

WTM/AB/IVD/ID4/20306/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

In respect of:

Noticee no.	Name of the Noticee	PAN
1.	Pentasoft Technologies Limited (now amalgamated with Pentamedia Graphics Limited)	AAACP1647B
2.	Teigh Holdings Limited.	Not available
3.	Mr. Ramesh Pillai	Not available
4.	Mr. D. Kannan	Not available
5.	Mr. S. Raghuraman	AAMPR6874K
6.	Dr. V Chandrasekaran	AAMPC9187G
7.	Mr. N. L. Rajah	Not available
8.	Mrs. Sumathi Sridharan	AKRTS6329P

The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as “the Noticees”.

In the matter of GDR Issue by Pentasoft Technologies Ltd.

1. Present proceedings emanates from the show cause notice dated September 07, 2018 (hereinafter referred to as, “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees, alleging violations of Regulations 3, 5(1) & 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 1995, since repealed (hereinafter referred to as “**PFUTP Regulations, 1995**”,) read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) by Pentasoft Technologies Limited (hereinafter referred to as “**the Company**”/ “**PTL**”) and violations of Regulations 3 & 6(a) of PFUTP Regulations, 1995 read with Regulation 13 of PFUTP Regulations, 2003 by Noticee No. 2 to 8.

2. The aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI conducted an investigation into two Global Depositary Receipts (hereinafter referred to as “**GDRs**”) issuances made by PTL during the period April 01, 2002 to May 31, 2002 (hereinafter also referred to as “**investigation period**”). The focus of investigation was to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures were made by PTL with respect to its GDRs.

3. The SCN *inter alia* alleges the following:

3.1. PTL had issued 16.2 million GDRs (amounting to USD 6.48 million) on May 03, 2002, representing 162,00,000 equity shares of Rs. 10 each. Summary of the GDR issues of PTL, as provided by the company is tabulated below:

GDR issue date	No. of GDRs Issued	Capital raised (US\$mn.)	Price per GDR (US\$)	Underlying shares per GDR	Local custodian	No. of equity shares underlying GDRs	Global Deposit ory Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
03-May-2002	1,62,00,000	6.48	0.4	1	Citi Bank, N.A.	1,62,00,000	Citi Bank NA, USA	Private Placement	Banco Efisa	Luxembourg Stock Exchange

3.2. It was observed from the corporate announcements made by PTL to National Stock Exchange (hereinafter referred to as “NSE”) during April 2002 to May 2002,

that the company reported at NSE on April 30, 2002 that:

“The Board of Directors of the company has allotted 16.2 million GDRs (each GDR representing one underlying equity share of Rs. 10/- each) to investors for cash at the rate of US\$ 0.40 per GDR at the Board Meeting held on 29/04/2002.”

3.3. Investigation revealed that Teigh Holdings Limited (hereinafter referred as **“Teigh”**) (Noticee No. 2), a company incorporated in the British Virgin Islands entered into a credit agreement with Banco Efisa, S.A. Lisbon a bank based in Lisbon (hereinafter referred to as **“Banco”**) on May 03, 2002 relating to a dollar term facility up to USD 6.48 million. The Credit Agreement was signed by authorized signatory of Teigh.

3.4. The following was *inter alia* mentioned in the Credit Agreement dated May 03, 2002:

1. Drawdown Date means the date on which the advance is made, or proposed to be made.

Drawdown Notice means a notice substantially in the form set out in Schedule 2.

Drawdown Period means the period starting on the date of this agreement and ending on 14 days later.

Facility means the Dollar term loan facility granted to the borrower under this agreement.

Facility limit means \$6,480,000 as reduced or cancelled in accordance with this agreement.

Facility period means the period starting on the date of this agreement and ending on the date on which all the obligations and liabilities of the borrower under the financing documents are discharged in full and the Bank has no continuing obligation in relation to the facility.

Final Repayment Date means the date falling three months after the date of this agreement.

2. Facility Limit- means \$6,480,000, as reduced or cancelled in accordance with this Agreement.

3. Purpose- The borrower shall use the proceeds of the advance to subscribe for 16,200,000 global depository shares (at a price of \$0.40) issued by Pentasoft Technologies Limited on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.

4. No monitoring: *The Bank shall not be obliged to investigate or monitor the use or application of the proceeds of the advance.*

5. Conditions precedent: *Notwithstanding any other term of this agreement, the bank shall not be under any obligation to make the facility available to the borrower unless it has notified the borrower that it has received all the documents listed in the schedule 1 (in form and content satisfactory to it.)*

6. Drawdown

Drawdown period: *Subject to the terms of this agreement, the loan shall be made to the Borrower at any time during the Drawdown period by way of a single advance, when requested by means of a Drawdown notice in accordance with this Clause 5.*

Drawdown Notice: *When the Borrower wishes to drawdown under the Facility, it shall give a duly completed Drawdown notice to the Bank to be received not later than 11.00 a.m. on the third business day before the Drawdown Date. A drawdown notice shall be irrevocable and the borrower shall be obliged to borrow in accordance with its terms.*

3.5. From the examination of the above Credit Agreement and drawdown notice by Teigh to Banco for an amount of USD 6.48 million, it was observed that Teigh had availed a loan for subscription to GDRs of PTL.

3.6. The investigation also revealed that the Board of Directors of PTL had passed a resolution in its Board Meeting dated January 25, 2002. Relevant extracts of the resolution passed in the aforesaid meeting of Board of directors of PTL, as obtained from Comissaso do Mercado de Valores Mobiliarios Portugal i.e Portuguese Securities Market Commission (hereinafter referred to as '**CMVM**') are as under:-

“The Chairman informed the Board that it was considered necessary to open a GDR subscription A/c, with Banco Efisa, S.A. Lisbon for future allocation of Subscription. The matter was considered in detail and thereafter the following resolutions were passed unanimously.

- A. *RESOLVED THAT a subscription account be opened with Banco Efisa, S.A., Lisbon in the name of PENTASOFT TECHNOLOGIES LIMITED-GDR Subscription A/c and that the said bank be instructed to honour all cheques or any other negotiable instruments or other orders which may be drawn by/accepted/made by on behalf of the Company including acceptance of subscription money and to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the Company by any of the following signatories individually without any limit”*

<u>Name</u>	<u>Designation</u>
Mr. D. Kannan	Director & CEO
Mr. R. Vijayakumar	General Manager-Finance
Mr. R. Hariharan	Assistant General Manager-Finance & Accounts
Mr. Ramesh Pillai	General Manager – UK & European Operation

- B. *RESOLVED FURTHER THAT the above mentioned signatories irrevocably authorise and instruct Banco Efisa S.A. to carry out as soon as practicable upon receipt, instruction transmitted by telephone, telex and/or telefax, without waiting for a written confirmation thereof*
- C. *RESOLVED FURTHER THAT the above mentioned signatories shall bear all risks and losses connected with the transmission means utilized, including, but not limited to, those deriving from errors of transmission, misunderstandings, impersonation, purported transmission by unauthorised persons, or forgery and release of the Bank from any liability for carrying out such instructions except in the event of its proven gross negligence, for which the above mentioned signatories shall bear the burden of proof*
- D. *RESOLVED FURTHER THAT the present instructions shall cover all persons who are at present, or shall be in the further, authorised signatories on the above mentioned account*
- E. *RESOLVED FURTHER THAT the present instructions shall remain in full force and effect until revoked in writing, including in the event of death, incapacity, bankruptcy or liquidation, as the case may be”*
- F. *RESOLVED FURTHER THAT the present release is governed by the general conditions of the Bank, in particular as regards applicable law and jurisdiction”*
- G. *RESOLVED FURTHER THAT a certified true copy of the above resolution be forwarded to the concerned bank for their records”*

3.7. Further, it was revealed that the Board of Directors of PTL had passed another resolution in its Board Meeting dated January 25, 2002, wherein, the Board of PTL resolved to authorize Noticee no. 4 to issue General Power of Attorney in favour of Noticee no. 3. Relevant extracts of the resolution passed in the aforesaid meeting of Board of directors of PTL, as obtained from CMVM are as under:-

“GENERAL POWER OF ATTORNEY

“RESOLVED THAT Shri. D. Kannan, Director & CEO, be and is hereby authorized to issue General Power of Attorney in favour Mr. Ramesh Pillai, General Manager – UK & European Operation in the ordinary course of business to liase with the Government Agencies and other statutes on behalf of the Company, to open Bank account on behalf of the Company and sign

any agreement in connection with obtaining loan from Bank and financial Institutions for the Company.

RESOLVED FURTHER THAT Mr. Ramesh Pillai, General Manager – UK & European Operation be and is hereby authorized to file necessary documents, applications, etc., before any statute authorities and to represent on behalf of the Company.

RESOLVED FURTHER THAT certified copy of the resolution be issued to Government Authorities/ Banks and Financial Institutions and they be requested to act upon the same.”

- 3.8. It was observed that the Power of Attorney dated March 18, 2002 was executed by PTL and *inter alia* states the following:

“By this Power of Attorney executed at Chennai, this 18th day of March, 2002 by M/s. Pentasoft Technologies Ltd., incorporated under the Companies Act and having its Registered office at “Taurus” No. 25, First Main Road, United India Colony, Kodambakkam, Chennai – 600024, (hereinafter called the Company) and represented by its Director & CEO Shri. D. Kannan, S/o. Mr. Duraisamy, do hereby appoint, nominate and constitute the General Manager – UK & Europ Operation, Mr. Ramesh Pillai, to be its true and lawful Attorney and in the name of the Company and on its behalf to do, perform, exercise and execute all or any of the following acts, deeds, matters, powers, authorities and things that is to say:

- 1. To attend and represent the company before statute authorities in relation to Tax assessments and appear before the Government authorities in connection with the business of the company.*
- 2. To open Bank Account on behalf the company and execute documents for availing loan from Banks and Financial Institutions.*
- 3. To place orders, negotiate, collecting dues etc., and sign relevant documents regarding business with the Government Departments/Boards, Private sectors and other Institutions.*
- 4. To contest the cases, sign necessary, vakalaths, affidavit(s), give evidence(s), appear on behalf of the Company before the Court and legal forums.*
- 5. This Power of Attorney is valid upto 31st March 2003.*

The Company hereby ratifies and confirms and agrees to ratify and confirm by virtue of these present all whatsoever the Attorney shall/or may lawfully do or cause to be done in and about the premises by virtue of these presents.

IN WITNESS WHEREOF the common Seal of M/s Pentasoft Technologies Ltd., was hereunto affixed this 18th day of March, 2002.

