BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/DS/2020-21/ 9498]

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 –

1. **Arun Panchariya (PAN: AEVPP6125N)** having address at - 7, Nandanbaug Society, Opp. New Civil Hospital, Shahubaug, Ahmedabad – 380004 and J4, Emirates Hills, Jhulnar Street 2, Dubai, United Arab Emirates.

In the matter of GDR issue by Winsome Yarns Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***"), initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") against Arun Panchariya (hereinafter referred to as **"the Noticee / Arun / You**") in the matter of GDR issue by Winsome Yarns Ltd. Adjudication proceedings were initiated against the Noticee for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated March 14, 2019 to inquire into and adjudge under Section 15HA of the SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated March 28, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/23572/2019 dated September 11, 2019 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee under Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15HA of the SEBI Act for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. An investigation was carried out by SEBI in the matter of GDR issue by Winsome Yarns Ltd (hereinafter referred to as **'Winsome / Company'**) during the period March 01, 2011 to April 30, 2011 (hereinafter referred to as **'investigation period'**).

6. Winsome was incorporated in 1990 as public limited company and commenced its commercial production in April 1994. The company was promoted by Winsome Textile Industries Ltd. & Punjab State Industrial Development Corporation Ltd. The equity shares of the company have been listed on BSE since April 08, 1994 and on NSE since March 26, 2002. The company is claimed to be engaged in the manufacturing of cotton yarn and high quality garments. The company's registered office is located at SCO 191-192, Sector 34-A, Chandigarh- 160022.

7. Winsome Yarns (Cyprus) Limited, a wholly owned subsidiary of Winsome was incorporated on November 08, 2006 in Cyprus.

8. Winsome Yarns FZE ('WINSOME FZE') was incorporated in U.A.E. on July 11, 2011 as a wholly owned subsidiary of Winsome Yarns (Cyprus) Limited, which was a wholly owned subsidiary of Winsome. WINSOME FZE was declared defunct w.e.f. April 01, 2014.

9. The board of directors ('Board/BOD') of Winsome as on the date of its GDR Issue i.e. March 29, 2011 was as follows:

Sl. No.	Name of director	Designation
1.	Satish Bagrodia	Chairman (Non-Executive)
2.	Manish Bagrodia	Managing Director
3.	Chandra Mohan	Independent Non Executive Director
4.	Brij Mohan Khanna	Independent Non Executive Director
5.	S. K. Singla (Nominee Director of PSIDC)	Independent Non Executive Director
6.	G. K. Sawhney (Nominee Director of PNB till March 16, 2011)	Independent Non Executive Director
7.	Yashpal Barar (Nominee director of PNB w.e.f. March 17, 2011)	Non-Executive, Independent Director
8.	Ashish Bagrodia	Non-Executive Director

10. **Shareholding Pattern:** (Source: bseindia.com)

Particulars	QE Dec 2010		QE Mar 2011		QE Jun 2011	
	No. of shares	%	No. of shares	%	No. of shares	%
Promoter Holding	22,33,96,090	57.73	22,33,96,090	38.10	22,33,96,090	38.10
Non Promoter Holding	16,35,88,700	42.27	16,35,88,700	27.90	16,35,88,700	27.90
Shares held by custodian against GDRs	0	0	19,94,12,500	34.01	19,94,12,500	34.01
Total no. of issued shares	**38,69,84,790**	**100**	**58,63,97,290**	**100**	**58,63,97,290**	**100**

11. The total number of shares of Winsome for the quarter ended March 2011 increased by 19,94,12,500 shares as compared to quarter ended December 2010, due to issuance of 1.99 million GDRs on March 29, 2011.

12. Winsome issued 19,94,125 GDRs amounting to USD 13.24 million on March 29, 2011. Summary of the GDR issue is tabulated below:

(Source: Information provided by WINSOME)

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
29-Mar-11	1.99 (at USD 6.64 per GDR)	13.24	DBS Bank Ltd.	19,94,12,500	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

13. Investigation revealed that Vintage FZE (now known as Alta Vista International FZE), an entity controlled by the Noticee, was the sole subscriber of GDR issue of Winsome. Vintage availed a loan of USD 13.24 million from EURAM Bank for payment of subscription amount for GDR issue of Winsome. Vintage signed a Loan Agreement dated March 22, 2011 with EURAM Bank for the loan. It was further observed that Winsome had pledged the GDR proceeds as collateral

against the loan availed by Vintage FZE. Winsome signed a Pledge Agreement dated March 22, 2011 with EURAM Bank for the purpose.

14. **Loan Agreement:**

15. Vintage FZE ('Vintage') opened a loan account having number 540012-051-3 with EURAM Bank and Winsome opened a retail account having number 5800400101 with EURAM Bank. Vintage obtained loan of USD 13.24 million by entering into a Loan Agreement dated March 22, 2011 with EURAM Bank. The Loan Agreement was signed by Mukesh Chauradiya, in capacity of Managing Director of Vintage for subscription of GDRs of Winsome.

16. The Loan Agreement inter-alia states as follows:

> ***2."Nature and purpose of facility"*** "*To provide funding enabling Vintage FZE to take down GDR issue of 1,994,125 Luxemburg public offering and may only be transferred to EURAM account nr. 580040, WINSOME Yarns Ltd.*"
>
> ***6. Security:*** *….it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*
>
> 1) *Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
> 2) *Pledge of the account no. 580040 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

17. As per the Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Noticee was the beneficial owner and Managing Director of Vintage as on June 06, 2007. Documents received from EURAM Bank show that Alkarni Holding Limited was the sole shareholder of Vintage FZE and Noticee was the sole shareholder of Alkarni Holding Ltd.

18. **Pledge Agreement:**

    a) A Pledge Agreement dated March 22, 2011 was entered into between Winsome (*as Pledgor*) and EURAM Bank (*as Bank*). The pledge Agreement

was signed by Manish Bagrodia, Managing Director on behalf of Winsome.

b) The preamble of the Pledge Agreement states:
"By Loan Agreement K210311-002 (hereinafter referred to as the "Loan Agreement") dated 22 March 2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 13,240,990- The pledger has received a copy of the Loan Agreement No. K210311-002 and acknowledges and agrees to its terms and conditions."

c) The Pledge Agreement pledged *all of the pledgor's (Winsome) rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 13,240,990 existing from time to time at present or hereafter on the securities account(s) no. 580040 held with the Bank; and all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580040 kept by the Bank and all amounts credited at any particular time therein….*

19. Further, conditions were put in the Pledge Agreement for realization of the pledge which permitted the Euram Bank *to apply the funds in the Pledged Account to settle the Obligations and to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code.*

20. Thus, Winsome opened a bank account (*A/c no. 580040*) with EURAM Bank to keep the GDR proceeds and pledged its GDR proceeds before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of Winsome. It was observed from the pledge agreement that Winsome was aware of the loan agreement and initial subscriber and the source of funding.

21. Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd), a UK based entity was the lead manager for the GDR issue of Winsome. Noticee was Pan Asia's director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012). Pan Asia was Lead Manager for about 16 GDR issues during the years 2006-11. Vintage was the sole subscriber for 23 GDR issues. In all these GDR issues, subscription was made by Vintage FZE (a Dubai based entity controlled and owned by the Noticee) by obtaining loan from EURAM bank and security towards the loans was given by the respective GDR Issuer Indian companies. Further, EURAM Bank and Pan Asia Advisors Ltd were having a joint venture in UAE in the name of Euram Bank Asia Ltd. (EBAL).

22. In the instant matter, Vintage (connected to Noticee) was the sole subscriber of the GDR issue of WINSOME and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 13.24 million for which security was provided by WINSOME by pledging its GDR proceeds. Mukesh Chauradiya signed the Loan Agreement in capacity of the Managing Director of Vintage. Further, Vintage defaulted in repayment of loan to the extent of USD 6.05 million, and thereby GDR proceeds to that extent were adjusted by EURAM Bank. Hence, Vintage acquired GDRs of Winsome to the tune of USD 6.05 million at free of cost.

23. Noticee connected FII-sub-accounts namely HBSF and ASPIRE converted the GDRs and sold 56.36 lakh converted equity shares amounting to Rs 69.21 lakhs in the Indian securities market. The scheme can be summarized as – Noticee arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub-accounts which, in turn, sold the converted equity shares in the Indian securities market. Thereby, HBSF and APSIRE acted as conduit to the Noticee in selling converted equity shares of Winsome and acted as party to fraudulent scheme.

24. Considering the fact that Vintage was sole subscriber to GDR issue and it defaulted on loan repayment, it is evident that the converted equity shares sold by

HBSF and ASPIRE were acquired by Vintage at free of cost. Hence, the same caused a loss of USD 6.05 million (amount of loan default) to the shareholders of Winsome.

25. The above fact illustrate that GDRs were issued pursuant to a plan devised by the Noticee involving Vintage, Pan Asia Advisors Ltd. and issuer company i.e. Winsome and executed with the help of Mukesh Chauradiya, HBSF, ASPIRE and Golden Cliff. Winsome misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed and were made to think that stocks of the issuer company have been highly valued by foreign investors. Existing shareholders and prospective investors of Winsome were informed of the positive news that Winsome had received foreign capital through GDRs but they were completely uninformed of the activities of Noticee and his connected entities, in such GDR issue. Thereby, the issuance of GDRs, subsequent transfer of GDRs and sale of converted shares of Winsome in Indian market was a fraudulent scheme.

26. Noticee in connivance with the GDR issuer company, Winsome, devised and structured a fraudulent scheme through his connected entities like Vintage FZE, Pan Asia Advisors Ltd., Mukesh Chauradiya, HBSF, ASPIRE and Golden Cliff.

27. Noticee was the key person in structuring the GDR issue of Winsome who devised and structured the GDR issue in connivance with Winsome. Noticee connected entities were involved at all stages of GDR issue. Noticee connected Pan Asia Advisors Ltd. was Lead Manager to GDR issue. Noticee controlled Vintage subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which Winsome pledged its GDR proceeds as security. Vintage subsequently defaulted on repayment of balance loan amount of USD 6.05 million. Therefore, GDRs to the extent of USD 6.05 million were issued at free of cost to Vintage. Noticee connected FII sub-accounts namely HBSF and ASPIRE received and converted GDRs and sold converted equity shares of WINSOME in Indian securities market. Noticee connected FII, namely Golden Cliff, facilitated HBSF

and ASPIRE in conversion of GDRs and sale of converted equity shares. Thus, Noticee devised GDR scheme along with Winsome where in Winsome 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.

28. In view of the above, Noticee was alleged to have violated sections 12A(a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

29. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15HA of the SEBI Act.

