BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/10102]

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.

In respect of: -

Mr. Sanjay Aggarwal (PAN: AAFPA4428F)

In the matter of GDR Issue of Farmax India Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ("SEBI") had conducted investigation against several Indian companies that had issued Global Depository Receipts ("GDR") in overseas markets. In this regard, on an enquiry with European American Investment Bank ("EURAM Bank") about the loan taken by initial GDR subscribers, it was informed that in respect of GDR issue of Farmax, M/s. Vintage FZE ("Vintage"), now known as Alta Vista International, had availed loan against the GDR proceeds of Farmax. Accordingly, SEBI had investigated the issue of loan taken against the GDR proceeds of Farmax during the issuance of GDR i.e. June 01, 2010 to August 31, 2010 (hereinafter referred to as "Investigation Period ("IP")) to ascertain as to whether:
    a. GDRs were issued with the intention of defrauding Indian investors
    b. Shares underlying GDRs were issued with proper consideration and
    c. Appropriate disclosures with respect to Listing Agreement, if any were made

2. During the investigation, following facts were observed, which was basis the for issuance of SCN;
    a. Farmax issued 4.25 million Global Depository Receipts (hereinafter referred to as "GDRs") amounting to US$59.925 million on June 29, 2010 and further issued 0.85 million GDRs amounting to US$11.985 million on August 14, 2010 under green shoe option. Summary of the GDR issue (in two tranches) is tabulated below:

GDR issue date	No. of GDRs	Capital raised (USmn.)	Local custodian	No. of equity shares	Global Deposit	Lead Manager	Bank where GDR	Stock exchange on

	issued (mn.)			underlying GDRs	ory Bank		proceeds were deposited	which GDRs are listed
29-6-2010	4.25	59.925	DBS Bank, Mumbai	10,62,50,000	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange
14-8-2010		0.85		11.985			2,12,50,000	
Total		**5.10**		**71.91**			**12,75,00,000**	

b. On perusal of corporate announcements made by Farmax to Bombay Stock - Exchange (hereinafter referred to as "BSE") during the period December, 2009 to August, 2010, it was observed that the company had informed BSE on April 27, 2010 that the Board of Directors of the Company at its meeting held on April 27, 2010 had approved issue of GDRs.

c. Further, on June 29, 2010, Farmax informed BSE that, "… the Company has successfully concluded placement of 4,250,000 Global Depository Receipts at US$ 14.1 per Global Depository Receipt".

d. Prospect Capital Ltd. was the Lead Manager of GDR issue of Farmax.

e. Vintage, an Arun Panchariya (AP) owned entity, signed a Loan Agreement dated May 5, 2010, as a borrower, with EURAM Bank for payment of subscription amount of US$71.91 million for GDRs of Farmax. The Loan Agreement was signed by Arun Panchariya as Managing Director of Vintage.

f. From the examination of Loan Agreement, Pledge Agreement and ESCROW account statement, investigation established that all 5.10 million GDRs of Farmax (amounting to USD 71.91 million) were subscribed by only one entity, i.e., Vintage.

g. Investigation also observed that Vintage had availed of loan facility to the extent of USD 71.91 million from EURAM Bank to subscribe to the GDRs of Farmax. The loan amount was same as the GDR size of Farmax.

h. From examination of KYC documents, investigation observed that Arun Panchariya (AP) was the beneficial owner and Managing Director of Vintage as on June 06, 2007. From Vintage's letter dated December 30, 2010, it was further observed that Mr. Mukesh Chauradiya was its director. Vintage's letter dated April 27, 2011 and February 23, 2012 also show that Mukesh Chauradiya was Authorized Signatory of Vintage.

i. It was further observed that on the same day of the signing of the Loan Agreement, i.e. May 05, 2010, a Pledge Agreement was also signed between Farmax (as Pledgor) and EURAM Bank (as Bank).

j. Vintage had entered into Loan agreement with EURAM Bank as per which Vintage would be provided a loan only for the purpose of subscribing to the GDRs of Farmax. The Loan Agreement mentioned that the loan amount *"… may only be transferred to EURAM account No.580018 Farmax India Ltd…".*

