of your goodself's SCN wherein Our Client is one of the noticees', he had vide his letter dated August 28, 2019 requested your goodself for certain documents which shall be required to fully understand the nature of the SCN and the allegations made therein. The documents previously sought from your goodself are as follows:

i. Complete Investigation Report for the investigation conducted by SEBI in the Global Depository Receipt (hereinafter referred to as "GDR") issue of Cals.

ii. Documentary evidence that BBS Capital Partners, Switzerland and Invest Bank Montenegro were the Lead Manager of GDR issue of Cals.

iii. Documentary evidence of Loan Agreement (titled as Credit Agreement relating to a dollar term facility of up to $ 200,000,000).

iv. Documentary evidence of Pledge Agreement (titled as Account Charge Agreement) signed between BancoEfisa S.A. Lisbon (hereinafter referred to as Banco/Bank") and Cals.

v. Full Copy of Resolution (as available in minute book) passed by Board of Directors and Copy of Minutes of meeting dated October 30, 2007.

vi. Documentary evidence of Bank Statement that the Loan provided to Honor Finance Limited (hereinafter referred to as "Honor") by Banco for subscription to the GDR issue was transferred to Bank Account of Cals maintained with Banco on December 12, 2007.

vii. Copies of correspondence exchanged by Securities and Exchange Board of India (hereinafter referred to as "SEBI") with Banco,

viii. Cross examination of representation of Banco and copies of documentarv obtained from Banco.

ix. Documentary evidence of Extension Agreement signed between Cals Refineries Ltd. And Banco.

x. Documentary evidence that proceeds of GDR could be withdrawn bv Cals from Banco only to the extent of an amount equal to the repayment under the Loan Agreement by Honor.

xi. Documentary evidence of utilization of USD 200 Million raised via GDR issue.

xii. Documentary evidence and copy of Bank statement of Honor maintained with Banco that Honor repaid Banco in several instalments from the earnmgs received by Honor from the sake of the GDRs of Cals

xiii. Documentary evidence of contract signed between Noticee-l and Noticee-3 for acquisition of refinery equipments and proof of payment.

xiv. Documentary evidence and copy of agreement between Cals and Asiatexx.

xv. Documentary evidence of Asiatexx's purchases of GDRs from Honor.

x vi. Documentary evidence of Honor repaying outstanding amount to Banco.

xvii. Documentary evidence of payments made from Cals to Aslatexx under the pretext of the Agreement to purchase refinery equipments and evidence that payment was forfeited.

xviii. Documentary evidence of transfers of GDRs from Asiatexx to Mr. Gagan Rastogi.

xix. Documentary evidence of GDRs of Cals purchased by Asiatexx from Honor and transferred to the account of Noticee-5 on July 09, 2009 in Julius Baer Bank Singapore.

xx. Documentary evidence that Noticee 5 obtained 25 million GDRs of Cals using funds of Cals.

xxi. Documentary evidence that the liability of the promoter of Cals (liabilitv of Mr. Sanjav Malhotra through Honor) was discharged using the funds of Cals.

xxii. Copy of Annual report of Cals Refineries Ltd. for the year 2008-2009.

xxiii. Copy of replies furnished by Cals to SEBI or statements given under oath, in person, before Investigating Authorities.

xxiv. Any other documents/ material relied upon while issuing the Notice for the alleged violation of the provisions of the Securities law.

iv. *In response to the same, your goodself had provided him with an opportunitv of Inspection of Documents on January 09, 2020 which was availed by Our Client and subsequent provision of certain documents vide email dated March 21, 2021 However, it is pertinent to note that all the documents/ information/ details which were requested and are relevant for the matter were not provided to Our Client, therebv effectively rendering Our Client ill-equipped to defend the allegations levied against himself. Our Client vide his various letters requested your goodself to provide him with certain documents/ materials which were relied upon by your goodself in the present SCN. In this regard, he was provided with an opportunity of Inspection. However, all the documents/ information/ material as requested and relevant for the matter were not provided to Our Client.*

v. *In this regard, it is respectfully submitted that in absence of complete material and documents, it is impossible for Our Client to submit a proper and detailed response to the SCN and thus, the SCN suffers from serious vice of violation of 'principals of natural justice' and on this ground alone, the proceedings are fit to be dropped and the present SCN under replv needs to be withdrawn.*

vi. *In this regard, it is pertinent to note that the failure to provide such complete and comprehensive material is bad in law, as it is contrary to the settled principles of natural justice. The basic requirement of following the principles of natural justice In all the cases/ matters is adversely affected in this case, thereby negatively affecting the rights and obligations of Our Client. The basic requirement and need of following the natural justice principle has been time and again reiterated by the Hon'ble Supreme*

Court, Hon'ble High Courts of India and Hon'ble Securities Appellate Tribunal. For your goodself's ready reference, the extracts of the relevant Judgments are provided herein below;

a. The Hon'ble Supreme Court in the matter of Securities and Exchange Board of India vs. Price Waterhouse (Civil Appeal No. 6003-6004/12), observed that SEBI being a statutory authority is not at liberty to withhold information, on the basis of what it has relied upon while preparing the SCN or otherwise and should allow a Noticee to inspect and take copies of all the Information which it has collected during the course of investigation. The relevant part of the said judgment is as under:

> *"We direct, that all statements recorded during the course of Investigation shall be provided to the respondents. We further direct, that all documents collected during Investigation shall be permitted to be Inspected by the respondents. The authors of such statements (recorded during Investigation), which are to be relied upon (against the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same"..*

b. The Hon' ble Supreme Court in the matter of State of Orissa vs. Miss Bina Pani Devi, (AIR 1967 SC 1269) has also held that.

"even an adminstrative Order which Involves CIVII consequences must be made consistently with the rules of natural justice. The person concerned must be Informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken".

vii. On applying the above judgments of Hon'ble Supreme Court, Hon'ble High Courts of India and Hon'ble Securities Appellate Tribunal, it is respectfully submitted that SEBI has not provided Our Client With the Information/ documents which were relied upon while preparing the SCN, which is contrary to the rule laid down by the Hon'ble Courts of India. Thus, on the strength of the aforesaid judgments, it is submitted that the SCN against Our Client be quashed solely on the ground of violation of natural justice principle.

<u>OVERVIEW OF CALS AND OUR CLIENT:</u>

viii. Before delving Into the merits of the matter, it is pertinent to note a brief overview of Cals and Our Client along with the events that led to present SCN:

a. Computer Aided Learning Systems Private Limited (hereinafter referred to as "Cals Limited/company") was promoted by a group of Technocrats namely, by Our Client and three others in the year 1984. Company had a successful track record of setting up education computers in Central/ State level Universities, Colleges and Schools.

b. Gujarat Venture Finance Limited (hereinafter referred to as "G VFL"), a venture fund promoted by Gujarat Government's GIIC and Word Bank had venture funded the company for computer hardware manufacturing and multilingual development. The company after its success in the field planned to come out with an Initial Public Offering (hereinafter referred to as "IPO"). Thereafter, at the time of IPO in September 1993, G VFL had joined hands as co-promoters with the professional team of Cals Limited's employees, their family and friends. The IPO which was supported by SIDBI, Banks and other Financial Institutions had oversubscribed by 11 times.

c. The company was given a project in relation to Voters ID card and the same was successfully completed in several states. However, due to blockage of large funds in Voters ID card project and in exports after break up of Eastern Europe, the company suffered heavy losses and it had to cease all operations in M arch 1997

d. This led company's promoters to take up full time jobs m other companies and sustain their living. Our Client who was one of the promoters in Cals Limited continued to fulfil his obligations in respect of compliances with all Government departments, Stock Exchanges, etc. Further, Our Client had repaid all outstanding liabilities with the salary earned from his job/ s in other companies and consulting assignments.

e. In the meanwhile, Our Client has been consulting on IT and Telecom projects and had also been teaching and conducting workshops on part time basis at IIT s, Universities and IIITs. Further, in order to meet ends and also to fulfil his obligation in respect of the company's liabilities took up a Telecom project October 2006and took over the role as a full time CEO in March, 2007 of Auditel Expense Management Private Limited, a Joint Venture of Auditel Inc., USA leading Telecom Analytics Company. As the CEO of a of the newly launched Joint venture of a leading Telecom Analytics Company, Our Client was required to setup and develop the business for the clients of Auditel Inc., in USA while co-ordinating with the Business Management Team of Auditel and various of its

corporate clients and the Government Department. This required Our Client to travel to USA to manage thing in person.

f. Further, after a struggle of 10 long years and process before various forums the companv arrived at a "One Time Settlement" with the Banker in March 2007. In regard to the settlement payment, after the sale proceeds from the assets of the company, Our Client with the help of loans from his family and friends somehow managed to make the balance payments to the Bank.

g. Thereafter, looking at Our Client's commitments in Telecom project and disinterest in continuing with Cals Limited, Our Client along with other investors in Cals Limited started exploring possibilities of sale/ transfer/ merger of Cals Limited. In this respect, it is pertinent to note that during this time, the company had residual liabilities of Rs.60,00,000/- (Rupees Sixty Lakhs only). Further, Our Client over the previous years' had brought-in/ borrowed money for the company to the extent of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only) (approximately) to settle various liabilities and maintain compliances.

h Furthermore, there were several rounds of discussions with potential buyers of Cals Limited to transfer the company fully on an estimated cost of Rs. 1,70,00,000/- (Rupees One Crore Seventy Lakhs only).

i. There were many proposals in respect of Cals Limited; however, the structuring of the transfer deal became difficult due to the miniscule shareholding of Our Client and other close shareholders in Cals Limited. Similarly, the proposers were not willing to make cash Investment in Cals Limited and phase wise payment to Our Client in 2-3 years was mooted by them.

j. Among the aforementioned proposals, one such proposal came in January, 2007 when Mr. Deep Rastogi, one of the promoters of SRM Exploration Private Limited (hereinafter referred to as " SRM") approached Our Client to consider buying/ takeover of Cals Limited for their refinery project. It was further Informed that Mr. Rastogi and his co-promoter Mr. Sanjay Malhotra had already signed an agreement m one of their group companies in 2006 for purchase of refinery equipment and were looking for a listed company in India for the said project.

k Further, there was an understanding with the SRM group that it shall buy all the shares of old promoters and do a further raise of equity. It was also to pay for old pending liabilities, make payment for settling cases pertaining to Section 138 of Negotiable Instruments Act, 1881 and refund part of the amount brought in by Our Client.

l. However, the shareholding of Cals Limited's old promoters which was 2% only (approximately), was not sufficient for SRM group and therefore, it was suggested that a preferential allotment up to 15% as per SEBI guidelines be made. Further, due to the urgency in starting the refinery project, SRM group was not Inclined towards a

Public Offer process.

m. In furtherance to the aforesaid, Our Client who was then engaged with IT and Telecom companies on full time basis, expressed his inability to help in Petroleum Industry project, as it was not his domain and also due to his commitment to other companies. Thereafter, SRM group showed profile of their promoters, directors and associates globally and informed that they will manage the refinery project themselves and Our Client will have no role to play in it. In pursuance of the aforesaid, SRM group then deputed their CFO and GM Finance to conduct a due diligence on the company, background, financials, liabilities and compliances.

n. After being fully satisfied, the SRM group proposed an investment m the company through allotment of preferential shares to SRM to the extent of 14.5% of the then paid up equity of Cals Limited.

o. Thereafter, Our Client was asked to continue as a non-executive director on the Board of Cals during the said transitional period as he was aware of the pending legal cases and he was also required to complete the due diligence process with the Legal Advisors and Agencies appointed by SRM.

p. Further, the funds of over Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs only) that were brought in by Our Client to repay the balance settlement amount and other liabilities were refused from being repaid and only an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) out of the total was converted to equitv. He was promised that the balance amount of Rs. 1,00,00,000/- (Rupees One Crore only) which was due will either be repaid or shares will be issued on preferential basis to him. Even after this allotment the old promoters would hold only 2.2% of the equity with no control or power to take management decisions.

In this regard, it is pertinent to bring to your goodself's kind attention that this amount remains outstanding in the company even after 13 years.

q. Consequently, the plan was executed and SRM group completed the following during the Board meeting dated July 23, 2007:

i. Allotment of preferential shares and authorization for completion of all formalities with SEBI, Exchanges etc.

ii. Appointment of Mr. Bhupendra Kansagra, Mr. Ravi Chilkuri, Mr. Manabendra Guharoy and Mr. Sundararajan as additional directors of the company representing SRM Group.

iii. Change of the name of the company from "Cals Limited" to "Cals Refineries Limited"

Post this meeting "effective control" of company's management was taken over by the representatives, CFO and the directors of SRM and their group company and their management staff. A copy of the minutes of the Meeting dated July 23, 2007 is attached and annexed here as Annexure – A.

r. Further, Our Client was requested to continue on the Board only to help in transition and transfer of "management control" to SRM. Having agreed to transitional process, Our Client had signed the applications and forms as presented to him by the SRM management. As is evident from various emails, SRM management and their officials were fully in control of activities and conduct of day to day business of Cals. The emails representing control in Cals are attached and annexed herewith as Annexure – B.

s. Thereafter, Annual General Meeting was held on September 12, 2007 to seek shareholders; approval on resolutions, such as:

i. Allotment of preferential shares to SRM.

ii. Appointment of their four representatives as " directors"

iii Change of Management.

iv Raising of funds through Equity Shares/ Preference Shares/ Convertible Debentures/ Global Depositary Receipts and/or American Depositary Receipts/ Foreign Currency Convertible Bonds subject to approval by all the authorities.

However, it is pertinent to note that the "change in Management" resolution was deferred by SRM on the grounds that preferential allotment process may trigger public offer' process and that may delay the project of SRM. In this respect, Our Client Vide his email to Mr. Sundararajan, director, expressed his disagreement and had sent an opinion from outside Company Secretary that Regulation 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 will not trigger public offer. This aspect was conveyed by Our Client much earlier on August 02, 2007 i.e., soon after the induction of SRM Directors. However, SRM wasn't in agreement to this and promised that change in management will be

done soon in the next Extraordinary General Meeting or Annual General Meeting. Our Client, not having any choice with a hope of recovering his Rs. 1,00,00,000/- which was still outstanding in the books of Cals, had to accept it as an interim solution.

t. Thereafter, In the Board of Directors meeting held on October 17, 2007, Mr. M.S. Ramachandran (Ex-Chairman of Indian Oil Corporation Limited) was appointed as a director and took over as the chairman of Cals. The Board was also informed about the total cost of the refinery project, which would stand at USD 950 million.

u. Pursuant to the aforesaid, SRM and their advisors (including Mr. Sanjay Malhotra) presented a plan for funding of the refinery project to the new Board. It was stated that the project cost would be met by raising issue of GDRs of USD 200 million and Qualified Institutional Placement and balance by wav of External Commercial Borrowings of USD 500 million, partly in the form of Foreign Currency Convertible Bonds and partly in Foreign Currency Loan.

v. Further, it was stated and communicated by SRM that the arrangement for subscription of GDR issue has been done through promotion to private Investors and funds and there were commitments from investors to support the said GDR issue. An Information memorandum was presented which mentioned only about SRM and its group companies, associates, advisors as the "promoters" and there was no reference to old/ original promoters of Cals and the name of any old promoter or that of Our Client was not even mentioned in any fund raising document, as they were not in any way involved in the GDR fund raising process. Similarly, the process of raising GDR was managed by the agency appointed by the advisors of SRM and company CFO Mr. Sundararajan, nominated by SRM. Here, the Bank of New York was the depository of the GDR issue and it was proposed to be listed on the Luxembourg Stock Exchange. A copy of the minutes of the Meeting dated October 17 2007 IS attached and annexed here as Annexure- C.

w. Thereafter, it is pertinent to note that Our Client during November 10 to November 17, 2007 was travelling to USA to attend meeting for Auditel Telecom Expense Management, as he was CEO of Auditel Telecom Expense Management during the said period. As a result, on November 12/ or 13, 2007, Our Client was requested by Mr. Sundararajan, director of Cals to re-route his

tickets via London, as he was required to execute bank account opening documents for Banco.

x. Earlier, Mr. Sundararajan was scheduled to travel for the same; however, Our Client was informed over telephone that due to certain personal emergency he was unable to travel to UK and thus, requested Our Client, if he could stop for a few hours in London and sign the documents to be given by their representatives m UK, Our Client vide his email suggested that Mr. Ravi Chilikuri, also a Spice Energy Group Nominee, could execute the document as he was based in London, UK, However, Ravi Chilikuri was not yet authorized by the Board to execute the documents qua Banco. Our Client vide his email also requested for full set of documents that were to be executed by him, so that he could review them and be well versed with the documents beforehand. However, the same were not provided to Our Client. The same is substantiated through Our Client's email which is attached and annexed as Annexure – D.

Thereafter, on November 14, 2007 Our Client received an email from Mr. Sundararajan's secretary mentioning the address in London to be visited on November 19, 2007, without any attachment/ documents for Our Client's review. Further, it was mentioned that some documents have been sent via courier and will be handed over by one Ms. Jules, Secretary in their London office.

z. On reaching London after a long flight, Our Client was taken to the Notary office and was asked to sign the documents without being given a chance to read or review them. Thereafter, Our Client as per his limited knowledge and on assuming that all documents have been reviewed by the SRM Directors, CFO and other authorized signatory, completed the paper work in good faith and signed account opening/ KYC form on November 19, 2007, due to non-availability of any other authorized person. Here, it is pertinent to note that Our Client was neither aware about the contents of the documents nor was he given any opportunity to review the details/ papers, as they were required to be notarized before closing of the business hours of that day. Further, Our Client was neither aware that the Agreement contained a clause to the effect that all communications in regards to the Agreement shall be addressed to either Mr. Sundararajan or himself nor did he receive any communication in respect of this Agreement. This is substantiated from the fact that Our Client even after repeatedly asking for the documents vide his mails and calls, was not provided with the same and further, due to the timing of the London flight, there was no

time in hand to reach Notary Public office well before time and review the allegedly signed documents. At the time of executing the documents, Our Client was assured that he would be given a copy of documents later; however, it was only after receiving the SCN that Our Client was informed about the Agreement and subsequent, account charge extension agreement.

aa. In the meanwhile, Our Client prior to the next Board meeting sent an email dated December 27, 2007 to all directors and SRM management highlighting that he was not being Informed about any activities, decisions in Cals and matters were also not brought on record in the Board meetings. Our Client also raised his concern on ensuring legal compliances and requested a proper opinion from chartered accountant and lawyers. It was further indicated that Our Client was not aware of various actions and acts of the management and he would like to be assured that all the laws are followed and compliances are completed. The copy of the email dated December 27, 2007 IS attached herewith as Annexure – E.

bb. Our Client was concerned only because he was still continuing as a name sake Director of Cals till the next Annual General Meeting and although he was not responsible for the conduct of the business, he wanted to be aware of important issues. Further, to review the status, Our Client also suggested names of well-known law firms in Delhi. Our Client had also conveyed his request to step down from the Board. However, there was no response from the company.

cc. Thereafter, the change of Management to SRM was completed in July, 2008 and the old promoters/ promoters group/ persons acting in concert or Our Client were no longer in-charge or responsible for the conduct of the business of Cals The change of Management was ratified in Annual General Meeting; however, it is Important to note that Our Client was effectively not involved in the day to day affairs/ management of Cals since July, 2007 itself. This can be substantiated through various filings and statements of SRM representatives. Thus, from the aforesaid, it is necessary to note that Our Client was neither the part of the Management of Cals nor was he made aware about any action/ act of the Management. Similarly, Our Client was not involved in the signing and execution of the Agreement as alleged and the only document(s) signed by him were account opening documents with Banco.

<u>REPLY TO SCN:</u>

ix. Considering abovementioned facts, the submissions of Our Client to the observations made in the Notice are as under.

1. With regard to the appointment of your goodself as an Adjudicating Officer vide communique dated July 05, 2018 to inquire into and adjudge upon the alleged violations of various provisions of SEBI Act and PFUTP Regulations by various entities including Our Client is a matter of record and therefore, Our Client does not have any comment to offer on the same. It is humbly submitted that investigation in the GDR issue of Cals is a matter of record and therefore, Our Client does not have any comment to offer on the same. In any event, Our Client vehemently denies having violated any of the provisions of SEBI Act and PFUTP Regulation as alleged.

2. It is further submitted that the investigation carried out by SEBI is a matter of record; however, Our Client is not aware as to why there is huge delay in issuing the present SCN, as the issue upon which the investigation was conducted dates back to 2007 and the SCN is issued in 2019, i.e., after a delay of 12 years. Further, no reason has been specified in the SCN for such delay.

3. It is further submitted that the SCN has tried to show close proximity between independent events which have happened separately and is trying to relate Our Client to unrelated transactions. It is also important to note that, without going into the background of Cals, the SCN has tried to portray a false and distorting picture. Thus, it is submitted that the allegations levied against Our Client in the SCN are without any reasonable backing and evidence and they are thus based on mere surmises and conjectures, thereby violating the eternal principles of natural justice.

4. At the outset, it is humbly submitted that Our Client denies the allegations levied against him. In this regard, it is pertinent to note that the only allegation that has been levied against Our Client is that of signing the alleged Agreement. It is submitted that the allegedly signed Agreement cannot be relied upon. This is due to the fact that Our Client did not sign any document which was dated December 11, 2007 and the only document(s) signed by Our Client were the bank opening account/ KYC form on November 19, 2007. This is substantiated by the fact that during December, 2007 Our Client was present in India only and he did not travel to either UK or USA. Thus, from the aforesaid, it is submitted that the veracity of the alleged Agreement cannot be relied upon, as it alleges something which never

happened. The copy of the passport of Our Client for the relevant period is attached herewith as Annexure — F.

5. Further, assuming without admitting that Our Client executed the alleged Agreement, it is humbly submitted that Our Client was merely acting on the instructions of Cals and its representations at all times and he was never aware about the documents that were being executed, as he never had any opportunity to review them. Our Client was the original promoter of Cals and whilst admittedly he was an authorized signatory for certain matters and was on the Board until July, 2008, he had a very limited or no role to play in the management, day to day activity, operations, strategy and planning and/or in the decision making since the date on which the SRM Group made a strategic investment into Cals i.e. on July 23, 2007. Thus, it is submitted that after the entry of the SRM Group, Our Client's role in the then newly transformed Cals was only transient and extremely limited in nature. Further, the same could also be verified from the Management of the company.

6. It is further submitted that Our role in Cals as a figure head was only for the transition period i.e., till the handover process was complete and it was so because of his knowledge about the pending legal cases and statutory compliances.

7. It is pertinent to note that all the aspects of the GDR process such as the due diligence, Bombay Stock Exchange Approvals, finalization of Annual General Meeting Notice/ Agenda, etc. were undertaken by the SRM's nominee directors and Our Client had no role in it. It is also corroborated by the fact that a roadshow presentation was conducted for the GDRs, which did not even bear the name of Our Client in either the Promoters or the Key Personnel section. A copy of emails in this regard are attached and annexed as Annexure — G Colly.

8. It is submitted that with each passing day Our Client became more distant from the management activities. In fact, Our Client had no effective role to play in the GDR process, except to the extent of signing and executing certain documents in relation thereto, upon the instruction and as was desired by the Company from time to time.

9. It is further submitted that Cals had appointed reputable organizations for the purpose of managing the GDR process and Our Client had no role in these appointments and the same could be confirmed from the Management. The organizations appointed included custodians, depositories, legal counsel, and lead managers. BBS Capital Partners, Switzerland and Invest Bank Montenegro were appointed as lead managers to the issue. Cals also appointed the Bank of New

York as its depository and DBS Bank was appointed as the local custodian to the issue.

No knowledge about any Account Charge Agreement

10. It is humbly submitted that Our Client never received any information or communication in respect of the Agreement. It is further submitted that Our Client never used any funds of GDR proceeds in any manner whatsoever. Our Client was neither a beneficiary of the GDR proceeds nor was he involved in any related party transaction and admittedly the management control of Cals was taken over by the SRM Group as early as in July, 2007.

11. Further, it is submitted that Our Client never signed any documents dated December 11, 2007 as he was not present in UK or anywhere in Europe on the said date and the only document that was executed by Our Client was the bank opening account/ KYC form, that too without being aware about the details of the said document.

12. During the course of the Board Meeting held on October 30, 2007, Our Client alongwith Mr. Sundarajan were inter alia specifically authorized severally to open a bank account with Banco and 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 the common seal of Cals thereon, if and when so required. A copy of the said Board Resolution is attached and annexed as Annexure – H.

13. During the beginning of November, 2007, it is submitted that Our Client was in the US and was due to return to New Delhi directly. During November 12 or 13, 2007, Our Client was telephonically informed by Mr. Sundararajan that he would need to re-route his ticket via London to sign and execute some urgent documents in relation to Account opening with the bank. Mr. Sundararajan explained that due to some reasons he was unable to travel to the UK and requested him again on email/ phone to sign the Bank account opening documents in UK. In this regard, Our Client raised objection regarding signing of the documents and suggested that Mr. Ravi Chilukuri another SRM nominee Director in Cals, can sign and execute the document in absence of Mr. Sundararajan. However, Our Client was informed that formalities in respect of Mr. Ravi Chilukuri were not yet complete and he was not yet authorized to sign the Bank Account opening documents. Mr. Sundararajan reconfirmed to Our Client that the authorization at present is in his (Mr. Sundararajan) and Our Client's name.

14. Thereafter, Our Client asked Mr. Sundararajan to email the documents that were required to be executed by him, so that he could review them before going to UK. In spite of repeated reminders on phone, no documents were received by Our Client. Subsequently, Our Client received a forwarded email dated November 13, 2007, which was forwarded to him by Ms. Valerian. The same mail was originally not marked to Our Client and it was sent from Ms. Valerian R. Fernandes, Assistant to Mr. Sundararajan & Mr. Jain which in turn read, "Respected Sir, Please find attached 4 files for doing the needful at your end. Thanks and regards…"

15. In respect to the aforesaid mail, Our Client is at loss of words to comment on what these attachments were because despite repeated requests the same were never sent or provided to him and the only document that was ever received by Our Client was the one-page of a KYC form. On further following up on phone, Our Client was informed by Mr. Sundararajan that he shall be sending him a SMS containing the address of the office of Mr. Ravi Chilkuri in London, where the documents would be available for signatures by Our Client. From the above submission of facts, the ill intentions of Cals representatives can be easily seen and understood. It is quite evident that by hiding material information from Our Client and then repeatedly asking him to sign the documents, Our Client has been used as scapegoat by Cals representatives.

16. Thereafter, Our Client's ticket was re-routed and he reached Mr. Chilkuri's London office around noon on November 19, 2007. On reaching the London office, Mr. Chilkuri asked his Secretary, Ms. Jules to take Our Client to the office of the Notary Public urgently, since the Notary Public had to leave his office by 1 P.M. In the meanwhile, when Our Client asked which documents were to be signed, it was informed to him that they will be available for review at the Notary office due to paucity of time.

17. Subsequently, Our Client was rushed to a nearby Tube station (underground train) from where Mr. Chilkuri's secretary took him to Notary's office in downtown London area in sense of great rush and urgency. At the Notary's office, the secretary took out documents from an envelope and hurriedly asked Our Client to sign the same, telling him that these were routine documents and a copy of the same would be sent to him soon. It is submitted that Our Client was then made to sign the papers by Notary, in such a hurry that he could not review them. Our Client's passport was also taken for photocopy and he was then asked to sign a register.

18. When Our Client asked for a photocopy of the signed documents from the Notary, for his personal records, he was told that they (papers) were required to be taken to some other office in London for legalization and shall be able to provide a copy only on next day or after the entry the papers. However, it is pertinent to note that no set of documents were ever provided to Our Client.

In this regard, an email dated November 14, 2007 was sent by Ms. Valerian R. Fernandes to Ms. Jules:

> *"Ms. Jules, I am Valerian R. Fernandes (Cell No. +91 9820631933) working with DS (Mr. Sundararajan) in Mumbai Office. I am sending by courier a set of documents to be executed by Mr. Sarvesh Goorha, Director, Cals Refinenes, in London on Monday, November 19, 2007. He will be visiting our office on Monday. DS has already bnefed Mr. Vishal in this regard. Please keep the documents with you for handing over to Mr. Sarvesh. The airway bill tracking number will be provided to you tomorrow.*
>
> *Thanks and regards,*
>
> *Valerian R. Fernandes*
>
> ==========
>
> *Note for Mr. Sarvesh Goorha*
>
> *Respected Sir,*
>
> *We have marked the documents with "SG" on all those places where you have to sign.*
>
> *It has to be notarized and legalized at the below address:*
>
> *Foreign & Commonwealth Office*
>
> *Legalisation Section*
>
> *Old Admiralty Building*
>
> *The Mall, Mitehall*
>
> *SWIA 2AF*
>
> *London*
>
> *The coordinates of the Bank Official will be mailed to you.*
>
> *Our London Office Address:*
>
> *Spice Energy 7 Cavendish Sqaure*
>
> *London WIG OPE*
>
> *United Kingdom*
>
> *Tel +44 207 323 9307/9303/9297*
>
> *Fax: +44 207 373 9237"*

19. From the aforesaid, it is evident that:

a) Our Client who was in the USA on November 14, 2007 did not have access to the documents that were required to be signed by him;

b) Our Client was never the intended signatory, but merely a fill-in arrangement for Mr. Sundararajan;

c) Albeit, Our Client was unaware, but perhaps Mr. Sundararajan can elaborate upon the documents that were intended to be executed;

d) Our Client signed and executed the documents that were sent from Mumbai office to London and for which Mr. Sundararajan briefed Mr. Ravi Chilkuri and his staff in the London office.

Thus, as required and instructed by the Company, Our Client executed the account opening forms for Banco and then, left for India on November 20, 2007 morning.

20. In light of the aforesaid, it is necessary to bring your goodself's kind attention to the point that Our Client was authorized to execute documents in relation to Banco. Further, in order to hurriedly make Our Client sign the documents, he was specifically instructed to re-route from USA and stop in London, UK, However, due to association of Cals with reputable organizations in respect of GDR process, Our Client had no reason to think that anything was amiss, more so, when Our Client was acting on the instructions of reputable directors (including the Ex-Chairman of Indian Oil Corporation Limited) and management of Cals.

21. Without prejudice to the aforegoing, the veracity of the alleged Agreement has left much to be desired, to say the least. Any document in relation to the Notary public that was required to be executed in London, as is evident from the emails appended, could have happened only in presence of Our Client i.e., on November 19, 2007 and not after that. However, the alleged Agreement is dated December 11, 2007, a date on which Our Client was in India and not in London or anywhere else. Thus, Our Client categorically denies signing the documents as alleged. Since, on December 11, 2007, Our Client was in India, the question of signing any documents or executing any Agreement on the said date in London does not and cannot arise. Further, from a bare perusal of the documents/ Agreement it appears that said documents do not appear to be genuine as the said documents bear a date of December 11, 2007 and Notary execution was on November 19, 2007. This is also substantiated by the fact that the date mentioned on the document as the execution date is hand written and all the other content of the same Agreement is

typed, which prima facie shows that the said Agreement cannot be relied upon as there seems to be some mischief and illegality on part of others who were involved in this scheme.

22. In light of the aforesaid submissions, it is pertinent to note that Our Client on being requested to sign certain documents, suggested Mr. Ravi Chilkuri's name as he was London based; however, the same was denied on the ground that he was not yet authorized to sign the documents. Further, Our Client took all the necessary and reasonable measures to ascertain the contents of the documents that were required to be signed by him, on Mr. Sundararajan's request. These are substantiated from the communication between Our Client and Mr. Sundararajan vide emails and telephone calls.

23. It is submitted that Our Client took all the reasonable steps that were required to be taken on his part and hence, he was unaware about any such Agreement being signed between Cals and Banco. Similarly, the investigation also fails to show any kind of understanding between Mr. Sundararajan and Our Client in respect of the signing of the Agreement. Therefore, no neglect under Section 27 of the SEBI can be attributable to Our Client as the offence as stipulated under the SCN was carried out by others and Our Client had no role to play. Further, in order to shift their burden, Our Client is being shown in such light that the aforesaid offence and violation thereof, was committed by him.

24. Without prejudice to the aforegoing and assuming without admitting that Our Client did execute some Agreement, there would have been no basis to impute any illegality to him, as the creation of charge/ lien on GDR monies is a routine exercise for any Bank underwriting the subscription.

25. It is pertinent to note that Our Client had no role in the entire GDR process except for the name-sake ability given to him to execute documents related to opening of bank account with Banco. Mr. Sunderrajan sent copy of Board resolution confirming to our Client that he was also authorised to sign Bank account opening documents. It is submitted that the investigation failed in showing Our Client's involvement/ connection/ collusion with the new management of Cals. It also failed in showing any arrangement or exchange between Our Client and Banco or Honor. Similarly, the investigation has failed to show Our Client's collusion/ connection/ role in the entire fraudulent scheme, In this regard, it is also important to mention that at no point has Our Client in any manner been enriched or benefited on account of these GDRs. In fact, not a single share has ever been

sold or traded by Our Client or his family members since 1997 and they continue to hold the same number of shares even now. And, on the contrary, it is important to understand and note that Our Client has incurred huge losses in Cals Limited and when he wanted to exit, he was made a scapegoat in the entire GDR process by the new Management of Cals, which further led him to incur huge expenses on the legal fees to prove his innocence before the concerned Authorities.

26. In reality, Our Client worked as a name sake director from July, 2007 to June, 2008 and thereafter, stepped down in June, 2008 and the formal management change was done in the ensuing Annual General Meeting in September, 2008.

27. Further, it is humbly submitted that it is SEBI's own case that the alleged Agreement expired on December 15, 2008. In this regard, it seems inexplicable as to why an extension agreement dated January 13, 2009 would be signed after the expiry of limitation period on December 14, 2008 and in the meanwhile, the Bank itself permitted the outflow of funds freely without any limitations.

28. SEBI has alleged that the list of initial subscribers to the GDR issue disclosed by Cals to Bombay Stock Exchange and SEBI was false. In this regard, it is submitted that the communication in respect of subscribers to the GDR was received by Cals from BBS Capital Partners, Switzerland, Lead Manager to the issue through their letter dated December 12, 2007. The said Letter was tabled during the Board Meeting held on December 12, 2007. Further, during the Board Meeting held on December 12, 2007, the following was stated, "The Company Secretary informed the Board that the GDR issue of 78840000 GDR of the Company was opened for subscription today and it has been fully subscribed. The Board decided to close the GDR issue and stock exchanges be informed about the closure of the GDR Issue". A copy of the said Board Meeting dated December 12, 2007 is attached and annexed as Annexure -I.

29. From the aforesaid facts, it is humbly submitted that Our Client was merely acting on the instructions of Cals and its management at every instance. Further, Our Client had no reason to doubt the credentials of anyone, as prima facie all the procedures appeared to be complied with. Similarly, Our Client had no moral or legal responsibility and/or means in his individual capacity to either verify the identity or beneficial ownership of the subscribers to the GDR issue. Further assuming without admitting, any wrongdoing attributed to Our Client is unwitting and without any knowledge or intention of Our Client.

30 Our Client, in the above context would also, bring to your goodself's notice that in respect of the GDR issued by Cals, one entity by the name of RP Explorer Master Funds had subscribed to the GDR of Cals on and around December 17, 2007 and had executed a Put Option Agreement with Spice Energy Group (being the promoters of SRM Exploration Private Limited which is now the promoter group entity of Cals) of which both the parties entered into dispute whereby serious allegations of misrepresentations and misleading assurances were levied against Our Client, the executives of SRM Group and Spice Group. The dispute went to the High Court of Justice, Queens Bench Division, Commercial Court whereby a consent order was passed on May 25, 2016 between the parties of which Our Client was a party, Our Client brings it to your knowledge that the action against Our Client was discontinued and the charges were dropped which clearly illustrates the genuine nature of the dealings done by Our Client and that there is no basis for alleging any misrepresentation or fraud against Our Client and accordingly the present matter should also be dropped and the SCN be set aside.

31. Our Client, in respect of the above submissions places reliance on the judgements of the Hon'ble Securities Appellate Tribunal in the matters of Sayanti Sen vs. SEBI [dated August 09, 2019], Adi Cooper vs. SEBI [dated November 05, 2019], Adesh Jain vs. SEBI [dated November 19, 2020]

32. The Hon'ble Tribunal in the case of Sayanti Sen vs. SEBI (supra) has held that if the work/ functions of the Board of Directors of a corporate entity has been divided and assigned to any one specific person then that person to whom the said authority or work has been assigned shall be the "officer in default" as per the Companies Act, 2013. Further, it was held that for operation of Section 27 of the SEBI Act, 1992, the knowledge of director for the alleged wrongdoing is essential and necessary to be proved. The relevant extract of the said judgement are reproduced as below:

> *"The contention that the appellant being a Director of the Company cannot disown responsibility for the acts of the Company is misconceived. In the instant case, the power under Section 11 or 11B of the SEBI Act has been exercised debarring the appellant from accessing the securities market on the ground that the appellant was responsible for the acts of the Company and thereby in an indirect manner has introduced the concept of strict liability of vicarious liability under Section 11 or 11B of the SEBI Act. In this*

regard it would be, thus, relevant to peruse Section 27 of the SEBI Act which reads as follows:-

"27(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Section 27 of the Act states that a person is deemed to be guilty of an offence on condition that he was in charge and responsible to the company. The proviso to Section 27 states that:

'i Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. "

In our view it is not possible to lay down any hard and fast rule as to when a Director would be vicariously responsible for the acts of the Directors in charge of day today affairs of the Company. In a given case a Director who had no role to play in the day today affairs of the Company could still be made liable for any penal consequences under Section 11B but when there is an order debarring a Director under Section 11B, in that case the principles evolved under Section 27 of the SEBI Act or the ingredients mentioned therein are required to be considered, since the consequences under an order under Section 11B is far reaching and similar to the

consequences of an order under Section 27 of the SEBI Act. The spirit of Section 27 of the SEBI Act would indicate that if a finding is given that the appellants have nothing to do with the day today affairs of the Company then they cannot be held guilty of any violation as there is no such thing as vicarious liability under Section 11B of the SEBI Act. "

33. Further, the Hon'ble Tribunal in Sayanti Sen (supra) while placing reliance on SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 stated as below:

"In SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 the Supreme Court held that a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in crinnnal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable If he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status.

34. Taking into consideration the above dictum of the Hon'ble Tribunal in Sayanti Sen vs. SEBI (supra), it is submitted that while Mr. Sundarajan, the CFO of Cals was authorized by the Board to take decisions and execute necessary documents in respect of the GDR issue, SEBI has out rightly and unduly alleged wrongdoing on Our Client even when the records show that it was only on the instance of Mr. Sundarajan that Our Client had visited London. Taking into consideration the above submissions and the dictum of the Hon'ble Tribunal, the said allegations have no legs to stand upon and are liable to fall.

35. In addition the above, the Noticee hereby relies upon the order of Hon'ble Tribunal in the case of Adi Cooper vs. SEBI (supra) where the Hon'ble Tribunal has observed that:

"The finding of the WTM against the appellant Adi Cooper is wholly misconceived, farfetched and cannot be accepted to come to a conclusion that the said appellant

was party to a resolution which had an intention to manipulate the market or defeat its mechanism. Admittedly, the appellant Adi Cooper was party to a resolution of the Board of Directors dated January 30, 2008 which only resolved the company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds. The resolution further authorized the bank to use the proceeds as security in connection with a loan. The resolution did not stipulate that the proceeds would be used as security in connection with a loan taken by another entity. The resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself. Thus, from the resolution dated January 30, 2008 one cannot arrive at a conclusion that this was the first step or the starting point of a fraudulent arrangement through which the company could facilitate the financing of the GDR subscription by Vintage, It may be noted here that when the resolution of January 30, 2008 was passed Vintage was nowhere in the picture. The pledging of the shares on May 5, 2009 in favour of Vintage and the loan taken by Vintage in order to subscribe to the GDR issues was done at a time when the appellant admittedly was not involved in the affairs of the company as he had ceased to be a director prior to that date. There is no evidence to establish that the appellant Adi Cooper remained associated with the company or with other directors even after he resigned on October 10, 2008,

We further find that the resolution of January 30, 2008 authorizing the bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Vintage. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Therefore, the finding of the LWM that the appellant had violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations is misconceived and not acceptable. For facility, the said provision of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations are extracted hereunder:-

A perusal of the aforesaid provisions clearly indicates that the appellant Adi Cooper was neither directly or indirectly involved in any fraudulent activity nor employed any scheme to defraud any shareholder or Investor. The WTM committed a manifest error in holding that the appellant Adi Cooper cannot be absolved of the consequences of the resolution of January 30, 2008 even though he was not present in the time when the issuance of GDR and execution 12 of the loan and pledge agreements. We are of the opinion that the resolution of January 30, 2008 does not indicate any resolution or execution of the loan or the pledge agreement

and, thus, holding the appellant that he was actively involved in the manipulation of the market through this fraudulent scheme is patently erroneous and farfetched. In the light of the aforesaid, we are of the opinion that the order of the WTM debarring the appellant Adi Cooper from accessing the securities market for two years cannot be sustained."

36. Taking into consideration the above cited order of Hon'ble Tribunal in the matter of Adi Cooper vs. SEBI (supra) it is submitted that even if a person who is a whole time director in a company but was neither directly or indirectly involved in any alleged fraudulent activity nor employed any scheme to defraud any shareholder or investor, the said person therefore cannot be held liable merely because he was a director in the company or was party to a resolution of the Board of Directors. Applying the same in the present case, it is submitted that the Noticee cannot be held liable for any acts of Cals just because he was a non-executive director in Cals, when the it is clearly shown that it was Mr. Sundarajan who was the concerned person and it was him who had the ultimate authority delegated from the board of Cals to manage the GDR issue of Cals.

37. With respect to reliance of the Noticee on the judgement of the Hon'ble Tribunal in the matter of Adesh Jain vs. SEBI (supra), it is submitted that the Hon'ble Tribunal has mandated that in order to hold any person liable under Section 27 of the SEBI Act, 1992, knowledge of the wrongdoing is an essential element. The respective paragraphs of the said judgement are reproduced below:

"We also find that the reliance of Section 27 of the SEBI Act is patently erroneous. Section 27 is not applicable if the offence is committed without the knowledge of the incumbent. "

38. Taking into consideration the above dictum of the Hon'ble Tribunal, it is submitted that in order to fix any liability on any of the director of the company, the knowledge of the wrongdoing with the said person is essential to be proved, which in the present case SEBI has failed to illustrate. Moreover, the fact of Our Client wanting and demanding documents to confirm his due-diligence has been well established from the above facts mentioned and hence Our Client cannot be held liable for any of the alleged violations of either SEBIAct or any of its allied regulations.

PARAWISE REPLY

1) With reference to paragraph 1 of the SCN, it is submitted that the contents of paragraph 1 are a matter of record and Our Client does not have anything to

comment upon the same except that the violation of SEBI Act and PFUTP Regulations are denied in toto.

2) With reference to paragraphs 2 and 3 of the SCN, it is submitted that the same is a matter of record and needs no specific response from Our Client. However, it is pertinent to mention that the list of subscribers to GDR issue was provided to Cals by its lead manager BBS Capital Partner, Switzerland on December 12, 2007, which was also tabled during the Board Meeting and Our Client had no reason or basis to ever doubt the veracity of the statements of the lead manager. Further, any fact contrary to the above is not in the knowledge of Our Client, so as to be able to verify the same.

3) With reference to paragraphs 4 to 6 of the SCN, it is humbly submitted that due to want of information and knowledge, the contents of SCN are denied in totality except that Shri Sanjay Rai Malhotra was one of the promoters of SRM.

4) With reference to paragraphs 7 to 9 of the SCN, it is submitted that the allegations in the SCN are false and thus, the contents are denied in toto. Further, Our Client categorically denies that an Agreement dated December 11, 2007 was signed by him on behalf of Cals or otherwise. Our Client was in India on December 11, 2007, therefore, the question of executing a document in London cannot and does not arise. The presence of Our Client's name on a document that he has not executed is of no consequence. It further raises questions on the veracity of the Agreement and it needs to be tested and verified on strict parameters.

5) It is pertinent to note that Our Client does not deny being an authorized signatory of the bank account of Cals with Banco at that time. Our Client along with Mr. Sundararajan, were severally authorized in respect of any requirement for the opening of a bank account with Banco. However, it is most respectfully submitted that Our Client had neither executed any Agreement creating charge on any amount nor was he aware about any Agreement. More so, Our Client never issued any cheque in relation to the same and was not a party to utilization of funds, since it was being managed by SRM group CFO, Directors and MD. Further, a detailed account of Our Client's trip to the UK on November '19, 2007 has been provided in the aforementioned paragraphs inter alia explaining the execution of certain documents before the Notary public in London by Our Client. The contents thereof are to be read as part and parcel of Our Client's submission under this paragraph of the reply. Further, for the sake of brevity and to avoid verbosity, the contents of the aforesaid have not been repeated.

6) With reference to paragraphs 10 and 11 of the SCN, Our Client denies the allegations made in the said paragraphs of SCN for want of knowledge and information. Further, it is submitted that Our Client had no knowledge about the loan provided to Honor by Banco or its transfer to the bank account of Cals maintained with Banco on December 12, 2007. Similarly, due to want of knowledge about the utilization of the GDR amount, Our Client does not have anything to comment upon except that in his knowledge the GDR amount was not tied up with Banco due to any obligation and it was freely withdrawn by Cals in terms of the project timeline.

7) It is further submitted that at the time of the signing of the extension agreement on January 15, 2009 in respect of the earlier Agreement, Our Client was nowhere related to or connected with Cals, as he had finally stepped down from the Board during June, 2008. Thus, Our Client should not be made liable for any agreement entered into by Cals after the date of his stepping down from Cals Board of Directors.

8) With reference to paragraph 12 of the SCN, it is submitted that the content in respect of the Honor's bank statement does not pertain to Our Client and hence, he does not have any comment to offer on the same except that the appropriate authority to answer such questions, assertions IS the Management and not Our Client. It is further submitted that Our Client denies the allegation levied in the SCN that utilization of GDR proceeds by Cals was dependent on loan repayment by Honor, as the same is false and untrue. Thus, with respect to the knowledge and information that Our Client had, it is pertinent to note that the GDR proceeds were freely available for Cals and its utilization was solely dependent upon the funding requirement of the refinery project. Similarly, it is a mere co-incidence that the GDR proceeds were not utilized by Cals in excess of the loan repayment by Honor. Further, the non-utilization in excess to the loan repayment amount can be attributed to the refinery project timeline.

9) With reference to paragraphs 13 and 14 of the SCN, the contents of the same are denied for want of knowledge. Further, the contents do not pertain to the period when Our Client was associated with Cals and it pertains to such a time period which was much later from the date of stepping down from the Board of Directors by Our Client. Thus, it is reiterated that Our Client remains unaffected from any agreement entered into by Cals after his date of stepping down from Cals Board of Directors and no consequence thereof, can be attributed to him.

10) With reference to paragraph 15 of the SCN, it is submitted that Our Client is not aware about any such arrangement as alleged and thus, denies it for want of knowledge. Further, as per Our Client's limited knowledge, Cals fund has not been utilized to settle the outstanding liability of Honor towards Banco.

11) With reference to paragraph 16 of the SCN, it is submitted that the contents do not pertain to Our Client and hence, he does not have anything to comment upon the same.

12) With reference to paragraph 17 of the SCN, Our Client repeats, reiterates and confirms all that has been stated hereinabove and denies everything contrary thereto or inconsistence therewith. It is submitted that the allegations made against Our Client do not stand before law as Our Client did not have any role to play in the GDR issue process and he was appointed in Cals as a Director only for facilitating the smooth transition, due to his knowledge about old pending legal cases and statutory compliances.

13) Our Client categorically denies being a signatory to the Agreement as alleged and consequently denies having violated Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3 (b), 3(c), 3(d), and of the PFUTP Regulations. It is further submitted that the allegations made in SCN are false and Our Client vehemently denies having violated SEBI Act and PFUTP Regulations. In this regard, it is submitted that:

a) Our Client did not use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized Stock Exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under.

b) Our Client did not employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized Stock Exchange.

c) Our Client did not engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized Stock Exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

d) Our Client did not induce any person to subscribe to an issue of the securities for fraudulently securing the minimum subscription to such issue of

securities, by advancing or agreeing to advance any money to any other person or through any other means.

e) Our Client did not knowingly publish or cause to publish or report or cause to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

f) Our Client did not disseminate information or advice through any media, whether physical or digital, which he knew to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities.

14) It is humbly submitted that all the allegations against Our Client are either false or derivative on account of acts and omissions of others. Our Client has not violated any provision of the laws including the SEBI Act and PFUTP Regulations.

15) With reference to paragraphs 18 and 19 of the SCN, the content therein is the bare text of SEBI Act and PFUTP Regulations and thus, requires no comment thereof.

16) With reference to paragraphs 20 to 27 of the SCN, it is submitted that the contents thereof do not pertain to Our Client and hence, it does not require any specific comment from Our Client except for the fact that Our Client did not have any knowledge of false information being allegedly published and/or disclosed to the Stock Exchanges, including Bombay Stock Exchange, in India. Further, Our Client was not involved with furnishing/ providing information to SEBI and Our Client at all times acted upon the information provided to him by Cals and its promoters/ directors.

17) From the aforesaid submissions and explanations, it is submitted that it is quite clear that Our Client did not violate any provision of the SEBI Act and PFUTP Regulations and therefore, the allegations against him in the SCN must be quashed and set aside with immediate effect. The SCN and the allegations therein are uncalled for and unjust, since there is no justification in subjecting Our Client to such harsh and baseless allegations. It is submitted that Our Client had not committed any wrong and no charge had been established against him prima facie to warrant any action. Therefore, it will be unfair to subject him to unwarranted allegations by SEBI under the SEBI Act and PFUTP Regulations.

18) It is submitted that very serious allegations and averments have been raised against the Noticee. These allegations require a high level of proof and establishment of mens rea. Other than pointing out that Our Client had allegedly executed the Agreement, no further proof have been provided of any wrong doing to establish that Our Client had intentionally executed that Agreement. The SCN does not mention anything about profit which has been made by Our Client by engaging in such activity or any loss which has been incurred by others because of this Agreement.

19) Further, your goodself's attention is invited to the decision of the Supreme Court in Union of India vs. Chaturbhai M. Patel (AIR 1976 SC 712),which held that fraud, even in civil proceedings, must be established beyond reasonable doubt. Thus, the SCN against Our Client does not meet the well settled standards of law and evidence in such a case and need to be withdrawn.

20) Further, the Hon' ble Securities Appellate Tribunal in Parsoli Corporation vs. SEBI (Appeal No. 146 of 2011, Order dated August 12, 2011), observed that-

> *."a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be degree of probability to establish the same. "*

21) Similarly, the Hon'ble Securities Appellate Tribunal in Sterlite Industries vs. SEBI (Appeal No. 20/2001, Order dated October 22, 2001), held that:-

> *".. in the absence of reasonable strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment, Mere surmise, conjuncture or suspicion cannot sustain the finding of fault."*

It is seen that in the present case, the SCN is based on low preponderance of probabilities. Thus, the SCN is bad in law and must be withdrawn and the proceedings thereon must be dropped.

23) It is submitted that serious allegation of violation of PFUTP Regulations cannot be alleged on the basis of mere surmises and conjectures and based on the erroneous interpretation of facts, as has been done in the instant case. The same is also clear from the decisions given by various courts in numerous cases. The Hon'ble Securities Appellate Tribunal in its order in case of KSL & Industries Ltd vs. SEBI (SAT Appeal no. 9/2003 decided on 30.09.2009) has held that:

"I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported

with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises.

24) In Union of India vs. H.C. Geol, AIR 1964 SC 364, the Hon'ble Supreme Court has inter alia held that:

> *"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules"*

25) Further, in L.D. Jaisinghani vs. Naraindas N Punjabi, (1976) 1 SCC 354, wherein Ray, CJ speaking for the Court has observed:

> *"In any case we are left in doubt whether the complainants' version with which he had come forward with considerable delay was really truthful. We think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently.*
>
> *(In Re An advocate AIR 1989 SC 245)."*

26) About the test of evidence in a civil proceeding, the following observations made by the Hon'ble Court in Razikram vs. J.S. Chauhan, AIR 1975 SC 667are to be noted:

"It is true that there is no difference between the general rules ofevidence in civil and criminal cases and the definition provided in section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life, Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense... The same is equally true about proof of a charge of corrupt practice which cannot be established by a mere balance of probabilities".

27) The Hon'ble Supreme Court in yet another case with reference to adjudication under the Sea Customs Act and Land Customs Act (Ambalal vs. Union of India, AIR 1961 SC 264) relating to imposition of penalty on the person concerned had held:

> *"To such a situation though the provisions of the Code of Crimmal Procedure or the Evidence Act may not apply, except in so far as they are statutorily made applicable, the fundamental principles of cnnnnal jurisprudence and of natural justice must necessanly apply, If so, the*

burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing evidence. "

28) Further in the case of Seth Gulabchand vs. Seth Kudilal, AIR 1966 SC 1734, the Hon'ble Court has inter alia held that:

"the Indian Evidence Act applies the same standard of proof in civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the courts will not, while striking the balance of probability keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged."

29) In light of the aforesaid explanation and case laws, it is quite clear that the findings of the SCN against Our Client must be quashed and set aside with immediate effect. The SCN is uncalled for and unjust since there is no justification in subjecting Our Client to such harsh and baseless allegations.

30) In the instant case, since no primary violation of SEBI Act or PFUTP Regulations against Our Client has been made out and as Our Client has also explained the genuineness of the case, the question of initiating inquiry and imposing of penalty under SEBI Act read with PFUTP Regulations does not arise against Our Client. It is submitted that Our Client did not commit any wrong and no charge had been established against him prima facie, to warrant any action.

31) Accordingly, in the light of the above, the SCN against Our Client for the alleged violation of securities law is completely arbitrary, unfair, unjust and illegal and cannot be sustained. It is submitted that the allegations in the SCN does not flow out of the factual position and therefore, it cannot be legally sustained to warrant any penalty against the Noticee.

32) It is reiterated that Our Client had signed the alleged Agreement approximately 12 years ago and the present SCN is issued in 2019 against our Client. Thus, the delay too has severely prejudiced Our Client, and on this ground alone, the SCN ought to be discharged as against Our Client.

33) In the circumstances, it is humbly prayed that the SCN be discharged as against our Client, and the charges as levelled against him be dropped.

34) In light of the aforesaid, it is humbly submitted that Our Client is a law abiding citizen and has never been engaged in any crime. In fact, his conduct in relation to repayment of debts of Cals Limited in the past years has been an

exemplary example. Our Client has not in any manner enriched himself from any such purported acts as stated in the SCN. Impropriety, if any, on behalf of Cals and/or promoter/ director/ employee of Cals, has been without any knowledge of Our Client and/or his connivance,

35) Alternatively, it is humbly submitted that in the instant case there is no evidence at all to establish that Our Client had indulged in any fraudulent and unfair trade practices as alleged and in view of the authorities cited above, it is humbly submitted that the charges against him be quashed. It is further submitted that while taking a decision under the aforesaid provisions for imposition of penalty, the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, which specifies the factors to be considered before levying any penalty. The wordings of Section 15J are as follows:

" 15J: Factors to be taken into account by the adjudicating officer:

While adjudging the quantum of penalty under section 15-1, the adjudicating officer shall have due regard to the following factors, namely:-

(i) the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default;

(n) the amount of loss caused to an investor or group of investors as a result of the default;

(iii) the repetitive nature of the default."

36) With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default", it is submitted that the findings does not lead to the conclusion that there has been disproportionate gain or unfair advantage to Our Client and all his income was legitimately earned by him by working at different organizations and taking up different assignments and projects. Hence, it is submitted that there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default by Our Client.

37) With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default", it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the GDR issue. It is submitted that your goodself was unable to prove any loss caused to other investors as a result of executing such Agreement in respect of GDR issue. Therefore, it is submitted that there is no amount of loss caused to an investor or group of investors as result of the Agreement allegedly executed by Our Client.

38) With regard to Clause (c):- "the repetitive nature of the default." it is submitted that this is for the first time that any adjudication proceeding has been initiated against Our Client in the entire securities market. The unproved allegations levelled in the notice are isolated instance and hence, there is no question of repetitive nature of default,

39) It is further submitted that it is not mandatory for the Learned Adjudicating Officer to impose a penalty every time he comes to a conclusion that any person/ entity has failed to comply with the specified requirement under the Act and/or the Regulations. Even though Section 15HA of the SEBI Act contain the words "shall be liable to a penalty" there is no strict or mandatory obligation on the part of the Learned Adjudicating Officer to levy the said penalty.

40) In this regard, Our Client would like to draw your goodself's kind attention to the judgment passed by the Hon'ble Supreme Court of India in the matter of Superintendent and Remembrancer Legal Affairs to Government of West Bengal vs. Abani Maity (1979) 4 SCC 85, wherein it held that:

> *"… Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be" .."*

41) Further, the Hon' ble Supreme Court of India in the case of Adjudicating Officer vs. Bhavesh Pabari (dated 28th February, 2019)has held that section 15J are illustrative in nature and depends from situation to situation:

> *"…. This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty."*

42) It is further submitted that in the matter of SEBI vs. Cobot International Capital Corporation Limited [2004 51 SCL 307 (BOM)l, the Hon'ble High Court of Bombay stated that where the breach of the regulation is unintentional, not deliberate, technical, minor and based on a bonafide belief, then strict enforcement of the regulations may not be warranted. The Hon'ble High Court has stated that the authority may refuse to impose penalty for justifiable reasons.

43) Similarly, the Hon'ble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa(AIR 1970 SC 253), where it was held that:

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. "

44) Further, the Hon'ble Supreme Court in the case of Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212) inter alia held that:

"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

45) Similarly, in the matter of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) it was held that:

"The sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be Immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

46) In view of the aforementioned submissions, it is submitted that your goodself needs to quantify the amount of penalty, if any, through the wordings of

Section 15 J of the SEBI Act and the factor of reasonableness. Also, in the absence of any cogent evidence, your goodself cannot in any manner allege Our Client of any unfair or manipulative trade practices and the same needs to be decided judiciously.

47) It is submitted that since Client did not violate with provisions of SEBI Act and PFUTP Regulations and at he did not indulge in any fraudulent and unfair trade practices relating to securities market, imposition of any penalty under Section 15HA of SEBI Act is not warranted.

16. A hearing was held on May 12, 2021 in respect of Noticee 6 through videoconference on the webex platform, wherein Noticee 6 and his authorized representatives viz. Mr. Pulkit Sharma, advocate, Mr. Aditya Bhansali, advocate, and Ms. Nirali Mehta, practicing company secretary appeared and reiterated the submissions made by the Noticee letter dated April 15, 2021. Thus, the personal hearing in the matter was concluded and the ARs did not request for any further opportunity of personal hearing.

17. The SCN was sent to Noticee 7 (Mr. Ravi Chilukuri) at the following address as per records – Walnut Lodge, Barnet Lane, London N20 8as, however the same was returned undelivered. Vide letter dated July 30, 2020, copy of the SCN was sent to Noticee 7 at the following address - Siglap Road, #2-45, Singapore-448908, however the same could not be delivered. In this regard, further, attempts were made to serve the SCN to the Noticee through the assistance of overseas regulator. However, the same could not be delivered. Further, vide email dated March 15, 2021 the SCN and its annexures were sent to Noticee 7 at his email id – ravikuri@gmail.com. Noticee was granted time till March 30, 2021 to submit reply to the SCN. Further, Noticee was

granted an opportunity of personal hearing on April 07, 2021. However, no reply was received form Noticee 7, neither did Noticee 7 appear for the hearing.

18. The SCN was sent to Noticee 8 (Mr. Sanjay Rai Malhotra) at the following address – N-2Q, Panchsheel Park, New Delhi – 110017 through Speed Post with Acknowledgement Due, however the same returned undelivered. Thereafter, letter dated June 15, 2021 was issued to Noticee 8, enclosing the copy of the SCN along with its annexures. The Noticee was was granted time till July 02, 2021 to submit his reply to the SCN and also an opportunity of personal hearing on July 09, 2021. The said letter was served on Noticee at the following addresses – i) N-2Q, Panchsheel Park, New Delhi – 110017, and ii) D-146 Saket, new Delhi, Delhi – 110001, through affixture. However, no reply was received from Noticee 8, neither did Noticee 8 appear for the hearing.

CONSIDERATION OF ISSUES AND FINDINGS:

19. I have taken into consideration the facts and circumstances of the case, the material available on record. I note that the allegations levelled against the Noticees are as below:

    a. Cals and its directors and promoters had executed the scheme of fraudulent issuance of GDRs wherein they had issued GDRs and pledged the GDR proceeds with Banco Efisa so that Honor, whose 100% shareholder was Noticee-8 (Mr. Sanjay Rai Malhotra) could take loan for the subscription of GDRs. Further, Cals paid USD 92 million to Noticee 3

(Asiatexx) under the pretext of the Agreement to purchase refinery equipments and the payment was forfeited, whereas Asiatexx paid USD 92 million to Honor to purchase 25 million GDRs. Thereafter, Honor repaid the outstanding amount of USD 9,18,00,000 to Banco. Thus, it is alleged that the transaction between Cals and Asiatexx appears to have been structured to settle the outstanding liability of Honor to Banco using funds of Cals. Therefore, it is alleged that Cals and its Managing Director i.e Noticee-2 has violated section 12A(a), (b) and (c) of the SEBI Act read with regulation 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations. Further, it is alleged that Noticee-6, Noticee-7, Noticee-8 as signatories to the Account Charge Agreement, Extension Agreement and Credit Agreement, respectively have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations. Further, it is alleged that Noticee-3, Noticee-4, and Noticee-5 as party to the fraudulent arrangement has violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3 (b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.

b. Cals and Noticee 2, by their failure to submit the required information as well as by making false submissions before SEBI, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

c. Cals failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE. As per BSE website (www.bseindia.com), the equity held with custodian is shown as nil for Cals

during the period June 01, 2009 to September 21, 2011. Therefore, it is alleged that the Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 21 and Section 23E of SCRA.

20. In view of the above, the issues for consideration before me are:-

a. Whether the Noticee 1 and 2 have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations, and whether Noticee 3 to 8 have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f) & (k) of PFUTP Regulations?

b. Whether Noticee 1 and 2, viz. Cals and Mr. Devanathan Sundararajan respectively, have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

c. Whether Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 21 and Section 23E of SCRA?

d. If yes, whether the Noticees are liable for penalty under Section 15HA of the SEBI Act, Section 15A(a) of the SEBI Act, and/ or Section 23E of SCRA, as applicable?

e. If yes, what should be the quantum of penalty that should be imposed on them?

21. Before moving forward, the relevant extracts of the provision of law, allegedly violated by Noticees, are mentioned as under-

SEBI Act
Investigation.
11C.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(6) If any person fails without reasonable cause or refuses—

…….

(b) to furnish any information which is his duty under sub-section (3) to furnish;

or

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities.

SCRA

Conditions for listing.

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E*. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

22. Further, before moving forward, I would like to deal with certain preliminary issues raised by the Noticees. Noticee-6 has raised a preliminary issue with regard to supply of documents. In this regard, the Noticee has quoted the judgement of the Hon'ble Supreme Court in the matters of *SEBI Vs. Price Waterhouse & Co. and others* (Civil Appeal Nos. 6003-6004 of 2012) and also in the matter of *State of Orissa vs. Miss Bina Pani Devi*, (AIR 1967 SC 1269). In the present matter, the SCN contains *inter alia* the allegations of scheme of fraudulent issue of the GDRs and subsequent fraudulent transactions. I note that the allegations against the Noticees are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticees as enclosures to the SCN. I note that Noticee-6 was granted an opportunity for inspection of documents in the matter. Further vide email dated March 15, 2021, documents sought by the Noticee were provided to him and the said response has been elaborated in paragraph 14 of this order. I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticees. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter *of Shruti Vora vs. SEBI* has held that: *"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision*

relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied."

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and hat said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)"

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

23. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence*".

24. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to Noticee-6, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to Noticee-6.

25. I note that Noticee 2 and 6 have also contended that the alleged violations pertain to the period of 2007 and the SCN has been issued after a long and inordinate delay of 12 years. Further, Noticee 4 and 5 have submitted that the alleged transactions purportedly took place in 2009 and the notice is belated (almost 10 years). In this regard, I note that the GDRs under consideration in the present proceedings were issued in December 2007. However, I note that the present matter is complex involving investigation of various entities registered under foreign jurisdiction. The same, *inter alia*, required collaboration with foreign regulators by SEBI and collection of information. In this regard, I note that Hon'ble SAT in its order dated February 05, 2020 in the matter of Jindal Cotex Ltd. vs. SEBI had made the following observations:

> "*Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in*

the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc."

26. Adjudication proceedings were initiated against the above entities and pursuant to the appointment of the undersigned as AO vide Order dated July 05, 2018, SCNs were issued in the matter. Further, the Noticees were granted opportunity for inspection of documents, submitting replies and hearing in the matter. Thus, I note that there is no delay in the present adjudication proceedings. Further, I would like to rely upon the judgement of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

> *".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....."*

27. In this context I find it relevant to refer to the order passed by Hon'ble SAT in the case of *Metex Marketing Pvt. Ltd. vs. SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: "*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that*

there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation.".

28. Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter.

    a. Whether the Noticee 1 and 2 have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations, and whether Noticee 3 to 8 have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f) & (k) of PFUTP Regulations?

29. I note from the Investigation Report (**IR**) that, Cals issued 78,80,000 GDRs (amounting to US$200 million) and the issue closed on December 12, 2007. Further, BBS Capital partners, Switzerland and Invest Bank Montenegro were the Lead Manager of GDR issue of Cals. Summary of the GDR issues as provided by Cals is tabulated below:

Table - 1

GDR issue close date	**No. of GDRs issued**	**Capital raised (US mn.)**	**No. of equity shares underlying GDRs**	**Lead Manager**	**Bank where GDR proceeds were deposited**
December 12, 2007	78,80,000	200	78,80,00,000	BBS Capital partners, Switzerland Invest Bank Montenegro	Banco Efisa, SFE, S.A (**Banco)**

30. The following were the investors in the GDR issue of Cals as submitted by Cals:

Table-2

Sl.	Name of Subscriber	GDRs Subscribed	% of total GDR issue
1	Investec Bank (Switzerland) AG	13,79,000	17.5
2	Invest Bank Montenegro	11,82,000	15.0
3	Swiss Pb AG	9,85,000	12.5
4	Gemini Financial Services Ltd	7,88,000	10.0
5	Calixis AG	5,91,000	7.5
6	Fundabilis GmbH	5,91,000	7.5
7	Asset Logic Ltd	5,91,000	7.5
8	Sensalis GmbH	5,91,000	7.5
9	Board Matters AG	5,91,000	7.5
10	Contifina Asset Management	5,91,000	7.5
	Total	**78,80,000**	**100.0**

Loan and Pledge Agreement signed among Cals, Honor and Banco

31. I note from the IR that a Loan Agreement dated December 11, 2007 was signed between Banco (as the Bank) and Honor (as the borrower), a company incorporated in the British Virgin Islands and owned by Noticee-8 (Sanjay Rai Malhotra), one of the promoters of SRM Exploration Pvt Ltd (**SRM**). Noticee-8 was the 100% shareholder of Honor at the time of signing of Loan Agreement with Banco. It is noted that SRM was granted shares of Cals pursuant to preferential allotment prior to the GDR issue. SRM subsequently became the promoter of Cals in June 2008.

32. It is observed that the Loan Agreement (titled as Credit Agreement relating to a dollar term facility of up to $200,000,000) was signed by Noticee-8 on behalf of Honor. The preamble of the Credit Agreement is stated as:

> *"Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower a Dollar term loan facility in the maximum principal amount of up to $200,000,000."*

33. I note that the purpose of the Loan Agreement is stated as *"The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to $200,000,000 issued by Cals on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange."*

34. Further, a Pledge agreement (titled as Account Charge Agreement) was signed between Banco and Noticee-1. The agreement was signed by Noticee-6 (Goorha), one of the promoter directors of Cals on December 11, 2007 on behalf of Cals. Further, from the Credit Agreement and Account Charge Agreement, it is evident that Honor was the sole subscriber to the GDR issue of Cals and not the 10 investors named above and submitted by Cals to SEBI. The Account Charge in the agreement is stated as below:

"Account Charge

- *Subject to the terms of this Agreement,* ***Cals deposited in its designated account with the Bank (hereinafter the Account) an amount not exceeding USD200,000,000 as security for all the obligations of Honor under the Loan Agreement (hereinafter the Secured Obligations)****, and with full title guarantee ' hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.*
- *Upon payment of all or part of the amounts due under the Loan Agreement, Cals may withdraw from the Account the equivalent amount.*
- *Cals covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.*

- *Cals hereby irrevocably appoints by way of security the Bank as the attorney of Cals with full power in the name and on behalf of Cals to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Cals to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully -and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realisation of the security hereby created.*
- *Cals hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Cals itself and Cals hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred."*

35. Noticee-6 (Goorha) in his reply has submitted that during December 2007 he was present in India and he did not sign any document dated December 11, 2007. He has however admitted that he travelled to London and signed certain documents qua Banco on November 19, 2007. In this regard, I note from the Account Charge Agreement that it clearly bears the signature of Noticee-6 on behalf of Cals. Thus, I find that it is a bald denial on Noticee-6's part. Further, Noticee-6 has submitted that the Account Charge Agreement does not appear to be genuine as it bears a date of December 11, 2007 and Notary execution was on November 19, 2007. On perusal of the Account Charge Agreement, I find that it was notarized in London on November 19, 2007 and apostilled on November 20, 2007; it was however dated December 11, 2007. In this regard, I note that the Account Charge Agreement was

notarized and apostilled only in respect of the signature of Goorha. I find it is possible that the Account Charge Agreement between Cals, an Indian Company and Banco, acting through its branch in Portugal, was given effect subsequently on the date Banco signed such Agreement i.e. December 11, 2007, despite Goorha having signed the same on behalf of Cals, on an earlier date i.e. November 19, 2007. The aforesaid also gains credence from the Account Charge Agreement, which provided that the date of its execution was only on the date set out therein.

36. Noticee-6 (Goorha) in his reply has contended that he was requested by Noticee-2 (Sundararajan) to execute the documents qua Banco in London. Further, he has submitted that he was hurriedly made to sign documents at the Notary Office in London and that he was not given the opportunity to review them. He has further submitted that he had signed the same in good faith. The Noticee has also submitted that he was never the intended signatory, but merely a fill-in arrangement for Mr. Sundararajan. The Noticee has contended that he became aware of the Account Charge Agreement only after receiving the SCN. In this regard, I note that he has admittedly signed the Account Charge Agreement in the capacity of director of Cals. Further, he was duly authorized to execute the same as per the resolution passed by the Board of Directors of Cals at its meeting dated October 30, 2007. I find the above contentions to be an attempt to shirk responsibility from the act of signing the Account Charge Agreement and not tenable.

37. I note that Noticee 2 and 6 (Goorha and Sundararajan respectively) have denied knowledge of the Account Charge Agreement. In this regard, I note that the Account Charge Agreement contained a clause to the effect that all communication in this

regard was to be addressed to either Noticee-6 or Noticee-2 thus indicating that both Noticee-6 and Noticee-2 were aware of this Account Charge Agreement; further it is observed that Noticee-2 and Noticee-6 were the authorized signatories of the bank account of Cals with Banco as per its KYC document furnished by Banco.

38. Further, I note from the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Cals held on October 30, 2007 that the following Resolution was passed:-

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

RESOLVED FURTHER THAT Mr. Sarvesh Goorha. Director and Mr. D. Sundararajan, Director be and are hereby severally authorised to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and any other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

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

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

39. The certified copy of the extract from the Minutes of the Meeting of the Board of Directors of Cals held on October 30, 2007 received by SEBI from Banco was certified by Noticee-2 (Sundararajan), then a Director and subsequently Managing

Director of Cals. The said document also bears the signature of Noticee-6 (Goorha) as director of Cals. The copy of the said document has also been shared with the Noticees.

40. I note that Sundararajan has admitted to signing the aforesaid minutes of the meeting which clearly establishes the authenticity of this document which made Sundararajan and Goorha, authorised signatories of Cals' account with Banco. Further, I note that as Banco has provided this document to SEBI, it is clear that for Banco, Sundararajan and Goorha were authorised representative of Cals on the basis of this Board Resolution.

41. It is noted that the Loan provided to Honor by Banco for subscription to the GDR issue was transferred to Bank Account of Cals maintained with Banco on December 12, 2007. Banco submitted that the loan granted to Honor was settled throughout the financing period, through earnings received by Honor from the sale of the GDRs of Cals. From the data obtained from Banco, it is observed that Honor sold GDRs to various entities between the period December 18, 2007 and October 7, 2008. However, as on December 15, 2008, an amount of USD 9,18,00,000 was still outstanding in the Loan Account of Honor. Since the expiration date of the Account Charge Agreement signed between Cals and Banco was December 15, 2008, an Extension Agreement was signed between Cals and Banco for extension of the Account Charge Agreement for three months. The Extension Agreement was signed by Noticee-7 (Chilukuri) on behalf of Cals. Article II of the said extension agreement, *inter alia*, states that the parties (Cals & Banco), intending to be legally bound, agree as follows:

"the parties have agreed to extend and continue the Agreement for an additional term of three months, commencing upon the expiration of the original term on December 15, 2008 and shall now expire on June 15, 2009, providing as security for Honor Finance Limited the amount US $ 91,800,000."

42. It is noted that security for the loan amount of $200,000,000 taken by Honor was provided by Cals by depositing with banco, the proceeds of GDR issue amounting to $200,000,000. I note that the proceeds of GDR could be withdrawn by Cals from Banco only to the extent of an amount equal to the repayment under the aforesaid Loan Agreement by Honor. Further, on examining the debits made from the said bank account of Cals and Honor, it is found that it was only after part payment by Honor of the amounts due under the Credit Agreement that Cals was able to withdraw funds from its bank account with Banco, in accordance with the terms of the Account Charge Agreement. The series of transactions in the account of Cals clearly indicate that Cals was never able to remit any amount from its account in excess of the amounts repaid by Honor to Banco. Further, I note that the remittance by Cals always followed repayment of loan by Honor and never preceded it. This is a clear indication that the withdrawal of GDRs proceeds by Cals was entirely dependent on the repayment by Honor under the Credit Agreement. The table indicating datewise repayment of loan by Honor and utilization of funds by Cals Refineries Limited is given below : -

Table - 3

Date	Loan repaid by Honor ($)	Amount utilised by Cals in ($)	Cumulative Loan repaid	Cumulative Amount utilised by

			by Honor as on date ($)	Cals as on date ($)
27-12-2007	6,50,00,000		6,50,00,000	
28-12-2007		4,93,51,000	6,50,00,000	4,93,51,000
28-12-2007		87,09,000	6,50,00,000	5,80,60,000
02-01-2008	2,50,00,000		9,00,00,000	5,80,60,000
03-01-2008		1,00,000	9,00,00,000	5,81,60,000
03-01-2008		25,000	9,00,00,000	5,81,85,000
03-01-2008		75,000	9,00,00,000	5,82,60,000
31-01-2008		44,45,400	9,00,00,000	6,27,05,400
11-02-2008		72,70,000	9,00,00,000	6,99,75,400
29-02-2008		1,52,50,000	9,00,00,000	8,52,25,400
04-03-2008	35,00,000		9,35,00,000	8,52,25,400
11-03-2008		11,35,000	9,35,00,000	8,63,60,400
09-04-2008		11,35,000	9,35,00,000	8,74,95,400
05-05-2008	8,50,000		9,43,50,000	8,74,95,400
18-06-2008	35,00,000		9,78,50,000	8,74,95,400
19-06-2008		11,35,000	9,78,50,000	8,86,30,400
11-07-2008	1,00,000		9,79,50,000	8,86,30,400
22-07-2008	79,50,000	79,55,000	10,59,00,000	9,65,85,400
05-09-2008	23,00,000	1,50,000	10,82,00,000	9,67,35,400
12-09-2008		1,33,534	10,82,00,000	9,68,68,934
27-03-2009	9,18,00,000	9,20,00,000	20,00,00,000	18,88,68,934
Total	**20,00,00,000**	**18,88,68,934**		

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

relevant period and had signed the Account Charge Agreement. Apart from Sundararajan, Goorha was also the authorised signatory of the account maintained by Cals with Banco. Accordingly, I am of the considered view that Goorha was well aware of the contents of the Account Charge Agreement.

44. This is further supported by the finding that Sundararajan is one of the Noticees in the Account Charge Agreement for any communication to be sent by Banco. Sundararajan himself admitted that he had the responsibility of GDR issuance by Cals but then contradicts his statement vide his reply by submitting that he has not signed the Account Charge Agreement and that merely because his name was included in the said Agreement cannot mean that he was aware of the same. It is clear that the Account Charge Agreement entered into between Cals and Banco would not have mentioned Sundararajan as one of the Noticees for any communication sent by Banco unless Sundararajan was aware of the said Agreement. Further, Sundararajan in his reply has submitted that he and Goorha were the authorized signatories on behalf of Cals for the bank account with Banco in which the GDR proceeds were parked and that his signatures were obtained for authorizing withdrawals from the bank account of Cals in Banco. As noted earlier, the withdrawals by Cals, which were admittedly authorized by Sundararajan, was dependent on repayment of loan by Honor, which clearly evidenced the terms of the Account Charge Agreement. I therefore find that Sundararajan was very much aware of the Account Charge Agreement and was in fact intrinsically linked to the Account Charge Agreement.

45. Further, it is noted that the series of transactions in the account of Cals maintained with Banco indicates that at no time Cals remitted any money from its account in excess of the amount paid by Honor to Banco. I note that the remittance by Cals always followed repayment of loan by Honor and never preceded it. The same clearly indicates that the withdrawal of GDR proceeds by Cals was dependent on the loan repayment by Honor and shows the operation of the Account Charge Agreement. Sundararajan and Goorha were the authorised signatories of Cals and remittance of funds of Cals was dependent on their signatures. It is clear that Sundararajan and Goorha could not have been ignorant of the fact that Cals could not remit more than the amount repaid more by Honor to Banco. Thus, I conclude that Sundararajan and Goorha were aware of the Account Charge Agreement.

Information regarding initial subscribers to the GDR Issue of Cals

46. I note that since Cals, Sundararajan and Goorha were aware of the Account Charge Agreement, they were aware that Honor was the sole subscriber to the GDR Issue as the Credit Agreement between Honor and Banco was an integral part of the Account Charge Agreement. I find from the Account Charge Agreement that Cals had deposited in its designated account with Banco an amount of US $200 million as security in respect of all the obligations of Honor under the Credit Agreement. In the information provided to BSE and SEBI, Cals had submitted a list of initial subscribers to its GDR Issue. It is pertinent to note that in the aforesaid list provided by Cals, the name of Honor was not mentioned. However, as stated before, Honor was the initial subscriber to the GDR Issue of Cals by virtue of the Credit Agreement and Account Charge Agreement. Hence, Cals' submission that Honor was not the

initial subscriber to the GDR Issue is incorrect. In view of the same, I find that Cals had indeed provided false information in respect of the initial subscribers to its GDR Issue. The same also shows malafide intention on the part of Cals as well as Goorha and Sundararajan.

Transaction between Cals and Asia Texx

47. Further, pursuant to signing of the extension agreement as stated above, it is observed that on March 26, 2009, Noticee-3 (Asia Texx) acquired 2,50,00,000 GDRs at the rate of USD 3.68 amounting to USD 9,20,00,000 from Honor. Further, it is also observed that Noticee-1 had signed a contract with Noticee-3 for acquisition of refinery equipments and paid USD 9,20,00,000 to Noticee-3.

48. The following are the timelines of transactions which resulted in payment of outstanding loan of Honor by Noticee-1

Table - 4

Date	**Event**
05-Feb-2009	Cals signs agreement with Asiatexx
26-Mar-2009	Asiatexx purchases 2,50,00,000 GDRs from Honor for USD 9,20,00,000
27-Mar-2009	Honor repays the outstanding amount of USD 9,18,00,000 to Banco
27-Mar-2009	Cals pays USD 9,20,00,000 to Asiatexx under the pretext of the Agreement to purchase refinery equipments and the payment was forfeited.
09-Jul-2009	Asiatexx transfers 2,50,00,000 GDRs to Mr. Gagan Rastogi free of cost.

49. It is observed that 2,50,00,000 GDRs of Cals purchased by Asiatexx from Honor were transferred to the account of Noticee-4 (Mr. Gagan Rastogi) on July 09, 2009 in Julius Baer Bank Singapore. Thus, Noticee-4 obtained these 25 million GDRs of Cals using the funds of Cals. Thus, it is alleged that the transaction between Cals and Asiatexx appears to have been structured to settle the outstanding liability of Honor to Banco using funds of Cals. Thus, the liability of the promoter of Cals (liability of Mr. Sanjay Malhotra through Honor) was discharged using the funds of Cals.

50. Noticee-5 (Mr. Deep Kumar Rastogi) was a Director of Cals during its GDR Issue. As per the Annual Report of Cals for the year 2008-2009, as a Director of Cals, Noticee-5 admittedly had significant influence over that company at the time the Agreement with Asia Texx was signed. Further, Noticee-4 who was the beneficial owner of Asia Texx is the son of Noticee-5. It is noted that Asia Texx was significantly influenced by relative of the Director and key management personnel of Cals viz. Noticee-5. With regard to the Asia Texx transaction, Noticee-2 (Sundararajan) has also submitted document pertaining to Serious Fraud Investigation Office (SFIO) investigation, however, I note from his reply that he has admittedly signed the said contract with Asia Texx on behalf of Cals. He has further submitted that it cannot be assumed that he was aware about the beneficial owner of Asia Texx and that on January 23, 2009 when the contact with Asia Texx was approved by the Board of Cals, he was only a non-executive director of the company. In this regard, I note that it is but natural to understand the ownership / beneficiary details of a company before entering into contract. Therefore, the argument is not acceptable.

51. Noticee-4 (Gagan) has submitted in his reply that Sundararajan insisted Asia Texx's bank account be opened in Banco. He has further submitted that the contract between Asia Texx and Cals was prepared by Sundararajan and was sent to him around February 04, 2009. He has further submitted that he was provided an introduction letter from Cals dated February 04, 2009 which was signed by Sundrarajan for opening the account of Asia Texx at Banco. Further, Noticee-4 in his reply has denied that Asia Texx purchased 25 million GDRs from Honor and that Asiatexx transferred 25 million GDRs to him. However, Noticee-4 has contradicted the said submission by stating that actually 27.5 million GDRs were received by him from Honor as a security to be held until the refinery was assigned to Asia Texx from Honor. Further, he has submitted that he held the GDRs as Asia Texx did not had the necessary "Euroclear Account" to receive GDRs. I note that no refinery equipment was ever supplied by Asia Texx to Cals nor has it been shown that any refinery equipment was received by Asia Texx from Honor. The said submissions support the finding that the Cals- Asia Texx transaction was structured to settle the outstanding loan amount of Honor with Banco using the funds of Cals. I also note that Noticee-4 has admittedly received GDRs free of cost in lieu of the transaction between Asia Texx and Honor.

52. Noticee-4 has also submitted that he believed the agreement dated February 05, 2009 between Asia Texx and Cals was a genuine one and that he was not aware that the arrangement was made only to settle the outstanding loan of Honor with Banco. In this regard, I note that Noticee-4 was the beneficial owner of Asia Texx during the time when the following occurred - Asia Texx entering into agreement with

Cals for supply of refinery equipment, Asia Texx receiving USD 92 million from Cals for purchase of refinery equipments and the payment was forfeited, Asia Texx purchasing 25 million GDRs from Honor for USD 92 million, and Asia Texx transferring the 25 million GDRs to him free of cost. Further, from the bank statements of Cals, Asia Texx and Honor that on March 27, 2009, Cals paid USD 92 million to Asia Texx. On the same day, Honor received USD 92 million from Asia Texx and repaid the outstanding loan amount of USD 91.8 million. Noticee-4 has submitted that the aforesaid transactions were made on trust, good faith and after relying upon representations and assurances made by Mr. Sanjay Malhotra, however, I find the same to be untenable. Thus, I note that the transaction between Cals and Asia Texx was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. Further, I note, thus, that the liability of the promoter of Cals (i.e. liability of Noticee-8 (Mr. Sanjay Malhotra) through Honor) was discharged using the funds of Cals. Noticee-4 has also referred to the investigation report dated March 30, 2017 by the Serious Fraud Investigation Office (SFIO) and has submitted that he was never aware about the transaction between Banco, Honor, Cals etc. and the whole transaction was hatched at the instance of Mr. Sanjay Malhotra, Mr. Jagdish Lavekar and Banco with the sole purpose of extinguishing the liability of Honor of the outstanding loan amount of USD 92 million with Banco. In this regard, I note that SEBI initiated an investigation in the matter and passed an interim order dated September 21, 2011 *inter alia* in respect of companies having GDR issues which included Cals. I note that the investigations were conducted into the GDR issues made through alleged fraudulent manner and have been based on documentary evidence received from Banco and correspondences between SEBI

and the companies etc, and the findings thereon have become part of the investigation. Hence, I note that the investigation by SEBI has been independently conducted to investigate the alleged fraudulent GDR issues. I note that the investigation report and SCN is independent of the investigation conducted by SFIO. The concerned department of SEBI has also concurred that the investigations of SEBI are independent. Further, I note that the present proceedings are with respect to the violation of the SEBI Act, the PFUTP Regulations and the SCRA, which are Securities laws, whereas the investigation of SFIO has framed charges of the violation under Indian Penal Code, and the Companies Act, 1956 as stated therein in its investigation report. Further, the present proceedings are civil proceedings and are based on the preponderance of probabilities. In this regard, reference is placed upon a recent judgement of the Hon'ble High Court of Delhi, in order dated December 01, 2020 in the matter of *Dharmendra Kumar Arora vs. The State & Ors* in W.P. (CRL) 1979/2020 wherein, it was held that :

> *"11. The contention that the FIR is required to be quashed as SEBI is also investigating a similar compliant, is also unmerited. SEBI's jurisdiction extends to investigate complaints and take appropriate action for violation of Securities and Exchange Board of India Act, 1992 (SEBI Act) and the Rules and Regulations made thereunder. It does not extend to prosecuting offences under the IPC. The fact that SEBI is investigating or prosecuting the petitioner for offences under the SEBI Act, or the relevant regulations made thereunder does not in any manner warrant quashing of the present FIR. It also does not preclude the investigating agency from investigating the allegations regarding offences punishable under the Indian Penal Code, 1860."*

53. From the above, I note that SEBI has the jurisdiction and power to conduct its own investigation and take appropriate action for violation of the SEBI Act and the Rules and Regulations made thereunder. Thus, I note that SEBI's investigation is independent and the SFIO investigation is not binding upon the present proceedings.

54. Noticee-5 (Deep Kumar Rastogi) has submitted that he joined the Board of Cals as an independent and non-executive director of Cals on January 19, 2008 i.e. after the GDR issuance by Cals. However, I note that during the course of hearing held on December 20, 2019 before me, Deep Kumar Rastogi admitted receiving the email dated August 02, 2007 sent by Goorha to Sundararajan with a copy to him. Further, on being inquired about the resolution of Board of Directors dated December 12, 2007 wherein he was permitted to operate the bank account of Cals Refineries Ltd to be opened with Axis Bank Ltd, Deep Kumar Rastogi has admitted that he was authorized for such operation of the bank account. I also note that Hon'ble SAT in its order dated October 12, 2007 in the matter of Cals Refineries Ltd & Others vs SEBI has held as follows –

> *"24. Involvement of Deep Rastogi in the affairs of Cals even before his becoming director of Cals on 19/1/2008 is evident from the e-mail sent by Goorha on 2/8/2007 addressed to Sundararajan with a copy to Deep Rastogi. In the said e-mail, Goorha has specifically stated that on induction of four Spice Energy group nominees as directors of Cals, there was change of management which ought to have been recorded in the minutes of the AGM held on 23/7/2007, however, at the instance of Sundararajan nominated by Spice Energy group and in-charge of the GDR issue, the said*

resolution has not been recorded. Very fact that Goorha, promoter-director of Cals had sent a copy of an e-mail dated 2/8/2007 to Deep Rastogi, when he was not even a director of Cals, clearly shows that Deep Rastogi had significant influence over Cals even before becoming a director of Cals. 25. Apart from the above, BoD of Cals on 12/12/2007 resolved to permit Deep Rastogi to operate the bank account of Cals to be opened with the Axis Bank Ltd. Thus, Deep Rastogi was permitted to operate the bank account of Cals when he was not a director of Cals which clearly falsifies the claim made by Deep Rastogi that he was not concerned with the affairs of Cals prior to becoming director of Cals on 19/1/2008.

25. Apart from the above, BoD of Cals on 12/12/2007 resolved to permit Deep Rastogi to operate the bank account of Cals to be opened with the Axis Bank Ltd. Thus, Deep Rastogi was permitted to operate the bank account of Cals when he was not a director of Cals which clearly falsifies the claim made by Deep Rastogi that he was not concerned with the affairs of Cals prior to becoming director of Cals on 19/1/2008."

55. Thus, I note that though Noticee-5 (Deep Kumar Rastogi) joined late, he had an important role to play. He was clearly a director of Cals at the time of the fraudulent transaction between Cals and Asia Texx which transaction effectively amounted to siphoning of funds of Cals into the account of the promoter under the pretext of payment for setting up of refinery project. The transaction between Cals and Asia Texx was structured to settle the outstanding liability of Honor to Banco using funds

of Cals. The equipment providing transaction with Asia Texx was one of the important aspects in the whole plan.

56. Deep Kumar Rastogi has contended that the allegations against him have been adjudicated by SEBI vide its Order dated December 31, 20214 whereby a ban was imposed against him to not deal with securities for 10 years. In this regard, I note that the present adjudication proceedings are different from the proceedings cited by the Noticee which was under Section 11B of the SEBI Act. Further, he has submitted that the SFIO proceedings is also pending against him at the Dwarka District Court, New Delhi on the same matter. In this regard, I note that the said proceedings are before a different law authority and the present adjudication proceedings are independent of the said proceedings.

57. As per the Annual Report of Cals for the year 2008-2009, as a Director of Cals, Deep Kumar Rastogi admittedly had significant influence over that company at the time the Agreement with Asia Texx was signed.

58. As has been stated earlier, Gagan Rastogi who was the beneficial owner of Asia Texx is the son of Deep Kumar Rastogi. Asia Texx, therefore, was clearly an enterprise owned and significantly influenced by relative of the Director and key management personnel of Cals viz. Deep Kumar Rastogi.

59. The transaction between Cals and Asia Texx pursuant to the Agreement between them for purchase of refinery equipments, which was portrayed as a commercial transaction, was clearly a *'related party'* transaction in accordance with AS-18 read with Clause 32 of the Listing Agreement. The entire transaction effectively amounted

to siphoning of funds by Cals to the account of its Promoter under the pretext of payment for refinery parts.

60. The entire transaction was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. Asia Texx has thus acted fraudulently in the matter. Gagan Rastogi (son of Deep Kumar Rastogi) was clearly the beneficiary of the fraudulent transaction. Noticee-5 viz. Deep Kumar Rastogi was Director of Cals at the relevant time and is thus liable for the offences of Cals.

61. Further, I note from the corporate announcements available on BSE website that CAT had informed BSE on December 13, 2007 that -

> *"Cals Ltd has informed BSE that the Company's GDRs issue of USD 200 Million has been fully subscribed and the Board of Directors of the Company at its meeting held on December 12, 2007 has closed the issue and allotted 788,000,000 equity shares of Rs 10/- each for cash at par, being the shares underlying 7,880,000 Global Depository Receipts (GDR) issued at an Offer Price of US$ 25.38 per Global Depository Receipt, entitling the holder of each GDR to 100 equity shares, to The Bank of New York, ADRs, being the depository for the GDRs."*

62. Further, Cals, had informed to SEBI that 10 investors as mentioned in Table -2 in the preceding paragraphs were the investors in its GDR issue. However, from the sequence of events as discussed previously, the GDRs were subscribed by Honor, using loan taken from Banco. Therefore, in view of the scheme of the GDR issue as described in the initial paragraphs of this order, I note that, from the beginning, Cals

and directors – Goorha and Sundararajan were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In light of the whole scheme of things as explained it only stands to reason that despite clear knowledge of the subscriber to the GDR issue Cals and its directors have disclosed non-factual information which buttresses their *malafide* intention behind withholding the correct actual information

63. Therefore, as noted above in pre-paragraphs, Cals didn't disclose the details of Credit Agreement of Honor and its own Account Charge Agreement with Banco for its GDR issue. Further, Cals did not make any disclosure to the stock exchanges regarding the Extension Agreement dated December 15, 2008. I note that such non-disclosure in the context of the whole scheme of things is clearly fraudulent. In this regard, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of *Jindal Cotex Ltd. vs. SEBI*, has clearly delineated the importance of disclosure of loan agreement and pledge agreement and the requirement of their disclosures in the following terms:

> "*When the company has lent the entire proceeds of the GDR issue to the tune of US$ 38.75 million as security for a third party abroad to avail a loan on the basis of that security and thereby potentially jeopardizing the entire proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.*

…… The basic question to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue was properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud……"

64. Therefore, in light of the above judgement of Hon'ble SAT, I am of the view that non-disclosure of Credit Agreement, Account Charge Agreement and subsequently, the Extension Agreement were done so as to create a fraudulent impression in the minds of the public investors that the said GDR issues were genuine in nature and the company had received the funds and the same were available for the free use of Cals.

65. I also note that Hon'ble Supreme Court of India, in its judgment dated July 06, 2015, in the matter of *SEBI vs. Pan Asia Advisors Ltd. & Ors*, had explained the object of creating and trading in GDRs outside India in the following terms:

"*60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the*

appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs. In fact for creating of GDRs apart from the desire of the issuing company to raise foreign funds, the marketability of such shares in the form of GDRs should have an applicable potential at the global level. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its Lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none. The above fact has to be kept in mind when dealing with an issue relating to creation of GDRs, in as much as, when the GDRs gets fully subscribed at the global level providing scope for huge foreign investment, the same will have a serious impact at the internal investment market in the form of high appreciation of share value whereby the issuing company and the investor will be greatly benefited mutually. Such a real growth structurally and financially is the underlying principle in the creation and trading of GDRs at the global level."

Therefore, I observe that the company has issued GDRs without disclosing the actual subscribers would clearly give an impression that the company has developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors.

66. In this regard, I am of the view that the above general disclosure that the GDRs issue of USD 200 million had been fully subscribed clearly establishes the malafide intention on the part of Cals as well as its directors. Further, the purpose behind such disclosure has been elaborately explained by the Hon'ble SAT, in its order dated October 25, 2016 in the matter of *Pan Asia Advisors Ltd. vs. SEBI*, in following words:

"*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.*"

In view of this, I hold that the deliberate act on the part of Cals and its directors to submit wrong information was an important part of the whole scheme of GDR issue and the same was done only for the purpose of defrauding Indian investors by creating an impression that the GDRs of Cals have been subscribed by genuine foreign entities on the basis of its fundamentals and future prospects, while in reality the GDRs were subscribed by Honor through the back-end arrangement of the Credit Agreement and Account Charge Agreement.

67. To put the entire discussion in a nutshell, I find that Cals issued 78,80,000 GDRs and raised US$ 200 million in the process; the said GDR issue closed on December 12, 2007. With regard to the GDR issue, a Credit Agreement was entered on December 11, 2007 between Honor and Banco to the extent of the whole GDR proceeds of Cals, secured by a corresponding account charge agreement between Cals and Banco, was instrumental in the subscription of the complete GDR issue by

Honor. I note that the two agreements were drawing strength from each other. At the same time, Cals did not disclose the aforesaid credit agreement and account charge agreement. Thereafter, as the account charge agreement was expiring, and extension agreement was signed between Cals and Banco. The same was also not disclosed by Cals. Thereby, Cals created an impression that the GDRs were genuinely subscribed by foreign entities.

68. Thus, I note that the issuance of GDRs by adopting the explained *modus operandi* and the consequential misleading and false disclosure on the above occasion render the whole schemes of things a fraudulent act orchestrated by Cals and other Noticees. At the same time, Honor has played a very important role in the GDR issue by subscribing the whole GDR issue using funds secured by Cals. In view of the above, I further hold that, using the GDR issue, the fraudulent impression created before the investors in Indian securities market, showed Cals as a company to be of international reputation and better investment opportunity. The same also created a false and misleading impression in the minds of the investors. I am of the view that the said impression was made possible only through an elaborate fraudulent planning detailed above. With regard to the aforesaid modus operandi, the Hon'ble SAT vide its order dated October 12, 2017 in the matter of *Cals Refineries Ltd & Others Vs. SEBI* has held as :

> "*7.(g) …….In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of*

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted."

69. I note that the provisions of Section 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) of the PFUTP Regulations, *inter alia* prohibit buying, selling or dealing in securities in a fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulations 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, *inter alia* prohibit fraudulent and unfair trade practices in securities through various acts, omissions stated therein. In my view, any fraudulent or deceptive device, scheme, act, omission, etc. which has the potential to *inter alia* induce sale/purchase of securities of any company; influence investment decisions of investors in such company; or result in wrongful gain, etc. would be covered within the prohibition under the aforementioned provisions of law. I note that the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, has made the following observations:

"*From the aforesaid definition (of fraud) it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on*

the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud. Therefore, in the facts of present case, if fraud is committed by the appellants on the investors in India, then without making the investors as party to the proceedings, SEBI could take action against the appellants."

70. In this regards, the following judgement made by the Hon'ble SAT in matter of V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

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

71. Further, I note that the Hon'ble Supreme Court in its Order dated July 06, 2015, SEBI (Appellant) vs. Pan Asia Advisors Ltd. (Respondent) had observed that –

"81. Therefore, it is for the respondents as well as the Indian issuing company to demonstrate that any of the allegations made by the appellant in relation to the so called fraud or fictitious creation of GDRs at the global level to mislead the local investors was totally baseless and that therefore no action was called for. …. It is common knowledge that in the commercial sector, companies which are in the field of manufacturing or any other business activity are able to gain the confidence of the investors by virtue of their appreciable performance in the respective manufacturing or other business activities and while controlling and developing the growth in their respective field of business, aspire to make further excellence by drawing the attention of foreign investors to make investments and thereby broad base their business venture also endeavour to sustain their development in the concerned business in which they are involved. Any such initiative taken by any entrepreneur would develop an appreciable trend in the share market which would draw the attention of the local investors to stake their claim in such well established, well grown business ventures with a view to earn better profits on whatever investments they wish to make. Therefore, if there is going to be a false pretext or misleading information circulated with a view to lure both the foreign investors as well as Indian investors and in that process the very purpose of creation and trading in GDRs are found to be not true or bona fide, it cannot be said that simply because creation of such GDRs and its trading is in global market, SEBI should keep its mouth shut on the ground that it cannot extend its long statutory arm beyond Indian territory to

control any such misdeeds deliberately committed with a view to defraud the Indian investors and thereby their interest in the investment of securities and its protection is at great stake."

72. I incidentally note from the IR that SEBI had attempted to examine the utilization of the funds of the GDR issues. I note from the IR that substantial amounts were paid by Cals to entities for setting up of Refinery Project and which resulted in forfeiture. The following table provides details of such payments done by Cals which resulted in forfeiture –

Table - 5

Name of Entity receiving payment	**Amount in USD**	**Amount forfeited as % of GDR Issue size (USD 200 million)**
Lohrmann & ATEP	8,57,10,400	42.86 %
Ventech International Engineers Corporation	34,05,000	1.70 %
Asia Texx	9,20,00,000	46.00 %
Total	**18,11,15,400**	**90.56 %**

73. Thus 90.56% of the capital raised via GDR issue that was supposedly utilised for the setting up of Refinery Project by Cals, resulted in forfeiture. From the IR, it is observed that there are a number of entities with which Cals has apparently entered into an agreement and provided funds which have been subsequently forfeited. While such events can occur in commercial transactions, the frequency and the amount involved taken in conjunction with the irregularities committed by Cals and its directors/promoters while issuing the GDRs leads to a high degree of suspicion regarding the genuineness of the intention of the company while making such payments. Further, as discussed earlier, the payment made to Asia Texx was a

fraudulent transaction which was structured to settle the outstanding loan of Honor with Banco.

74. In view of the above, I note that the scheme of arrangement of Cals, in allotting GDR issue to only one entity, i.e. Honor which subscribed to the GDR issues by obtaining loans from Banco and which were secured by Cals by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by Cals stating that the GDR was issued and allotted without disclosing the crucial details pertaining to the aforesaid Credit and Account Charge Agreements which were price sensitive information, lead to a conclusion that the same were done in a fraudulent manner. Further the transaction with Asia Texx which resulted in siphoning of USD 92 million from Cals was a fraudulent transaction. Therefore, I find that Cals has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

75. Further, I note as follows regarding the role of Noticee-2 (Sundararajan) and Noticee-6 (Goorha) –

    i. Sundararajan admittedly was a Director of Cals in charge of completing the GDR process. As per his reply, he was director of Cals during the period July 2007 to July 2009. Similarly, Goorha was also a Director of Cals during the GDR Issue. It was in that capacity that they were authorised by the Board of Directors of Cals during the meeting held on October 30, 2007, to be signatories to the Account Charge Agreement on behalf of that company. Sundararajan certified the copy of the resolution passed by the board of directors of Cals in the meeting held on October 30, 2007 and which was further submitted to Banco and which

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

ii. Sundararajan was also responsible for submitting false information to SEBI regarding the initial subscribers to the GDR Issue of Cals.

iii. It is also pertinent to mentioned that Sundararajan was a signatory to the Agreement between Cals and Asia Texx for purchase of refinery equipments. Further, as the authorised signatory of the bank account of Cals, Sundararajan also authorised the payment of US $92 million to Asia Texx. He was also aware

that Asia Texx was beneficially held by its Promoter i.e. Gagan Rastogi, who is the son of one of the Directors of Cals i.e. Deep Rastogi. The transaction between Cals and Asia Texx was fraudulent and was inextricably linked to the GDR process since it was structured to enrich Gagan Rastogi who was able to obtain 25 million GDRs of Cals, from Honor, by using the funds of that Company under the pretext of payment for refinery equipment (no machinery equipment was received from Asia Texx) and also enabled Honor to repay the entire loan to Banco.

iv. Sundararajan also failed to co-operate with SEBI in its investigation regarding the GDR Issue of Cals. Sundararajan had concealed the fact that the Promoters/Directors of Cals did not have any agreement with the initial investors of the GDR Issue even though the investigation revealed that the Promoters/Directors of Cals had entered into a fraudulent arrangement with the initial investor of the GDR Issue viz. Honor. Further, Sundararajan had also concealed the fact that the transaction between Cals and Asia Texx was a related party transaction.

v. I note that Noticee-2 and Noticee-6, being the directors of Cals, had been vested with substantial powers for the purpose of respective GDR issues of Cals, an artificial juridical person and they assume the character as “officer in default” for any violation.

76. Further, I note as follows regarding the role of Noticee-3 (Asia Texx), Noticee-4 (Gagan Rastogi) and Noticee-5 (Deep Kumar Rastogi) –

i. Deep Kumar Rastogi has submitted that he became director Cals on January 19, 2008 i.e. after the GDR issuance by Cals. However, I note that during the course of personal hearing held on December 20, 2019, Deep Kumar Rastogi admitted receiving the email dated August 02, 2007 sent by Goorha to Sundararajan with a copy to him. Further, on being inquired about the resolution of Board of Directors dated December 12, 2007 wherein he was permitted to operate the bank account of Cals Refineries Ltd to be opened with Axis Bank Ltd, Deep Kumar Rastogi has admitted that he was authorized for such operation of the bank account. Thus, he is observed to be concerned with the affairs of Cals even prior to becoming director of Cals on 19/1/2008. The same has also been upheld in the judgement of the Hon'ble SAT in its order dated October 12, 2007 in the matter of Cals Refineries Ltd & Others vs SEBI, as discussed elsewhere in this order.

ii. As per the Annual Report of Cals for the year 2008-2009, as a Director of Cals, Deep Kumar Rastogi admittedly had significant influence over that company at the time the Agreement with Asia Texx was signed.

iii. As has been stated earlier, Gagan Rastogi who was the beneficial owner of Asia Texx is the son of Deep Kumar Rastogi. Asia Texx, therefore, was clearly an enterprise owned and significantly influenced by relative of the Director and key management personnel of Cals viz. Deep Kumar Rastogi.

iv. The transaction between Cals and Asia Texx pursuant to the Agreement between them for purchase of refinery equipments, which was portrayed as a commercial transaction, was clearly a 'related party' transaction in accordance with AS-18 read with Clause 32 of the Listing Agreement. The entire transaction

effectively amounted to siphoning of funds by Cals under the pretext of payment for refinery parts.

v. The entire transaction was structured to settle the outstanding liability of Honor to Banco using the funds of Cals. Asia Texx has thus acted fraudulently in the matter. Gagan Rastogi (son of Deep Kumar Rastogi) was clearly the beneficiary of the fraudulent transaction. Deep Kumar Rastogi was Director of Cals at the relevant time and is thus liable for the offences of Cals.

77. Further, I note as follows regarding the role of Noticee-7 (Chilukuri) –

i. As the Account Charge Agreement was expiring, an Extension Agreement was signed between Cals and Banco on January 13, 2009. The said Extension Agreement was signed by Chilikuri (Director and authorised signatory of Cals) on behalf of Cals. In accordance with the Extension Agreement, Cals agreed to extend and continue the Account Charge Agreement and the Agreement was henceforth to expire on June 15, 2009. The Extension Agreement re-validates the commitment by Cals to Banco in pledging the GDR proceeds as security for the loan taken by Honor.

78. Further, I note as follows regarding the role of Noticee-8 (Sanjay Rai Malhotra) –

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

of its own GDR issue. Thus, Honor effectively became the sole subscriber of the GDR Issue of Cals. By means of the aforesaid Agreements, Sanjay Malhotra, through Honor, became the holder of majority of capital of Cals as the GDRs accounted for a major portion (99.24%) of the capital. It may be noted that Sanjay Rai Malhotra was one of the promoters of SRM Exploration Pvt Ltd (**SRM**). He was the 100% shareholder of Honor at the time of signing of Credit Agreement with Banco. It is noted that SRM was granted shares of Cals pursuant to preferential allotment prior to the GDR issue. SRM subsequently became the promoter of Cals in June 2008.

ii. Subsequently, part of the loan (USD 92 million) taken by Honor from Banco towards subscription of GDRs of Cals, was repaid on account of the transactions pursuant to the Agreement for purchase of refinery equipments between Cals and Asia Texx. As is evident, the transaction was structured to enrich the Promoter of Cals at the expense of the genuine investors and Honor was a beneficiary of the fraudulent transaction.

79. In this regard it is pertinent to rely upon the provisions of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of *Shri N. Narayanan vs. SEBI* decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.".* Further, Hon'ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 CompCas 1 Mad) has held that – "… *Section 5 of the Companies Act defines the expression "officer*

who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

… Section 29 of the Companies Act provides the general power of the board….Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

80. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

81. In light of the above discussions regarding the scheme of GDR issues of CAT, I am of the view that the Directors viz. Noticee 2, 5, 6 and 7 had played the major role from the side of Cals with regard to the issuance of the GDRs in a fraudulent manner and the subsequent fraudulent transaction with Asia Texx. Therefore, in view of the above I hold the directors viz. 2 Noticee 2, 5, 6 and 7 to be equally liable for the abovementioned frauds carried out by Cals, on the Indian investors.

82. In view of the above, I find that Cals and its Managing Director i.e Noticee-2 has violated section 12A(a),(b) and (c) of the SEBI Act read with regulation 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations. Further, I find that Noticee-6, Noticee-7, and Noticee-8 as signatories to the Account Charge Agreement, Extension Agreement and Credit Agreement, respectively have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations. Further, I find that Noticee-3, Noticee-4, and Noticee-5 as party to the fraudulent arrangement has violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3 (b), 3(c), 3(d) 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.

b. Whether Noticee 1 and 2, viz. Cals and Mr. Devanathan Sundararajan respectively, have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

83. I note that Section 11C(3) of SEBI Act requires any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before the Investigating Authority or any person authorised by it in this behalf which the investigating authority considers relevant or necessary for the purposes of its investigation.

84. It is alleged that Cals did not comply with summons issued by SEBI as it furnished wrong information and concealed material information from SEBI either in their replies to SEBI or in statements given under oath, in person, before Investigating Authority. It is alleged that Cals tried hamper and mislead the investigation carried

out by SEBI. The misleading submissions made by Cals to SEBI in response to summons are given below:

a) In its reply dated January 20, 2012 to the summons issued by SEBI on January 12, 2012, Cals denied having any agreement with Banco for any other services except opening of bank account for keeping GDR proceeds. This statement is misleading as Cals has concealed the information that it had entered into an Account Charge Agreement with Banco.

b) Cals specifically stated in its reply dated January 20, 2012 that there were no conditions by Banco on utilization of GDR subscription funds from the account of Cals with Banco. This is misleading because in terms of the Account Charge Agreement, Cals could not utilize any funds till the loan availed by Honor from Banco was repaid by Honor.

c) In its reply dated January 20, 2012, Cals denied having any agreement with any entities regarding the financing of the subscription by initial investors of its GDR issue. This is misleading as in terms of the Account Charge Agreement, Cals was required to deposit in its designated account with Banco an amount not exceeding USD 200 million as security for all obligations of Honor under the Loan Agreement .Cals did not mention the name of Honor in this context and thereby concealed material information.

d) Cals informed BSE regarding the raising of capital through issuance of GDRs for its utilisation. The information was misleading as the capital was raised using loan taken from Banco and was pledged with the same bank itself. The general public was not aware that the GDR subscription proceeds were locked with Banco and utilisation of the same was totally dependent on the repayment of loan by Honor. Cals filed information regarding initial investors of GDR issue with BSE and SEBI. However, as explained earlier, the names of initial investors provided was false as the real subscriber to the GDR issues was Honor.

e) Cals also informed its investors and SEBI that the funds raised through GDRs have been utilised in paying foreign based entities for purchase of refinery equipments. The payment of USD 92 million was found to be routed back to Honor for repayment of loan taken by Honor. Cals concealed information in this regard in its reply dated January 20, 2012 as well as in its annual reports.

85. Further, Noticee-2, on behalf of Cals, in his statement to SEBI on April 03, 2012 has submitted that a payment of USD 92 million to Noticee-3 (Asia Texx) was done for

purchase of various refinery units to expand the total capacity of refineries planned by Cals. Noticee-2 concealed the fact that the transaction with Noticee-3 is a related party transaction. Noticee-2 in his statement has admitted that he was responsible for completing the GDR process. Thus, as director in charge of the GDR process and also signatory to the agreement between Cals and Noticee-3, it is alleged that he was aware of the fraudulent transaction between Cals and Noticee-3. However, Noticee-2 concealed this material information from SEBI

86. Further, Noticee-2 in his statement recorded on April 03, 2012 has submitted that the promoters/directors of Cals did not have any agreement with the initial investors of the GDR issue. However, it is alleged that the promoters/directors of Cals had entered into a fraudulent arrangement with the initial investor of the issue viz. Honor. Thus, Noticee-2 mislead SEBI in this regard.

87. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India, in Civil Appeal No. 5859 of 2006 in the matter of *Bonanza Biotech Ltd Vs SEBI* and other connected appeals examined the issue as to whether the Adjudicating Officer (AO) under Section 15A of the SEBI Act is authorized to impose penalty when the documents/information called for and furnished are false or whether the power of the said AO to impose penalty on the person/entity is limited and exercisable only in the event of failure to furnish information/details/documents. I note that the above appeal was filed in the context of an Order dated June 16, 2008 in the matter of *Bonanza Biotech Ltd vs SEBI* wherein Hon'ble SAT had upheld the levy of penalty imposed by the AO on Bonanza Biotech Ltd (the appellant) under Section 15A for submission of false information /details to the investigating authority of SEBI. In its order dated

March 7, 2017, in Civil Appeal No 5859 of 2006, the Hon'ble Supreme Court, *inter alia*, referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr. Justice M. H. Kania, former Chief Justice of India, which was relied upon by the appellant, which mentioned that-

> "*as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for failure to furnish information or delay in furnishing the information. However, there is no provision for monetary penalty for giving false information*"

The Hon'ble Supreme Court of India, in its judgment dated March 07, 2017 had observed the following: -

> "*It appears that the only question in this matter is whether the Adjudicating Officer Under Section 15A of the Securities and Exchange Board of India Act, 1992, is authorized to impose penalty on the ground that the documents which have been asked for and have been furnished are false or whether power of the Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents.*
>
> *We have perused the order passed by the Adjudicating Officer. It appears from the order which was passed that the Adjudicating Officer had specifically stated in para 31 'that the Appellant has already furnished the materials which are available on record'. Since the materials have already been furnished, in our opinion, the said section is not attracted on the given facts.*"

88. Having regard to the above mentioned observations, the Hon'ble Supreme Court, set aside the Order dated June 16, 2008 of Hon'ble SAT as not sustainable. Therefore, in view of the above observations and in the context of the present proceedings against Cals and Sundararajan, the allegation levelled in the SCN that Cals and Sundararajan i.e. Noticee 1 and 2 have violated the provisions of Section 11C(3) of SEBI Act by furnishing false information/details to the Investigating Authority w.r.t details sought through the summons (two summons) issued to Cals by the IA is not sustainable. Accordingly, no penalty can be levied on Noticee 1 and 2 under Section 15A(a) of the SEBI Act, as existing at the time of occurrence of cause of action, for furnishing false information/details sought through the summons issued by the Investigating Authority. Therefore, I dispose of the SCN against Noticee 1 and 2 limited to the allegation of furnishing of false and misleading information.

c. Whether Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 21 and Section 23E of SCRA?

89. It is also alleged that Cals failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE. In this regard, I note that as per BSE website (www.bseindia.com), the equity held with custodian is shown as nil for Cals during the period June 01, 2009 to September 21, 2011 although the company had outstanding GDRs. Clause 35 of the Listing Agreement reads as under:

35. "The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

a. One day prior to listing of its securities on the stock exchanges.
b. On a quarterly basis, within 21 days from the end of each quarter.
c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital"

90. Therefore, I note that that the above allegation is established and I find that Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 21 and Section 23E of SCRA.

d. If yes, whether Noticees are liable for penalty under Section 15HA of the SEBI Act, Section 15A(a) of the SEBI Act, and/or Section 23E of SCRA, as applicable?

91. As established in the pre-paragraphs, the Noticee 1 and 2 have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations. Further, Noticee 2 to 8 have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), and (k) of PFUTP Regulations. Therefore, the Noticees are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for fraudulent and unfair trade practices.

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

92. It has also been established that Noticee-1 (Cals) has violated the provisions of Clause 35 of Listing Agreement read with Section 21 and Section 23E of SCRA. Therefore, Noticee-1 is liable for penalty under Section 23E of SCRA. The text of the said provision of law is being reproduced below:

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

93. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the SEBI Adjudication Rules and Section 23J of SCRA read with Rule 5 of the SCR Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

94. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or the loss caused to general investors on account of the violations committed by Cals and its directors and promoters.

95. I also note that the Hon'ble SAT, in its order dated April 21, 2017 in the matter of Sunita Gupta vs. SEBI, has made the following observations:

> "*6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."*

96. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of *P G Electroplast vs SEBI*, I also note that, vide Order dated October 23, 2013, Hon'ble Whole Time Member of SEBI has debarred Cals from issuing equity shares or any other instrument convertible into equity shares or any other security for a period of ten years. Further, vide the order dated December 31, 2014, Hon'ble Whole Time Member of SEBI also prohibited Mr. Devanathan Sundararajan, Asia Texx Enterprises Limited, Mr. Gagan Rastogi, Mr. Deep Kumar Rastogi, Mr. Sarvesh Kumar Goorha, Mr. Ravi Chilukuri and Mr. Sanjay Rai Malhotra, 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 ten years.

ORDER

97. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of SEBI Adjudication Rules, hereby impose the following penalty on the Noticees for their violation of the provisions of SEBI Act and PFUTP Regulations, as discussed in this order:

Name of the Noticee	**Provision**	**Penalty**
Noticee-1 (Cals Refineries Ltd.)	Section 15HA of SEBI Act	Rs. 10,00,00,000 /- (Rupees Ten Crore Only)
	Section 23E of SCRA	Rs. 5,00,000/- (Rupees Five Lakh Only)
Noticee-2 (Mr. Devanathan Sundararajan)	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore Only)
Noticee-3 (Asia Texx Enterprises Ltd)	Section 15HA of SEBI Act	Rs. 50,00,000/- (Rupees Fifty Lakh Only)
Noticee-4 (Mr. Gagan Rastogi)	Section 15HA of SEBI Act	Rs. 75,00,000/- (Rupees Seventy Five Lakh Only)
Noticee-5 (Mr. Deep Kumar Rastogi)	Section 15HA of SEBI Act	Rs. 50,00,000/- (Rupees Fifty Lakh Only)
Noticee-6 (Mr. Sarvesh Kumar Goorha)	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore Only)
Noticee-7 (Mr. Ravi Chilukuri)	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore Only)

Noticee-8 (Mr. Sanjay Rai Malhotra)	Section 15HA of SEBI Act	Rs. 2,00,00,000/- (Rupees Two Crore Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

98. The aforesaid Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

99. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticees shall also provide the following details while forwarding Demand Draft / payment information:

i. Name and PAN of the Noticee
ii. Name of the case / matter
iii. Purpose of Payment – Payment of penalty under AO proceedings
iv. Bank Name and Account Number
v. Transaction Number

100. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI

Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

101. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **K SARAVANAN**

Date: December 24, 2021 **ADJUDICATING OFFICER**