30. SCN was served to the Noticee through email at its registered email id - arun.panchariya@me.com on September 11, 2019, which was duly digitally signed by the undersigned. An opportunity of hearing was granted to Noticee on March 3, 2020 vide digitally signed email notice dated February 20, 2020. Hearing Notice was also served to Noticee on February 27, 2020 through Speed Post Acknowledgement (SPAD) at its address – Arun Panchariya, Global Finance and Capital Limited, 7 AYLMER Drive, Stanmore, Middlese, United Kingdom, HA7 3EJ and also at - Arun Panchariya, Global Finance and Capital Limited, Level 1 Devonshire House, Mayfair Place, London, England, W1J 8AJ (Copy enclosed). It may be noted that alongwith hearing notice, copy of SCN along with Annexures were also delivered to the Noticee at both the aforesaid addresses. Noticee neither filed reply nor any one appeared on behalf of the Noticee for hearing on the given date of hearing.

31. Vide email dated July 22, 2020, Noticee requested for all the relevant materials, documents, statements, reports and other evidences relied upon while issuing the said SCN. In this regard, vide email dated July 23, 2020 Noticee was intimated that all the information considered relevant for the purpose of the allegations levelled against him and information collected during investigation which was

relevant was provided to the Noticee in the SCN and Annexures thereto. An opportunity of hearing was granted to the Noticee on August 3, 2020.

32. Vide email dated August 1, 2020 Noticee requested for adjournment of hearing. Accordingly, as per Noticee's request opportunity of hearing was granted on September 16, 2020. Vide letter dated September 11, 2020, Noticee again requested for adjournment of hearing and also requested for all the relevant materials, documents, statements, reports and other evidences relied upon while issuing the said SCN. In this regard, vide notice dated September 15, 2020, Noticee was intimated that all relevant information and requisite documents on the basis of which charges have been framed against him had already been provided and Final opportunity of hearing was granted to Noticee on October 5, 2020. Hearing on October 5, 2020 was attended by Authorised Representative of the Noticee (AR), Mr. P R Ramesh and Mr. Lalit Joshi. During hearing, the AR requested for documents with regard to Vintage default in loan repayment and submitted that he will be filing detailed reply by October 15, 2020. Accordingly, Noticee filed reply vide email dated October 15, 2020 and October 16, 2020.

33. The key submissions of the Noticee in his reply dated October 15, 2020 and October 16, 2020, are reproduced as below: -

A) *The SCN is without jurisdiction*

a) The Noticee submits that he is a person residing outside India for over 2 decades. He was never registered with the SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. The provisions of the SEBI Act, 1992 state that it extends to the whole of India. The SCN proposes to impose penalty under Section 15HA of the SEBI Act who is a resident outside India which is not tenable in law. Without prejudice to this argument, the Noticee is making further submissions.

B) *Relevant parties not made party to the Proceedings.*

b) The SCN is addressed to the Noticee in his personal capacity. However, the allegations in the SCN against the Noticee are arising out of the averment that the Noticee is the beneficiary under various other entities being Vintage FZE, Highbue Sky Emerging Market, Aspire. The Noticee submits that each of these entities is duly incorporated under the relevant laws and have a separate legal existence and the role of the Noticee is totally different from the activities carried on by these entities under their Charter. However, these entities have not been parties to the SCN and therefore SCN is not tenable.

C) *SEBI has no powers under the SEBI Act, to lift/ pierce the corporate veil*

c) The Noticee submits that the SCN is issued under the provisions of Rule 4(1) of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules 1995 for imposition of penalty under Section 15HA of the SEBI Act for alleged violations under Sections 12A (a),(b)(c) of the SEBI Act and Regulations 3(1) (a)(b)(c)(d) and 4(1) of the SEBI PFUTP Regulations 2003.

d) The allegations in the SCN Noticee is based on the theory that the Noticee is instrumental in devising the alleged fraudulent scheme of GDR and is the beneficiary. The Noticee is not involved in the GDR issue in his personal capacity, the SCN is issued to him in his personal capacity; the Noticee is made to answer for the alleged irregularities of other entities like Vintage. It is submitted that SEBI has no powers under the SEBI Act, to lift or pierce the corporate veil. Each of these entities have separate legal existence as limited liability companies having been duly incorporated in the relevant jurisdictions. The Powers to lift the corporate veil cannot be exercised by an Adjudicating officer exercising powers for imposing penalty under Section 15HA of the SEBI Act. The factors to be considered for imposing a penalty are specifically provided in Section 15J of the Act. The adjudicating officer cannot go beyond the

scope of these provisions. It is also submitted that the entities whose veil is purportedly attempted to be lifted are not entities incorporated in India and any proceedings for lifting corporate veil can be held outside by the relevant authorities overseas having jurisdiction over such matters and following the due process under the relevant overseas laws, and not by SEBI under the provisions of the SEBI Act.

D) *The Judgment of the Hon. Supreme Court in the Panasia Advisors GDR are not applicable to this case;*

e) The Noticee submits that the present case is materially different from that of Pan Asia Advisors matter. The charge in the PAN Asia matter arises out of the alleged manipulation of the shares underlying the GDRs in the Indian stock exchanges. However, there are no allegations in the SCN that the GDR converted shares were used to manipulate the Indian markets.

E) *The Noticee is not the Key person or mastermind in structuring of the GDR scheme and SEBI is bound by the Orders passed by itself in similar other matters;*

f) It is alleged in para 50 of the SCN that the Noticee was key person is structuring GDRs issues. The Noticee says that he is not the mastermind of such GDR schemes, there were numerous prior issues and he followed the market practice abroad.

g) The Noticee submits that he has been in the financial services business in Dubai and UK and is well aware of the laws in these jurisdictions. Many companies were issuing GDRs under the 1993 Scheme for issue of GDRs. The Noticee's first association with an Indian company for GDR was in 2006. Prior to this numerous companies have come out with GDR issues which had the market practices allegedly now found to be illegitimate by the SEBI. From the information available on the SEBI's website, the SEBI has passed orders in GDRs of Himachal

Futuristic Communications Ltd, Aftek Infosys Ltd. (name changed to Aftek ltd.), Morepen Laborator ies Ltd., Sterling Biotech Ltd., Aptech Ltd, Crew B.O.S. Products Ltd., KEI Industries Ltd. and Lyka Labs Ltd.

h) The Noticee submits that from the orders passed by SEBI in the above matters it is evident that;

   i. the method/process of raising GDR and listing on the Luxembourg stock exchange was laid down well before the Noticee got associated in advising in the GDR market. The modus operandi of a single investor taking down the GDR, obtaining a loan from a bank, the bank taking a pledge of the GDR proceedings, the Issuer signing the pledge agreement and getting the GDR proceeds released after the loan repayment by the Investor/subscriber was the market practice.

   ii. The terms of the loan/pledge and the conditions were similar in the earlier GDR issues as well.

   iii. It was also the market practice for the GDR investor to convert the GDRs or sell the GDRs to another investor who converted into underlying shares as allowed in the GDR scheme and sell the same in the Indian market through SEBI registered FII/sub account.

   Further the Noticee submits that in the matter of Himachal Futuristic Communication Ltd. (order no. SO/EFD-2/SD/280/Mar/2019 dated 26.3.2019) and KEI Industries (order no. SO/EFD-2/SD/287/May 2019 dated 16.5.2019, wherein the SEBI had brought in charges related to pledging of GDRs and GDR funds and non-disclosures, SEBI had allowed the settlement application of these companies without accepting or denying charge thereby implying that the charges were not so serious. The amount paid as Settlement amount by Himachal Futuristic Communication Ltd. was Rs. 1.14 crores and that by KEI was Rs. 1.78 crores. From an analysis of these settlement order cases and also the Orders in the matters of Aptech Ltd.,

Lyka Labs Ltd. it would be clear that the SEBI brought no action against the investor/subscriber (such as Fusion Investment, Willow) and the entities that sold the converted GDRs in India. The Noticee submits that this is the correct legal position as the SEBI had taken note of the recognized market practice overseas and not proceeded against these entities as no violation has been committed by the overseas entities.

i) In view of the above, the charge that the Noticee was the mastermind to craft the devious scheme and fraudulent devices with a view to dupe the Indian investors is devoid any merit. The Noticee was only following the market practice which has held to be not illegitimate in other cases as stated above.

j) The Noticee submits that the SEBI has passed various orders in which no action has been taken against the subscribers/investors like Willow, Solec company limited, Seviron company limited, Fusion Investment Ltd etc. Placing reliance on the doctrine of issue estoppel it submitted that, in light of the previous decision of the Hon'ble Whole Time Member, covering essentially similar facts and addressing similar legal issue, it is submitted that the charges against the Noticee be dropped.

F) *The Noticee is not the Beneficiary and there is no illegal gain to the Noticee:*

k) The Noticee submits that the Issuer has confirmed having received the GDR proceeds aggregating to USD 1,33,17,865 (after GDR expenses) and utilized the same as stated at page 340 of the annexure to the SCN. The SCN also states that in 2014-15 Aspire and HighBlue sky sold 1452500 and 4182347 shares and realized Rs. 63.55 lakhs. (para 24 of SCN) and in 2015 the GDR scheme was terminated and the Depository sold 7950000 shares and held Rs.1779741 in escrow account. (para 25). Therefore, it is evident that the Noticee received none of the proceeds.

l) As regards the default of the loan availed by Vintage it is submitted that these are commercial defaults. As per the copy of a letter dated 7th

August 2012 purportedly sent by Winsone Yarns Ltd. to Euram Bank the loan amount of USD 6046900 was to be repaid, otherwise the pledged cash deposit will be set off with the outstanding loan amount plus any outstanding interest. Further, Winsome has directed Euram Bank to transfer the all remaining GDRs held in deposit of Alta Vista with Euram Bank, to Habib Bank AG Zurich. Therefore, it appears that on the adjustment of the proceeds, the GDRs were placed with Habib Bank AG Zurich and consideration was received by the Issuer, as the Issuer has confirmed having received the full GDR proceeds of USD 13.31 mn (after expenses).

m) Therefore, the allegation against the Noticee in para 45 of the SCN that Vintage acquired GDRs of Noticee No. 1 to the tune of USD 6.05 mn free of cost is erroneous. As stated and confirmed by the Issuer and Euram, post the default, the GDRs were taken over by the Euram Bank/Winsome and Vintage as the defaulting pledger did not have any rights over these GDRs. Thus, either way, for 50% of the GDRs the loan was repaid by Vintage and the Issuer got the proceeds and for the remaining 50%, though Vintage defaulted on its loan, the GDRs went to Euram bank/issuer and how they dealt with the same is not brought out in the SCN, but it is evident these GDRs on which Vintage defaulted on loan, were not in the control of Vintage. Therefore it is erroneous to charge that Vintage obtained GDR to the tune of USD 6.05 mn free of cost (as these GDRs were never released to Vintage). In any case the Noticee had no role in his personal capacity at all. Further the Issuer has confirmed that it has received the full consideration of the GDRs at page 340 and despite the default the proceeds of the GDRs have been fully realized by Winsome. The Noticee hence submits the allegation at 45 is totally erroneous and without basis. Incidentally it also shows that the shares sold in the Indian market were with full consideration paid up on the GDRs.

G) *The allegations about association with various entities and that the Noticee is connected with them or is a beneficiary under them, are without basis.*

n) The Noticee further submits that the SCN has gone all lengths to allege that the Noticee is the underlying beneficiary of the entities like High Blue Sky Emerging Market Fund, Aspire and Golden Cliff. The Appellant submits that such allegation is without legal basis. In the finance industry one works with many persons and entities and this does not in any mean that Appellant is connected or is the beneficiary under each of these entities; the SCN has shown no documents of fund movement between Highsky blue and Aspire but merely suggests the connection between the Noticee and these entities. The SCN also does not state what is definition of 'connection' that is used in the SCN and how it is illegal.

o) In this regard, the Noticee submits that in the order dated 14.7.2020 of WTM in the matter of GDR issue of FARMAX there is the statement of Highblue sky as follows;

a) Noticee 11 Highblue Sky Emerging Market Fund (para 19 (i) and(ii) page 39 has stated that ;

i *Noticee 11 holds a category one global business license issued by FSC Mauritius. Its receives fund from investors which it in turn invests in shares and securities across the globe. Their investors are foreign corporate and institutional investors, none of the investors are Indians or non-resident Indians. As in the case of mutual fund/hedge fund their investors are entitled to redeem the investment with them as and when they desire.*

ii *Highblue has no connection with the Appellant, none of its investments belong to the Appellant or its connected entities. Aurisse is the management company of HighBlue and they provide service such as accounting, NAV calculations etc.*

p) The Noticee therefore submits that SCN has overlooked the evidences available on SEBI records in making the allegation at para 46 of the SCN and therefore the allegation that the Noticee is connected or is a beneficiary under Highblue sky, Aspire and Golden Cliff or are devoid of any merit.

q) The Noticee submits that the SCN levels serious allegations without any evidence and merely on the basis of surmises and conjectures.

r) The Noticee submits that in Kishore Ajmera the Hon. Supreme Court held; *"Insofar as first case (C.A.No. 2818 of 2008 SEBI vs Kishore R Ajmera) is concerned the proved facts are as follows;*

i. both the clients are known to each other and were related entities

ii. this fact was also know to the sub broker and the SEBI-broker

iii. the clients through the sub broker had engaged in mutual buy and sell trades in the scrip in question, volume of which was significant keeping in mind that the scrip was an illiquid scrip

Apart from the above there is no other material to hold either lack of vigilance or bona fides on the part of the sub broker so as to make SEBI-broker liable. An irresistible or irreversible inference of negligence/lack of due care etc.in our considered view, is not established even on proof of the primary facts alleged so as to make SEBI broker liable under the conduct regulations, 1992 as has been held in the order of the Whole Time Member, SEBI, which according to us, was rightly reversed in appeal by the Securities Appellate Tribunal."

s) In Dilip S Pendse vs SEBI (Appeal No.80 of 2009, decided on November 19, 2009) (page 131) Hon. SAT held as under:

"…13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of possibility in

establishing the same. In Mousam Singha Roy vs State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of possibilities. …"

The SAT also referred to the observations of Lord Denning LJ in Bater vs Bater (1950) 2 All ER 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case and in which he said *"… So also in civil cases. The case may be proved with a preponderance of possibility, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion".*

In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on record and find that the whole time member has miserably failed to establish the charge of insider trading against the Noticee with the required degree of probability necessary to establish such a serious charge.."

Further in CA 2595/2013 SEBI v Kanaiyalal Baldevbhai Patel Hon. Supreme Court held at Para 36 that *"Further the charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises".* Para 42 of said

Judgment states *" therefore, a person conveying confidential information to another person (tippee) breaches his duty prescribed by law and if the recipient of such information knows of the breach and trades, and there is an inducement to bring about an inequitable result, then the recipient tippee may be said to have committee fraud."* The entire case against the Appellant hinges on the 'front run trade information' to the Tipeee (Dealer) but the impugned order has not established the allegation as per the applicable standards to constitute a fraud.

Therefore the Noticee submits that the SCN has failed to bring out the evidences as held by the Hon. Supreme Court to make the allegations of fraud under the SEBI Act and the PFUTP Regulations.

H) *The Noticee has not violated the provisions of Section 12A (a), (b),(c) of the SEBI Act, read with Regulation 3(1) (a), (b),(c) (d) and Regulation 4(1) of the SEBI PFUTP Regulations, 2003.*

t) The Noticee submits that he had no personal role and the entities which handled the transaction are separate limited liability companies and he cannot be charged even assuming there are alleged violations committed by these companies.

u) Without prejudice to the above, the Noticee states that role of the concerned entities was twofold; one, investing and subscribing to the GDR and this is a legally valid transaction in the relevant jurisdiction. Neither the Noticee nor the entities that subscribed have an obligation to make any disclosures in India. The Issuer has its own financial and legal advisors in India and who advise the Issuer on compliance with Indian laws. The Noticee submits that as brought out above, in SEBI's own view taken in HFCL and KEI, the obtaining of financing for the GDRs and pledge of the GDRs and non disclosure on the stock exchanges are violations that can be settled under the SEBI (Settlement of Administrative Proceedings) Regulations. The Noticee submits that there was no compulsion on the Issuer to provide the security for the

loan availed by Vintage from Euram bank and it was left open for the Issuer to approach any other banker. The Noticee as investor/takedown subscriber is legally entitled to protect his interests and these contracts are strictly legal under the relevant local laws. If the SEBI can settle the alleged violations against the Issuers, there is no case against the Noticee to allege that he had devised scheme to finance the GDRs.

v) The second leg involved conversion of the GDRs and sale in Indian market. This leg is also a valid legal transaction. In this regard, the Noticee submits that an Issuer under a GDR scheme, raises money abroad and uses it as allowed under the GDR scheme. As per the SCN itself (page 340) the Issuer did get the funds by issue of GDRs that were listed on the Luxumberg stock exchange. This is a valid legal transaction and is also a separate accounting transaction. The pledge of the deposit amount is a separate legal and accounting transaction and is legally valid in the relevant jurisdiction. Further, as per page 340 of the Annexure to SCN the Issuer did get the funds equivalent transferred to its Bank accounts. Thus, as far as the Noticee is concerned, the entire consideration for the GDRs has been obtained by the issuer and the GDRs were legally and fully subscribed. The Noticee submits that under the GDR scheme the holder of the GDR is entitled to convert and sell the shares in the Indian stock exchanges. The allegation that the entities who sold the shares in the Indian are connected to the Noticee does not dissolve the fact that this is a valid legal transaction and not a fraudulent scheme, as the GDR holder is entitled to convert and sell as per the GDR scheme. Therefore each leg of the transaction is legally valid and is a separate accounting transaction as well.

w) To allege a fraud, it has to be seen whether or not the Issuer received the funds in its bank account where the GDR proceeds were deposited. Since the Issuer has confirmed having received the GDR proceeds to

the extent of USD 13.34 mn, the GDRs and the underlying shares are fully with consideration.

x) Similarly as held by the Hon. SAT in the case of KII, the holder of GDRs is entitled to convert the same and sell in the Indian markets as allowed under the GDR scheme. Once the GDRs are subscribed whoever is the holder is entitled to convert the same and sell the shares in the Indian market. Each of the funding transaction and the conversion and sale transactions are separate legally tenable transactions. There is no allegation in the show cause notice that the market price of the securities in the Indian market was manipulated. The Noticee submits that there is no charge under Regulation 4(2) of the PFUTP against the Noticee, however the charge is held under Regulation 4(1) which is not legally tenable.

y) The Noticee submits that he has made no representations to any investors in India and there is no evidence in the SCN to the contrary.

z) The Noticee submits that the above paras sufficiently establish that the Noticee has not committed any violation of the provisions of Regulation 3(1) (a), (b) (c) (d) of the PFUTP Regulations and consequently there is no violation of the provisions of Section 12 A (a), (b) (c) of the SEBI Act.

aa) In view therefor, the Noticee submits that he has committed no violation of the provisions of Section 12A (a), (b), (c) of the SEBI Act, read with Regulation 3(1) (a), (b),(c) (d) and Regulation 4(1) of the SEBI PFUTP Regulations, 2003.

bb) Hence he is not liable for penalty under Section 15HA of the Act and humbly submits that the SCN may be discharged.

cc) Noticee vide email dated October 16, 2020, informed that Noticee in the GDR issue of Winsome has not received any fees / brokerage or funds. The Noticee has also informed that after the SEBI interim orders of September 2011 in the GDR matters, certain investigations were conducted by Dubai Financial Services Authority as he is based in UAE. After the investigations, a no action letter has been issued to him, a copy of which was attached. The same may please be taken on record. The submissions in this regard is that the subscriptions to the GDRs by Vintage or the pledging of the GDRs or the consequences of default if any in loan repayments, are under commercial contractual obligations and no laws of the jurisdiction have been violated by virtue of these contracts by Vintage or by the Noticee.

34. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

35. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee is in violation of section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

Issue No. II If yes, whether the violation on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee is in violation of section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?**

36. The Noticee has made two preliminary arguments in his defence – that SEBI has no jurisdiction to pierce the corporate veil of the entities participating in the GDR scheme, and that SEBI has no jurisdiction over the Noticee as he has been residing outside India for two decades.

37. In this regard I note that in terms of Section 11(2)(ia) and (ib) of SEBI Act, SEBI has power to call "*for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities"* or to call "*for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard"*. I further note that Section 15HA of the SEBI Act is applicable to *any person indulges in fraudulent and unfair trade practices relating to securities*.

38. In view of the aforesaid provisions, I note that SEBI is well within its jurisdiction to seek information on persons who are responsible for violation of securities laws including those persons who are in control of the legal entities in whose name violations have been allegedly carried out. I also note that even though Noticee has stated that he is not a resident of India for two decades, if his actions are found responsible for fraudulent or unfair trade practices relating to Indian securities, he shall be liable for such actions.

39. The charge against the Noticee was that it devised and structured fraudulent scheme with the GDR issuer company i.e. Winsome and through his connected entities involving Vintage, Pan Asia Advisors Ltd, Mukesh Chauradiya, HBSF, ASPIRE and Golden Cliff. Noticee controlled Vintage subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which Winsome pledged its

GDR proceeds as security. Vintage subsequently defaulted on repayment of balance loan amount of USD 6.05 million. Therefore, GDRs to the extent of USD 6.05 million were issued at free of cost to Vintage. Noticee connected FII sub-accounts namely HBSF and ASPIRE received and converted GDRs and sold converted equity shares of WINSOME in Indian securities market. Noticee connected FII namely Golden Cliff facilitated HBSF and ASPIRE in conversion of GDRs and sale of converted equity shares. Thus, Noticee devised GDR scheme along with Winsome wherein Winsome 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.

40. The connections of the Noticee to the various entities who were part of the aforesaid scheme as seen from Annexure – 29 of SCN are tabulated below:

Sl. No.	Name of entity	Connection/association of Noticee with entity
1	Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	Noticee was director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012).
2	Vintage FZE (now known as Alta Vista International FZE)	Noticee was beneficial owner and Managing Director (as on June 06, 2007 and June 07, 2010 respectively). Alkarni Holdings Limited was shareholder of Vintage as on December 28, 2010 and Mr. Arun Panchariya was sole shareholder and Director of Alkarni as on April 21, 2014.
3	India Focus Cardinal Fund (IFCF)	Noticee was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner
4	EURAM Bank, Austria	Noticee connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited. EURAM Bank AG held 51% and Pan Asia Advisors Ltd held 49%. EURAM Bank Asia Limited was dissolved with 30.12.2013.
5	EURAM Bank Asia Limited	Noticee was director and president (resigned on September 22, 2011)

Sl. No.	Name of entity	Connection/association of Noticee with entity
6	Mr. Mukesh Chauradiya	Noticee was beneficial owner of Vintage FZE in which Mukesh Chauradiya served as Managing Director and director.
7	Mr. Anant Kailash Chandra Sharma ('AKCS')	Noticee and AKCS were directors in Sai Sant Advisory (I) P. Ltd- Noticee - August 31, 2007 to October 20, 2010 AKCS-December 01, 2009 to March 18, 2016. Noticee is one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (As observed from shareholding pattern of ALKA available on BSE website) AKCS was director in Alka India Ltd From December 01, 2009 to April 26, 2018. In Ramsai Investment Holdings P. Ltd, where Vintage FZE was holding 99.99% shareholding, AKCS was director from September 01, 2015 to March 18, 2016. AKCS has worked with Vintage FZE
8	Highblue Sky Emerging Market Fund (HBSF)	AKCS is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of HBSF. AKCS is connected to Noticee as shown above. (HBSF's emails dated March 02 & April 29, 2016) Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBSF since April 21, 2014). Ms. Reema Narayan Shetty is connected to Noticee as she was authorized signatory of India Focus Cardinal Fund.
9	Golden Cliff (previously known as Vaibhav Investments Limited)	AKCS is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. AKCS is connected to Noticee (HBSF's emails dated March 02 & April 29, 2016) Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was authorized signatory for the bank account of India Focus Cardinal Fund which was maintained with EURAM Bank Austria.

Sl. No.	Name of entity	Connection/association of Noticee with entity
10	Aspire Emerging Fund (Aspire)	Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah who was also a director of HBSF.

41. Noticee was the director and beneficial owner of Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd), a UK based entity at the relevant time of March-April 2011. Pan Asia was the lead manager for the GDR issue of Winsome. Vintage, the sole subscriber of GDR issue of Winsome was also 100% by the Noticee as seen from the KYC documents of Vintage. Noticee was the beneficial owner and Managing Director of Vintage as on June 6, 2007. Vintage was controlled fully by Noticee through a 99.99% shareholding control. Alkarni Holding Limited was the sole shareholder of Vintage as on December 28, 2010 and Noticee was the sole Director and shareholder of Alkarni Holding Ltd as on April 21, 2014.

42. Euram Bank Asia through which loan was taken to subscribe to GDRs was a joint venture between Euram Bank Austria and Noticee controlled Pan Asia. Noticee controlled Vintage subscribed to the GDR issue by entering into Loan Agreement with EURAM Bank Asia for which Winsome pledged its GDR proceeds as security. Hence, the entire scheme of GDR funding and subscription was controlled by the Noticee. Winsome was a willing participant in the scheme to issue GDRs in this manner.

43. Vintage subsequently defaulted on repayment of balance loan amount of USD 6.05 million. Upon default, in terms of the Loan Agreement and Pledge Agreement, an amount of USD 6.05 million, which was part of the GDR proceeds lying in the Winsome account under customer number 580040 with Euram Bank AG was realized by Euram Bank AG in order to repay part of the outstanding loan no. K210311-002 of Alta Vista International FZE (Vintage).

44. From the letter of Winsome Yarn dated August 7, 2012, it is seen that remaining GDRs after realization of loan amount of USD 6.05 million by Euram bank, held in deposit number 540012 of Alta Vista were to be transferred to the account no.20311-333-196205 of Alta Vista in Habib Bank, Zurich.

45. As per terms of the Loan Agreement, the GDRs which were also pledged in favour of Euram Bank were released to Vintage upon payment of funds. This is evident from Euram Bank letter dated October 10, 2012, which states that Winsome Yarns became the pledgee of 391154 GDRs owned by Alta Vista (Vintage) pursuant to repayment of loan of USD 6.05 million to Euram Bank.

46. The fact that Winsome became a pledgee of 391154 GDRs and Vintage became the pledger shows that Vintage owed funds to Winsome. At the issue price of USD 6.64 per GDR, this amounts to around USD 2.6 million (2597262.56).

47. Thus, GDRs to the extent of USD 6.05 million were acquired by Vintage at no cost to Vintage. The Euram Bank letter dated 10 October 2012 evidences part of this acquisition amounting to USD 2.6 million.

48. Material on record shows that subsequently, FII sub-accounts namely HBSF and ASPIRE, which were connected to the Noticee as shown above, received and converted 11,99,125 GDRs into equity shares numbering 11,991,250 equity shares. They sold 56,35,847 converted equity shares of Winsome in Indian securities market for a value of Rs.69.21 lakhs. Noticee connected FII namely Golden Cliff facilitated HBSF and ASPIRE in conversion of GDRs and sale of converted equity shares.

49. It has been stated by the Noticee that as per page 340 of the SCN, Winsome received the entire proceeds of the GDR issue. This is incorrect for several reasons. The contents of the Winsome letter dated July 06, 2015 were proved to be incorrect as Winsome gave wrong information on subscribers to the GDR issue. Further, as shown from the Winsome and Euram Bank letter quoted above,

Winsome remained a pledgee of Vintage, indicating non-receipt of funds by Winsome.

50. Noticee has compared this matter with two other cases of GDR issues where settlement orders have been passed by SEBI, namely Settlement Order dated March 29, 2019 in the matter of GDR issue by Himachal Futuristic Communications Ltd and Settlement Order dated May 16, 2019 in the matter of GDR issue by KEI Industries Ltd. I note that the instant matter is not comparable to the two cases referred because in those two instances, the companies had received the GDR proceeds and there was no allegation that the GDR subscriber had defaulted on its loan obligation.

51. From the scheme as brought out above, it is evident that the scheme was designed to create an impression of receiving funds through GDR subscription. The total GDR issue size was around Rs.60 Cr. This wrong impression was aided by the Company when it gave misleading disclosures about the subscribers to the issue and suppressed information regarding the Pledge conditions of the GDR proceeds pledged with Euram Bank. By its own admission in its letter dated July 6, 2015, Winsome received only Rs.37.21 Cr of the proceeds of GDR issue in its bank account in India, i.e. a shortfall of around Rs.23 Crores. Winsome in this letter has admitted that it did not receive around USD 5 million and has claimed that this amount was deposited in Aries Capital Fund Ltd. I note that Winsome did not provide any documentary evidence of the deposit with Aries Capital Fund. Considering that the amount of USD 6 million from the GDR funds was realized by Euram Bank against loan default by Vintage as shown in preceding paras, the claim of deposit of USD 5 million with Aries Capital was only a ruse by Winsome to explain the lack of receipt of funds.

52. The GDR subscription was structured in a manner whereby the Noticee controlled subscriber, Vintage, acquired the GDRs without spending a penny, through pledge of the GDRs and GDR proceeds against the loan used for subscription. Thus, no funds actually flowed to the Company, until Vintage repaid the loans. While

Vintage repaid part of the loan, and funds to that extent did flow to Winsome, an amount of USD 6.05 million was defaulted by Vintage. Hence, Winsome did not get equivalent funds against the equity it had issued, leading to a loss of USD 6.05 million to Winsome shareholders, whose valuations were diluted by the expanded equity capital, without any funds flowing to the Company. In INR, this amount works out to approximately Rs.27 crores at an exchange rate of Rs.45.

53. Thus it is established that Noticee devised GDR scheme along with Winsome wherein Winsome 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. Through this scheme, Noticee obtained GDRs worth USD 6.05 million/ 27 crores free of cost. Subsequently, 60% of the GDRs were converted into equity shares. 47% of the converted equity was sold by Noticee related entities HBSF and ASPIRE in Indian market for Rs.69.21 lakhs.

54. The Noticee has relied upon several judgments which state that the charge of fraud should not be based on surmises and conjectures and the standard of evidence should be commensurate with the seriousness of the charge. In this regard, I note that the facts of the case are clearly brought out and establish the role played by the Noticee in devising and executing the entire scheme, as well as the extent of gains made by Noticee and commensurate loss caused to shareholders of Winsome.

55. I note that Noticee vide email dated October 16, 2020, informed that certain investigations were conducted by Dubai Financial Services Authority(DFSA) as he is based in UAE. After the investigations, a no action letter has been issued to him on August 8, 2012. I have perused the letter and find that is in respect DFSA rules and regulations. I am of the view that conclusions by DFSA regarding any violations of their laws do not have a bearing on the violation of Indian securities laws in respect of actions relating to Indian listed companies and conduct which impacts the investors dealing in shares of such listed companies.

56. In view of the, it is established that the Noticee was responsible for the fraudulent scheme and arrangement for subscription of GDRs of Winsome whereby Winsome shareholders were misled and defrauded in violation provisions 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.

Issue No. II **If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?**

&

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

57. 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:

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.*

58. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

59. From the material available on record, it is seen that Noticee acquired GDRs worth USD 6.05 million/ Rs.27 crores free of cost, and caused equivalent loss of value to Winsome. Further, of the GDRs acquired free of cost by Noticee controlled Vintage, around 28% were sold in Indian markets for consideration of Rs.69.21 lakhs. I further note that as per the GDR proceeds received by Winsome in its bank account in India there was a shortfall of around Rs23 Crores out of the total GDR issue size of around Rs.60 Crores. I note that Noticee was responsible for the fraudulent scheme and arrangement for subscription of GDRs issued by several companies in which separate enforcement proceedings are going on.

60. I note that in the matter of issuance of GDRs by Hiran Orgochem Ltd.(Hiran), SEBI vide Order dated June 17, 2020, levied penalty of Rs.50 Crore upon Arun Panchariya (Noticee) and in the matter of issuance of GDRs by Aqua Logistics Limited, SEBI vide Order dated September 29, 2020, levied penalty of Rs.10 Crore upon Arun Panchariya (Noticee).

61. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹25,00,00,000/- (Rupees Twenty-Five Crore only) will be commensurate with the violations committed by the Noticee.

ORDER

62. 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 following penalty of ₹25,00,00,000/- (Rupees Twenty-Five Crore only) upon the Noticee i.e. Arun

Panchariya, 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.

63. The Noticee 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

64. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

65. Copies of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: OCTOBER 29, 2020 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**