The Common Seal of the Company was hereunto Affixed pursuant to Resolution of the Board of Directors passed on 25th January, 2002 and signed by Shri. D. Kannan, Director & CEO of the Company In the presence of Shri. S. Raghuraman, Company Secretary. ”

- 3.9. From the above documents, it was observed that the Power of Attorney was signed by Noticee No. 4 on behalf of PTL and in the presence of Noticee No. 5, Company Secretary of PTL. The Board resolution regarding General Power of Attorney and further authorizations given to Noticee No. 3 was signed by Noticee No. 5. It was observed that in the Board Meeting dated April 29, 2002, the directors approved the allotment of GDRs to Teigh. It was observed that Noticee No. 6, Noticee No. 4, Noticee No 7, and Noticee No 8 attended the aforesaid meeting.
- 3.10. Investigation further revealed that Noticee no. 3 entered into an Account Charge Agreement dated May 03, 2002. The Account Charge Agreement *inter alia* states as following:

Loan agreement:

Loan agreement means the Loan agreement signed between Teigh and the Bank dated on or around the date of this agreement by which the bank lent to Teigh the amount of up to US\$ 6,480,000.

Account Charge:

Upon and Subject to the terms of this agreement, Pentasoft Technologies deposited in the Bank's account number 6020985 (hereinafter the Account) the amount of US\$ 6,480,000 as security for all the obligations of Teigh under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

Upon payment and final discharge in full of all the Secured Obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of Pentasoft, release the deposit made in the Account.

Pentasoft covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the Bank.

At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in it's discretion determines.

Pentasoft hereby irrevocably appoints by way of security the Bank as the attorney of Pentasoft with full power in the name and on behalf of Pentasoft to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Pentasoft to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realization of the security hereby created.

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

It is further mentioned that any notice or other communication to be given under this agreement shall be given to that other party at the respective addresses, given hereunder:

Pentasoft:

Tidel Park, 9th Floor, 4 Canal Bank Road, Tasramani Chennai -600113

Attention: Mr R Hariharan, Ph : +91.442540052

- 3.11. The Account Charge Agreement was executed between PTL and Banco and the aforesaid agreement was signed by Noticee no. 3. It was observed from the Account Charge Agreement that PTL deposited in its designated account with Banco an amount not exceeding loan availed by Teigh as security for all the obligations under the Credit Agreement (which was signed between Banco & Teigh by which Banco agreed to lend Teigh for subscription of GDRs of PTL). Further, it was observed that only upon payment of all or part of the amounts due under the Credit Agreement, PTL could withdraw an equivalent amount from the bank account with Banco. The Account Charge Agreement contained a clause to the effect that all communications to be given under the Agreement were to be addressed to PTL.

- 3.12. From the examination of Credit Agreement, Account Charge Agreement, it was observed that Banco granted term loan facility to Teigh only for subscription of GDRs of PTL. Therefore, it was observed that GDR issue of PTL (16.2 million GDRs amounting to USD 6.48 million) was subscribed only by Teigh. It was observed from the above that PTL had pledged GDR proceeds to secure the rights of Banco against the loan given to Teigh for subscription to GDR issue and corresponding GDR proceeds could be utilized by PTL only on the repayment of loan by Teigh.
- 3.13. From the examination of corporate announcements made by PTL during the period April 2002 to May 2002, it was observed that PTL did not inform stock exchange about Account Charge Agreement/ collateral security.
- 3.14. It was observed that the Credit Agreement was integral part of Account Charge Agreement and vice versa and both were executed concurrently. The Account Charge Agreement had the reference to the Credit Agreement dated May 03, 2002 entered between Teigh and Banco by virtue of which Banco provided loan to Teigh for the purpose of subscribing to the GDR of PTL. It was alleged that the GDR issue would not have been subscribed had the company not given security towards the loan taken by Teigh through Account Charge Agreement.
- 3.15. It was alleged that the fraudulent arrangement of Credit Agreement and Account Charge Agreement, which resulted in the subscription of GDR issue of the company was not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange which contained information in a distorted manner. On April 30, 2002, the stock exchange (NSE) reported that *"The Board of Directors of the company has allotted 16,200,000 GDRs to investors for cash at the rate of US\$0.40 per GDR at the Board Meeting held on April 29, 2002..."* which might have made other investors of the company believe that the said GDR issue was genuinely subscribed by investors whereas

the GDR was subscribed by only one subscriber via private placement (subscription agreement) for which consideration was received on May 07, 2002.

3.16. Therefore, it is alleged that the entire scheme involving entering into account charge agreement, passing Board resolution regarding issuance of GDRs, making corporate announcement that the Board of directors allotted the GDRs on April 29, 2002 without disclosing the arrangement of account charge agreement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements are alleged to have misled Indian retail investors and induced investors to deal in shares of PTL. Therefore, it is alleged that the scheme of issuance of GDRs was an act of fraud.

3.17. It is alleged that the directors of PTL namely, Mr. D Kannan (Noticee No. 4), Dr. V Chandrasekaran (Noticee No. 6), Mr. N I Rajah (Noticee No. 7), Mrs. Sumathi Sridharan (Noticee No. 8) who approved allotment of GDRs to Teigh without receipt of funds and Mr. S Raghuraman (Noticee No. 5) who signed Board resolution pertaining to Power of Attorney and Mr. D Kannan (Noticee No. 4) who signed Power of Attorney on behalf of PTL which subsequently led to signing of Account Charge Agreement and Mr. Ramesh Pillai (Noticee No. 3) who signed the Account Charge Agreement at Banco, acted as party to the fraudulent scheme and enabled the fraudulent scheme of issuance of GDRs.

4. The SCN called upon Noticee no. 1, to show cause as to why appropriate directions under sections 11(1), 11B and 11(4) of the SEBI Act, 1992 including the direction to bring back the money which was transferred to the subscribers of the GDR issue, amounting to USD 6.48 million, should not be issued against it on account of the alleged violations mentioned in this SCN. The SCN also called upon Noticee nos. 2 to 8 to show cause as to why appropriate directions under sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them on account of the alleged

violations mentioned in this SCN.

5. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:

Serial No.	Details	Page No.
1.	Reply of Pentasoft dated July 18, 2015	1-4
2.	Email from Citi Bank dated October 14, 2015.	5-7
3.	The scanned copies of announcements provided by NSE	8-
4.	Credit Agreement dated May 03, 2002	9-44
5.	Resolution of Board dated January 25, 2002	45-46
6.	Resolution of Board dated January 25, 2002	47
7.	Power of Attorney dated March 18, 2002	48-49
8.	Minutes of Board Meeting dated April 29, 2002	50-51
9.	Account Charge Agreement dated May 03, 2002	52-61
10.	Instruction given vide Letter dated August 07, 2002	62-63
11.	Bank Account Statement of Pentasoft	64-65
12.	Page No. 32 of Offer Document as provided by Company	66
13.	Email from Citi Bank dated October 14, 2015.	67-70

6. The SCN was served on all Noticees by Speed Post Acknowledgement Due, except to Noticee no. 2, whose address is in Jersey, UK. The matter was placed before me on April 11, 2019 and in compliance with the principles of natural justice an opportunity of hearing was granted to all Noticees on May 27, 2019, except to Noticee no. 7, who had filed a Writ Petition before the Hon'ble High Court of Madras and a stay was imposed on the SCN by the Hon'ble High Court of Madras, vide Order dated March 22, 2019. During this time inspection was granted to Noticees no. 1 and 4 on May 24, 2019, which was attended by the advocates of the Noticees. On May 27, 2019, only the advocate for Noticee no. 5 appeared and made submissions and filed additional submissions during the hearing. Noticees no. 1, 4 and 8 sought adjournment vide their respective letters and the remaining Noticees did not appear for the hearing or seek adjournment for the hearing. The Noticees no. 1, 4 and 8 were granted another opportunity of personal hearing on July 05, 2019, however, all three Noticees sought adjournment for the said date. Accordingly, a final opportunity of hearing was granted

to Noticees no. 1, 4, 6 and 8 on July 11, 2019. However, none of the Noticees no. 1, 4, 6 and 8 appeared on the said date and also did not file any letter seeking adjournment of the hearing. Thereafter, SEBI was in receipt of Order dated July 05, 2019 passed by the Hon'ble High Court of Madras in W.P. Nos. 19109/2019 filed by Noticee no. 4, W.P. No. 19112/2019 filed by Noticee no. 1 and W.P. No. 19117/2019 filed by Noticee no 8, granting interim stay to the SCN. Accordingly, the proceedings was kept on hold as interim stay on the SCN had been granted to majority of the Noticees, including the Company i.e. Noticee no. 1. Subsequently, vide its Order dated February 02, 2022, the Hon'ble High Court of Madras disposed of the Writ Petitions filed by Noticees no. 1 and 4. Further, vide its Order dated February 17, 2022, the Hon'ble High Court of Madras disposed of the Writ Petitions filed by Noticees no. 7 and 8 *inter alia* directing that the SCN issued to the Noticees no. 7 and 8 be kept in abeyance for a period of 12 weeks from the date of the Order in order for the Noticees to file appropriate applications before the Securities Appellate Tribunal with regard to the issues raised before the Court. Accordingly, an opportunity of personal hearing was granted to all the Noticees except Noticees no. 7 and 8 on June 07, 2022. On June 07, 2022, the advocate representing Noticee no. 3 appeared via video conferencing and made submissions. The remaining Noticees did not appear for the hearing. Advocate for Noticees no. 1, 4 and 6 sought for adjournment vide email dated June 07, 2022. Noticee no. 5, vide email dated June 03, 2022, submitted that he has already availed opportunity of hearing on May 27, 2019 and filed his reply to the SCN and is therefore, not interested in availing another hearing as he has nothing more to add or present. Further, Notice of hearing could not be delivered to Noticee no. 2 whose address is located outside India in Jersey, UK.

7. In the meanwhile, Noticee no. 7 filed a Review Writ Petition No. 58 of 2022 in Writ Petition No. 8666/2019 and 19117/2019 to review the Order dated February 17, 2022 passed the Hon'ble Madras High Court, and vide its Order dated April 27, 2022, the Hon'ble High Court of Madras, *inter alia*, directed as under:

"i) The petitioners are directed to submit their explanation to the show cause notice within a period of six weeks from the date of receipt of a copy of this order;

ii) On such explanation being submitted by the petitioners, the same shall be considered by respondents 1 and 2 in accordance with law and orders passed thereon within a period of eight weeks from the date of submission of the explanation to the show cause notice;

iii) Till such time, the respondents 1 and 2 shall not take any coercive action against the petitioners.”