Therefore, investigation observed that subscription of GDRs was done through loan availed by Vintage from EURAM Bank and the security for the Loan Agreement was provided by pledging the proceeds of the GDR issue.

k. It was also observed that Farmax pledged GDR proceeds even before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription to GDR issue (as mentioned in Loan Agreement). Further, on perusal of the Pledge Agreement and Loan Agreement, investigation observed that bank account in which GDR proceeds were held, was in the name of the Farmax but the amount deposited in the account was not at the disposal of the company as same was kept as collateral even prior to issuance of GDRs for the loan availed by Vintage.

l. From examination of Farmax's bank account held with EURAM Bank (where GDR proceeds were deposited) and loan account of Vintage (held with EURAM Bank), investigation observed that only after Vintage repaid loan instalments, equal/ less amount of money was transferred from Farmax's EURAM Bank account to Farmax's India and UAE account on the same day. Thus, investigation concluded that the GDR proceeds were not at the disposal of Farmax.

m. From the above, investigation concluded the Pledge Agreement allowed FIL to effectively finance the purchase of its own GDRs since it deposited the GDR proceeds as collateral for the loan extended by EURAM Bank to Vintage which was the sole subscriber to the GDR issue of FIL. Since the underlying of GDRs i.e., equity shares resulted in an increase of capital of the company without proper consideration, such arrangement was fraudulent in nature. Moreover, the same was not disclosed to the shareholders and investors.

n. GDR proceeds were deposited in Farmax's account no. 580018 held with EURAM Bank. It was observed during investigation that the account no. 580018 was the same where Farmax showed its GDR proceeds had been deposited. Details of receipt of GDR proceeds in the Farmax.'s bank a/c maintained with EURAM Bank in Austria are as given below: -

Date of credit of funds	Credit amount (USD)
June 28, 2010	59,925,000
August 13, 2010	11,985,000
Total	**71,910,000**

o. The details of realization of funds by Farmax out of GDR proceeds of US$ 71.91 million is tabulated below:

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Aug 25, 2010	225,000
Sept 15, 2010	250,000

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Total	**475,000**

Date of receipt of funds	Amount of funds received by Farmax in its UAE subsidiary's a/c {Abu Dhabi Commercial Bank (ADCB) and Emirates NBD Bank} (USD)
Sep 01, 2010	1,000,000
Sep 09, 2010	500,000
Sep 09, 2010	1,000,000
Sep 15, 2010	750,000
Sep 21, 2010	1,000,000
Sep 22, 2010	2,000,000
Sep 30, 2010	1,250,000
Oct 05, 2010	3,000,000
Oct 05, 2010	2,500,000
Oct 08, 2010	2,000,000
Sep30, 2011	600,000
Total	**15,600,000**

p. Funds were transferred to various entities from Farmax's UAE subsidiary's i.e. Farmax International FZE, account. In this regard, Farmax, vide e-mail dated July 09, 2015, submitted that funds were transferred from its EURAM Bank a/c (where GDR proceeds were deposited) to Farmax International FZE without its knowledge. Farmax further submitted that it was not aware of funds transferred from its Sharjah based subsidiary Farmax International FZE to some other entities.

q. On examination of the transfer request form for payment of money from FIL's a/c (maintained with EURAM Bank, where GDR proceeds were deposited), investigation observed that fax no. (+9713553047) on the transfer orders was same as the fax no. from which Vintage sent its request for redemption of loan amount to EURAM Bank. Further, investigation observed that on the top of both documents name "Vintage" appeared. Investigation further observed that USD 2,50,000 which were transferred on September 15, 2010 from Farmax's EURAM Bank a/c to it's Indian account, also originated from Vintage's fax no. (+9713553047).

r. Investigation therefore concluded that Farmax, in connivance with its associates transferred USD 15.60 million from its EURAM bank account to the account of Farmax International FZE and Vintage colluded with Farmax to divert the funds which caused loss to the Farmax as well as its shareholders to the extent of USD 15.60 million and the claim of Farmax that it was not aware of such transfers was false.

s. Cancellation of GDRs (conversion into equity shares):

- On perusal of the details of GDR transactions provided by EURAM Bank, it was observed that Vintage had transferred 12,58,000 GDRs to India Focus Cardinal Fund and 3,85,865 GDRs to Clariden Leu AG.
- All GDRs were subscribed by Vintage. GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from August 09, 2010 and continued till December 04, 2012. During the period a total 12,56,000 GDRs (24.63% of total 5.10 million GDRs issued) were converted.
- India Focus Cardinal Fund was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011 and India Focus Cardinal Fund was granted transfer from EURAM Bank to another FII (FPI) Cardinal Capital Partners on July 20, 2011 and was registered as sub account of FII- Cardinal Capital Partners for the period July 20, 2011 to June 19, 2017.
- Highblue Sky Emerging Market Fund was registered as sub account under FII-KBC Aldini Capital Ltd. (June 18, 2010 to October 21, 2012) and thereafter sub account was transferred to FII-Golden Cliff (previously known as Vaibhav Investments Ltd.) for the period October 22, 2012 to February 28, 2017.
- India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold the equity shares (which they received post cancellation of GDRs) in Indian securities market.

By October 31, 2012, India Focus Cardinal Fund sold all the shares which it had received post conversion of GDRs, i.e., 3,10,25,000 equity shares.

- Highblue Sky Emerging Market Fund received 3,75,000 equity shares post conversion of 15,000 GDRs. By January 24, 2013 it sold all the shares which it had received post conversion of GDRs.

t. Sale of equity shares by entities in India: Investigation observed that underlying shares of GDRs were sold to Indian investors (during the period August 12, 2010 to January 23, 2013) by Vintage through sub accounts IFCF and Highblue Sky Emerging Market Fund.

u. Termination of GDR issue by Global Depository:

- The Depository i.e. The Bank of New York Mellon ('hereinafter referred to as "BNY"), issued Termination Notice to holders of GDRs of Farmax on March 16, 2015. The GDR facility was terminated with effect from June 16, 2015. Out of total 12,75,00,000 underlying shares of GDRs, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold 3,14,00,000 shares before termination of the GDR facility. After termination of the GDR facility, remaining 9,61,00,000 shares (12,75,00,000 – 3,14,00,000) were sold by BNY in India during the period from June 24, 2015 to September 11, 2015. Total 9,61,00,000 shares aggregating to INR 1,71,53,923.49 were sold on BSE and NSE. Shares were sold on BSE and NSE in the name of The Bank of New York Mellon (depository).
- Total 12,75,00,000 shares of Farmax worth INR 53.48 crore were sold (pre and post termination of GDR scheme) in Indian securities market.

v. With regard to repayment of loan by Vintage, investigation observed the following:

- Vintage repaid loan amount to EURAM Bank in several instalments aggregating to USD 15,480,200 till October 08, 2010 and thereafter defaulted on the loan payment. Vide letter dated August 14, 2012, EURAM Bank Intimated Vintage (now known as Alta Vista International FZE) that Alta Vista International FZE had not settled outstanding loan amount of USD 56.66 million (principal amount USD 56.43 million and interest amount USD 0.23 million), EURAM Bank realized part of the pledged security to cover amount of USD 56.57 million.

- From Farmax's EURAM Bank statement, investigation observed that on August 13, 2012, EURAM Bank adjusted USD 56.57 million from Farmax's bank account (where GDR proceeds were deposited) towards loan taken by Vintage.
- It was observed from examination of the annual report of Farmax for FYs 2011-13 that FIL had written off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 million were written off by Farmax on account of loan default by Vintage for which security was provided by Farmax.

w. Investigation observed that loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, investigation concluded that shares sold by India Focus Cardinal Fund and Highblue Sky Emerging Market Fund are the shares which were issued without proper consideration.

x. **Role of Mr. Sanjay Aggarwal (the Noticee)**

- From the offer document of GDR issue of Farmax, investigation observed that La Richesse Advisors Private Limited (herein after referred to as "La Richesse") was Indian advisor to the Farmax for Farmax's GDR issue. Mr. Sanjay Aggarwal in his written submission dated July 23, 2015 submitted that he was owner of La Richesse Advisors Private Limited and he along with Mr. Nithish Bangera (who was the only employee of La Richesse Advisors P. Ltd.), handled the GDR matter of Farmax. Mr. Sanjay Aggarwal further submitted that the matter of Farmax was referred to him by one Shri. Jalaj Batra and post scrutiny of documents he (Mr. Sanjay Aggarwal) forwarded the documents to Mr. Arun Panchariya/ Prospect Capital Ltd.
- E-mail communications of Farmax with Mr. Sanjay Aggarwal and Mr. Nithish Bangera were examined and it was observed that Mr. Sanjay Aggarwal facilitated preparation of various documents/ agreements/ formats such as deposit agreement, placing agreement, documents/ undertaking/ declaration for trading on Luxembourg Stock Exchange, offering circular, Farmax board resolutions, Farmax's announcement on stock exchange etc. Investigation further observed that Mr. Sanjay Aggarwal helped Farmax in opening bank account with EURAM Bank.
- From the services rendered by Mr. Sanjay Aggarwal & M/s La Richesse Advisors Private Ltd., investigation established that their role was equivalent to that of a Lead Manager's

and they prepared engagement letter of Prospect Capital Ltd. and engagement letter of BNY. Further, they acted as agent to AP as they were acting as conduit between AP and the company even in November 2010 (3 months after GDR issue closure).

- Above email correspondences exhibit that Mr. Sanjay Aggarwal had the knowledge of fraudulent arrangement/ scheme of GDR issue of Farmax and in connivance with AP and his connected entities, facilitated the GDR issue of Farmax.
- Therefore, investigation concluded that Mr. Sanjay Aggarwal was responsible for creating entire infrastructure for Farmax and AP to bring out the fraudulent GDR issue of Farmax, providing formats for board resolution and filings with stock exchanges and helped in transferring funds from EURAM Bank to Farmax's subsidiary in UAE and from Farmax's UAE subsidiary to other accounts, etc. Mr. Sanjay Aggarwal acted as single point of contact between the company and all the concerned entities with regard to the GDR issue of Farmax.

3. In light of the above facts, Adjudication proceedings were initiated against Mr. Sanjay Aggarwal (Noticee) for violations as alleged in the SCN.

APPOINTMENT OF ADJUDICATING OFFICER

4. The Adjudicating Officer("AO") was appointed vide order dated May 23, 2017, under section 19 read with Section 15-1 of Securities and Exchange Board of India Act, 1992 ("the Act") and Rule 3 of SEBI AO Rules and SCRA AO Rules to inquire and adjudge under Section 15HA of the SEBI Act to inquire and adjudge the alleged violations of Section 12A(a),(b) and (c) of the Act read with Regulations 3(a),(b),(c) and (d) and 4(1) of SEBI Prohibition of Fraudulent and Unfair Trade Practices Regulations 2003 ("PFUTP Regulations") by Mr. Sanjay Aggarwal ("Noticee"). Consequent to transfer of current proceedings, the undersigned has been appointed as AO vide order dated August 13, 2019, to inquire and adjudge the aforementioned alleged violations under Section 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Based on the aforesaid facts, SCN dated January 12, 2018, was issued to the Noticee, wherein following was alleged;

- Farmax issued 5.10 million GDRs amounting to USD 71.91 million in June and August, 2010. The entire GDR issue were subscribed by only one entity, i.e., Vintage.
- Vintage took a loan from EURAM Bank through a Loan Agreement dated May 05, 2010 to subscribe to the GDRs of Farmax. Farmax provided security towards the loan obtained by Vintage for subscribing to the GDRs of Farmax, through Pledge Agreement signed between Farmax and EURAM Bank, wherein Farmax pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of Farmax. The information of Pledge Agreement to the extent of USD 71.91 million was not disclosed by Farmax to its shareholders/investors.
- The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank. These agreements enabled Vintage to avail the loan from EURAM for subscribing GDRs of Farmax. The GDR issue would not have subscribed had Farmax not given any such security towards the loan taken by Vintage.
- Farmax made announcement on June 29, 2010 and August 14, 2010 on BSE that it had successfully concluded placement of GDRs and raised money. However, Farmax had signed pledge agreement with EURAM Bank on May 05, 2010 and pledged GDR proceeds as security against loan extended by EURAM Bank to Vintage before issuance of GDRs.
- The arrangement of Pledge Agreement and Loan Agreement resulted in subscription of GDR issues of Farmax which was not disclosed but reported misleading news to the stock exchange which contained information in a distorted manner and might have influenced decision of investors.
- Farmax wrote off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 were written off by Farmax on account of loan default by Vintage. Farmax gave misleading information regarding loan amounting to USD 15.60 million which was never extended to its UAE subsidiary and later written off it. The information of write off was deliberately concealed from the investors of Farmax. Farmax gave misleading, distorted information to its shareholders and caused loss to its shareholders to the tune of USD 72.20 million.
- The loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, shares sold by IFCF and Highblue Sky

Emerging Market Fund (hereinafter also referred to as "Highblue") (who were allotted shares subsequent to conversion of GDRs of Farmax) were the shares which were issued without proper consideration. Since the underlying of GDRs i.e., equity shares, resulted in an increase of capital of Farmax without proper consideration, such arrangement was fraudulent in nature.

- AP was prime person in structuring the GDR issues. It was observed that AP controlled every stage of GDRs from issuance of GDRs to the sale of converted shares thereby committed fraud on Indian shareholders of Farmax. AP devised and structured the GDR issue in connivance with Farmax. AP connected entities were involved at all stages of GDR issue since AP controlled Vintage subscribed to GDR issues by entering into fraudulent loan agreement, AP connected EURAM Bank extended loan to Vintage and made AP controlled IFCF its sub account to facilitate off-loading of converted equity shares. IFCF and Highblue cancelled GDRs and off loaded converted shares, in the Indian securities market. AP controlled Vintage defaulted on loan payment of USD 56.57 million which was written off by Farmax as Farmax had pledged GDR proceeds against this loan. Thus, AP devised GDR scheme along with Farmax wherein Farmax misled the Indian investors by concealing the information of entering into pledge agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders by writing off USD 72.20 million.
- Mr. Mukesh Chauradiya held key position in Vintage (was Managing Director during period when Vintage defaulted on loan), facilitated GDR issue of Farmax in connivance with AP and Farmax in a fraudulent manner. He was AP's close associate and was authorized signatory of Vintage and facilitated the GDR issue of Farmax. Vintage defaulted on loan of USD 56.57 million when he was the Managing Director and authorized signatory of Vintage. He collaborated with AP, Farmax and Vintage and performed the role assigned to him and thus acted as party to fraudulent scheme
- Farmax furnished wrong information to SEBI by providing false list of GDR subscribers.

- The corporate announcements dated June 29, 2010 and August 14, 2010 made by Farmax to BSE reported misleading news which contained information in a distorted manner and might have influenced decision of investors.
- Vintage was the sole subscriber of GDR issue of Farmax and Vintage subscribed to the GDR issue by taking a loan from EURAM Bank to the extent of USD 71.91 million and the security for the said loan was the GDR proceeds of FIL. AP is beneficial owner of Vintage. Vintage repaid loan to the tune of USD 15.48 million and defaulted on the loan thereafter. Outstanding loan amount of USD 56.57 million was adjusted by EURAM Bank from Farmax's EURAM Bank Account. On account of default by Vintage, USD 56.60 were written off by Farmax. Highblue and IFCF, received GDRs, converted them and sold converted shares worth INR 51.77 crore pre termination of the GDR program, on Indian stock exchanges. Post termination of GDR facility shares worth INR 1.71 crore were sold.
- Therefore, it was concluded that shares sold by IFCF and Highblue and shares sold by BNY, the Depository Bank, post termination of GDR facility were the shares which were issued without proper consideration as Vintage defaulted on loan repayment. Hence, Vintage along with AP, IFCF and Highblue, was responsible for the loss of INR 53.48 crore inflicted on the shareholders of Farmax jointly and severally.
- Prospect was Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of Farmax.
- AP is beneficial owner of Cardinal Capital Partners. EURAM Bank is also connected to AP. As FIIs, Cardinal Capital Partners and EURAM Bank did not make investment and were registered as FII only to facilitate the AP connected IFCF in off-loading the converted equity shares of Farmax. Thus, by performing the role assigned to them in connivance with Mr. Sanjay Aggarwal i.e. the Noticee, Cardinal Capital Partners and EURAM Bank acted as parties to fraudulent scheme of GDR issue of Farmax.

6. The aforesaid SCN was issued to the Noticee on January 12, 2018 and same was also served upon the Noticee. Subsequently, the Noticee submitted his reply to the SCN vide letter dated September 11, 2019. Thereafter, a Hearing Notice (HN) was digitally sent to the Noticee on July 17, 2020 at sanjay@larichesse.in, which was available on record, giving opportunity of virtual

hearing on August 05, 2020. However, the same was not attended by the Noticee on the scheduled date. Thereafter, the Noticee vide e-mail dated October 29, 2020, responded from a different mail ID informing that his mail ID is changed to aggarwalsan@outlook.com.

7. Subsequently, the Noticee vide HN dated November 05, 2020, was given another opportunity of virtual hearing on November 16, 2020, which was subsequently, attended by AR of the Noticee, wherein AR of the Noticee reiterated Noticee's earlier submissions.
8. Submissions of the Noticee are summarized below;
    - *The decision to enter into agreement with respect to issue and placement of GDRs and other terms & conditions of the agreement was to be decided among company, Merchant Bankers & other entities involved. No way he or La Richesse or any other employee of La Richesse had the power to take decisions regarding terms & conditions of the agreement, hence, in this casehis role was only limited upto the instructions received from the company/ client.*
    - *He denied that he had acted as agent to Mr. Arun Panchariya and acted as conduit between AP and FIL. He only coordinated between FIL and Prospect Capital Ltd./ AP and denied that he was connected to/ associated with AP other than professional engagement.*
    - *He did not have knowledge of fraudulent arrangement/ scheme of GDR issue of FIL in connivance with AP and his connected entities. He was only adviser of the company & the final decision to do every act rested with the company and its Board of Directors. Hence, he was not involved in decision making process.*
    - *With regard to the Loan Agreement, he is not responsible and liable for the same since he was not party of the loan agreement. He was advisor to the company and was nowhere involved in preparation/vetting of the said agreement.*
    - *He has been made a scapegoat just to broaden the ambit of investigation without any documentary evidence and bald allegations have been made.*
    - *The email enclosed at Annexure 11 to the SCN only proves my contention that he was only coordinating. He received email from Mr Mukesh Chauradiya and informed the director that they need to carry out certain formalities.*
    - *The SCN has not shown and has not been able to prove his connivance with AP which establishes that bald allegation of him being an associate of AP has been levelled. This*

further establishes that serious charge of fraudulent and unfair trade practice has been levelled without any evidence, documentary or otherwise, which is devoid of merit.

- *He was not a director of Prospect Capital Limited. He had not used/created /owned/operated any email id sa@prospectcapital.com. He has already submitted evidence from UK Company Law website and UK- FCA website vide letter dated November 11, 2016 during the course of investigation that he was neither director nor share holder nor decision maker in Prospect Capital.*
- *He was assigned various tasks related to GDR issue which includes preparation of various documents formats such as deposit agreement, placing agreement, documents/ undertaking/ declaration for trading on LuxembourgStock Exchange, offering circular, etc. and was nowhere involved in decision making process.*
- *It is common knowledge that the legal advisers are not involved in day to day affairs of the company. In the board meetings, broad policy decisions are taken and the actual implementation at cutting edge level is done by directors along with the other employees. Legal advisers, do not monitor on daily basis the implementation of the decisions or interfere in the same. While levelling the allegations in the Notice, it has been ignored and overlooked that legal advisers are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which lies in the domain of directors.*
- *He had prepared documentation of GDR issue, opening of bank accounts and incorporation of Farmax's UAE Subsidiary as he was assigned to do above mentioned work.*

ISSUES UNDER CONSIDERATION

9. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:

I. Whether the Noticee has violated Section 12A(a),(b) and (c) of the Act read with Regulations 3(a),(b),(c) and (d) and 4(1) of SEBI PFUTP Regulations?

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of the SEBI Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

FINDINGS

10. Before Proceeding further, the provisions as applicable, are reproduced as under:

SEBI ACT, 1992

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

Section 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 recognised 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;

(d) ……..."

Relevant extract of provisions of PFUTP Regulations, 2003

*"**Regulation 3 - Prohibition of certain dealings in securities***

No person shall directly or indirectly:

(a) buy, sell or otherwise deal in the securities in a fraudulent manner;

(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.

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

Issue no. I: Whether the Noticee has violated Section 12A(a), (b) and (c) of the Act read with Regulations 3(a),(b),(c) and (d) and 4(1) of SEBI PFUTP Regulations?

11. I note that the SCN under current proceedings alleges that the sole subscriber to the GDRs of FIL i.e. Vintage FZE, whose beneficial owner was Mr. Arun Panchariya (AP), obtained loan from EURAM Bank, an entity connected with Mr. Arun Panchariya, for subscription of GDR issue for which security was provided by FIL by pledging its GDR proceeds. Further, the SCN observes that Vintage FZE defaulted on repayment of loan to EURAM Bank to the extent of USD 56.60 million, thereby GDR proceeds to that extent were adjusted by EURAM Bank and subsequently written off by FIL. USD 15.60 million were also written off by FIL which were transferred by FIL from its EURAM Bank account to the account of its subsidiary based in UAE, i.e. Farmax International, FZE, and further from Farmax International, FZE's bank account to certain other related entities.

12. In this regard, it first needs to be established that the scheme for GDR subscription by Vintage FZE was a fraudulent scheme. The material on record shows that AP devised and structured fraudulent scheme with the GDR issuer company i.e. FIL and through his connected entities involving various other connected entities including Sanjay Agarwal (The Noticee). AP controlled Vintage subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which FIL pledged its GDR proceeds as security. Vintage subsequently defaulted on repayment of balance loan amount of USD 56.60 million. Therefore, GDRs to the extent of USD 56.60 million were issued at free of cost to Vintage. AP connected FII sub-accounts namely Cardinal Capital Partners received and converted GDRs and sold converted equity shares of FIL in Indian securities market. AP connected FII namely Golden Cliff facilitated Cardinal Capital Partners in conversion of GDRs and sale of converted equity

shares. Thus, it is clear that AP devised GDR scheme along with FIL wherein FIL misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchanges which made investors believe that GDRs were genuinely subscribed.

13. The SCN has alleged that the Noticee coordinated with Mr. Mukesh Chauradiya (one of the other connected entities in the issue of GDR of Farmax) in facilitating the documentation for GDR issue of FIL in connivance with AP. From examination of the copy of email correspondences between FIL and the Noticee, the SCN has alleged that he facilitated the bank account transactions and financial statements for FIL's UAE based subsidiary. The SCN alleges that Mukesh Chauradiya was Managing Director of Vintage when Vintage defaulted on the repayment of loan availed by it for subscription of GDRs of FIL and Vintage default on loan repayment affected FIL to the tune of USD 56.60 million. The SCN alleges that Mukesh Chauradiya in connivance with AP, his connected entities and FIL, facilitated the GDR issue of FIL to commit fraud on Indian shareholders of the FIL. From Vintage's letter dated December 30, 2010 addressed to EURAM bank, SCN alleges that Mukesh Chauradiya was the director of Vintage Vintage's letter dated April 27, 2011 and February 23, 2012 also show that the Mukesh Chauradiya was Authorized Signatory of Vintage. Based on this the SCN alleges that AP and the Mukesh Chauradiya were managing affairs of Vintage and they were responsible for all acts and deeds of Vintage. The SCN also alleges that the Mukesh Chauradiya was an associate of AP and that in a company named Ramsai Investment Holdings Private Limited, where AP was holding 99.98% shares (for the period 2009-2013) the Mukesh Chauradiya was director from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016.

14. The charge against the Noticee is that the Noticee was responsible for creating entire infrastructure for FIL and AP to bring out the fraudulent GDR issue of FIL which included providing formats for board resolution and filings with stock exchanges and helping in transferring funds from account of FIL with EURAM Bank to FIL's subsidiary in UAE and from FIL's UAE subsidiary to other accounts, etc. The Noticee acted as single point of contact between FIL and all the concerned entities with regard to the GDR issue of FIL.

15. I also note that M. Srinivas Reddy (MD of Farmax) in his statement recorded on July 13, 2015 (Annexure 14 of the SCN), before investigating authority, SEBI, had stated that *"Sanjay Aggarwal*

advised us to contact Mr. Arun Pancharia, who has taken out the funds from the EURAM Bank against the settlement of the loan. Hence, we are suspecting direct role of Sanjay Agarwal in the matter from the initiation of GDR issues." It has further been noted from the statement recording of the Noticee dated July 23, 2015 (Annexure 16 of the SCN), wherein the Noticee has nowhere denied his long association with AP. The Noticee in his statement has stated that "*I knew Mr. Arun Panchariya from 2004. I was in contact with him from 2004-2011. we also act as a single point of contact between the Company and all the concerned entities with regard to the GDR issue."*

16. I note that the emails exchanged amongst the Noticee and FIL (Annexure 30 of the SCN), mainly deals with seeking copies of certain documents such as MoA, AoA of FIL, Placement Agreement, photos of directors etc. I note that, vide email dated June 28, 2010, Noticee had provided the draft of the disclosure to the stock exchange that FIL eventually made to the stock exchange. Noticee had also provided the copies of the draft resolutions which were required to be passed by the board of FIL for the purposes of GDR issue. I note that no draft resolution has been produced by the Noticee under current proceedings to show that the draft resolution provided by him did not contain pledging of the bank account where GDR proceeds were to be kept. Moreover, I note that vide an email dated August 19, 2010 blank TT slips were sought from FIL by the Noticee and the same were directed to be forwarded to Mr. Mukesh Chauradiya who was an employee of Vintage and an associate of AP. As an Indian advisor to FIL, there was no rationale for the Noticee to seek blank transfer slips from the issuer company to be forwarded to the subscriber of the issue.

17. This fact alone would have raised reasonable apprehension of wrongdoing in the mind of the Noticee, had he not been involved in the fraudulent scheme of issue of GDR. In fact, reasonably speaking, it was the subscriber who would need to make the payment to the bank account of the issuer. Noticee has not provided any explanation for this email sent by him to FIL except stating that he was coordinating between AP and FIL and that he was acting on directions. As a reasonable person and most definitely as 'advisor' to the issue this should have been a red flag for the Noticee, a chartered accountant by profession, when bank TT slips were sent to the subscriber of the GDR issue. This email points to a reasonable inference that the Noticee was aware of the Pledge Agreement, between FIL and EURAM Bank, which secured the loan taken by Vintage by pledging the GDR proceeds of FIL and was also a party to the diversion of the funds from FIL's account with EURAM Bank to Farmax

FZE, the UAE subsidiary of FIL since the TT slips that he directed to be sent to Vintage were used for diversion of funds form the EURAM Bank account of FIL.

18. In view of the above, I find that the Noticee was also a party to the fraudulent scheme and facilitated fraud related to the GDR issue of FIL. Therefore, I hold that Mr. Sanjay Agarwal has violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

19. Therefore, in view of the foregoing, I conclude that the Noticee has violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

20. I also note that parallel proceedings under section 11B of the SEBI act were initiated against the Noticee for similar violations and the same has been concluded vide order dated July 14, 2020, wherein the Noticee has been restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years from the date of order.

Issue no. II: Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of the SEBI Act?

21. Since it is established that Noticee was responsible for the fraudulent scheme and arrangement for subscription of GDRs in violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003. I am of the view that it warrants imposition of monetary penalty under Section 15HA of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act, 1992

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 which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

22. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:

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

While adjudging quantum of penalty under section 15-I, 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.

Explanation: For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

23. From the material available on record, it is not possible to ascertain disproportionate gains or unfair advantage made by the Noticee nor the loss caused to the investors. I note that while the main perpetrator of the scheme was Arun Panchariya, the Noticee had the knowledge of fraudulent arrangement/ scheme of GDR issue of Farmax and in connivance with AP and his connected entities, facilitated the GDR issue of Farmax.

ORDER

24. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the penalty of `10,00,000/- (Rupees Ten Lakh only) upon the Noticee i.e. Sanjay Aggarwal, under section 15HA of SEBI Act for the violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

25. Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action – I [EFD 1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1.	Case Name	
2.	Name of the Payee	
3.	Date of payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Details in which payment is made	
7.	Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

26. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

27. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

28. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: January 15, 2021
PLACE: MUMBAI

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER