BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO: Order/BD/MG/2020-21/9116

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

In respect of:

Dr. Chandra Prakash (Director)

House No. 5816,

Sector 38, West Chandigarh,

India – 160036

In the matter of Issuance of GDR by Beckons Industries Limited

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BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the Global Depository Receipts (hereinafter referred to as '**GDR**') issue of Beckons Industries Ltd. ('**Beckons**'/ '**Company**') to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures with respect to Listing Agreement, if any were made by Beckons with respect to GDRs. The period of investigation was during the issuance of issuance of GDR for the period from June 01, 2010 to June 30, 2010 (*hereinafter referred to as **'investigation period'**).*

2. Based on the observations made during the investigation, it was inter-alia alleged that GDRs were issued in a fraudulent way by way of credit agreement and account charge agreement by Beckons, In this regard, it was *inter alia* alleged that the directors of Beckons namely Mr Gurmeet Singh, Mr. I. S. Sukhija, Mr. H. S. Anand and Dr. Chandra Prakash (hereinafter referred to as '**Noticee/ by Name**') *inter alia* approved the board resolution and authorized the EURAM Bank to use the Beckons' GDR proceeds deposited with EURAM Bank as security in connection with loan and Managing Director i.e. Mr

Gurmeet Singh executed the Pledge Agreement. In view of the above, it was alleged that the Noticee violated the provisions of section 12A(a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATION OFFICER

3. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as 'AO'), vide order dated May 23, 2017, under Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Inquiry Rules") to inquire into and adjudge under the provisions of Section 15HA of the SEBI Act, the alleged violation of the provisions of Sections 12A(a), 12A(b) and 12A(c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (herein after referred to as '**SCN**') dated September 10, 2018 was issued to the Noticee, under Rule 4(1) of the Inquiry Rules calling upon the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee as mentioned in above paragraphs.

5. It is noted from the record that the SCN was sent to the Noticee by Speed Post Acknowledgement Due (hereinafter referred to as '**SPAD**') and was duly served. However, no reply to the SCN was received. Thereafter, the Noticee was granted opportunities of hearings on November 15, 2018, and March 20, 2019, vide Hearing Notices dated October 29, 2018 and February 26, 2019, respectively, however, the aforesaid Hearing Notices returned undelivered.

Subsequently, considering the prevailing circumstances, the Noticee was granted another opportunity of hearing before the undersigned on September 15, 2020, by way of video conference vide Hearing Notice dated August 26, 2020, which was sent through Professional Couriers and was duly delivered to the Noticee. As the Email address of the Noticee was not available on record, the Noticee was advised to furnish his Email address by September 10, 2020, to avail the opportunity of hearing. However, the Noticee not only failed to furnish his email address but also failed to respond.

6. I note that despite the SCN and hearing notice having been duly served upon the Noticee, while the Noticee failed to submit his reply and also failed to appear for the hearing. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that - *"..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

7. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), inter-alia, observed that – *"……As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices……..".*

8. In view of the above, I am of the opinion that the SCN has been duly served upon the Noticee, but the Noticee failed to reply and also failed to avail the opportunity of personal hearing. Noting that the principle of natural justice has been duly followed in the matter, as enough opportunities were provided to the Noticee to reply to the SCN and appear for hearing, I am inclined to proceed with the matter taking into account the evidence / material available on record.

CONSIDERATION OF ISSUES

9. After perusal of the material available on record, I have the following issues for consideration, viz.,

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

   b) *Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?*

   c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE-1: *Whether the Noticee have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?*

10. Before proceeding further, I refer to the relevant provisions of SEBI Act and PFUTP Regulations alleged to have been violated the Noticee, which reads as under:

SEBI Act

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

12A. *No person shall directly or indirectly—*

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

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

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

Regulation 3 of PFUTP Regulations: - 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 thereunder;

(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 thereunder.

Regulation 4: - Prohibition of manipulative, fraudulent and unfair trade practices

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

11. I not that Beckons had issued 24,92,640 GDRs (USD 10.54 million, approximately INR 50.14 crore) on June 14, 2010. As per the information provided by the company, a summary of GDR is as follows:-

Table 1

GDR issue date	No. Of GDRs Issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
14-Jun-2010	2.49	10.54	DBS Bank,	4,98,52,800 (20 shares per	The Bank of New York	IKON Capital	EURAM Bank, Austria	Luxembourg Stock

			Mumbai	GDR)	Mellon	Ltd.		Exchange

12. On perusal of corporate announcements made by Beckons to BSE during the period December 2009 - June 2010, I note that the company had informed BSE that their Board of Directors (hereinafter referred to as "Board") at their meeting held on December 29, 2009 had approved issuance of GDRs in one or more tranches up to an amount of Rs 50.00 cr. The company had also informed BSE that their Board of Directors in their meeting of June 14, 2010 had approved the allotment of 4,98,52,800 equity shares of Rs. 10/- each underlying 24,92,640 GDRs.

13. I note that Vintage had signed a Loan Agreement dated June 07, 2010 with EURAM Bank for payment of subscription amount of USD 10.54 million for GDR issue of Beckons. The Loan Agreement was signed by Shri Arun Panchariya on behalf of Vintage as Managing Director of Vintage for subscription of GDRs of Beckons. I note that the following was *inter-alia* mentioned in the Loan agreement:

a) "*Nature and purpose of facility*" : "*To provide funding enabling Vintage FZE to take down GDR issue of 2,492,640 Luxembourg public offering and may only be transferred to EURAM account no. 540133, Beckons Industries Limited.*"

b) *"the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be deemed by the Bank:*

- *Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540133 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

14. From the above referred Loan agreement, I note that Vintage had availed loan facility to the extent of USD 10.54 million from EURAM Bank to subscribe to GDRs of Beckons.

15. I further note that the Board of Beckons passed a resolution in its meeting on February 21, 2008 authorizing the EURAM Bank to use the GDR proceeds as security against loan. Relevant extracts of the resolution passed in the meeting of Board of Beckons on February 21, 2008**,** are as under:

"RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."

Resolution also states that:

"……RESOLVED FURTHER THAT Shri Gurmeet Singh, Managing Director of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.."

Resolution further states that:

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

16. I note from the minutes of aforesaid meeting of Board of Beckons that the Noticee being the director of Beckons had attended the said board meeting.

17. I further note that the account no. 540133 of Beckons, maintained with EURAM Bank, was opened to keep the GDR proceeds, which was also the Escrow account.

18. A Pledge Agreement dated June 07, 2010 was signed between Beckons (as Pledgor) and EURAM Bank (as Bank). Mr. Gurmeet Singh (Managing Director) signed the Pledge Agreement on behalf of Beckons and pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank for subscribing to the company's GDR. Further, I note that the company by authorizing EURAM Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, depicted that the

abovementioned Board resolution was to provide security in connection with loan.

19. The preamble of the Pledge Agreement stated as under:

> *"By Loan Agreement K070510-003 (hereinafter referred to as the "Loan Agreement") dated 07 June 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 10,543,867.20. The pledgor has received a copy of the Loan Agreement No. K070510-03 and acknowledges and agrees to its terms and conditions."*

20. The pledge created in the Pledge Account stated as under:

> *2. Pledge*
>
> *2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments hereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")the Pledger hereby pledges to the Bank the following assets as collateral to the Bank:*
>
> > *2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount US$ 10,543,867.20, existing from time to time at present or hereafter on the securities account(s) no. 540133 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*
> >
> > *2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540133 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….*
> >
> > *(The pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")*
>
> *2.2 The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.*

2.3 The Bank herewith accepts the pledge established pursuant to section 2.1 hereof."

21. Further, I also note that following condition had been put in the Pledge Agreement for realization of the pledge.

"6. Realization of the Pledge

6.1 In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transaction, a selected by the Bank.

6.3 The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

22. From the above, I note that EURAM Bank granted loan to Vintage for subscription of GDRs of Beckons. On perusal of the Escrow account statement, I note that GDR subscription money was received from only one entity i.e. Vintage. Therefore, it is apparent that the GDR issue of Beckons (2.49 million GDRs amounting to USD 10.54 million) was subscribed by one entity alone, i.e., Vintage.

23. Further, I note that the Pledge Agreement and Loan Agreements enabled Vintage to avail the loan from EURAM Bank for subscribing to GDRs of Beckons and issuance and subscription of GDRs was done through the aforesaid loan availed by Vintage.

24. From all the above, I am of the opinion that the aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and

EURAM Bank and vice versa and both were executed concurrently. In view of the same, I find it evident that Beckons had complete knowledge about the subscriber of GDR issue and the Loan Agreement and had understanding with Vintage.

25. Further, I note that Vintage repaid loan amount in several instalments from July 2010 to September 2010. Details of repayment of loan by Vintage, provided by EURAM Bank are tabulated as below:

Table 2

Date	Loan amount repaid by Vintage (USD)	Date	Amount of funds transferred from Beckons' EURAM a/c to Beckons' bank a/c in India and UAE based subsidiary's bank a/c (USD)
27.07.2010	2,002,500.00	27.07.2010	2,000,000.00
16.08.2010	1,000,000.00	16.08.2010	1,000,000.00
25.08.2010	2,500,000.00	25.08.2010	2,500,000.00
31.08.2010	100,000.00	31.08.2010	(remitted to Beckons' bank a/c I India) 100,000.00
08.09.2010	2,000,000.00	08.09.2010	2,000,000.00
09.09.2010	1,500,000.00	10.09.2010	1,500,000.00
16.09.2010	1,441,367.20	17.09.2010	1,139,425.61
Total	**10,543,867.20**		**10,239,425.61**

26. On perusal of the Beckons' EURAM Bank account and Vintage's loan account statement, I note that only after Vintage repaid loan instalments, on the same day equal amount of money was transferred (except on two instances when on one occasion equal amount of money was transferred on next day and on the other occasion less money was transferred on next day) from Beckons' EURAM Bank account to Beckons' UAE a/c and Beckons' bank account in India. From the above, I find that the amount transferred from Beckons' EURAM Bank account was not at the free disposal of the company as same was kept as collateral even prior to issuance of GDRs for the loan availed by Vintage and was dependent on the repayment of the loan by Vintage.

27. I note that GDR proceeds were deposited in Beckons' EURAM Bank account no. 540133. Details of receipt of GDR proceeds in the Beckons' bank a/c (maintained with EURAM Bank in Austria) are as given below:-

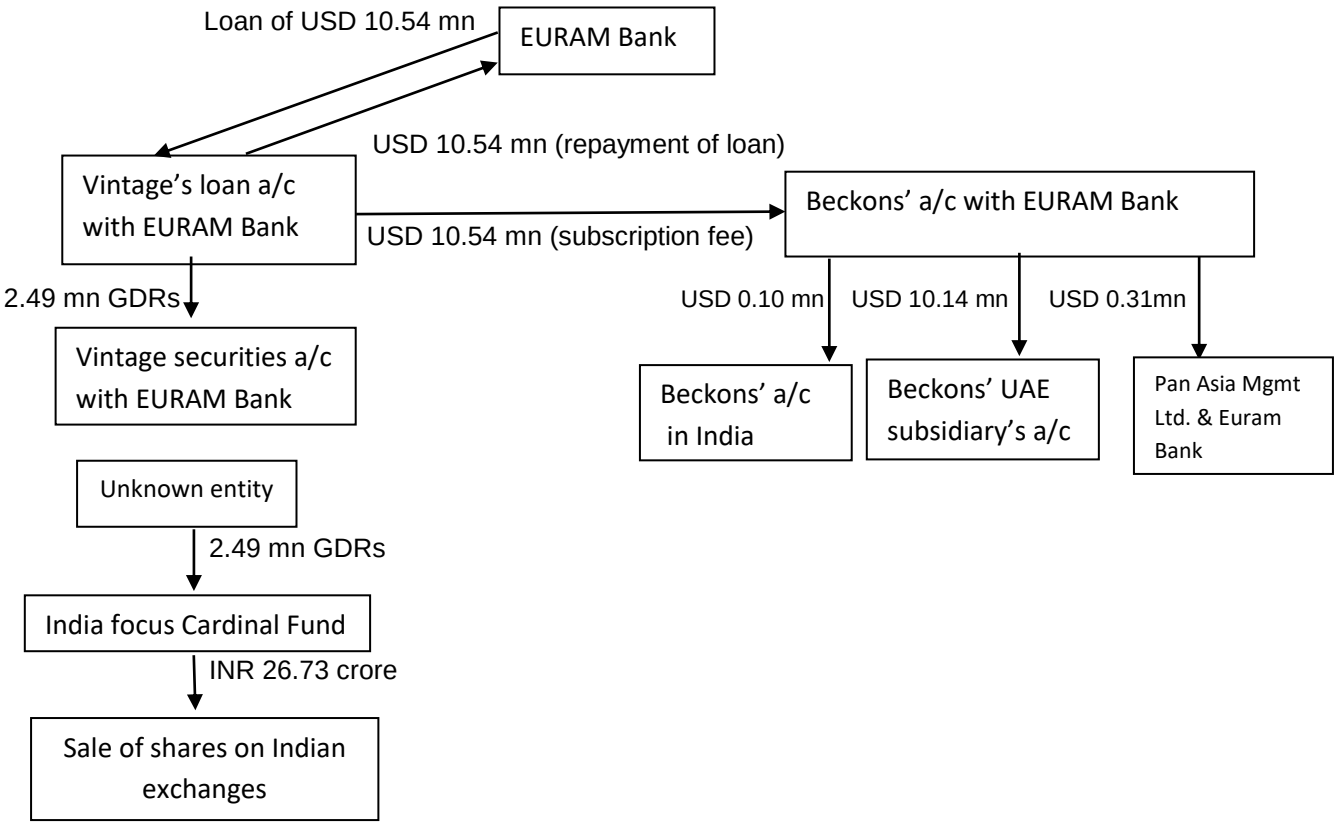
Date of credit of funds	Credit amount (US$)
June 11, 2010	10,543,867

28. Details of realization of funds by Beckons out of GDR proceeds of US$ 10.54 million are tabulated below:

Date of transfer of funds	Amount of funds transferred from Beckons' EURAM Bank a/c to Beckons' Union Bank of India a/c in India (USD)	Amount of funds transferred from Beckons' EURAM Bank a/c to Beckons' UAE subsidiary's bank a/c with ADCB (USD)	Amount of funds transferred to other entities
27.07.2010		2,000,000	
16.08.2010		1,000,000	
25.08.2010		2,500,000	
31.08.2010	100,000		
08.09.2010		2,000,000	
10.09.2010		1,500,000	
16.9.2010			311,400 (Pan Asia Management Ltd., Seychelles)
17.09.2010		1,139,425	10,462 (Euram Bank Asia Ltd.)
Total	**100,000**	**10,139,425**	**321,862**

29. Further, I note that GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from September 17, 2010 and continued till March 07, 2011. All 2,492,640 GDRs (100% of total 2,492,640 GDRs issued) were converted.

30. Issuance of Beckons' GDRs, flow of funds and subsequent sale of shares is shown below:



31. From all the observations arising from the above facts, I find it evident that Vintage, sole applicant in GDR issue, did not have any genuine interest in the GDR issue nor had any funds on its own. Rather, the chronology of events starting from opening of bank account of Beckons with Euram, Loan agreement along with Pledge agreement between Beckons and Euram, clearly indicates that GDR issue was prearranged and was premeditated plan of Beckons. Further, the circular movement of funds whereby Vintage, being the sole subscriber of GDRs of Beckons had received the loan from Euram which was in turn secured by Beckons who pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of Beckons which infers that GDRs were allocated to Vintage essentially free of cost. Therefore, all the above points to the conclusion that Beckons had devised a fraudulent, deceptive and manipulative scheme of GDR Issue and created GDR's without actually receiving any consideration for the same. Further, given that Beckons was connected to Vintage well before the issue of GDR, it further corroborates that Beckons had deliberately and carefully planned and executed the fraudulent, deceptive and manipulative scheme of GDR issues as mentioned above. However, I note that Beckons had ensured that the scheme of its operations were deliberately withheld from the investors and therefore Beckons gave out misleading and false information in public domain through deliberately suppressing the resolutions passed in its Board Meeting held on February 21, 2008. Considering that issue of GDR issuance is by its very nature is a price sensitive information and any announcement made by listed company will signal a positive impression in public domain that there is a good demand for its shares in international market. Such positive impression created in favour of Beckons would result in scope for expanding its business operations which would ultimately enhance the value of shareholders. In this regard, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of Jindal Cotex Ltd. vs. SEBI, has clearly delineated the importance of disclosure of loan agreement and pledge agreement in the following terms:

> "*The contention that Pledge Agreement was not required to be disclose under the Listing Agreement is not correct as the Listing Agreement, which forms the very basis of a disclosure based regulatory regime, requires every material information to be disclosed to the Stock*

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

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

32. Therefore, in light of the above observations of Hon'ble SAT, I am of the view that the non-disclosure of actual initial investor, loan agreement and pledge agreement were done so as to create a fraudulent impression in the minds of the public investors that the said GDR issue was genuine in nature and the company had received the funds and the same were available for the free use of Beckons.

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

"60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to

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

34. Therefore, I observe that the company has issued GDRs without disclosing the actual subscribers would clearly give an impression that the company has developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. The same not only provides scope for huge foreign investment but may also lead to high appreciation of share value.

35. Further, the purpose behind such wrong disclosure has been elaborately explained by the Hon'ble SAT, in its order dated October 25, 2016, in the matter of Pan Asia Advisors Ltd. vs. SEBI, in following words:

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

36. In view of this, I hold that the deliberate act on the part of the Beckons to submit wrong information was an important part of the whole scheme and the same was done only for the purpose of defrauding Indian investors by creating an impression that the GDRs of Beckons have been subscribed by genuine foreign entities on the basis of its fundamentals and future prospects.

37. Having noted the observation on the fraudulent mechanism devised by Beckons in issuance of GDRs suppressing the information to the public as above, I now proceed to record my findings with respect to the charges against the Noticee with respect to the aforesaid fraudulent issue of GDRs.

38. Before dealing with the allegations against Noticee, I consider it relevant to examine the role and responsibilities of the Noticee as Director in the Board of Beckons. As per the information available in Annual Report during 2009-2010 and 2010-2011, the Noticee was associated with the Board of Directors of Beckons as under:

Sl. No.	**Name**	**Designation**	**Category**
1.	Dr. Chandra Prakash	Director	Non-Executive Independent

39. I note that the Noticee did not file any reply to SCN and also did not appear before me despite being provided sufficient opportunities. Therefore, I proceed to deal with charges against him based on documents available on record.

40. I note from the facts on record that Board in its meeting held on February 21, 2008 had examined the proposal to open bank account with EURAM and passed various resolutions authorising Mr. Gurmeet Singh, Managing Director of Beckons for the purpose of the same. I note that during the meeting in which the resolution was passed, Mr. Gurmeet Singh was resolved as the chairman of the meeting.

41. On perusal of the Resolution no. 4, I note that the proposal was to open the account with Euram Bank outside India for the purpose of receiving subscription money in respect of the GDR issue of Beckons. It was also resolved that Euram Bank was authorised to use the funds so deposited in the aforesaid bank account as security in connection with loans, if any as well as to enter into any Escrow Agreement or similar agreement if and when so required. In this regard, the Board of Beckons had also passed resolution authorising Mr. Gurmeet Singh, Managing Director of the Company to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the company thereon, if and when so required.

42. As note in the pre-paragraphs, as a part of the scheme culled out with respect to the issuance of GDR by Beckons, Vintage had signed a Loan Agreement dated June 07, 2010 with EURAM Bank for payment of subscription amount of USD 10.54 million for solely for the purpose of subscribing to the GDRs of Beckons. At the same time Beckons opened its account with EURAM Bank for the purpose of credit of proceeds of GDR Issue. I also note that, on the same day (i.e., June 07, 2010) when Vintage had entered into loan agreement with EURAM Bank, as discussed in pre-paragraphs, Beckons also entered into a pledge agreement as Pledger with EURAM Bank which was signed by the Mr. Gurmeet Singh as the Managing Director of Beckons authorized by the Board

Resolution dated February 21, 2008. By the said pledge agreement, Beckons pledged the proceeds of its GDR issue with EURAM Bank as security for the loan extended by EURAM Bank to Vintage for subscribing to its GDRs.

43. I note from the records that the Mr. Gurmeet Singh had signed all the documents while opening of bank account with EURAM, entering into pledge agreement, which acted as a security to the loan availed by Vintage for subscription of GDRs.

44. I note that the Pledge Agreement refers to the Loan Agreement dated June 7, 2010 between the borrower i.e. Vintage and EURAM Bank (Lendor), whereby Vintage was granted a loan of US$ 10.54 Million and it is stated that the Pledger i.e. Beckons had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, I observe that, at the time of signing of the Pledge Agreement, the Company was clearly aware that Vintage had acquired a loan only to subscribe to the GDR issue of Beckons. Further, as the pledge agreement was signed by Mr. Gurmeet Singh on behalf of Beckons, in his capacity as the Managing Director of Beckons, I note that he had, as clearly mentioned in the Pledge agreement, acknowledged receiving the said loan agreement and agreed to its terms and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, it is noted that Beckons had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. This arrangement shows that Beckons had complete knowledge about the subscriber to GDR issue well in advance before the actual GDR issue.

45. With respect to role of the Noticee, I note that the Noticee was associated with Beckons in the capacity of Non-Executive Independent Director. I note that the Noticee was present during the Board meeting dated February 21, 2008 whereby an unanimous resolution was passed inter alia to open account with EURAM Bank for the purpose of receiving subscription money in respect of the GDRs, proposed to be issued by Beckons and authorised Mr. Gurmeet Singh

to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the company thereon, if and when so required. Therefore, the Noticee was part of Board meeting passing the aforesaid resolution which was significant and crucial in the whole deceitful scheme of fraudulent GDR issue of Beckons as it had enabled EURAM to retain the GDR proceeds of Beckons as collateral / security against the loan taken by Vintage.

46. I am of the opinion that the Noticee being part of Board in particular was involved in the outcomes or decisions taken by it. It is imperative that the independent director should act responsibly and cannot merely be name lenders or passive in the meeting. They are expected to be independent from the management and act as the trustees of shareholders have greater role to play and therefore should discharge their responsibilities diligently and carefully. Any failure in this regard will facilitate promoter related directors / MD to take advantage of their ignorance. In the instant case, Noticee was part of Board and also part of Audit committee, however, on perusal of the document available on record, I do not find anything to prove that he had exercised due diligence and discharged its duties as member of the Board.

47. In a listed company, independent director who act as trustees of stake holders should take all such steps and measures necessary in furtherance of the interest of shareholders and demonstrate highest standards of governance. Ignorance of law or knowledge is no excuse. For the purpose of this proceeding, I will proceed to examine the extent of involvement of the Noticee in his capacity of non-executive independent director in the issuance of GDR. In this regard, I refer to the Board meeting conducted in the relevant period from the Annual reports of Beckons for the years from 2009-2010 and 2010-11. I note the following from the same:

Financial Year	**No. of Meetings Held**	**No. of Meeting attended by the Noticee**
2009-10	9 (30/04/2009, 30/06/2009, 31/07/2009, 26/08/2009, 06/10/2009, 30/10/2009,	7

	25/11/2009, 23/01/2010 & 22/02/2010.)	
2010-11	13 (12/04/10, 13/05/10, 09/06/10, 14/06/10, 12/07/10, 26/08/10, 30/09/10, 12/10/10, 22/10/10, 03/01/11, 17/01/11, 14/02/11, 09/03/11)	1

48. From the above, I note that the Noticee was actively attending the board meetings in the aforementioned period. Further, I also note that Noticee was part of Audit committee of Beckons in the 2009-10. Considering the above I note that, the Noticee was closely associated with Beckons in the entire duration as above, I find that Noticee has not only failed to perform the duties cast upon him as an Independent Director but also, by passing the above mentioned Board Resolution, he has acted in a manner to promote the unscrupulous design of the Company to perpetrate a fraud upon its Shareholders and the investors of Securities Market. There is nothing available on record to support that the Noticee has actually acted responsibly or that he has raised all pertinent issues and had asked relevant questions to the management before the Board at the relevant time before agreeing to pass such a resolution, as expected of him as an Independent Director. There is no material or evidence on records to suggest that he has made due enquiries with or has confronted the management by questioning them as to why GDR proceeds should be kept as security for any loan in an overseas bank and how the GDR proceeds are proposed to be used in terms of the objects of issue. He has also not raised any question on the actual utilization of the GDR proceeds in terms of the objects of the issue. Holding a position of independent non-executive director on the Board he has duties and responsibilities during his tenure as a Director of the Company, which bestowed a responsibility on him to act diligently in the interest of the Company and the Shareholders. The phrase of acting diligently embodies in itself the duty not to be careless and casual in approach while taking decisions. I note that it is not in dispute that Noticee attended the multiple Board meeting including the one dated February 21, 2008, wherein, apart from the opening of bank account with EURAM Bank, the authorization in favour of Mr. Gurmeet Singh was also deliberated and approved.

49. In view of the aforesaid observations with respect to Noticee, I find it pertinent to note the following observation made by the Hon'ble SAT in the matter of Adi Cooper Vs. SEBI (Appeal No. 124 of 2019 dated November 5, 2019):

"13. Having heard the learned counsel for the appellant and having perused the record, we find that the appellant has only disputed his presence in the resolution of the Board of Directors dated January 30, 2008 but has not disputed his presence in the other resolutions that were passed by the Board of Directors of the company. Thus, his involvement in day to day affairs of the company cannot be ruled out. The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds. Apart from the above, we also find that the appellant was also the Chairman of the audit committee of the company. The WTM found that being the Chairman of the audit committee, he did not place any objection as to why the GDR proceeds did not reach the company and how the proceeds were utilized. We are thus, of the opinion that in the light of the findings given by the WTM, the appellant Kishore Hegde was part of the scheme through which issue of GDR by the company was effected through a fraudulent arrangement of loan agreement and pledge agreement. We are also of the opinion that the conduct of the appellant Kishore Hegde was inimical to the interest of the company, to the investors, as well as to the shareholders and, the action of the appellant Kishore Hegde was in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations. The order of the WTM debarring the appellant Kishore Hegde from accessing the securities market, etc. for a period of two years does not suffer from any error of law."

50. In view of the aforesaid Judgment by Hon'ble SAT, considering that the Noticee who actively participated in multiple board meeting of Beckons during the relevant period in the capacity of a director and also acted as the member of the Audit Committee of Beckons during the period concerning issuance of GDR, his failure to question why the GDR proceeds did not reach the company and how the proceeds were utilized do rise a significant scope of him

complying wilfully with the scheme of fraudulent issuance of GDR. Therefore, I am of the view that though the Noticee was an Independent Director, looking at the way he has conducted himself as an independent Director, as suggested by the facts of the matter, he clearly allowed himself to be a part of the fraudulent scheme and does not deserve any leniency since the charges against him stand firmly established. Therefore I conclude that the Noticee is liable for the violation of provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4 (1) of PFUTP Regulations.

ISSUE – 2: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?

51. It is established from the above findings that Noticee had played active part in a pre-meditated plan to provide financial assistance by means of pledge of entire GDR subscription proceeds for the purpose of ensuring the issuance and subscription of its GDRs and in turn the underlying equity shares without receiving any consideration at the time of GDR issue. The pre-determined fraudulent and manipulative acts of a few entities damage the integrity of the market. Further, the genuine investors are put at risk because of the fraudulent artifice employed by the Noticee as observed in this case. It is also established that the said Noticee deliberately flouted the Listing Agreement norms.

52. Therefore, as the alleged violation against the Noticee stands established, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher".

ISSUE - 3: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

53. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15J of SEBI Act, which reads as under:

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

54. To put it in nutshell, the issuance of these GDRs was for private gain at the cost of public good. Therefore, I am of the view that, in order to meet the ends of justice, exemplary penalty is warranted against the Noticee who was the director of Beckons. Given the gravity of fraudulent scheme devised and executed in Indian Markets which affected the integrity of markets, the same is warranted. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the the Noticee and the loss suffered by the investors as a result of these Noticee default. The consequences resulting from violations committed by the said Noticee are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future.

55. A basic premise that underlies the integrity of the securities market is that entities connected with the securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. In this case, it is established that Noticee's by employing fraudulent arrangement with regard to subscription of

GDRs had acted in a manner which is fraudulent and deceptive, thereby detrimental to the interest of investors in the Indian securities market. The Noticee actively played a role in defrauding the Indian investors by entering Pledge Agreement with respect to subscription of GDRs outside India and thereby inducing the Indian investors to deal in the shares of Beckons by deliberately making false/ misleading statements, misrepresenting, actively suppressing and concealing material facts /regarding GDR proceeds being available at Beckon's disposal when in fact GDR issuance, was just a facade to create underlying equity shares without receipt of consideration. It is particularly evident from the established facts that the entire proceedings of GDR which was transferred in the EURAM's account of Beckons served as collateral to the loan taken by Vintage in subscribing GDR and such amount was ultimately transferred to the Beckons' Indian Bank Account, only as and when Vintage repaid the loan to EURAM. Thus, the manner in which the entire scheme of fraudulent and deceptive scheme was planned and executed demonstrates beyond reasonable doubt the manipulative intent to deliberately withhold the critical information to Stock Exchange and also to the investors which ultimately enabled them to carry out the fraud. Such a conduct by a listed company erodes the trust and confidence of investors and also threatens the integrity of the securities market. Therefore, such lapses need to be dealt with sternly to protect the interest of investors in the securities market. In view of the above, I find it appropriate to impose suitable penalty.

ORDER

56. Further, in view of the findings mentioned in the pre-paragraphs above, in exercise of the powers conferred upon me under Section 15 – I of the SEBI Act read with Rule 5 of Inquiry Rules, I hereby impose a penalty of Rs. 15,00,000/- (Rs. Fifteen Lakh only) on the Noticee. I am of the view that the said penalty are commensurate with the lapse/omission on the part of the Noticee and also deterrent to the Noticee.

57. The aforementioned Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders →Orders of AO →PAY NOW

58. The aforementioned Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-I, SEBI, SEBI Bhavan, Plot No. C –7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". The Noticee shall provide the following details while forwarding DD/ payment information:

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

59. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Paragraphs above, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

60. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India, Mumbai.

Date: September 22, 2020 **B J Dilip**
Place: Mumbai **Adjudicating Officer**