8. Accordingly, an opportunity of personal hearing was granted to Noticees no. 1, 2, 4, 6, 7 and 8 on June 28, 2022. On June 28, 2022, the advocate representing Noticee no. 7 appeared via video conferencing and made submissions. The remaining Noticees i.e. Noticees no. 1, 2, 4 and 8 did not appear for the hearing. Advocate for Noticees no. 4 and 6 sought for adjournment vide email dated June 27, 2022. Noticees no. 1 and 8 did not appear for the hearing or file any letter seeking adjournment. However, it was noted that the hearing notice could not be delivered to Noticee no. 1. Accordingly, a last and final opportunity of hearing was granted to Noticees no. 1, 4, 6 and 8 on July 15, 2022. On July 15, 2022, common advocate representing Noticees no. 4, 6 and 8 appeared via video conferencing and made submissions and sought time to file written submissions. Noticee no. 1 did not appear for the hearing or file any letter/email seeking adjournment. Since this was the third opportunity granted to the Noticee no. 1, no further opportunity was granted to the Noticee no. 1. Thereafter, Noticees no. 4, 6 and 8 filed joint written submissions vide letter dated August 16, 2022. Further, I note that letter dated June 11, 2020 was received from the British Virgin Island Financial Services Commission, informing SEBI that Noticee no. 2 (Teigh Holding Limited) is dissolved as on April 30, 2014.

9. The various submissions made by the Noticees vide their replies and written submissions are as under:

A. Vide joint letter dated October 16, 2018, Noticees no. 1, 4, 6 and 8 have *inter alia* made the following submissions:

(i) *At the outset it is submitted that my client has not violated any provisions of the SEBI Act and PFUTP Regulations as alleged or at all and that the requisite disclosures were made and relevant approvals were obtained from the shareholders of the Company for*

undertaking the GDR Issue and for entering into an account charge agreement. The shareholders of the Company therefore were at all time aware of all material particulars regarding the GDR issue.

- (ii) It is evident that my client had always kept the stock exchange and its shareholders informed regarding the issuance of GDRs and the entire process leading up to that issuance. It has always been intent to keep the stock exchange and shareholders informed of all the material developments regarding the GDR issue proposed and undertaken by the Company. Further, not only the Company has kept the stock exchange informed of the fact of the GDR issue proposed to be undertaken by the Company, it has also taken specific approval in connection with the proposed GDR issue from the shareholders for creating a charge over its assets and properties including moveable properties in favour of existing and future lenders and also has taken approvals from the shareholders for providing security in connection with a loan made to any person by any person and therefore, had received approval for creating third party rights and security over its assets. It is also submitted that not only this approval was specifically obtained, it was also disclosed to the stock exchange.*
- (iii) It is submitted that the contents of the dollar loan agreement between Teigh and Banco have been reproduced and since my client was not privy to the same no comment is offered in respect of the same. It is also submitted that even though the agreement purportedly refers to the purpose of the loan to Teigh from Banco is for subscription to the proposed GDR issue of the Company, that fact in and of itself does not in any manner indicate that my client was aware of the said agreement. The agreement was between two independent parties not connected to my client and without any prior concurrence or consent of my client.*
- (iv) As regards the allegation that account charge agreement acted as security to the loans availed by Teigh for subscription of GDRs, it is reiterated (and as is evident from the SCN itself), till the date of the passing of the said resolution dated January 25, 2002, there is nothing on record, and rightly so, which suggests that my client was aware that the charge over the account of the Company would be utilized by Banco as security for the loan given to Teigh. If that was the case, the Board would have recorded that such an arrangement exists in the meeting dated January 25, 2002 – no such statement is recorded or even suggested in the Board Meeting. Once again it is stated that it was a part of the standard terms and conditions that Banco insisted for security over the*

account to be provided by the Company to Banco for agreeing to act as a banker for the proceeds of the GDR issue.

- (v) It is submitted that if the bank Banco, as a part of its standard terms and conditions accepts such a security even before receiving any funds in that respect from the Company, then that is a credit risk that such bank is taking on the Company and it in any case does not violate provisions of any SEBI Act or PFUTP Regulations and the SCN does not even make out any change or case in that regard.*
- (vi) It can be seen that all the relevant facts pertaining to the proposed GDR issue by the Company were already disclosed to the stock exchange and shareholders and were disclosed whenever the material development as regards GDR issue was discussed and approved by the Board on 29.04.2002 and the shareholders of the company on 20.07.2001. It is submitted that since the fact of the GDR issue was itself disclosed to the stock exchange and the shareholders of the Company and approved by the shareholders of the company. The only details the board resolution dated 30.04.2002, that provides are procedural in nature dealing with the process of undertaking the GDR issue for instance appointing a banker to the issue of GDR, opening a bank account with the banker etc. These processes are undertaken in the ordinary course of business of issuing the GDRs and a specific disclosure as regards these procedural formalities are neither required or warranted. Further even the authority to the bank to use funds of the Company as security was at that point of time a standard condition provided and required by the Bank agreeing to act as a banker to the GDR issue (being a foreign bank and having no exposure or security available with it for the obligations of the Company in respect of the GDR issue) and as a part of the standard documentation, such a condition was insisted upon by the bank Banco and agreed to by the Company.*
- (vii) Once again for undertaking such an action with respect to the GDR issue, the shareholders had given the authority to the Board vide resolution dated 20.07.2001 and the same was also disclosed to the stock exchange. The contents or the actions therefore, flowing out of the board resolution dated 20.07.2001 were already in the public domain and no further disclosure were required as the Board resolution only dealt with the procedural formalities of the GDR issuance which was already approved and disclosed to the stock exchange and shareholders. It is further submitted that the allegation of SEBI in this para that misleading news was reported which contained information in a distorted manner does not pass muster as the SCN does not place at any place establish or place on record any material or evidence to establish this. The*

SCN does not even state as to what has been misreported and what has been reported in a distorted manner. My client therefore is unable to understand this charge and reiterates that all disclosures were promptly and fairly made as soon as required under the provisions of law. Further, to state that misleading news "might have" influenced decision of the investors is absolutely vague and contrary to the establish principles of issuing a SCN. It is for the SEBI to analyse and investigate and establish as to whether a violation has taken place or not and is not sufficient for SEBI to suggest that something might have taken place or not and is not sufficient for SEBI to suggest that something might have misled the investors. In this SCN, no analysis has been made about any influence that any news specifically the one regarding GDR issuance would have had on the investors, if at all.

- (viii) The Pentasoft Technologies Ltd is sick and is non-functional right from the year 2008, so, the Pentasoft Technologies Ltd got merged with Pentamedia Graphics Ltd w.e.f. 01.10.2008 by the order of the Hon'ble High Court of Madras. As the Company became sick they could not meet their basic expenditures which includes office rent and staff salary. As many of the staff left the company all of a sudden, many of the Company's records are not traceable. If those documents were available, my client would have filed a better reply than this reply.*

B. Vide letters dated February 23, 2021 and June 07, 2022, Noticee no. 3 has *inter alia* made the following submissions:

- (i) At the further outset, I submit that I was totally shocked and surprised to receive the SCN, in context of my role as a General Manager of the Company, after a period of more than 18 years post my resignation on November 12, 2003. Clearly, the impugned proceedings suffer from enormous laches. Admittedly, the alleged violation arising from the Global Depository Receipts issue by the Company pertain to the period April 2002. The present SCN has been issued on September 07, 2018 (i.e. more than 16 years after the GDR issue). The aforesaid inordinate delay has severely prejudiced me. The said inordinate delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped qua me.*
- (ii) It is well settled now that even though there is no period of limitation prescribed by SEBI Act and Regulations for the completion of investigations or for the issuance of a*

show cause notice, the authority is required to exercise its powers within a reasonable period. Fact of the present case will amply demonstrate that the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed.

- (iii) Libord Finance, Ashok k Chaudhary, HB Stockholdings, AstraZeneca Pharma, Ashlesh Gunvantbhai, Ashok Shivilal Rupani*
- (iv) The allegations in the Notice, in so far as I am concerned, are completely contrary to factual position on record. I have been unnecessarily embroiled in the whole proceedings. My role in the whole GDR issue was exceedingly peripheral and inconsequential. I categorically submit, that I had no knowledge or awareness about the alleged fraud in the GDR issue of the Company. In fact it is for the first time, through this notice I have become aware that the GDR issue of the Company was offshoot of fraud perpetrated by the Company/its directors/management.*
- (v) I remained as General Manager – UK and European Operation of Pentafor Software UK Ltd from April 2001 and thereafter, I resigned on 12th November 2003.*
- (vi) All the aforesaid decisions regarding GDR etc. were taken at Board/management level, in which I had no say or influence or control. Further, I had no knowledge/awareness of the alleged fraudulent scheme of issuance of GDR. I categorically submit that in the organisational hierarchy, I was at the middle level, having no role in decision making.*
- (vii) In the Notice, based on the signing of the “Account Charge Agreement”, I have been roped in, in the whole proceedings, without appreciating my actual role and involvement and the circumstances under which “Account Charge Agreement” came to be signed by me.*
- (viii) I may point out that, I had no role in my being one of the officials chosen by the Company with regard to the “Subscription account” with Banco Efisa SA Lisbon and Issue of Power of Attorney in my favour for signing the “Account Charge Agreement” on behalf of the Company. Further, at no point my consent was sought for the same.*
- (ix) In fact, after decision had been taken by the Board and the requisite resolutions were passed, I was just informed by my director Mr. Kannan regarding the same and I was directed to follow the orders. At the relevant time, I had no clue about GDR and why the Company was coming out with the same, and what was the intention and objective behind the same etc. Same was really of no concern to me. It was like any other ministerial job assigned to me by the Company, since I was based in UK and the*

transactions were happening in UK. I was given to understand, that for the sake of operational convenience, since the directors/management officials were stationed in different geographical location, power of attorney was given in my favour so that the documents etc. could be executed swiftly without impediments.

- (x) I emphasize and underscore that just because, at the relevant time, I was an employee based in UK, I was chosen with regard to the “subscription agreement” and signing the “Account Charge Agreement”. Had I been working at any other place, other than UK, lets say India, I would not have been chosen. The trigger for my being chosen as the Power of Attorney holder for the GDR transaction etc, was my location in UK at the relevant time and nothing else. Here it may also be noted, as per the “Account Charge Agreement” all notice etc. were to be served to the Company only at Chennai and marked to R. Hariharan. Effectively, beyond signing the agreement, there was nothing I was involved in. everything, with regard to GDR issue including the “Account Charge Agreement” was managed and controlled by the Chenna office of the Company (i.e. by its directors and management based out of Chennai).*
- (xi) Additionally, I may point out that, when I was given the Power of Attorney for the GDR transaction, it was in a similar vein to my cheque signing authority given to me in the local London Barclays Bank for 3 CRC UK and Pentafor Software UK Limited. I had not thought anything beyond that. I reiterate that I was not involved in any discussion or transaction regarding the GDR or the related company bank account at all since that was entirely handled by the Head Office. I was told that this Power of Attorney was being given since the GDR required a local signatory based in Europe and that I was not expected to do anything with this at all.*
- (xii) It may also be appreciated that with my limited awareness/knowledge about fund raising activities of the Company and the compliances etc. required to be complied with by the Company with regard to GDR issuance etc. I could not sense any fraud involved at the relevant time in the “Subscription Account” and in signing of the “Account Charge Agreement”. I may point out that Finance and legal/compliance functions were completely outside my professional domain and I was predominantly concerned with the sales function in UK. I did not have any idea that SEBI laws being violated or incorrect disclosures being made by the Company or the overall fraudulent arrangement of the Company.*
- (xiii) Therefore, based on the mere factum of signing the “Account Charge Agreement” on behalf of the Company, I cannot be alleged to be part of the fraudulent scheme,*

ignoring the surrounding circumstances. My case cannot be considered at par with the other directors of the Board and CEO/CFO of the Company, who were in charge of the affairs of the Company, were deeply involved with day-to-day management and affairs of the Company, were responsible to the Company and were fully aware of the activities pertaining to GDR through attending board meetings etc. Their knowledge/awareness about the GDR being fraudulent etc. cannot be equated with my knowledge/awareness.

(xiv) Significantly, it may be noted that there is no allegation that I had made any profits in any manner by virtue of the alleged fraudulent scheme of issue issuance of GDR. I submit that I have not made any gains or gained any unfair advantage. On the contrary, I had already been treated shabbily and unprofessionally by the Company, wherein very reduced salaries were paid to me for around 8 months resulting in my resignation in the year 2003 from the Company, and now I have to defend myself for something which the Company had done and I have to suffer for the brief association I had with it. I have been used as a vehicle/pawn by the directors for signing the agreement, in order to further their designs pertaining to fraudulent GDR.

C. Vide joint letter dated August 16, 2022, Noticees no. 4, 6 and 8 have *inter alia* made the following submissions:

- (i) The Noticees were non-executive directors/independent directors of the said company between 1998 and 2005 and that in the said capacity of being either a non-executive director or an independent director, the Noticees were not involved in the day-to-day management and affairs of the company. The Noticees further submit that their involvement is very limited, pertaining only to some strategic and key decisions that were taken by the said company, which had nothing to do with the purported issue of GDR. In the year 2009, the company Pentasoft Technologies amalgamated with the Pentamedia Graphics Ltd. and is no longer in existence. Over the past 17 years, the Noticees are in no way connected with the company or had any dealings with the company.*
- (ii) The allegations in the Show Cause Notice previous issued coupled with the documents enclosed therein do not in any manner make out a case that the Noticees were involved in the execution of these documents or authorized the same or wilfully misled the investors or the stock exchange and neither the previous notice nor the documents enclosed in support the allegation of SEBI relating to the involvement of the Noticees.*

We further state that no particulars have been provided in the SCN which reveal the purpose for which the transfer of amounts to Teigh Holdings was made and the allegations made by SEBI is not supported by any documentary evidence and is a mere conjecture. Moreover, no material has been placed or provided to show the alleged involvement of the Noticees in these transactions. We further state that it is not the allegation of SEBI that the transfer had taken place on the explicit instruction/authorisation of the Noticees.

- (iii) It is our submission that there has been a gross and inordinate delay in filing the SCN by the Enforcement Department of SEBI and hence the entire proceeding has been prejudicial against us. The GDRs in question were issued on February 13, 2002 and November 25, 2002 respectively, and the previous notice concerning the above issue which was impugned before the Hon'ble High Court of Madras, wherein an order was rendered and pursuant to which the present SCN has been issued, was issued only on December 16, 2019. There has been a thread of cases where the proceedings have been quashed as a result of there being an unexplained and inordinate delay. It is a clearly established position in law that even is no limitation period has been prescribed under any concerned legislation for an authority to exercise its power within a reasonable period of time, and clearly this does not fall within the definition of reasonable period.*
- (iv) It is our submission that the accusations levelled against us in the SCN are false, baseless and unsustainable. It is a well- established principle that where allegations have been cast against any entity following an investigation, then the investigating officer has a duty to disclose and supply copies of all the documents that may be available with him/her, based on which the officer has formulated his accusations and also to ensure that the person against whom the allegations have been raised is able to effectively defend himself/herself. Justice would also demand that it will not just be the documents that the investigating officer has selectively chosen and mentioned in the SCN, but all documents which were available to the officer based on which he/she has arrived at their decision to issue a show cause notice. In the failure to provide us of such documents, our ability to mount a defense stands prejudiced and compromised and hence it is our submission that we are entitled to all the documents collected and prepared during the investigation irrespective of whether SEBI have chosen to cite them or not in the SCN..*

- (v) *Assuming but not conceding that the allegations stated in the SCN are true, it is submitted that even none of Noticees who were on the board during the time of the GDR issue are currently present on the board or are independent directors and hence the Noticees cannot be held liable for the actions. Actions that have been committed by directors without reasonable care, skill and diligence, amounts to negligence only on the part of the Directors. It is submitted that such negligent actions should not confer any liability on the Company and that the concerned individual should be personally liable for their negligent actions. It is further submitted that the Noticees neither consented nor connived with the promoters of the Company who were in-charge or control of the day-to-day affairs of the Company in transactions creating a misleading appearance, and hence the Noticees can never be held responsible.*

D. *Vide letter dated April 30, 2019 and May 27, 2019, Noticee no. 5 has inter alia made the following submissions:*

- (i) *The Noticee submits that he was appointed Company Secretary of the Company from 11.05.2000 and resigned from the said position on 31.03.2002. Copies of Form no. 32 dated 30.05.2000 (appointment) and 01.04.2002 (resignation) filed by the Company with the jurisdictional Registrar of Companies pursuant to the requirements of Section 303(2) of the erstwhile Companies Act, 1956, together with a copy of the Annual Return filed by the Company with the jurisdictional Registrar of Companies pursuant to the requirements of Section 159 of the erstwhile Companies Act, 1956, indicating the date of appointment and resignation are enclosed, together with a copy of relieving letter dated 01.04.2002 of the Company, relieving the Noticee from the services of the Company. These documents would demonstrate the material fact, that during the period relating to the investigation conducted by SEBI i.e. 1.4.2002 – 31.05.2002, when alleged acts of omission and commission were conducted by the Company and Noticee's other than the answering Noticee no. 5, the Noticee was not concerned with the affairs of the Company in any manner and nothing can be attributed to him so as to fasten on him and pecuniary or other liability including penalty under the law relating to which the notice has been issued. There is also no allegation in the notice that the Noticee did anything during the period relating to the investigation supra to warrant the invocation of machinery relating to offences and penalties. Therefore, the show cause notice would not survive in law and the proceedings against the Noticee are liable to be dropped as without merit.*

- (ii) In furtherance to the above, the Noticee submits that the issue, allotment, cancellation, conversion of the GDRs into equity shares of the Company, execution of the Credit Agreement dated 03.05.2002 between Teigh and Banco and execution of the Account Charge Agreement dated 03.05.2002 took place many days after the Noticee left the services of the Company and therefore, the Noticee disclaims any knowledge of the GDR issue and subsequent developments. The Noticee did not commit any violation of law, by merely authenticating a document i.e. the Board resolution dated 25.01.2002 or the GPA executed by the Company on 18.03.2002. Authentication of a document would signify certifying the correctness and nothing more. There is no allegation whatsoever in the show cause notice that the documents authenticated by the Noticee no. 5 were not authentic or genuine. The genuineness of the documents is not in doubt.*
- (iii) The noticee further submits that the Board resolution which has been attested by the Noticee as a certified true copy does no more than reveal the position that the Noticee has verified the original resolution available in the minutes book maintained by the Company under the provisions of Section 193 of the Companies Act, 1956 which was in force. The resolution in question does not mention anything about a GDR issue, the place of issue, the subsequent date of its issuance and other ingredients which have been alleged in the Notice.*
- (iv) As far as the power of attorney issued by the Company is concerned which is on 18.03.2002, the Noticee was still in service. All he did was to discharge in good faith his duty cast under Section 54 of the Companies Act, 1956 and authenticate the documents under the endorsement that the common seal of the company was affixed in the Noticees presence on the document on the date mentioned therein. Nothing more can be read into the said assertion in the document.*
- (v) The Noticee submits that acts done in good faith are protected under Section 635A of the Companies Act, 1956. The said provision unequivocally states that no suit, prosecution or other legal proceeding shall lie inter alia against any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or rules made thereunder.*
- (vi) Further to what is stated above, the Noticee invites the kind attention of this authority to the minutes of the meeting of the Board of Directors of the Company held on 29.04.2002. It would be observed that the allotment of the GDRs as underlying equity shares had taken place on 29.04.2002 i.e. after the Noticee was relieved from the*

services of the Company. The kind attention of the Ld. Authority is invited to the positive and affirmative evidence submitted supra in support of the submissions.

- (vii) It is submitted that the Noticee cannot be said to be directly associated with the securities market. SEBI's jurisdiction is limited only to regulate the securities market and not beyond that and the Noticee is not connected with the securities market in any manner. The Noticee further submits that the Noticee was only discharging his duties as a Company Secretary of the Company till 31.03.2002 and that SEBI has no jurisdiction to initiate any inquiry against a Company Secretary who is a member of the ICSI.*

E. Vide letters dated June 09, 2022, Noticee no. 7 has *inter alia* made the following submissions:

- (i) I am presently a Senior Advocate, practising primarily before the Hon'ble High Court, Madras and the Hon'ble Supreme Court of India. I have been practising for the past over 36 years. I was an independent Non-Executive Director in Pentasoft Technologies Limited (hereinafter 'company' and for 'Pentasoft') till 2005. As you are aware, as a practising Advocate, under the Bar Council of India Rules, I cannot be a full-time Director with any duties of an executive character and as such I was only an independent Non-Executive Director in the company. I was never in-charge of and responsible for the conduct of the business of the company at any point of time nor does the SCN even allege that I held any such responsibility. I have never held any shares in the company. I ceased to be an independent Non-Executive Director of the company in the year 2005 and I had since learnt that the company is said to have merged with another company, viz., Pentamedia Graphics Limited a decade ago in the year 2009, pursuant to Orders of the Hon'ble High Court permitting amalgamation.*
- (ii) While so, I was shocked and surprised to receive the said SCN after over 13 years of me resigning the independent Non-Executive Directorship of the company. The SCN relates to the issue of GDRs by Pentasoft in 2002 and the SCN contends that the scheme of issuance of GDRs by Pentasoft was an act of fraud. The only role attributed to me in the SCN (I am responding to the issues raised against me in the SCN specifically as it is trite law that an enquiry cannot travel beyond the SCN) is that I attended the Board Meeting of Pentasoft on 29-04-2002 in which a Board Resolution was passed authorizing the allotment of GDRs to Teigh Holdings (paragraph 16 of the*

SCN) and that I did not ensure that the GDR subscription came in. However, paragraph L7 of the SCN states that the consideration was received on 07-05-2002. Be that as it may, the SCN relies upon an incomplete and unsigned minutes of the meeting said to have been attended by me on 29-04-2002 (pages 50 & 51 of List of Annexures and Documents relied upon in the SCN) as the basis for making such a claim against me. It is rather surprising to see that I am being called upon to show cause why action should not be taken against me on the basis of such an incomplete and unsigned minutes of the meeting which, once again as the law stands, cannot be even produced leave alone be relied upon in any legal proceeding. Moreover, I am not in a position to either confirm or deny, at this distance of time, whether at all I attended such a Board Meeting which is said to have been held on 19-04-2002 at B:30 P.M. at the registered office of the company. To my recollection, I have not attended any Board meeting at such late hours of any day.

- (iii) Even otherwise, assuming but not conceding that I attended the alleged Board Meeting on 29-04-2002, it cannot be said that the resolution authorizing the issuance of GDRs is illegal. Approval of a resolution authorizing allotment of GDRs by the company is perfectly legal and cannot attract any liability, particularly against persons like me who were just independent Non' Executive Directors. Furthermore, I cannot be attributed with the acts alleged to have been committed by the company or any of its officers subsequent to the allotment of GDRs and/or receipt of funds by the company. The complaint in the SCN is that a Credit Agreement and Account Charge Agreement were entered into by the company through one of its officers and the issuance of GDRs was a fraudulent scheme. I was neither aware of nor was a signatory to any of such Agreements and therefore I cannot, in any manner, be held responsible for the same. It is also required to be seen that the SCN does not allege any role on my part in the statement made to the Stock Exchange or in the arrangement of Account Charge Agreement. It is further relevant to note that no investor has complained that he/she has been induced on account of the alleged fraudulent representation and that his/her decision to deal in the shares of Pentasoft was influenced by the distorted information. In fact, even the claim made by SEBI during the hearing before the Hon'ble High Court, Madras, that I was the Chairman of the Audit Committee of the company, was news to me and in any case can have no relevance in the present enquiry as the same is not even stated in the SCN and can consequently, if Judgements of the Hon'ble Supreme Court are to be respected, have no bearing in the present proceedings. No such*

allegation was made in the SCN and even the relied upon documents do not mention so. Assuming but not conceding that I was the Chairman or part of the Audit Committee of the company, there is nothing to even indicate that a complaint in respect of the GDR issue was made by someone or even the internal/external auditors of the company, before the said Committee and that the said Committee failed to look into the same, etc. There cannot therefore be any assumptive and presumptive charge made against me, even assuming that I was the Chairman or part of the Audit Committee of the company. In fact, while adjudicating a similar issue, the Securities Appellate Tribunal (SAT) had held the same to be irrelevant.

- (iv) Furthermore, under Section 27 of the SEBI Act, 1992 (which is akin to Section 141 of the Negotiable Instruments Act, 1881 and both the provision's being in pari materia), action can only be taken against a person who is in-charge of and responsible to the company for the conduct of the business of the company. While so, for merely being an independent Non-Executive Director in the company and a person who was not in-charge of and responsible to the company for the conduct of the business of the company, I cannot be mulcted with any responsibility for any acts committed by the company or its officers. This is especially so when I had no knowledge of such acts and even the SCN does not allege me of having knowledge of any such acts.*
- (v) Be that as it may, the allegation of fraud in the SCN has no legs to stand upon. To constitute fraud, there should first be an intention to deceive from the beginning. In the present case, in the absence of any such intention, it cannot be said that the Board Resolution authorizing the issue of GDRs is fraudulent and that the Directors who attended the Board Meeting in which such resolution was passed had participated in fraud and/or violated PFUTP Regulations, 1995 and/or the SEBI Act, 1992. In fact, SEBI and SAT have time and again held so. For example - the following findings made in the Final Order dated 24-03-2022 passed by the Learned Whole Time Member, SEBI in the matter of GDR Issue by Pentamedia Graphics Limited, may be looked into. The facts and issues involved in the present case are similar to the above case and is of the same period with one important difference - that I did not sign any Credit agreement or Account Charge Agreement/s on behalf of the company nor have I even been charged in the SCN with having signed such agreements. From a reading of the above Order, it appears that I stand on a better footing than the Noticees Nos.7 to 10 in the above case. In any event, the findings and reasons given by the Learned Whole Time Member, SEBI in the above case are fully applicable to the present case also.*

Moreover, the company merged with the above said Pentamedia Graphics Limited (for which the above said Final Order dated 24-03-2022 was passed) in the year 2009.

- (vi) I was only an independent Non-Executive Director (a practising Advocate according to the Bar Council Rules can only be a Non-Executive Director of a company), I quit in the year 2005 and the company merged with Pendamedia Graphics Limited in the year 2009. Therefore, I do not currently have any records of the company to answer the SCN effectively and I cannot even reach out to the company to provide with me any documents as it does not exist today. Even if the company existed today, since there is no law that requires a company to maintain its records over such a long period of time, it is doubtful whether I would ever had access to the records to answer the SCN. My involvement in the issue at hand, as alleged in the SCN, is only to the extent of participating in one Board Meeting but the alleged minutes of the said meeting does not carry my signature. Therefore, I am not even in a position to respond to my alleged participation as no acceptable evidence relating to the same has as yet been produced. The SCN does not state anywhere why it is issued so belatedly. In several Judgements, the Hon'ble Supreme Court has stated that when a SCN is issued belatedly, for it to be legally sustainable, the reason for the delay must be set out in the SCN itself. The lack of statement in a belated SCN about such belated issuance of the same gravely prejudices me.*

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

10. I have considered the SCN issued to the Noticees, along with its annexures, and the aforementioned replies filed by the Noticees and the submissions made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of the PFUTP Regulations, 1995 (since repealed) read with PFUTP Regulations, 2003, as alleged in the SCN.
11. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extracts of provisions of PFUTP Regulations, 1995

"Prohibition of certain dealings in securities

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

.....

Prohibition of misleading statements to induce sale or purchase of securities

5. (1) No person shall make any statement, or disseminate any information which -

(a) is misleading in a material particular; and

(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-

(i) he does not care whether the statement or information is true or false; or

(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

Nothing in this sub-regulation shall apply to any general comments made in good faith in regard to

-

(a) the economic policy of the Government,

(b) the economic situation in the country,

(c) trends in the securities markets, or

(d) any other matter of a similar nature,

whether such comments be made in public or in private.

...

Prohibition on unfair trade practice relating to securities

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;"

Relevant extracts of provisions of PFUTP Regulations, 2003

"Repeal and savings

(1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

12. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by the Noticees. The Noticees have submitted that the SCN pertains to issuance of GDRs by the company in 2002, and

the SCN was issued only in 2018 and the delay in the matter has adversely affected their ability to present an appropriate defense in the matter. The Noticees have relied upon the observations of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in the numerous cases including *Ashlesh Gunavantbhai Shah Vs. SEBI* (Appeal No. 169 of 2019), *Ashok Shivilal Rupani & Ors vs. SEBI* (Appeal no. 417 of 2018), *Libord Finance vs. SEBI* (Order dated March 31, 2008), *Ashok K. Chaudhary Vs. SEBI* (Order dated November 05, 2008), *HB Stockholdings Ltd. Vs. SEBI* (Order dated August 27, 2013) and *AstraZeneca Pharma India Ltd and Anr vs. SEBI* (Order dated September 04, 2019) to contend that there has been inordinate delay in the initiation of the proceedings. In this regard, I note that in the present case, SEBI started investigation of issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few listed companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies had adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from

many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya and his connected entities were found to be involved. One of the connected entity of Mr. Arun Panchariya i.e. Pan Asia Advisors Ltd. contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in *SEBI Vs. Pan Asia Advisors Ltd. & Anr.* (2015) 14 SCC 71 on July 06, 2015. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014, Noticee No. 1 was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in April, 2019. I note that after completion of the investigation, the SCN was issued to the Noticees on September 07, 2018. An opportunity of hearing was granted to the Noticees on May 27, 2019, July 05, 2019 and July 11, 2019, at the request of the Noticees, but only one Noticee appeared for the hearing and the remaining Noticees sought adjournment each time. Moreover, I note that Noticees no. 1, 4, 7 and 8 had filed Writ Petitions before the Hon'ble Madras High Court which granted an interim stay on the SCN vide its Order dated July 05, 2019. The proceedings had to be kept in abeyance due to the said Order of the Hon'ble High Court of Madras, till the aforesaid Writ Petitions were dismissed vide its Order dated February 02, 2022 and February 17, 2022, *inter alia* directing the Noticees to *inter alia* file their replies before SEBI. Thereafter, hearing was granted to the Noticees on June 07, 2022, June 28, 2022 and July 15, 2022 and the Noticees no. 4, 6 and 8 filed joint written submissions vide letter dated August 16, 2022. Therefore, from the above facts and circumstances of the case, it cannot be said that there is inordinate and unnecessary delay in the matter as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In fact, Section 11C of the SEBI Act, 1992 expressly empowers SEBI to initiate investigation, "at any time", if SEBI has reasonable grounds to believe that the transaction of securities were being carried out in a manner detrimental to securities market or any intermediary or person associated with the

securities market has violated any provision of SEBI Act, 1992 or rules or regulations framed thereunder. Thus, there is no period of limitation prescribed for initiation of investigation by SEBI and consequently no limitation will apply for initiation of quasi-judicial proceedings based on the said investigation. Moreover, in terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

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

13. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that none of the aforesaid cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators, whereas, in the matter of *Jindal Cotex Ltd. and others Vs. SEBI* (Appeal No. 376 of 2019 decided on 05.02.2020) while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

“.....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long

it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.....”

14. Hence, in view of the aforesaid facts and circumstances of the present case, I find that there is no such delay in the present matter as alleged by the Noticees. Regarding the plea of prejudice caused to the Noticees because of time taken in initiation of proceedings, I note that the Noticees have been provided with all relevant material on the basis of which allegations have been made in the SCN, as annexures to the SCN. The details of such annexures have been provided in para 5 above. I also note that Noticee no. 7 has been provided inspection of documents on November 28, 2018 and Noticees no. 1 and 4 have also been provided inspection of documents on May 24, 2019. In view of this, I find that the Noticees have been provided with all relevant material to enable them to effectively respond to allegations made in the SCN. I note that Noticees have filed detailed replies and also made elaborate submissions during the personal hearing granted to them. I note that the Noticees have not pointed out any particular document / information which they could not access due to long passage of time because of which their ability to file effective reply or to put effective defense has been hampered. Therefore, I find that no prejudice is caused to the Noticees due to time taken in the proceedings.
15. I note that the Noticees no. 4, 6 and 8 have referred to the decision of the Hon'ble Supreme Court in *Kanwar Natwar Singh vs Director of Enforcement and Another* (2010) 13 SCC 255, wherein, it was held that where a person is being investigated or charged, nothing should be used against him which has not been brought to his notice and that if relevant material is not disclosed to a party, there is *prima facie* unfairness irrespective of whether the material in question arose before, during or after the hearing and that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defense. I find that since all material relevant to the case has been supplied to Noticees, therefore there is no non-compliance with the law laid down in the Kanwar Singh matter (supra). The Noticees have also relied upon decision of the Hon'ble Supreme Court in *PWC Vs SEBI*

(Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that similar contention, based on the aforesaid decision of the Hon'ble Supreme Court in the PWC matter, was raised before Hon'ble SAT in the matter of *Shri B. Ramalinga Raju vs. SEBI* (SAT Appeal No. 286 of 2014) wherein Hon'ble SAT, in its order dated May 12, 2017, observed as follows:

“21.Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants.”

16. Therefore, the direction given by the Hon'ble Apex Court in PWC matter (supra) was specific to that case only and has no application in the present proceedings as laying down law for general application. In the present case, I find that the Noticees have been provided with all the relevant documents as mentioned in above, which are sufficient for it to file an efficacious reply in the matter and the Noticees have also subsequently filed a detailed reply to the SCN. Therefore, the contention of the Noticees in this regard is untenable.
17. Coming to the merits of the case, I note that the Noticee no. 1 has contended that the SCN has in no manner throughout produced any charge, document, evidence, material or suggestion as to what exactly was the wrongdoing as regards the scheme of GDR Issuance is concerned and has not even suggested any provision of law or regulation applicable to GDR issuance which has been violated. In this regard, I note that the SCN has clearly brought out the charge, documents and evidence to show the *modus operandi* of the Noticee no. 1, which is summarized as under:
 - a) The scheme of issuance of GDRs of PTL involved the subscriber i.e. Noticee no. 2 subscribing to the GDR issue by obtaining finance from Banco wherein security

was provided by PTL through deposits for an amount approximately equivalent to GDR proceeds.

- b) PTL did not inform stock exchanges or its shareholders about this arrangement and about entering into the Account Charge Agreement dated May 03, 2002 or the fact that it had provided security for loans taken by the subscriber by pledging an amount approximately equivalent to GDR proceeds.
- c) GDR proceeds amounting to USD 6.48 million were transferred back to the GDR subscriber. Therefore, there was hardly any capital infusion in the Company in real sense since the Company had transferred the majority of the GR proceeds back to the subscriber. PTL concealed this information from the stock exchange and its shareholders.

18. In this regard, I note that the copies of the Board Resolutions dated January 25, 2002, the Credit Agreement dated May 03, 2002 between Noticee no. 2 and the bank, Power of Attorney dated March 18, 2002, Account Charge Agreement dated May 03, 2002 and further evidence, as listed in para 5 above, have been provided to the Noticees to show the *modus operandi* of the Noticee no. 1 and prove the fraudulent scheme of Noticee no. 1, as alleged in the SCN. However, I note that despite the above, it has to be examined as to whether the allegations levelled against the Noticees in the SCN can sustain.
19. In this regard, I note that in all GDR matters investigated by SEBI the gravamen of the allegation is that a listed company issued GDRs to a few or one subscriber(s) and the subscribers would take a loan from a particular bank to pay for the said GDRs and this loan would be secured by pledging the GDR proceeds, and the company would disclose to the stock exchange that the GDR issue was a success, but would conceal the scheme wherein the proceeds of GDRs had been pledged for securing the loan taken by the subscriber. The investigation carried out by SEBI in most of these GDR matters has termed this whole scheme to be fraudulent under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”). However, the violation of

provisions of PFUTP Regulations, 1995 pertaining to fraud, have been charged in the present SCN, since the violation took place in 2002. In this case, during the hearing Noticees have contended that the allegations made in the SCN does not satisfy the ingredient of the definition of 'fraud' under the PFUTP Regulations, 1995 which was a narrow definition of fraud.

20. In this regard, reference may also be made to the observations made by the Hon'ble Supreme Court in the matter of *Kanaiyalal Baldevbhai Patel*, (2017) 15 SCC 1, wherein, it was observed that:

"27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation."

21. Further, in the aforesaid judgment Hon'ble Supreme Court observed the comparison of relevant provisions of PFURP Regulations, 1995 and PFUTP Regulations, 2003, as follows:

Quote

FUTP 1995		FUTP 2003 (APPLICABLE REGULATION)		Amendment of 2013
Reg 2(c) Definitions	"Fraud" includes any of the following acts committed by a party to ac contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:- (1.) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true; (2.)The active concealment of a fact by one having knowledge or belief of the fact; (3.) A promise made without any intention of performing it; (4.) Any other act fitted to deceive; (5.) Any such act or omission as the law specially declares to be fraudulent; (6.) And "fraudulent" shall be construed accordingly	Reg 2(c) Definitions	"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include- (1) A knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment; (2) A suggestion as to a fact which is not true by one who does not believe it to be true; (3) An active concealment of a fact by a person having knowledge or belief of the fact; (4) A promise made without any intention of performing it;	

			(5) A representation made in a reckless and careless manner whether it be true or false; (6) Any such act or omission as any other law specifically declares to be fraudulent, (7) Deceptive behavior by a person depriving another or informed consent or full participation, (8) A false statement made without reasonable ground for believing it to be true. (9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.	
Reg 3 (Prohibition of certain dealings in securities)	No person shall buy, sell or otherwise deal in securities in a fraudulent manner.	Reg 3 (Prohibition of certain dealings in securities)	Prohibition of certain dealings in securities No person shall directly or indirectly- (a) buy, sell or otherwise deal in 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.	
Reg 4 (Prohibition against Market Manipulation)	No person shall- (a) Effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;	Reg 4 (Prohibition against 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. (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:- (a.) Indulging in a act which creates false or misleading appearance of trading in the securities market;	Explanation.- For the purposes of this subregulation, for the removal of doubt, it is clarified that the acts or omissions listed in this

	(b) Indulge in any act, which is calculated to create a false or misleading appearance of trading on securities market; (c) Indulge in any act which in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) Enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities; (e) Pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole objection of inflating, depressing, or causing fluctuations in the market price of securities.		(b.) Dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss; ... (e.) Any act or omission amounting to manipulation of the price of a security; ... (q.) An intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.	subregulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3 notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category or persons in this sub-regulation'
--	---	--	---	--

Unquote

22. Thus, as held by the Hon'ble Supreme Court in the Kanaiyalal matter (supra), allegation of 'fraud' or 'unfair trade practices' under the PFUTP Regulations, 1995 had a limited scope as compared to PFUTP Regulations, 2003. I note that, based on the actions of the Noticees, the SCN has alleged that Noticees have also violated Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with Regulation 13 of PFUTP Regulations, 2003. As can be noted from the relevant extract of provisions of Regulations 3 and 6(a) of PFUTP Regulations, 1995, as quoted above, all these violations contemplate either 'manipulative or deceptive device', a form of the fraud or 'fraud' itself. Therefore, for attracting the violation of these provisions, there must be fraud committed by the Noticees. I note that 'fraud' was defined under Regulation 2(c) of PFUTP Regulations, 1995. Subsequently, PFUTP Regulations, 1995 were repealed and PFUTP Regulations, 2003 came into force, on July 17, 2003. Since, in the present case, the violations alleged pertain to period prior to July 17, 2003, therefore, the definition of 'fraud' as given under the PFUTP Regulations, 1995 shall apply in the present case to determine the violations alleged.

23. A perusal of said definition of 'fraud' as provided under Regulation 2(c) of PFUTP Regulations, 1995, states as follows:

2(c) "fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-
(1) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent;
and "fraudulent" shall be construed accordingly.

24. Definition of 'fraud' as given under Section 17 of the Indian Contract Act, 1872 which is *pari materia* to the definition of 'fraud' as provided under PFUTP Regulations, 1995, provides as under:

"17. "Fraud" defined. —"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent.

Explanation. — Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

25. As mentioned above, in the present case, allegation is that PTL had provided security against the loan taken by the subscribers to the GDR issue in order to make the GDR issue a success and thereafter transferred majority of the GDR proceeds back to the subscribers and had failed to disclose this arrangement to its shareholders and stock exchanges. I find that the above mentioned definition of 'fraud' under Regulation 2(c) of PFUTP Regulations, 1995 as mentioned in para 23 include acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party to the contract or his agent, or to induce him to enter into the contract. With respect to ingredients of 'fraud' under PFUTP Regulations, 1995, the facts as contained in the SCN does not show details such as whether the arrangement entered

into by the Company to provide security for the loans taken by the subscriber to the GDR was with intention to deceive the other party to the contract, i.e. the subscriber. In this case, the subscriber was Noticee no. 2 who received allotment of GDRs and there is no material available on record to show that they were wrongfully induced to subscribe to the GDRs of PTL. Therefore, I find that the ingredients of 'fraud' as given under Regulation 2(c) of PFUTP Regulations, 1995 or Indian Contract Act, 1872, as referred to above, are not satisfied in the present case.

26. I note that in the present case, Regulation 13 of PFUTP Regulations, 2003 which deals with repeal and saving has also been invoked along with provisions of PFUTP Regulations, 1995 pertaining to fraud. The said regulation read as under:

“Repeal and savings

(1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.”

27. A reading of the aforesaid regulation shows that irrespective of repeal, anything done or any action taken under the PFUTP Regulations, 1995 can be pursued under the corresponding regulation in PFUTP Regulations, 2003. In such a case, if the corresponding definition of 'fraud' under PFUTP Regulations, 2003 is adopted it would amount to giving retrospective effect to the definition for those acts which were not earlier covered by the definition of 'fraud' under PFUTP Regulations, 1995. It is a trite law that any legal provisions creating any obligations or liability has to be understood to have prospective effect only. Moreover, as held by the Hon'ble Supreme Court in *SEBI Vs. Alliance Finstock Ltd. & Ors. (2015) 16 SCC 731*, a statutory authority cannot make regulations having retrospective effect unless specifically empowered in this behalf by the parent statute and SEBI Act, 1992 does not provide for making of

regulations with retrospective effect. In view of this, the corresponding provision of fraud under PFUTP Regulations, 2003 cannot be invoked against the Noticees by resorting to Regulation 13 of PFUTP Regulations, 2003 and the matter has to be adjudged in light of the definition of 'fraud' as given under PFUTP Regulations, 1995. Since the facts and allegations in the present case do not constitute 'fraud' under PFUTP Regulations, 1995, therefore, allegation of violation of provisions of Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with regulation 13 of PFUTP Regulations, 2003 are not made out against the PTL.

28. Coming to the other allegations levelled against PTL in the SCN, the SCN has observed that PTL had had issued 16.2 million GDRs (amounting to USD 6.48 million) on May 03, 2002, equivalent to 162,00,000 equity shares of Rs. 10 each. The SCN states that the subscriber to the GDR was Teigh i.e. Noticee no. 2. Summary of the GDR issues of PTL, as mentioned in the SCN, is tabulated below:

GDR issue date	No. of GDRs Issued	Capital raised (US\$mn.)	Price per GDR (US\$)	Underlying shares per GDR	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
03-May-2002	1,62,00,000	6.48	0.4	1	Citi Bank, N.A.	1,62,00,000	Citi Bank NA, USA	Private Placement	Banco Efisa	Luxembourg Stock Exchange

29. In order to examine the allegation against PTL levelled in the SCN and its reply to the same, the various documents related to the GDR issue of PTL were perused. From the examination of the Credit Agreement dated May 03, 2002, I find that it was clearly mentioned in the Credit Agreement that the subscribers to the GDR issue of PTL had availed of loan facility from Banco to subscribe to the GDRs of PTL and thus, Banco granted loan for subscription of GDRs of PTL. I also note that Noticee no. 2 had availed loan facility to the extent of USD 6.48 million to subscribe to the GDR of PTL. I note that the Noticee no. 2 had availed the loan specifically in order to pay the subscription amount for the GDRs to PTL, as mentioned in the Credit Agreement. From a perusal of the account statement of the subscription account of PTL, I find that the subscription amount had been deposited therein by Noticee no. 2 and the Noticee no. 2 had been

allotted GDRS. Therefore, it can be reasonably inferred from circumstantial evidence that Noticee no. 2 availed the loan facility in order to subscribe to the GDRs of PTL.

30. I also find that the Account Charge Agreement was dated May 03, 2002 i.e. the same date on which the Credit Agreement were entered into between the subscriber i.e. Noticee no. 2 and Banco. I also find that the Account Charge Agreement had reference to the Credit Agreement entered into between Noticee no. 2 and Banco by virtue of which Banco provided credit to Noticee no. 2 specifically for the purpose of subscribing to the GDR of PTL. I also note that the Account Charge Agreement dated May 03, 2002, which was signed on the same date on which GDRs were issued, specifically mentioned that PTL will, in its designated account no. 6020985 with Banco deposit an amount of USD 6,480,000 as security for all the obligations of borrowers under the Credit Agreement which corresponded to the Credit Agreement which provided credit facility of USD 6,480,000 to Noticee no. 2 for subscription of GDRs of PTL. I find that PTL had provided security for the loan taken by the subscriber to its GDR issue for the specific purpose of subscribing to these issues by pledging the amount equivalent to the proceeds of the GDR issue. This arrangement was not disclosed by PTL to the stock exchanges and its shareholders, which is discussed in detail in later paras, whereas by only disclosing the news of making of GDR issue without disclosing about pledging the amount equivalent to the proceeds of the GDR issue, for the loan taken by the subscriber to the GDR issue, PTL had created an impression to the investing public that it had made a successful GDR issue.
31. Noticee no.1 has contended that the Account Charge Agreement, as detailed above, was a part of the terms and conditions required by the banker to the GDR proceeds and agreed to by the Company after adequate disclosures and approvals of shareholders. I note that, the SCN observes that prior to the execution of the Account Charge agreement, the Board of Directors of PTL had passed a resolution in its Board meeting dated January 25, 2002. I note that the Board Resolution of PTL dated January 25, 2002 *inter alia* resolved that a subscription account be opened with Banco and Banco be instructed “to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the Company

by any of the following signatories individually without any limit’ and Noticee no. 4 i.e. Mr. D. Kannan (Director and CEO) and Noticee no. 3 i.e. Mr. Ramesh Pillai (General Manager) were named as two of the signatories. Further, on a perusal of the Board Resolution of PTL dated January 25, 2002, the Board of PTL resolved to authorize Noticee no. 4 to issue General Power of Attorney in favour of Noticee no. 3 i.e. Mr. Ramesh Pillai. Relevant extracts of the resolution passed in the aforesaid meeting of Board of directors of PTL, are as under:-

GENERAL POWER OF ATTORNEY

“RESOLVED THAT Shri. D. Kannan, Director & CEO, be and is hereby authorized to issue General Power of Attorney in favour Mr. Ramesh Pillai, General Manager – UK & European Operation in the ordinary course of business to liase with the Government Agencies and other statutes on behalf of the Company, to open Bank account on behalf of the Company and sign any agreement in connection with obtaining loan from Bank and financial Institutions for the Company.

RESOLVED FURTHER THAT Mr. Ramesh Pillai, General Manager – UK & European Operation be and is hereby authorized to file necessary documents, applications, etc., before any statute authorities and to represent on behalf of the Company.

RESOLVED FURTHER THAT certified copy of the resolution be issued to Government Authorities/ Banks and Financial Institutions and they be requested to act upon the same.

32. Further, it was observed that the Power of Attorney dated March 18, 2002 was executed by PTL and *inter alia* states that following:

By this Power of Attorney executed at Chennai, this 18th day of March, 2002 by M/s. Pentasoft Technologies Ltd., incorporated under the Companies Act and having its Registered office at “Taurus” No. 25, First Main Road, United India Colony, Kodambakkam, Chennai – 600024, (hereinafter called the Company) and represented by its Director & CEO Shri. D. Kannan, S/o. Mr. Duraisamy, do hereby appoint, nominate and constitute the General Manager – UK & Europ Operation, Mr. Ramesh Pillai, to be its true and lawful Attorney and in the name of the Company and on its behalf to do, perform, exercise and execute all or any of the following acts, deeds, matters, powers, authorities and things that is to say:

- 1. To attend and represent the company before statute authorities in relation to Tax assessments and appear before the Government authorities in connection with the business of the company.*
- 2. To open Bank Account on behalf the company and execute documents for availing loan from Banks and Financial Institutions.*
- 3. To place orders, negotiate, collecting dues etc., and sign relevant documents regarding business with the Government Departments/Boards, Private sectors and other Institutions.*
- 4. To contest the cases, sign necessary, vakalaths, affidavit(s), give evidence(s), appear on behalf of the Company before the Court and legal forums.*
- 5. This Power of Attorney is valid upto 31st March 2003.*

The Company hereby ratifies and confirms and agrees to ratify and confirm by virtue of these present all whatsoever the Attorney shall/or may lawfully do or cause to be done in and about the premises by virtue of these presents.

33. I note that, the Account Charge Agreement was entered into thereafter on May 03, 2002. I find that, the above-mentioned resolution is broadly worded and it can be said that such a resolution provided Noticee no. 3 the general authority to sign any agreement related to the GDR issue. The Company, contended that the Account Charge Agreement, was a part of the terms and conditions required by the banker to the GDR proceeds and agreed to by the Company after adequate disclosures and approvals of shareholders. Hence, by its own submission, I find that PTL was aware of the Account Charge Agreement and has not made any contention that the Account Charge Agreement had been fraudulently entered into without their knowledge.
34. I note that the Account Charge Agreement clearly states that the money deposited in the designated accounts by PTL would act as security for the loans taken by the subscriber. From the same, it is observed that the Company was securing the loans taken by the subscriber in order to subscribe to the GDRs of PTL. Moreover, as detailed in the Account Charge Agreement, the security was in the form of cash deposit amounting to approximately equivalent amount as the GDR proceeds. From the cross

reference between the Credit Agreement and the Account Charge Agreement and their dates I find that the Credit Agreement were integral part of Account Charge Agreement and vice versa and both were executed concurrently. I also find that the PTL was aware of the Account Charge Agreement and Credit Agreement. I also note that both the Credit Agreement and Account Charge Agreement were executed on the same day as the date of issue. From the timing, it is evident that PTL was aware of the Credit Agreement entered into between the subscriber i.e. Noticee no. 2 and Banco for subscription of GDRs of PTL. From the above discussion, I find that the scheme of issuance of GDRs of PTL involved subscribing to the GDR issue by obtaining finance from Banco wherein security was provided by PTL through deposits in designated account for an amount approximately equivalent to GDR proceeds. I note that the purpose of GDR issue is to raise further capital from overseas market for the company. If such subscription is made with the support of loans taken by the subscriber which are in turn secured by pledging equivalent amounts by the Company then it can be inferred that while on one hand, the Company is proposing to infuse capital by issuing GDRs, on the other hand the Company is creating liability of an amount similar to GDR proceeds, thereby encumbering the proceeds to be received. Therefore, I find that this was an artificial arrangement for the issuance and subscription of the GDR issue of PTL and was not for the benefit of the shareholders of PTL and PTL did not disclose this artificial arrangement to its shareholders or the stock exchanges.

35. I observe from the minutes of the Board meetings as provided by PTL to SEBI, that the Board of Directors of PTL, in its meeting held on April 29, 2002 approved allotment of GDRs. I note that the Company reported the following to the stock exchanges on April 30, 2002:

“The Board of Directors of the company has allotted 16,200,000 GDRs to investors for cash at the rate of US\$0.40 per GDR at the Board Meeting held on April 29, 2002...”

I further note that on April 30, 2002, PTL informed the following to the stock exchanges:

“The Board of Directors of the company has allotted 16.2 million GDRs (each GDR representing one underlying equity share of Rs. 10/- each) to

investors for cash at the rate of US\$ 0.40 per GDR at the Board Meeting held on 29/04/2002.”

36. From the examination of corporate announcements made by PTL to stock exchanges from the time of board of directors' approval for raising money through GDRs till issuance of GDRs and the Annual Reports of PTL pertaining to the FY 2002-2003, I note that PTL did not inform stock exchanges or its shareholders about entering into the Account Charge Agreement dated May 03, 2002 or the fact that it had provided security for loans taken by the subscribers by pledging an amount approximately equivalent to the GDR proceeds. I find that the arrangement of Credit Agreement and Account Charge Agreement, which was made in order to make GDR issues of the Company successful, were not disclosed to the stock exchange or the shareholders in a true and complete manner. From the Annual Reports pertaining to 2002-2003, I note that PTL had suppressed the arrangement between PTL and Banco, to provide security for the loan taken by Noticee nos. 2 in order to subscribe to the GDRs of PTL. I note that the shareholders and prospective shareholders of the Company had been informed about the GDR issue, which implies capital inflow but the information relating to encumbrance of a similar amount of capital in order to secure the GDR issue was concealed from them. Hence, I find that the contention of the Noticee no. 1 that the Account Charge Agreement was a part of the terms and conditions required by the banker to the GDR proceeds and agreed to by the Company after adequate disclosures and approvals of shareholders, is untenable.
37. I note that the SCN has not mentioned the provision under which the arrangement for GDR issue should have been disclosed by PTL. In this regard, Clause 36 of the erstwhile Equity Listing Agreement provided that:

“Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities....”

38. I note that the events enumerated under Clause 36 is an indicative and not exhaustive one. I find that the information related to the Account Charge Agreement entered into between the Company and Banco were critical information in order to enable the shareholders and the public to appraise the position of the Company and thus, in my view would be under the ambit of Clause 36. I, thus, find that the corporate announcements made by PTL on April 30, 2002 regarding allotment of GDR issues without disclosing the actual scheme of GDR issue as well as the failure to disclose the same in the Annual Report of PTL had the potential to mislead the investors and/or created a false impression in the minds of the investors that the GDR issue was leading to capital inflow in the Company, whereas, the PTL had created liability amounting to approximately equivalent amount to GDR proceeds. I note that Regulation 5 (1) of the PFUTP Regulations, 1995 prohibited any person from making any statement, or disseminate any information which is misleading in any material particular and is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities. In view of the same, I find that PTL has violated Regulation 5(1) of the PFUTP Regulations, 1995.
39. Regarding the GDR proceeds, I note that GDR proceeds were deposited in PTL's Banco accounts having number 6020985.10.001. Details of receipt of GDR proceeds in PTL's Banco accounts are given below:

Issue	Date of credit of funds	Credit amount (US\$)
I	07-05-2002	6,480,000

40. It is observed from the above that PTL received USD 6.48 million from Teigh i.e. Noticee no. 2. Further, I note that PTL vide letter dated August 07, 2002, instructed Banco to transfer USD 6.48 million from PTL's deposit account to the current account maintained with Banco and then transfer the same amount to the account of Noticee no. 2 i.e. M/s. Teigh Holdings Limited. Hence, I note that Banco transferred the amount to Noticee no. 2, which is not in line with the usage of GDR proceeds as mentioned in the Listing Particular document (which was approved by the Board in its April 29, 2002

meeting). Therefore, I note that the GDRs and the underlying equity shares were in turn issued without consideration to the subscriber, at the cost of other shareholders / investors. I note that the GDRs were converted into equity shares and these shares were sold in the Indian Securities Market. I note from the cancellation details provided by the local custodian i.e. Citi Bank that cancellation of GDRs started from July 2002 continued upto June 2003.

41. I find that the transfer of a major share of the GDR proceeds by the Company back to the subscribers, as detailed above, were also critical information which should have been disclosed by the Company under Clause 36 of the Listing Agreement which the Company failed to do. I also note that the Company has also not been able to show that the creation of such a liability and transfer of GDR proceeds were disclosed in the financials of the Company for the relevant period. I further note that when a company issues GDRs it is understood that there will be capital infusion to the company. In this case, the GDR proceeds amounting to USD 6.48 million were transferred back to the GDR subscriber. Therefore, there was hardly any capital infusion in the Company. PTL concealed this information from the stock exchange and its shareholders. This information, in my view was a price sensitive information which could have an impact on the price of the shares of the Company. Therefore, I find that by concealing the fact that GDR proceeds were majorly transferred back to the subscribers, PTL had misled the investor thus violating Regulation 5(1) of the PFUTP Regulations, 1995.
42. The allegation against Noticees no. 4, 6, 7 and 8 is that because they were directors of PTL during the relevant time, and were part of the Board resolution dated January 25, 2002 which *inter alia* resolved that a subscription account be opened with Banco for the GDR issue and were also part of the Board resolution dated on April 29, 2002 which recorded the Subscription Agreement entered into between the Company and the subscriber and the approved allotment of GDRs, they were part of the fraud, having violated Regulation 3 and 6 (a) of PFUTP Regulations, 1995. I note that the Board resolution dated January 25, 2002 *inter alia* resolved that a subscription account be opened with Banco for the GDR issue and unlike other GDR issues, there was no authorization in this resolution for pledging the proceeds lying in that account as

security for loan taken by the subscribers of the GDR issue of PTL. Further, the subscription account was in fact opened with Banco and the GDR proceeds were credited to the subscription account. Therefore, on the basis of this resolution, no wrong can be attributed to directors of PTL who attended the Board meeting and signed the resolution. As noted above, the allegation in the SCN is that PTL pledged the amount equivalent to the GDR proceeds lying in the bank accounts with Banco for securing the loan taken by the subscriber to its GDR issue. In this regard, from the Board resolutions dated January 25, 2002, it is noted that the resolution only authorized issue of the GDR so nothing sinister can be attributed to the Board of directors based on the said resolutions. I note that the SCN further alleges that subscription money which was received by PTL in its subscription account were subsequently transferred back to the subscriber. However, as discussed above, this act did not constitute 'fraud' as defined under PFUTP Regulations, 1995 as there was no intention to deceive the subscriber of GDR by the Company. In such a scenario the Board resolution authorizing the issue of GDRs cannot be termed 'fraudulent' and consequently the directors who attended the Board meeting in which such resolution was passed cannot be held to have participated in 'fraud' or having violated Regulation 3 and 6 (a) of PFUTP Regulations, 1995.

43. I note that the SCN alleges that Noticee no. 5 signed the Board Resolution pertaining to Power of Attorney and Noticee no. 4 signed the Power of Attorney on behalf of PTL and Noticee no. 3 signed the Account Charge Agreement dated May 03, 2002, by which the Company pledged an amount equivalent to the GDR subscription amount as security for the loan taken by the subscribers to the GDRs of PTL and that their act of signing the Account Charge Agreement were part of the larger fraudulent scheme alleged in the SCN. As discussed above, allegation of violation of PFUTP Regulations, 1995 involving 'fraud' is not sustained in the present matter. In such a scenario the act of signing the Account Charge Agreement cannot be faulted with and consequently no wrong can be attributed to Noticee nos. 3, 4 and 5. Further, I note that letter dated June 11, 2020 was received from the British Virgin Island Financial Services Commission, informing SEBI that Noticee no. 2 is dissolved as on April 30, 2014.

44. As discussed above, PTL has been found to have violated Regulation 5(1) of PFUTP Regulations, 1995. I note that no allegation of violation of Regulation 5(1) of PFUTP Regulations, 1995 was levelled against any of the other Noticees in the SCN. Further, regarding applicability of the Section 27 of the SEBI Act, 1992, for violation of Regulation 5(1) of PFUTP Regulations, 1995, I note that during the relevant period (i.e. 2002-03), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word 'offence' with the word 'contravention' in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by PTL, with reference to Regulation 5(1) of PFUTP Regulations, 1995 for which proceedings under Section 11, 11(4) and 11B has been proposed, which are civil in nature. In view of the above, violations as alleged in the SCN are not made out against Noticees no. 4, 6, 7 and 8.
45. In view of the violation of Regulation 5(1) of PFUTP Regulations, 1995 committed by PTL, I find that directions under Sections 11(1), 11(4), and 11B of the SEBI Act, 1992 were required to be issued against Noticee no. 1. However, PTL has now ceased to exist due to its amalgamation with Pentamedia Graphics Limited. I also find that although no violation of Regulation 3 and 6 (a) of PFUTP Regulations, 1995 has been established against Noticee no.1, however the facts of the case show that GDR proceeds amounting to USD 6.48 million have been transferred back by the Company to the subscriber of the GDRs. I observe that in terms of Section 177(4) (viii) of the Companies Act, 2013, the Audit Committee has to monitor the end use of funds raised through public offers and, therefore, the Audit Committee of Pentamedia Graphics Limited may look into the correctness of utilization of GDR proceeds by PTL (or the resultant company Pentamedia Graphics Limited) or may look into the justification of

the transfer of GDR proceeds by the Company to the subscriber of the GDRs and may also see whether this amount needs to be called back by the Company and may also advise the Company to undertake the measures to bring back the outstanding amount of the GDR, if any, as may be arrived at by the Audit Committee of Pentamedia Graphics Limited. I also note that, it has been brought on record that Noticee no. 2 has been dissolved/ struck off and does not exist anymore. Keeping the same in mind, for all practical purposes, if any directions to return the money to PTL are issued against them the same would be infructuous.

46. I note that Noticee no. 1 has been amalgamated with Pentamedia Graphics Ltd. w.e.f August 01, 2008 as per the Order dated September 03, 2009 of the Hon'ble High Court of Madras in CP Nos. 28 & 29 of 2008. As per the scheme of amalgamation, all the assets and liabilities of M/s Pentasoft Technologies Limited (Noticee no. 1) are vested with Pentamedia Graphics Limited. Further, by virtue of SEBI Order dated March 24, 2022, Pentamedia Graphics Ltd. has *inter alia* 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 1 year from the date of the order.

Directions:

47. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:
- a. Pentamedia Graphics Limited, with which Noticee no. 1 has amalgamated, is hereby directed, to undertake the measures to bring back or recover the outstanding amount of proceeds of the GDR issue if so determined by the Audit Committee of Pentamedia Graphics Limited within a period of one year from such identification by the Audit Committee of Pentamedia Graphics Limited. The present directors of Pentamedia Graphics Limited, shall take appropriate steps for the

compliance of this direction by Pentamedia Graphics Limited and the Audit Committee of Pentamedia Graphics Limited shall report the progress of the same to the Board of Directors of Pentamedia Graphics Limited.

- b. Proceedings against Noticees no. 2 to 8 are disposed of for reasons stated in para 42 to 44 of this order.

- 48. This Order comes into force with immediate effect.
- 49. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.
- 50. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: October 14, 2022

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA