

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

in the matter of GDR Issue of Edserv Softsystems Limited

In respect of –

Sr. No.	Noticee	PAN/Other Identifying Number
1.	S. Giridharan	AAGPG2646E
2.	G. Gita	AAGPG2647F
3.	T.S. Ravichandran	AAJPR0108F
4.	S. Arvind	AACPA7943E
5.	Arun Panchariya	AEVPP6125N
6.	Mukesh Chauradiya	AAVPC0966A
7.	Vintage FZE	<i>Registered outside India</i>
8.	Pan Asia Advisors Ltd.	<i>Registered outside India</i>
9.	India Focus Cardinal Fund	AABCI9518D

10.	Highblue Sky Emerging Market Fund	AADCK9460G
11.	Golden Cliff	(FII Registration No.) INMUFD256111
12.	KBC Aldini Capital Ltd.	(FII Registration No.) INUEFD237810
13.	Cardinal Capital Partners	(FII Registration No.) INMUFD263211

1. Background –

1.1. The present matter emanates from an investigation by SEBI into the issuances of Global Depository Receipts (“**GDRs**”) in overseas markets by Indian companies, allegedly with the intention of defrauding Indian investors. During the course of such investigation, it came to SEBI’s knowledge that there were several other GDR issues wherein loan was taken by a foreign entity and the security of the loan was provided by the GDR issuing company by signing a Pledge Agreement. One such company was Edserv Softsystems Limited (“**Edserv**”/the “**Company**”).

1.2. The focus of the investigation was to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures were made by Edserv with respect to GDRs issued by it on August 10, 2011. The period under investigation was the period around which the issuance of GDRs by

the Company took place, i.e. July 01, 2011 to August 31, 2011 (“**Investigation Period**”).

2. Summary of Show-cause Notice - (i) The Scheme (ii) The Modus Operandi and Fund Flow

2.1. Pursuant to the findings of the Investigation Report, a common Show-cause Notice dated January 15, 2018 was issued to the Noticees (hereafter referred to as the “**SCN**”). By way of the SCN, all the Noticees were called upon to show cause as to why suitable directions should not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act.

2.2. In this regard, the SCN relying on the Investigation Report has alleged that—

- A. The scheme of issuance of GDRs was fraudulent as the Company had entered into a Pledge Agreement with the bank, European American Investment Bank AG (“**EURAM Bank**”) for a loan that had been availed by Vintage FZE (“**Vintage**”), also known as Alta Vista International FZE, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 7, Vintage was a party to this fraudulent scheme. Noticee No. 1, S.Giridharan, who was an Executive Director in Edserv, signed a Pledge Agreement with EURAM Bank, whereby the account holding the GDR proceeds was given as

security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs of Edserv. Noticee No. 2, G. Gita; Noticee No.3, T.S. Ravichandran; Noticee No. 4, S. Arvind were Directors on the Board of Edserv, and in the board meeting dated July 25, 2011 passed a board resolution authorizing EURAM Bank to use the GDR proceeds account as security for the loan availed by Vintage. Noticee No. 6, Mukesh Chauradiya signed the Loan Agreement on behalf of Vintage for the subscription of GDRs of the Company. Noticee No. 5, Arun Panchariya was director and beneficial owner of Vintage.

- B. Noticee No. 9, India Focus Cardinal Fund was a sub-account of FII Cardinal Capital Partners. Arun Panchariya was the beneficial owner of Noticee No.9. Noticee No. 10, Highblue Sky Emerging Market Fund was registered as a sub-account of FII-Golden Cliff (also known as Vaibhav Investment Ltd.) and FII KBC Aldini Capital Limited. Arun Panchariya connected entities were beneficial owners and directors of Highblue Sky Emerging Market Fund. FII sub-accounts, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund received GDRs, converted them and sold the converted equity shares of Edserv in the Indian stock exchanges. Noticee Nos. 9 and 10 acted as conduits for Arun Panchariya and his connected entities, and sold the converted equity shares of Edserv, which had been acquired by Vintage, free of cost, through the fraudulent scheme.

C. Noticee No. 11, Golden Cliff; Noticee No. 12, KBC Aldini Capital Ltd.; and Noticee No. 13, Cardinal Capital Partners did not make any investment in India except investments made by their sub-accounts, namely India Focus Cardinal Fund and Highblue Sky Emerging Market Fund. So, the FIIs namely, Cardinal Capital Partners, Golden Cliff and KBC Aldini Capital Ltd. acted as conduits for Arun Panchariya and facilitated India Focus Cardinal Fund and Highblue Sky Emerging Market Fund to sell the underlying shares of the GDRs in the Indian stock exchanges.

2.2 (I) *The Scheme*

A. The Company came out with the issuance of 16,00,000 GDRs amounting to USD 23.89 million on August 10, 2011. A summary of the said GDR issuance is provided hereunder:

Table - 1

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USmn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds were deposited	Stock exchange on which GDRs are listed
10-08-2011	1.60	23.89	HSBC, Mumbai	80,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

B. A bank account was opened by Edserv with EURAM Bank bearing number 580048 to deposit the GDR proceeds. Accordingly, a total of USD 23,888,000 was credited to this account. Vintage was the only one from whom money was received in this account. Therefore, it was concluded by investigation that the GDR issue of Edserv was subscribed by only one entity i.e., Vintage. The amount credited to the GDR proceeds account is tabulated hereunder:

Table - 2

Date of credit of funds	Credit amount (USD)
August 09, 2011	23,888,000
	23,888,000

C. It was observed during investigation that of the total 23,888,000 USD taken as loan by Vintage, it repaid USD 600,000 of the total amount. Subsequently, it defaulted on the said loan, and the funds in the GDR proceeds account were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage. Further, it was seen from the bank account statements and the loan account statements that after Vintage repaid loan installments, Edserv made payments from its EURAM Bank account and

such payments were exactly the same amount that Vintage repaid to EURAM. Out of the GDR proceeds of USD 23.89 million, an amount of USD 23.33 million was utilised towards repayment of loan availed by Vintage. The GDRs issued to Vintage were issued free of cost, at least, to the extent of USD 23.33 million. This is the fraudulent scheme that had been conceived.

2.2 (II) *The Modus Operandi and Fund Flow*

- A. On April 29, 2011, the Board of Directors of Edserv passed a resolution resolving that a bank account be opened with any branch of EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Also, at the said board meeting, EURAM Bank was authorised to use the GDR proceeds as security against loan availed by Vintage.
- B. Vintage entered into a loan agreement dated July 25, 2011 with EURAM Bank for a loan facility of USD 23,888,000 so as to “ *provide funding enabling Vintage FZE to take down GDR issue of 1,600,000 Luxembourg public offering and may only be transferred to EURAM account nr.580048, Edserv Softsystems Limited.*”
- C. On July 25, 2011, a Pledge Agreement was executed between Edserv and EURAM Bank and the same was signed by S. Giridharan of Edserv. As per the Pledge Agreement, Edserv’s designated account with EURAM Bank bearing No. 580048 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.

- D. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed on the same day. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of Edserv.
- E. As already stated, the GDR proceeds to the tune of USD 23.89 million were deposited in the Company's bank account bearing number 580048 maintained with EURAM Bank. Vintage repaid the loan amount to the extent of USD 600,000 and thereafter defaulted on the loan repayment.
- F. As Vintage had defaulted, the outstanding loan amount of USD 23.33 million owed by Vintage to EURAM Bank was adjusted, in conformity with the Pledge Agreement dated July 25, 2011, from the GDR proceeds account of Edserv.
- G. Even though consideration had not effectively passed from Vintage to Edserv, the GDRs issued were, however, allowed to be converted into equity shares, and these shares were sold in the Indian capital market. Cancellation of GDRs started from September 14, 2011 and continued till February 15, 2013.
- H. Post cancellation of GDRs, FII-sub accounts namely 1) India Focus Cardinal Fund (Noticee No. 9); and 2) Highblue Sky Emerging Market Fund (Noticee No. 10) received equity shares on conversion of the GDRs.

I. A summary of the cancellation of the GDRs is provided hereunder:

Table – 3

Share credit date	No. of GDRs converted	No. of outstanding GDRs	No. of shares created	Entity in whose account shares were credited post cancellation of GDRs
12-Sep-11	-	16,00,000	80,00,000	Original Issue of Shares/ GDRs
14-Sep-11	51,550	15,48,450	2,57,750	IFCF
23-Sep-11	29,690	15,18,760	1,48,450	HBS
09-Mar-12	1,00,000	14,18,760	5,00,000	HBS
19-Apr-12	70,454	13,48,306	3,52,270	HBS
14-Sep-12	1,29,033	12,19,273	6,45,165	HBS
16-Oct-12	1,31,250	10,88,023	6,56,250	HBS
29-Oct-12	1,07,816	9,80,207	5,39,080	HBS
01-Nov-12	2,00,000	7,80,207	10,00,000	HBS
15-Nov-12	2,00,000	5,80,207	10,00,000	HBS
20-Nov-12	2,50,000	3,30,207	12,50,000	HBS
10-Jan-13	1,95,000	1,35,207	9,75,000	HBS
15-Feb-13	1,35,207	15,48,450	6,76,035	HBS

J. The Noticees, namely, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold the equity shares in the Indian capital market. Investigation found that the said sub-accounts were related to Arun Panchariya, and as such, the GDRs were converted into equity shares and these shares were sold in the Indian Capital Market .

K. Further, India Focus Cardinal Fund was registered as a sub account of FII, Cardinal Capital Partners. Also, as an FII, Cardinal Capital Partners did not make any investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by India Focus Cardinal Fund. Similarly, Highblue Sky Emerging Market Fund was registered as a sub

account of FIIs, Golden Cliff and KBC Aldini Capital Limited. It was seen that Golden Cliff and KBC Aldini Capital Limited did not make any investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by Highblue Sky Emerging Market Fund.

L. These FIIs, namely, Golden Cliff (Noticee No. 11); KBC Aldini Capital Limited (Noticee No. 12); and Cardinal Capital Partners (Noticee No. 13) facilitated the sale of the equity shares received by way of fraudulent issue of GDRs.

2.3. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 1 to 13 have violated the following provisions of the SEBI Act, 1992 and SEBI PFUTP Regulations, 2003 : Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

2.4. Consequent to the issuance of the SCN, a Supplementary Show-cause Notice dated June 18, 2018 was issued to Noticee Nos. 7, 8, 9 and 10 *inter alia* calling upon them to show cause as to why suitable directions, including disgorgement, should not be passed against them.

3. Inspection, Personal Hearing, and Replies and Written Submissions from the Noticees

3.1. The SCN was served on all the Noticees. Pursuant to the SCN, some of the Noticees filed their replies. Noticee No. 6 had also sought inspection of documents. Based upon the request of the Noticee, opportunity of inspection

of the records/ documents (which were relied upon by SEBI for the purpose of the SCN) were provided to Noticee No. 6. Details of the said inspection of documents are provided hereunder:

Table-4

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
7	Mukesh Chauradiya	April 17, 2018	Mr. Devendra Dhanesha, Chartered Accountant

3.2. The contention of Noticee No. 6 that he should have been allowed to inspect all documents gathered by SEBI is considered in detail in the latter part of the Order, while dealing with the preliminary issues.

3.3. The details of the personal hearings in the matter are tabulated below:

Table- 5

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
1 and 2	S. Giridharan and G. Gita	November 12, 2020; February 23, 2021; and July 19, 2021.	Ms. Purthana, Advocate along with S. Giridharan

5	Arun Panchariya	October 14 and October 20, 2020	Mr. P.R. Ramesh, Advocate
6	Mukesh Chauradiya	July 28, 2020	Mr. Devendra Dhanesha, Chartered Accountant along with Mukesh Chauradiya

3.3. Noticees Nos. 7, 9 and 13 have neither availed the opportunity of personal hearing nor filed any reply in response to the SCN. The details with respect to the service of the SCN and Hearing Notices to these Noticees are provided hereunder:

Table- 6

Noticee No.	Name of the Noticee	Details
7	Vintage FZE	<ul style="list-style-type: none"> ▪ SCN dated January 15, 2018 was sent by Speed Post to the said Noticee at the address: Aah-273, Al Ahmadi House, Jebel Ali Free Zone, Dubai. The same could not be delivered. ▪ SCN dated January 15, 2018 was served by way of a letter dated January 14, 2020 addressed to Arun Panchariya, the beneficial owner of Vintage FZE. ▪ Supplementary SCN dated June 18, 2018 was served by way of a letter dated February 26, 2020 addressed to Arun Panchariya, the beneficial owner of Vintage FZE.

		<ul style="list-style-type: none"> ▪ Hearing Notice for the personal hearing scheduled for November 12, 2020 was served through an email dated November 11, 2020 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner. ▪ Hearing Notice for the personal hearing scheduled for February 23, 2021 was served through an email dated January 29, 2021 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner.
9	India Focus Cardinal Fund	<ul style="list-style-type: none"> ▪ SCN dated January 15, 2018 was sent by Speed Post to the said Noticee at the address: C/o Cardinal Capital Partners, Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The same could not be delivered. ▪ SCN dated January 15, 2018 was served on the Noticee through FSC Mauritius. Intimation of the same was sent to SEBI by way of email dated June 5, 2018. ▪ Supplementary SCN dated June 18, 2018 was served on the Noticee through an email dated August 20, 2018 to the address of the liquidator (raj.rpl@insolvency.mu) with a copy to (m.reaz@intnet.mu). ▪ Hearing Notice for the personal hearing scheduled for November 12, 2020 was

		<p>served through an email dated November 11, 2020 to the address of the liquidator (m.reaz@intnet.mu).</p> <ul style="list-style-type: none"> ▪ Hearing Notice for the personal hearing scheduled for February 23, 2021 was served through an email dated February 23, 2021 to the address of the liquidator (m.reaz@intnet.mu).
13	Cardinal Capital Partners	<ul style="list-style-type: none"> ▪ SCN dated January 15, 2018 was sent by Speed Post to the said Noticee at the address: Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The same could not be delivered. ▪ SCN dated January 15, 2018 was served on the Noticee through FSC Mauritius. Intimation of the same was sent to SEBI by way of email dated June 5, 2018. ▪ Hearing Notice for the personal hearing scheduled for November 12, 2020 was served through an email dated November 11, 2020 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner. ▪ Hearing Notice for the personal hearing scheduled for February 23, 2021 was served through an email dated January 29, 2021 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner.

3.4. A summary of the replies as submitted by the Noticees is provided hereunder:

Noticee No. 1 (S. Giridharan) and Noticee No. 2 (G. Gita)

3.4.1. Noticee No. 1 and Noticee No. 2 have filed a common reply dated August 18, 2021. The Noticees, in their replies, have *inter alia* submitted that –

- a. they had not committed any violation as alleged and they believe that they had always adhered to the laws and regulations of SEBI at all times;
- b. the Noticees did not attempt to unnecessarily delay the proceedings except for the fact that they were trying to reach out to the Official Liquidator attached to the Honorable Madras High Court, and also Noticee 2 was going through a critical phase of her life due to ill health and was under medical observation before a major surgery;
- c. the Company, Edserv Softsystems Limited was wound up by an ExParte order of the Hon'ble Madras High Court dated 19th August, 2013;
- d. Edserv Softsystems Limited has not been made a party to the present proceedings even though the Noticees had sought the addition of the Company as a party to the present proceedings;
- e. as the Company was under liquidation, the Noticees had no access to day-to-day correspondences, communications, underlying detailed documentations as evidences for the Noticees, and the Noticees have

- relied only on the details given by SEBI and the information available with the stock exchanges / public domain, to submit their defence;
- f. the request to make the official liquidator attached to the Hon'ble Madras High Court a party to the present proceedings, in the virtual hearing dated 23/02/2021, was not accepted, although SEBI in the matter of Aqua Logistics Ltd has made the Official Liquidator a party to the proceedings;
 - g. the Noticees followed and complied with all the laws and regulations with respect to the GDR issue and the same was disclosed to the stock exchanges;
 - h. also, the Company informed BSE about the opening and closing of the GDR issue as well as about the board meeting held on 30th May 2011;
 - i. Pan Asia Advisors Limited lead by Arun Panchariya was the Lead Manager of the GDR issue, and the Noticees were not aware about any scam and/or fraud done by Arun Panchariya;
 - j. the intention of the GDR issue was to expand the Company's education business and there was no intention to defraud the investors;
 - k. no investors were affected because no investor till date has inquired and/or questioned and/or raise grievances about the same;

- l. no Indian statutory body cautioned or advised or disapproved the issue of GDRs with such a Lead Manager in spite of filing the information in public domain and the stock exchanges;
- m. there was no diversion of any funds as alleged in the SCN, and Arun Panchariya (Noticee no. 5) and Mukesh Chauradiya (Noticee no. 6) were the key persons in structuring the GDR and the scam and fraud was done by the lead manager;
- n. the SCN states that “GDRs were thereafter converted by two AP (Noticee no. 5) connected sub-accounts i.e. IFCF(Noticee no. 9) and HBS(Noticee no. 10) into equity shares of Edserv and converted equity shares to the tune of Rs. 12.86 crore were sold on BSE and NSE”, this clearly indicates that no amount was credited to Noticees’ account; so, they were not liable for any directions/investigation under SEBI Act, 1992;
- o. there has been inordinate delay in the issuance of the SCN and SEBI has not provided “sufficient cause” for such inordinate delay;
- p. SEBI’s jurisdiction over GDRs was not clear and only after the Supreme Court’s order in 2015 did the matter become clear, so the Noticees being first-time GDR issuers and promoters in the capital markets, they were unaware of the issues relating to issuance of GDRs; and

q. the decision for the issue of GDRs was not under their individual capacity but was approved by the board of directors of the Company, and the Noticees, being authorised by the Board and the General Body, signed a set of documents as a customary process as provided by the Lead Managers, who were entrusted with the job of doing the GDR issue of which the said Noticees had no idea.

3.4.2. The Noticee Nos. 1 and 2 have relied on the following case laws:

a. Order dated April 15, 2021 passed by Hon'ble SAT in Misc Application No. 12 of 2021 and Misc Application no. 66 of 2020 and Appeal no. 62 of 2020 in the matter of Morepen laboratories Limited V. SEBI and Order passed by SEBI July 22, 2021 in the matter of GDR issue of Aqua Logistics Ltd. to contend that in the present matter the Official Liquidator should have been made a party to the proceedings.

Noticee No. 3 (T.S. Ravichandran) and Noticee No. 4 (S. Arvind)

3.4.3. S. Arvind has submitted his replies dated February 02, 2018; July 05, 2018 and July 23, 2020. T.S. Ravichandran has submitted his replies dated February 05, 2018 and July 23, 2020. The said Noticees have made submissions which are similar and also include common correspondence and actions taken collectively. So, the replies of the Noticee No. 3 and Noticee No.4 have been clubbed here.

3.4.4. By way of the said replies, the Noticees have *inter alia* made the following submissions:

- a. Noticee Nos. 1 and 2 were the persons who were responsible for the day- to- day affairs of the Company and were attending to the day to day matters related to the GDR issue;
- b. Noticee Nos. 3 and 4 were ignorant of the fact that Noticee Nos. 1 and 2 had entered into a pledge agreement with Euram Bank;
- c. the fact of non-disclosure of the said agreement by the Company to the stock exchange has to be explained by S. Giridharan and G. Gita and not the Independent Directors;
- d. mere certification of the Board Resolutions of Edserv passed on April 29, 2011 and July 25, 2011 does not make the present Noticees part of any conspiracy to issue improper GDRs, as the certification only means that the two resolutions were passed by the Board of Edserv, which is true;
- e. the facts about the GDR issue as reported to the Board by Noticee Nos. 1 and 2, who were in charge of the day to day affairs of the Company and also the GDR issue, which were relied upon by the Board of the Company and the Audit Committee during the process of issue and utilization of the GDRs in 2011 and 2012, were in variance with the facts reported by SEBI after its investigations, which can be seen from the

Agenda and Notes for the Audit Committee meeting held on February 13, 2012;

- f. on May 30, 2012, the Chairman reported to the Audit Committee and the Board of the Company that out of the total amount available from the GDR issue, the position on March 31, 2012 was that the company had drawn USD 600,000 for content development expenses and the balance of USD 23,319,263.94 was kept in the retail account abroad, which was noted by the Audit Committee on that date;
- g. no further reports on the use of the GDR funds were placed before the Board or Audit Committee after the report on May 30, 2012;
- h. in the first week of November it was noticed by the present Noticees, that the Company had reported to the BSE on August 10, 2012 that the Company had acquired an e-learning company in the UAE, the name of which was Alta Vista and the price paid for the acquisition was not revealed;
- i. also a press notification dated September 28, 2012 was given out by the Company in this regard;
- j. this acquisition had also not been reported to the Board of the Company and had been done without being placed before the Board;

- k. an e-mail, with a copy to Ravichandran, was addressed by Noticee No. 4 to Noticee No. 1 on November 06, 2012 asking as to how the investment had been made without Board clearance and asking him to give a statement of the use of funds; however, no reply was received from Noticee No. 1 on the same;
- l. a subsequent mail, with a copy to Ravichandran, was addressed by Noticee No. 4 to Noticee No. 1 on November 07, 2012 asking Noticee No.1 to indicate as to who had done the valuation of the acquired company before it was acquired by Edserv, which also was not replied to;
- m. at the meeting of the Board of Directors on November 26, 2012, Noticee No. 1 did not provide a copy of the valuation report that had been asked for as he stated that the same was not available with him in the head office of the Company but was available in the Dubai office of Edserv's subsidiary and he promised to get a copy of the same and convene another board meeting in a week's time to allow the Board to peruse the report;
- n. however, no Board meeting took place after this in December 2012 to ratify this investment;

- o. Noticee No. 4 resigned as a Director of the Company on January 28, 2013 and Noticee No. 3 resigned as a Director of the Company on December 10, 2012;
- p. the present Noticees were Independent Directors, and not having any role in the day to day affairs of the Company cannot be held liable for any acts of the management which have not come to their notice through board processes in view of Section 149 (12) of the Companies Act 2013; and
- q. the circular of the Ministry of Corporate Affairs (General Circular No. 08/2011) which has laid down the guidelines for the responsibility of Non-Executive Directors on the Boards of Companies including Independent Directors appointed as per SEBI requirement on the Boards of publicly listed companies be considered.

3.4.5. The Noticees have relied on the following case law:

- a. National Small Industries Corp. Ltd. V. Harmeet Singh Paintal and Another, (2010) 3 SCC 330 to contend that the liability of each Director for the offences cited has to be separately stated and general statements that the Directors of the Company are liable for the offences is not adequate.

Noticee No. 5 (Arun Panchariya)

3.4.2. In his replies dated January 09, 2018 and November 15, 2020, Arun Panchariya has stated that he has been a non-resident Indian for the last more than 20 years, has certifications in finance and has been in the financial services industry in the Middle East and Europe.

3.4.3. The Noticee has challenged the jurisdiction of SEBI to initiate the present proceedings. In this regard, the Noticee has submitted that —

- a. SEBI has no jurisdiction to initiate action against natural persons resident outside India as the scope of the SEBI Act extends to the whole of India only, and not outside India;
- b. the Noticee was never registered with SEBI or the RBI, or any other regulatory agency in India, and he never had a place of business in India and has not carried out any activities within India;
- c. Vintage FZE, which was a limited liability company incorporated under the relevant laws of the UAE, was established by him;
- d. Cardinal Capital Partners, a company incorporated in Mauritius, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund ;
- e. the activities of Vintage, Cardinal Capital Partners and India Focus Cardinal Fund were carried out wholly outside India; and

- f. the subscription by Vintage of the GDRs issued by Edserv was a purely commercial arrangement outside India, under the relevant laws, and SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations.

3.4.4. The said Noticee has also denied all the allegations and charges made against him in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years, and the Noticee is completely in the dark about what exactly SEBI has in mind;
- b. there is no justification to issue the SCN in the name of the Noticee, in his personal capacity, ignoring the existence of corporate entities and transactions executed by way of legal and binding agreements between such entities;
- c. the legal entities are incorporated under respective foreign jurisdictions and many of them are also regulated by the respective financial market regulator of their respective jurisdictions, which shows that these legal entities are real, and there is no case for looking through them and arraigning the Noticee in his personal capacity;
- d. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary;

- e. the entities whose veils have been lifted are not entities incorporated in India, and hence the assumption of powers by SEBI to lift the corporate veil and issue a SCN to the Noticee in his personal capacity is beyond the scope of the powers of SEBI under the SEBI Act;
- f. numerous other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI in the year 2011;
- g. the investigation carried out by SEBI has been highly prejudiced and biased;
- h. the allegations in the SCNs are exclusively based on Xerox/Photostat copy of documents, the original of which are not available with SEBI, so the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied, and as such, the photostat copy of the documents relied upon by SEBI cannot be and should not be admissible as evidence in the present proceedings;
- i. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec company limited, Seviron company limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief and the charges against it be dropped as per the previous decisions

of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues;

- j. The Noticee was a director in Vintage FZE till 2007, and has already resigned from it;
- k. the decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management;
- l. The Noticee was neither a whole-time director nor the managing director of India Focus, and during the time when the Noticee was a director, investment decisions of India Focus were taken collectively by its Board of Directors;
- m. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to support the allegation that they were connected to or controlled by the Noticee, except showing few connections which were totally independent business relationships; and
- n. the scheme of subscription to the GDR is not a fraudulent device as the GDR issue was made under the 1993 GDR Scheme governed by the GOI Guidelines and FEMA.

3.4.5. The said Noticee has in his replies relied on the following case laws:

- a. UMC Technologies Pvt Ltd. V. Food Corporation of India, (2021) 2 SCC 551 to contend that impugned show cause notices does not specify what action SEBI proposes to take;
- b. Salomon V. A. Salomon & Co. Ltd, [1897] AC 22 to state that the facts and circumstances of the case do not warrant lifting of the corporate veil;
- c. Smt. J. Yashoda V. Smt. K. Shobha Rani, (2007) 5 SCC 730 and Hariom Agarwal V. Prakashchand Malaviya, (2007) 12 SCC 49 to contend that photostat copies of documents cannot be relied upon since the same have not been certified by any of the authorities from which they have been obtained;
- d. Dilip S Pendse V. SEBI, Order dated November 19, 2009 in Appeal No.80 of 2009, Securities Appellate Tribunal to state that the more serious the offence, the stricter should be the degree of proof;
- e. SEBI and Others V. Kanaiyalal Baldevbhai Patel and Others , (2017) 15 SCC 1 to contend that the charges under PFUTP Regulations need to be established as per the applicable standards rather than on mere conjectures and surmises; and
- f. Price Waterhouse & Co. and Ors. V. SEBI, Order dated September 09, 2019 in Appeal Nos.6, 7, 190 and 191 of 2018, Securities Appellate

Tribunal, to contend that it must be proved by cogent evidence that the appellants are guilty of “inducement”.

Noticee No.6 (Mukesh Chauradiya)

3.4.6. The Noticee in his reply dated February 27, 2018 has *inter alia* submitted the following:

- a. the Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in the Jebel Ali Free Zone Authority, UAE (“**JAFZA**”), under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage;
- b. in the Shareholder’s list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held 9,998/18,59,013 Equity Shares in Vintage FZE, so all along Arun Panchariya was the beneficial owner of Vintage FZE ;
- c. administrative fine statement passed by the Dubai Financial Services Authority (“**DFSA**”) imposing fine of USD 12,000 on Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE;

- d. the Noticee attempted to gather relevant information from JAFZA regarding the allegation that he was a director in Vintage, however he was denied the same and informed that he would be required to provide a court order; SEBI may seek the information from JAFZA as it would help the Noticee in defending his case;
- e. Arun Panchariya was initially the sole director, subsequently somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE;
- f. the copy of the JAFZA Visa of Arun Panchariya for the period 12/01/2010 to 11/01/2013 shows his designation to be Managing Director;
- g. the Noticee has never been the Director or Managing Director of Vintage FZE, as alleged in the SCN, and that he only held the position of Manager;
- h. the copies of the Noticee's resident-permits for the period 14th September 2005 to 9th September 2017 show that his designation/position was General Manager and not Director or Managing Director;
- i. the Employment Card issued to the Noticee by JAFZA shows that he has always been an employee of Vintage FZE, and not a Director or Managing Director;

- j. the decisions to subscribe to the GDRs issued by Edserv and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it;
- k. in respect of the loan agreement signed by the Noticee, it has been stated by the Noticee that he signed the document, on instructions from Arun Panchariya, owing to the conflict of interest that existed as Arun Panchariya was the Director and President of Euram Bank Asia., and he held a stake in Euram Bank Asia;
- l. the title “Managing Director” was pre-printed or part of the proforma of the Bank, and it was by oversight continued to be so;
- m. the loan availed by Vintage from Euram Bank was for the sole purpose of subscribing to the GDR of Edserv, and the same was applied for the purposes for which it was obtained;
- n. taking a loan for subscribing to a GDR issue per-se is not a violation of any laws, especially that of UAE and JAFZA, and also is not a violation of any Indian laws;
- o. the Noticee was not aware of any arrangement that Arun Panchariya may have had with Edserv in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;

- p. he did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya;
- q. the Noticee being a nominee director in some of the subsidiaries is true, though the same has nothing to do with the allegations contained in the present matter of GDR issue is concerned; and
- r. the Noticee requested that he be permitted to inspect all documents collected during investigation, and the recorded statement of Arun Panchariya.

Noticee No. 8 (Pan Asia Advisors Limited)

3.4.7. The Noticee has in its reply dated February 14, 2018 submitted that —

- a. The Hon'ble Supreme Court in the case of *SEBI V. Pan Asia Advisors Ltd and Others* has laid down that SEBI has jurisdiction to take action against the Noticee only if the GDR issue has an adverse impact on the Indian securities markets, so unless it is shown by SEBI that the issue of GDRs by any Indian company adversely impacted the Indian securities market, it would have no jurisdiction to proceed against me for alleged manipulation or violations committed in respect of a GDR issue;

- b. no specific allegation has been made against the Noticee, except that it was the lead manager to the issue related;
- c. also no allegation has been made against the Noticee regarding any irregularities on a part of the Lead Manager; and
- d. the Noticee has challenged the Hon'ble SAT's Order dated 25th October, 2016 and its review order dated 15th February, 2017 before the Hon'ble Supreme Court of India in CA No. 009516 /2017.

Noticee No. 10 (Highblue Sky Emerging Market Fund)

3.4.8. In its replies dated February 14, 2018 and August 12, 2018, it has been submitted by the Noticee that it is a limited liability company incorporated under the law of the Republic of Mauritius having its registered office at C/o Aurisse International Ltd, Suit 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius. The Noticee, as on February, 2018, was registered with SEBI as an FPI.

3.4.9. It has a license issued by the Financial Service Commission (FSC) of Mauritius, and its business was in the nature of a mutual fund/hedge fund i.e it receives fund and "in kind subscription" from investors, which it in turn invests in shares and securities across the global markets (including India). The investors are foreign corporates and institutional investors, and none of its investors are Indians or Non Resident Indians (NRIs).

3.4.10. The said Noticee has also denied all the allegations, charges made against it in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the allegation in the SCN that the GDRs were converted by Highblue Sky Emerging Market Fund on behalf of Arun Panchariya and his connected entities was not correct;
- b. the Noticee's investments did not belong to Arun Panchariya or his connected entities, and the Noticee did not have any connection with Arun Panchariya or his connected entities in any manner.
- c. the allegation that Highblue Sky Emerging Market Fund was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to AP, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Edserv Metal and Power Limited were done upto May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014) with the Noticee;
- d. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the *bonafide* intention of Anant Sharma;
- e. the fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma

was connected with Arun Panchariya in all businesses, which were independently handled by Anant Sharma;

- f. also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016;
- g. the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authorities, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund, and also to ICICI bank while seeking conversion of Sub-account Emerging Market Opportunities Fund (Previously known as Highblue Sky Emerging Market Fund) into FPI; and
- h. Aurisse was the management company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations, provision of Directors, Secretary, Registered office, maintenance of books and accounts, filing of change on Directors, shareholders, tax advice etc., which was a normal practice so the KYC documents of Highblue Sky showed its address and contact numbers being common with one Aurisse fund..

Noticee No. 11 (Golden Cliff)

3.4.11. In its reply dated February 14, 2018, it has been submitted by the Noticee that is a limited liability company incorporated under the law of the Republic of Mauritius having its registered office at C/o Aurisse International Ltd, Suit 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius. It was duly registered with SEBI as an FII until February 28th, 2017.

3.4.12. The said Noticee has also denied all the allegations, charges made against it in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the allegation in the SCN that Golden Cliff did not make any investment in India except through its sub-account Highblue Sky was not correct;
- b. its sub-account holders have invested in primary and secondary markets other than the Indian GDR issue;
- c. the fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all business, which were independently handled by Anant Sharma;
- d. the allegation that Golden Cliff was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to Arun Panchariya, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Edserv Metal and Power Limited were done upto May 17, 2013, which was prior to the association of

Anant Sharma (September 09, 2014) and Reema Narayan Shetty (September 12, 2013);

- e. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bonafide intention of Anant Sharma;
- f. Also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016; and
- g. the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authority, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund, and also to ICICI bank while seeking conversion of Sub account Emerging Market opportunities Fund (Previously known as Highblue Sky Emerging Market Fund) into FPI.

Noticee No. 12 (KBC Aldini Capital Limited)

3.4.13. The Noticee by way of its email reply dated February 04, 2021 has submitted that –

- a. it was in no way related to Arun Panchariya or any of its related entities;

- b. the Noticee was based in Dubai as an Investment Bank and regulated by the Dubai Financial Services Authority (“**DFSA**”);
- c. the Noticee in 2009-2010 set up a sub-fund in Mauritius by the name KBC Aldini Capital Ltd whose FII was KBC Aldini Capital Ltd, Dubai;
- d. KBC Aldini Capital Ltd, Dubai was active whereas KBC Aldini Capital Ltd Mauritius was closed and the name changed to Highblue Sky Emerging Market Fund in 2010; and
- e. Daniel Baumslag was a director in KBC Aldini Capital Dubai but not in KBC Aldini Mauritius.

3.5. Upon having summarised the replies of the Noticees, I find it relevant to extract the applicable provisions of the SEBI Act and PFUTP Regulations, stated to have been contravened in the SCN.

Relevant Provisions

3.5.1. Provisions of the SEBI Act —

Section 12 A (a), (b), (c)

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”

3.5.2. Provisions of the SEBI (PFUTP) Regulations, 2003 —

Regulation 3(a), (b), (c) and (d)

3. 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.”

Regulation 4 (1) and (2)

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(a) ... ;

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

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

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

4. Issues

I. Whether Edserv Softsystems Limited by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No.7) towards the subscription of GDRs issued by Edserv, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors ?

II. Whether the Directors of Edserv Softsystems Limited, namely, S. Giridharan (Noticee No.1), G. Gita (Noticee No. 2), T. S. Ravichandran (Noticee No.3) and S. Arvind (Noticee No. 4) who authorised EURAM Bank to use the GDR proceeds as security in connection with the loan acted as party to the fraudulent scheme, and whether the Directors of Vintage namely, Arun Panchariya (Noticee No.5) and Mukesh Chauradiya (Noticee No. 6), were involved in perpetrating the fraudulent scheme?

III. Whether the Lead Manager to the issue, Pan Asia Advisors Ltd. (Noticee No.8) acted as a party to the fraudulent scheme?

IV. Whether the sub-accounts namely, India Focus Cardinal Fund (Noticee No. 9), Highblue Sky Emerging Market Fund (Noticee No. 10), and the FIIs namely, Cardinal Capital Partners (Noticee No. 13), Golden Cliff (Noticee No. 11) and KBC Aldini Capital Ltd. (Noticee No. 12) through whom the sub-accounts traded in the Indian securities market, acted pursuant to the fraudulent scheme?

V. Whether Vintage (Noticee No. 7), Pan Asia Advisors Ltd. (Noticee No.8), (Arun Panchariya), India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10) should be directed to disgorge the illegal gains?

5. Consideration and findings –

5.1. Before proceeding with the merits of the matter, it would be relevant to deal with the preliminary objections raised by certain Noticees.

Jurisdiction of SEBI challenged as GDR issue done outside India

5.2. Noticee No. 5, Arun Panchariya has raised this objection since the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. It is stated that the said question has already been

answered by the Hon'ble Supreme Court of India in its judgment dated July 06, 2015 in the matter of *Securities and Exchange Board of India V. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013, (2008) 13 SCC 369*. The case came before the Hon'ble Supreme Court pursuant to an appeal by SEBI against the order dated September 30, 2013, passed by the Hon'ble Securities Appellate Tribunal ("SAT"), Mumbai, in Appeal No.126 of 2013. The Hon'ble SAT by way of its above mentioned order had set aside SEBI's Order dated June 20, 2013, whereby SEBI had debarred Pan Asia Advisors and Arun Panchariya for a period of ten years in dealing with securities with respect to their roles in the issuance of GDRs by six companies. In this background, the Hon'ble Supreme Court through the said judgement has clarified the scope of SEBI's territorial jurisdiction, especially with respect to the issuance of GDRs by companies. The Hon'ble Supreme Court noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of *GVK Industries Officer v. Income Tax Officer (2011) 4 SCC 36*, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in*

India or related to India and Indians in terms of impact, effect of consequence”. The court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of above-mentioned reasons, the Hon’ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors.

5.3. Thus, the issue of jurisdiction of SEBI in GDR matters having been settled by the Hon’ble Supreme Court, I proceed to consider the matter on merits.

Proceedings not maintainable owing to delay

5.4. With respect to the submission of Notice Nos. 1 and 2 that sufficient cause has not been shown by SEBI with respect to the delay in the proceedings. In this regard, it is seen from the record that documents *inter-alia* in the captioned matter were obtained from the Financial Market Authority, Austria on January 22, 2016 and Financial Services Commission, Mauritius on September 15, 2016. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of Edserv and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated January 15, 2018 was issued to the Noticees. Further, a Supplementary Show-Cause Notice

dated June 18, 2018 was issued to Noticee Nos. 7,8, 9 and 10. Also, as many of the Noticees were based out of India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.

5.5. The Hon'ble SAT in its *Order dated February 05, 2020 in Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI*, while dealing with the question of delay, held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the investigation of the manipulative GDR issue and the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

5.6. Similarly, in the matter of *G. V. Films Ltd. Vs. SEBI. (Order dated February 15, 2021 in Appeal No. 168 of 2020, Securities Appellate Tribunal)* the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDRs as follows:

“Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time.”

(Underline added)

5.7. Thus, in view of the above, I do not accept that the delay in the matter would vitiate the proceedings.

All Documents/ Annexures of Investigation Report not Provided by SEBI

5.8. Noticee No. 6 has submitted that all the documents collected during the investigation process should have been provided to him. Similarly, it has been submitted by Noticee No. 5 that the allegations made in the SCNs were based on Xerox/Photostat copy of documents, and so those documents do not satisfy the conditions of Sections 63 and 65(a) of the Evidence Act, 1872 and the same cannot be admissible as evidence in the present proceedings.

5.9. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to Noticee No.6. It is noted that Noticee No. 6 had sought inspection of documents and the same was provided on April 17, 2018. Mr. Devendra Dhanesha, the authorised representative of Noticee No. 6 carried out inspection of the documents relied upon by SEBI.

5.10. In this regard, it would be appropriate to refer to the Order of Hon'ble SAT dated September 13, 2021 in Pooja Wadhawan V. SEBI (Misc. Application No. 822 of 2021 in Appeal No. 487 of 2021), whereby the Hon'ble Tribunal while dealing with the issue of supply of documents in proceedings before SEBI, has observed that:
“*The Supreme Court in Natwar Singh* (Natwar Singh V. Enforcement Directorate,

clearly underlines that the principles of natural justice does not require supply of documents upon which no reliance has been placed by the authority and that the principle of natural justice are not intended to act as a roadblock to obstruct statutory requirements.”

5.11. As regards, the assertion of Noticee No. 5 that the documents relied upon by SEBI were merely photocopies and not originals, it is stated that since a lot of the entities involved in GDR matters were incorporated/registered in foreign jurisdictions, the documents in the matter had to be obtained from the regulators in those jurisdictions, namely, Financial Market Authority, Austria; Financial Services Commission, Mauritius; and Dubai Financial Services Authority. With respect to the applicability of the provisions of the Indian Evidence Act, 1872, as raised by Noticee No. 5, it is stated upfront that the present proceedings are in the nature of quasi-judicial proceedings, and does not go by the strict rules of evidence. In cases where primary evidence is not available, reliance on information supplied by Regulators abroad along with photocopies of the underlying documents would constitute sufficient evidence.

5.12. In view of the aforesaid, I find that the contentions of Noticee Nos. 5 and 6 with respect to the documents relied upon are untenable.

Specificity of Violations Alleged in the SCN

5.13. Arun Panchariya (Noticee No. 5) has also submitted that the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 11 years and the Noticee is completely in the dark about what exactly SEBI has in mind. In the instant proceedings, the SCN has been issued for breach of provisions of

securities law, which confer discretion upon SEBI to take such measures as it thinks fit in the interest of investors and securities market. In this regard, it is further noted that the SCN issued to the Noticee has clearly spelt out the provisions under which the desired preventive/remedial measures, etc. if found necessary, would be issued and also clearly indicate the specific nature of violations that have been alleged against it in terms of different provisions of the PFUTP Regulations, 2003. Therefore, it is observed that specific allegations were unambiguously conveyed to the Noticee and further, opportunity was given to the Noticee for tendering its response thereto. It is, therefore, incumbent on the part of the Noticee to explain its position with support of relevant evidence in response to various allegations made against it in the SCN. Only after examining and considering the explanation offered by the Noticee to the allegations levelled under the SCN, it would be possible for the Competent Authority to determine as to what directions are required to be issued against the Noticee, depending on its role in the alleged violations and the impact of the alleged violations on the securities markets. It is to be noted here that the provision of Sections 11(1), 11(4) and 11B of the SEBI Act vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be crystallised and formulated before the adjudication of issues involved.

Issue I- Whether Edserv had devised a scheme with Vintage to defraud the investors?

5.14. The SCN has alleged that the issuance of GDRs by Edserv was fraudulent as the Company had entered into a Pledge Agreement with the bank, EURAM Bank for a loan that had been availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors.

5.15. No reply to the SCN has been received from the Company. Also, no reply has been received from the subscriber of the GDRs i.e., Vintage.

5.16. So, to consider the allegation made in the SCN, it is relevant to place a chronology of the events associated with the GDR issue:-

- a. ***April 29, 2011*** – The Board of Directors of Edserv passed a resolution whereby it resolved to open an account with EURAM Bank. The excerpts from the said Board Resolution are reproduced hereunder:

“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 the Global Depositary Receipt issued of the Company.

RESOLVED FURTHER THAT Mrs. G. Gita, Managing Director of the company, be and are hereby severally authorised 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 Company thereon, if and when so required.

RESOLVED FURTHER THAT Mrs. G. Gita, Managing Director of the Company, be and hereby severally authorised to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

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

- b. **July 25, 2011** – The Board of Directors of Edserv again passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company’s GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

“RESOLVED THAT in addition to the authority granted by the ADR/GDR/FCCB Committee at its meeting held on 29th April 2011 to Mrs. G.Gita, Managing Director of the Company, Mr.S.Giridharan, Chairman & CEO of the Company be and is hereby additionally authorised to operate the company's account held with Euram Bank or any branch of Euram Bank, including the Offshore Branch, outside India, 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 and to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

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.”

- c. **July 25, 2011** – Vintage entered into a Loan Agreement with EURAM Bank for availing a loan facility of USD 23,888,000 with respect to the subscription of GDRs issued by Edserv.
- d. **July 25, 2011** – Edserv entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage, and held in a bank account with EURAM Bank, was pledged as collateral for the loan availed by Vintage from EURAM Bank.
- e. **August 09, 2011** – In the Escrow Account maintained by Edserv with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 23,888,000

was made. The said amount had been deposited by Vintage for subscription of 100% of the GDR issue.

- f. **July 31, 2012** – A letter was issued by Edserv to EURAM Bank with respect to the deposit account maintained by it. By way of the said letter, Edserv confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 23,288,000. By way of the said letter, it was further instructed by Edserv that upon exercising its right to set off, the remaining GDRs being held in Deposit No. 5400121E of Vintage should be transferred to Account No. 20311-333-196205 in Habib Bank AG Zurich.
- g. **August 27, 2012** – Pursuant to the invocation of the pledge, an amount of USD 23,330,423.49 was realised by EURAM Bank in respect of the outstanding loan amount of Vintage.

5.17. The above chronology brings out the overall scheme and the simultaneous execution of the Loan Agreement by Vintage and a Pledge Agreement by Edserv on July 25, 2011 shows a clear understanding between Edserv and Vintage (which later became Alta Vista International FZE) to effectuate this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 23,888,000 on July 25, 2011. It is pertinent to note that the loan, as per the said Loan Agreement, was granted to Vintage on the pledge of the following assets: “ *Pledge of certain securities held from time to time in the Borrower’s account 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 580048 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.”

It is stated that the separate pledge agreement with respect to account no 580048 as mentioned above, which forms an integral part of the Loan Agreement, is the Pledge Agreement entered between Edserv and EURAM Bank. The Pledge Agreement provides that the purpose of the pledge was “...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 thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement...” So, the purpose of the Pledge Agreement was to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provides the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances are: “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 Accounts 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.

Notwithstanding the foregoing, in case the Borrower fails to make payment of 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 public authorized for such transactions, selected by the Bank.

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.”

Thus, a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, shows that the pledging of the proceeds of the GDR issue by way of a Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that Edserv was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD USD 23,888,000 was transferred by Vintage on August 09, 2011 to the Escrow Account maintained by Edserv in EURAM Bank for the receipt of GDR proceeds. However, as already mentioned, on July 31, 2012, a letter was issued by Edserv to EURAM Bank confirming to EURAM Bank that it had the right to set off the pledged cash deposit with the outstanding loan of Vintage. Further, by way of the said letter, Edserv requested EURAM Bank that upon

exercising its right to set off, all the remaining GDRs held in Deposit No. 540012 1E of Vintage, which would have otherwise reverted to Edserv, were to be transferred to Account No. 20311-333-196205 of Vintage in Habib Bank AG Zurich. This clearly establishes that the consideration received from Vintage, for the GDRs subscribed by it, was returned to Vintage, and as such, Vintage came to possess the GDRs without paying any consideration.

5.18. Thus, Edserv in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying the full consideration for the GDRs, at the cost of shareholders / investors of Edserv. Accordingly, I find that Vintage has clearly violated Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003.

Issue II. Whether the Directors of Edserv and Vintage can be held liable for the fraudulent scheme?

A. Directors of Edserv

5.19. Annual Reports of the Company for the financial years 2010-11 and 2011-12 show that during the said periods S. Giridharan, G. Gita, S. Arvind and T.S. Ravichandran were part of the Board of Directors. The details of the directors of the Company are provided hereunder :

Table - 7

Sl. No.	Name	Designation
1.	S. Giridharan	Chairman and Chief Executive Officer
2.	G. Gita	Managing Director
3.	S. Arvind	Independent, Non Executive Director
4.	T.S. Ravichandran	Independent, Non Executive Director

5.20.As seen from the above table, S. Giridharan and G. Gita were respectively the Chairman and Chief Executive Officer, and Managing Director whereas S. Arvind and T.S. Ravichandran were Non-Executive Independent Directors of the Company. In view of the same, the consideration of liability of the Directors shall be undertaken in two parts: a) liability of S. Giridharan and G. Gita; and b) S. Arvind and T.S. Ravichandran .

S. Giridharan and G. Gita

5.21.The said Noticees by way of their reply have primarily submitted that –

- a. they have been constrained in replying to the SCN owing to the lack of access to documents as the matter was currently under liquidation pursuant to an Order of the Hon’ble High Court of Madras;
- b. the request to make the official liquidator attached to the Hon’ble Madras High Court a party to the present proceedings, in the virtual hearing dated 23/02/2021, was not accepted, although SEBI in the matter of Aqua Logistics Ltd has made the Official Liquidator a party to the proceedings;

- c. there had been inordinate delay in the issuance of the SCN;
- d. they had no knowledge of the fraud carried out by Arun Panchariya along with PAN Asia and Mukesh Chauradiya;
- e. they had signed a set of documents as a customary process by the Lead Managers who were entrusted with the job of doing the GDR issue of which the said Noticees had no idea; and
- f. the decision for the issuance of GDRs was not taken in their individual capacity but had been duly approved by the board.

5.22. The issue of delay in the issuance of the SCN has already been dealt with in paras 5.4 to 5.7 of this Order. Also, it has already been brought out in paras 5.8 to 5.12 of this Order that the necessary documents upon which the SCN was based have been provided to the Noticees. As regards the question of making the Official Liquidator a party, it is stated that it is within SEBI's sole discretion, based on the facts of the matter, to make any entity a Noticee of a show-cause notice. In the present matter, Noticee Nos. 1 and 2 have been called upon to reply to the allegations made in the SCN and in that regard necessary documents, which have been relied upon by SEBI, have been provided to the Noticees. So, no specific prejudice has been caused to Noticee Nos. 1 and 2. Therefore, I do not find any merit in the argument that SEBI should have made the official liquidator a party/Noticee in the matter.

5.23. As regards the lack of knowledge of the said Noticees, it is seen from the Annual Report that during the investigation period, S. Giridharan and G. Gita were

respectively the Chairman and Chief Executive Officer, and Managing Director. By way of the Board Resolutions dated April 29, 2011 and July 25, 2011, S. Giridharan and G. Gita were authorised to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by the Bank, i.e. EURAM Bank. By way of the said Board Resolutions, the above-named directors were also authorised to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company.

5.24. It is further noted that the Pledge Agreement entered into by Edserv with EURAM Bank, whereby the deposit account of Edserv maintained with EURAM Bank was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by S. Giridharan. The letter from Edserv confirming that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 23, 288, 000 had also been signed by S. Giridharan. It is to be noted that by way of the said letter, EURAM Bank was instructed that upon exercising its right to set off, the GDRs pledged by Vintage which would have come to Edserv, should be transferred to Vintage's account in Habib Bank AG Zurich. Further, G.Gita was the Managing Director, and as such, it cannot be considered that she was unaware of the workings of the Company. The letters addressed by the above-mentioned directors and the agreement entered into clearly show an intent to carry out activities to the detriment of the

shareholders and cannot be called as a “customary process” where the directors signed documents handed over to them by the Lead Manager.

5.25. Thus, the above facts clearly show that S. Giridharan and G. Gita, as directors of the Company, have violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

T.S. Ravichandran and S. Arvind

5.26. The said Noticees by way of their replies have primarily submitted that –

- a. mere certification of the board resolutions of April 29, 2011 and July 25, 2011 being true does not make the said Noticees part of the fraudulent scheme ;
- b. the resolutions were just enabling resolutions empowering Noticee Nos. 1 and 2 to do such acts as may be needed to ensure that the GDR issue took place;
- c. the facts about the GDR issue reported to the Board and the Audit Committee by Noticee Nos. 1 and 2 during the process of issue and utilisation of the GDRs in 2011 and 2012 were in variance with the facts reported by SEBI after its investigations;
- d. they were ignorant of the fact that Noticee Nos. 1 and 2 had entered into a pledge agreement with Euram Bank, which had not been disclosed to the Board of Directors also; and

e. they had written by way of emails to Noticee Nos. 1 and 2 regarding utilisation of GDR proceeds but full details with respect to the same were not made available.

5.27. Noticee No.3 and 4 in support of their assertion that they were not aware or had knowledge of the scheme for fraudulent issuance of GDRs have provided certain correspondence exchanged between Noticee Nos. 3 and 4 and Noticee Nos. 1 and 2 and also agendas of Audit Committee meetings dated February 13, 2012 and May 30, 2012.

5.28. It is seen from the agenda note of the Audit Committee meeting dated February 13, 2012 that the GDR proceeds amounting to USD 23,888,000 was lying unutilised. Further, the agenda note of the of the Audit Committee meeting dated May 30, 2012 shows that as on March 31, 2012, a total of USD 600,000 had been utilised. The Agenda Note further states that USD 300,000 was utilised for content development and another USD 300,000 was in subsidiary accounts i.e., Edserv Softsystems Limited FZE .

5.29. Further, Noticee Nos. 3 and 4 have provided a copy of an email dated November 06, 2012 addressed by S. Arvind (Noticee No. 4) to S. Giridharan (Noticee No. 1), with a copy marked to T. S. Ravichandran (Noticee No. 3). It is seen from the said email that Edserv had acquired a company in the UAE, M/s Alta Vista without the Board being consulted. In this regard, S. Arvind has written in the email that “ *I find from the web site of BSE that Edserv has acquired an E learning company in UAE. While this is good the Board has not been consulted on this acquisition and has not approved this*

acquisition....How much has been invested and what are the source of funds?" He further states in the said email, " Please also let me know what happened to the GDR funds which should have come to India by now for use in day to day operations. Most companies I have been associated with (and I have been involved in GDR operations of many reputable companies in India of large industrial groups) have been able to get the funds within 10 days of placement of the GDR abroad. Edserv seems to be a special case of delay." Also by way of an email dated November 07, 2012 Noticee No. 4 has enquired about any valuation done prior to the acquisition of the UAE entity.

5.30.I note that what is relevant for examination, with respect to the liability of Noticee Nos. 3 and 4 who were Non-executive Independent Directors of the Company, are the circumstances indicating the knowledge of the said Noticees of the Pledge Agreement whereby the GDR proceeds were pledged as security for the loan taken by Vintage to subscribe to the GDR issue and the extent of due diligence exercised by the said Noticees in ensuring that the Company did not indulge in any act of illegality.

5.31.As regards the first question, I see that Noticee Nos. 3 and 4 have certified the authenticity of the July 25, 2011 Board Resolution, a fact which has not been denied by them. However, it has been asserted by the said Noticees that they were not aware of the Pledge Agreement, whereby the GDR proceeds were pledged as security for the loan taken by Vintage. Further, from the email exchanges, it appears that the utilisation of the GDR proceeds for acquisition of M/s Alta Vista, a company incorporated in the UAE, was without concurrence of the board of

directors of the Company. As regards the second question of due-diligence exercised, I see from the above that Noticee Nos. 3 and 4 had actively sought information and details from Noticee No. 1, S. Giridharan, the Chairman and Chief Executive Officer of the Company regarding the utilisation of the GDR proceeds and the acquisition of Alta Vista FZE, a company incorporated in the UAE. I also note that after the email dated November 06, 2012, whereby information was sought from S. Giridharan, with respect to the utilisation of GDR proceeds, T. S. Ravichandran, Noticee No. 3 resigned as a Director of the Company on December 10, 2012 and S. Arvind, Noticee No. 4 resigned as a Director of the Company on January 28, 2013. Upon a holistic view of the facts, I am inclined to grant the benefit of doubt to Noticee Nos. 3 and 4, especially in view of the diligence exhibited by them with respect to the utilisation of the GDR proceeds followed by their decision to step down from the Board of Edserv, soon thereafter.

5.32. Accordingly, I find that S. Arvind and T.S. Ravichandran have not violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

B. Directors of Vintage

Arun Panchariya

5.33. In response to the allegations made in the SCN, Arun Panchariya in his submissions/replies submitted to SEBI has refuted the allegations made in the

SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;
- b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;
- c. the Noticee was a director in Vintage FZE only till 2007; and
- d. decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management.
- e. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec company limited, Seviron company limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief.

5.34. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. With respect to the defence of issue estoppel, it is relevant to upfront clarify that the Orders referred to by the Noticee, wherein no action has been directed against certain investors, was purely based on the facts and circumstances as available on record in that matter and by way of the said Orders no relief has been granted to the present Noticee. This, therefore, does not entitle

Noticee No. 5 to advance the ground of issue estoppel in relation to the present proceedings. In this regard, reliance is placed on the case of *Gopal Prasad Sinha vs. State of Bihar (1970) 2 SCC 905*, whereby the Supreme Court held that the fundamental principle underlying the rule of issue estoppel is that the same issues of fact and law should have been determined in the prior litigation. So, for the invocation of the principle of issue estoppel, the issues of fact and law in the present matter, as they relate to the Noticee, should be the same as that determined in the Orders referred to by the Noticee. Noticee No. 5 in its defence has referred to Orders where certain reliefs were purportedly granted to other entities. As stated above, for the application of the principle of issue estoppel, issues of fact and law, as they relate to the Noticee, should have been decided in prior litigation. It is quite clear that the Orders that the present Noticee has referred to have not provided any relief to the Noticee and also, the facts in issue in the matters decided earlier were distinct from the facts in issue in the present matter. Thus, the principle of issue estoppel is inapplicable in the present proceedings.

5.35. It is seen from the letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that Vintage was a Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, it is seen from a Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management Company Trust (BVI) Ltd., that the only shareholder in the said company was Arun Panchariya, who held 50,000 shares. Arun Panchariya was also the sole director of the said company. Also, reference is made to the Administrative

Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya, by way of which, a fine of USD 12,000 was imposed on him. The said Administrative Fine Statement notes that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. So, it is clear that the sole beneficial owner of Vintage was Arun Panchariya, who held complete shareholding of Vintage through Alkarni Holding Ltd. Furthermore, it is seen from the above-mentioned letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that the director of Vintage was Ashok Panchariya, who is the brother of Arun Panchariya. So, it clearly belies the claim of the Noticee that he was a director in Vintage FZE only till 2007.

5.36. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., October 2010 to April, 2011, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. Also, during this period Ashok Panchariya, who is the brother of Arun Panchariya was the director of Vintage. Thus, I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme. Accordingly, I find that Arun Panchariya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Mukesh Chauradiya

5.37. It has been alleged in the SCN that Mukesh Chauradiya served as Managing Director and director of Vintage.

5.38. Mukesh Chauradiya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. he has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;
- b. the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee, had no role to play in it; and
- c. the Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

5.39. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Mukesh Chauradiya on behalf of Vintage, and in the space for providing the “Title” of the signatory, Managing Director has been mentioned. Further, I note that the letter dated December 30, 2010 addressed by Vintage to EURAM Bank, has been signed by

Mukesh Chauradiya, suffixing Director to his name. It is relevant to note that by way of the said letter, it has been represented to EURAM Bank that “*Mr. Mukesh Chauradiya, Managing Director of the company, has successfully completed the Training Program of DG CX in 2005.*” In addition to the above references, a letter dated December 28, 2010, issued by the JAFZA, shows Mukesh Chaurdiaya as a Manager of Vintage and not the director. Also, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mentions his occupation as General Manager.

5.40. It is seen from the letter dated December 30, 2010 addressed to EURAM Bank and the Loan Agreement dated March 22, 2011 that the Noticee has represented himself to be the Managing Director/Director of Vintage. Having represented himself as being the Managing Director/Director of Vintage, the Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee.

5.41. In this regard I note that a similar contention had been raised by Mukesh Chauradiya before the Hon'ble SAT in *Mukesh Chauradiya vs. SEBI (Date of Decision: January 7, 2021 Appeal No. 260 of 2020)* wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of Vintage FZE and he had never benefited from the alleged violation as he was only

a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

“It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed “for managing director” or “on behalf of managing director” etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is “an officer in default” in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.”

5.42. So, as held by the Hon'ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in

which he could put his signature in the Loan Agreement with EURAM Bank under the designation of Managing Director. From the facts of the case, it clearly appears that the appellant was holding a position by way of which he could execute binding agreements on behalf of Vintage. Thus, the present circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. Accordingly, I find that Mukesh Chauradiya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

III. Whether the Lead Manager to the Issue, Pan Asia Advisors Ltd. (Noticee No.8) acted as a party to the fraudulent scheme?

5.43. Pan Asia Advisors Ltd. (“**Pan Asia**”), a UK based entity, was the Lead Manager for the GDR issue of Edserv. It has been alleged in the SCN that Arun Panchariya was the director and beneficial owner of Pan Asia and as the Lead Manager, Pan Asia had handled the GDR issue of Edserv thereby acting as a party to the fraudulent scheme.

5.44. Pan Asia in its replies has submitted that—

- a. SEBI has jurisdiction to take action only if the GDR issue has an adverse impact on the Indian securities markets;
- b. no specific allegation has been made against the Noticee, except that it was the lead manager to the issue related; and
- c. also no allegation has been made against the Noticee regarding any irregularities on its part as the Lead Manager

5.45. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. Proceeding with the merits of the matter, it is seen from the records that the Noticee was registered as a private limited company with the Registrar of Companies for England and Wales on April 24, 2006. It is also seen that the name of the said Noticee has been changed from Pan Asia Advisors Ltd. to Global Finance and Capital Limited on February 08, 2013. Further, it is seen from the information, as received from the Financial Conduct Authority, UK, that Arun Panchariya was the director of Pan Asia from August 30, 2006 to September 29, 2011. Also, between July 01, 2008 and January 20, 2012, Arun Panchariya was the sole shareholder holding 100 % of the total shareholding. So, during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., during October 2010 to April, 2011, Arun Panchariya was a director and had a controlling stake in Pan Asia.

5.46. In this respect, reference is also made to the letter dated February 20, 2012 of Pan Asia addressed to SEBI. By way of the said letter, Pan Asia has provided a summary of the various steps involved in the consummation of a GDR issue, right from the initiation of the issue till the closing of the issue. Pan Asia, as part of the letter, has also provided a list of activities that it is usually required to carry out as the Lead Manager which is given hereunder:

“ 1) Signing the mandate with the Client (i.e. Indian Listed Company).

2) Conducting the due diligence that includes documentary evidences as well as a check on the premises owned by the company.

5) Then lead manager (PAA) enters into a tri-party Escrow Agreement wherein the parties are the (a) Issuer Company, (b) Lead manager (Pan Asia) and (c) Escrow Agent appointed by the company.

6) PAA introduces all the parties to each other by circulating a Working Group List.

7) PAA presents the project report of the Issuer Company along with the Offer document to the investor(s). This process runs simultaneously along with the progress on the working group co-ordination in terms of documentation for the listing.

10) As per the opening/closing schedule of the transaction- PAA obtains confirmation from Escrow Agent that the subscription money from the Investors is in place, on the day that is the last day for receipt of the subscription from investors.

11) On the closing day/allotment day, PAA closely monitors the documentation that is required by/from each & every working group member for the successful closure of the transaction. ”

5.47. The above explanation of Pan Asia about its role in GDR issues, along with the confirmation received from the Financial Conduct Authority, UK, that Arun Panchariya was its director from August 30, 2006 to September 29, 2011, brings out the fact that Pan Asia was well aware of the entire scheme underlying the GDR issue of Edserv. As seen from the sequence of events in the matter, the fraudulent scheme was devised by Arun Panchariya using all his connected entities to enact various roles in the GDR issue, including Pan Asia as the Lead Manager.

5.48. In this context, I would also like to place reliance on the Order dated October 25, 2016 of the Hon'ble SAT in Pan Asia Advisors Limited V. SEBI in Appeal No.

126 of 2013. The Hon'ble SAT while considering the role of the lead manager i.e., Pan Asia Advisors Limited and its Managing Director, Arun Panchariya, with respect to the GDR issue of Asahi Infrastructure & Projects Ltd., which is similar to the present matter, has held,

“...instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations...”

5.49. Accordingly, I find that Pan Asia being an Arun Panchariya owned and controlled entity acted as a party to the fraudulent scheme, and as such has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue – IV: Whether India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10), and the FIIs, Golden Cliff (Noticee No. 11), KBC Aldini Capital Ltd. (Noticee No. 12) and Cardinal Capital Partners (Noticee No. 13) have acted pursuant to the fraudulent scheme?

5.50. It has been alleged in the SCN that India Focus Cardinal Fund and Highblue Sky Emerging Market Fund by selling the equity shares of Edserv in the Indian Securities Market acted as conduits to Arun Panchariya and his connected entities, which were acquired by Vintage free of cost through the fraudulent scheme.

5.51. It has been further alleged in the SCN that Cardinal Capital Partners, Golden Cliff and KBC Aldini Capital Ltd. got registered as FIIs only to facilitate their sub-accounts to sell the converted shares of Edserv in the Indian securities market.

5.52. In this regard, the summary of the registration of FIIs and sub-accounts is tabulated below:

Table- 8

Sl. No.	Name of sub/ a/c	Period of registration of Sub-account	Name of FII under which sub a/c is registered	Period of registration of FII
1	IFCF	12/12/2008 to 19/07/2011	European American Investment Bank	21/11/2008 to 20/11/2011
		20/07/2011 to 19/06/2017	Cardinal Capital partners	20/06/2011 to 19/06/2017
2	HBS [previously known as KBC Aldini Capital (Mauritius) Ltd.]	18/06/2010 to 21/10/2012	KBC Aldini Capital Limited	22/03/2010 to 21/03/2016
		22/10/2012 to 28/02/2017	Golden Cliff (previously known as	01/03/2011 to 28/02/2017

Sl. No.	Name of sub/ a/c	Period of registration of Sub-account	Name of FII under which sub a/c is registered	Period of registration of FII
			Vaibhav Investments Limited	

5.53. The liability of the above-named Noticees is being taken up for consideration in two parts: a) joint role of India Focus Cardinal Fund and Cardinal Capital Partner; and b) joint role of Highblue Sky Emerging Market Fund, Golden Cliff and KBC Aldini Capital Limited.

India Focus Cardinal Fund and Cardinal Capital Partners

5.54. In response to the allegations made in the SCN, India Focus Cardinal Fund has not filed any replies/submissions with SEBI.

5.55. A summary of the shares received by India Focus Cardinal Fund upon conversion of GDRs is provided hereunder:

Table – 9

Date of conversion of GDRs	No. of GDRs converted	Total No. of outstanding GDRs on the said date	No. of equity shares issued on conversion of GDRs
14-Sep-11	51,550	15,48,450	2,57,750
Total	51,550		

5.56. Further, the summary of the shares sold by India Focus Cardinal Fund upon conversion of GDRs is provided hereunder:

Table- 10

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
14-Sep-11	2,57,750		2,57,750	
2-Aug-12		15,000	2,42,750	3,00,000
3-Sep-12		59,544	1,83,206	12,06,030
4-Sep-12		83,000	1,00,206	15,23,848
5-Sep-12		1,00,206	-	17,53,913
Total				47,83,791

5.57. It is seen from the above table that India Focus Cardinal Fund received 2,57,750 equity shares of Edserv upon conversion of GDRs of Edserv. It is also seen from the above tables that all the 2,57,750 equity shares received by India Focus Cardinal Fund were then sold by it in the Indian capital market between August 02, 2012 and September 05, 2012 for a total value of Rs. 47,83,791. The shares sold by the sub-account, India Focus Cardinal Fund were done through the FII, Cardinal Capital Partners.

5.58. In this regard, reference is made to the letter dated September 15, 2016 addressed by the Financial Services Commission, Mauritius to SEBI. By way of the said letter, it has been informed that in respect of India Focus Cardinal Fund, Cardinal Capital Partners Ltd. was the management shareholder since August 22, 2008, and Arun Panchariya was the beneficial owner. Further, reliance is placed on the letter dated April 02, 2012 addressed by India Focus Cardinal Fund to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 01, 2009 to May

31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Panchariya.

5.59. From the above, it is seen that complete shareholding in India Focus Cardinal was held by Cardinal Capital Partners Ltd., and in turn the complete shareholding in Cardinal Capital Partners Ltd. was held by Arun Panchariya. So, both India Focus Cardinal Fund and Cardinal Capital Partners Ltd. were controlled by Arun Panchariya during the period of the sale of converted equity shares in the Indian securities market.

5.60. In the present proceedings, the allegation is that Cardinal Capital Partners Ltd., a registered FII facilitated India Focus Cardinal Fund, its sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Edserv. It has also been brought out above that India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) and Cardinal Capital Partners Ltd. were both owned and controlled by Arun Panchariya. In view of the same, I am convinced that Cardinal Capital Partners Ltd. worked as a conduit for Arun Panchariya by providing a vehicle to India Focus Cardinal Fund to sell the illegally acquired shares of Edserv in the Indian securities market. Accordingly, I find that Cardinal Capital Partners Ltd. and India Focus Cardinal Fund have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Highblue Sky Emerging Market Fund, Golden Cliff and KBC Aldini Capital Limited

5.61. Highblue Sky in its submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It is, however, relevant to briefly mention herein the essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. the allegation of the Noticee's connection with Arun Panchariya was on the ground that Anant Sharma and Reema Shetty were connected to Arun Panchariya, but the cancellation of GDRs and the sale of the converted equity shares of Edserv Metal and Power Limited were done up to May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014);
- b. Arun Panchariya and Anant Sharma being Directors in one Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all the businesses; and
- c. the KYC documents of Highblue Sky showing its address and contact numbers being common with Aurisse fund was because Aurisse was the management company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations etc.

5.62.A summary of the shares received by Highblue Sky Emerging Fund upon conversion of GDRs is provided hereunder:

Table – 11

Date of conversion of GDRs	No. of GDRs converted	Total No. of outstanding GDRs on the said date	No. of equity shares issued on conversion of GDRs
23-Sep-11	29,690	15,18,760	1,48,450
09-Mar-12	1,00,000	14,18,760	5,00,000
19-Apr-12	70,454	13,48,306	3,52,270
14-Sep-12	1,29,033	12,19,273	6,45,165
16-Oct-12	1,31,250	10,88,023	6,56,250
29-Oct-12	1,07,816	9,80,207	5,39,080
01-Nov-12	2,00,000	7,80,207	10,00,000
15-Nov-12	2,00,000	5,80,207	10,00,000
20-Nov-12	2,50,000	3,30,207	12,50,000
10-Jan-13	1,95,000	1,35,207	9,75,000
15-Feb-13	1,35,207	-	6,76,035
Total	15,48,450		77,42,250

5.63. Further, the summary of the shares sold by Highblue Sky Emerging Fund upon conversion of GDRs is provided hereunder:

Table – 12

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
23-Sep-11	1,48,450		1,48,450	
10-Oct-11		1,48,450	-	1,25,95,639
09-Mar-12	5,00,000		5,00,000	

12-Mar-12				
08-Apr-12		4,58,338	41,662	1,27,81,076
19-Apr-12	3,52,270		3,93,932	
19-Apr-12			Default in delivery of 25,836 shares	
28-May-12		4,19,768	Nil Shares remaining	87,91,858
14-Sep-12	6,45,165		6,45,165	
20-Sep-12				
27-Sep-12		6,45,165	-	1,05,89,131
16-Oct-12	6,56,250		6,56,250	
17-Oct-12				
18-Oct-12		6,56,250	-	1,10,71,807
29-Oct-12	5,39,080		5,39,080	
30-Oct-12				
31-Oct-12		5,39,080	-	82,80,676
01-Nov-12	10,00,000		10,00,000	
05-Nov-12				
06-Nov-12		10,00,000	-	1,38,69,011
15-Nov-12	10,00,000		10,00,000	
16-Nov-12				
19-Nov-12		10,00,000	-	1,30,02,976
20-Nov-12	12,50,000		12,50,000	
29-Nov-12				
03-Dec-12		12,50,000	-	1,85,75,028
10-Jan-13	9,75,000		9,75,000	
11-Jan-13				
11-Feb-13		9,75,000	-	98,35,888
15-Feb-13	6,76,035		6,76,035	
18-Feb-13				
20-Feb-13		6,76,035		44,14,096
Total	77,42,250	77,68,086		12,38,07,187

5.64. It is seen from the above tables that Highblue Sky received 77,42,250 equity shares of Edserv upon conversion of the GDRs. It is also seen from the above table that it sold a total of 77,68,086 equity shares (it defaulted on delivery of 25,836 shares sold on May 28, 2012) were sold by Highblue Sky Fund in the Indian capital market between October 10, 2011 and February 20, 2013 for a total value of Rs.

12,38,07,187. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff and KBC Aldini Capital.

5.65. In this regard, it is seen that Reema Narayan Shetty was a director of Golden Cliff from May 16, 2013 to August 01, 2014. Reference is also made to emails dated March 02, 2016 and April 29, 2016 whereby Highblue Sky Emerging Market Fund has provided its shareholding and directorship details. The details provided by way of the above emails bring out the connection between Reema Narayan Shetty and Arun Panchariya. The details are as under:

- a. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014.
- b. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky Emerging Market Fund, she also became the beneficial owner of Highblue Sky Emerging Market Fund.

5.66. Further, Reema Narayan Shetty was the authorised signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011. It has already been established above that India Focus Cardinal Fund was managed and operated by Arun Panchariya.

5.67. As regards Anant Kailash Chandra Sharma, it is seen from the above mentioned emails that —

- a. He joined as a director of Highblue Sky Emerging Market Fund on August 11, 2014.
- b. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 09, 2014.
- c. He also became the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky Emerging Market.

5.68. Furthermore, it is seen from the information available on the MCA website that Anant Sharma was a director in the following Companies between 2009 and 2016:

Table-13

Serial No.	Director	Company	Start Date	End Date
1	Anant Kailash Chandra Sharma	Alka India Limited	01/12/2009	-
2	Anant Kailash Chandra Sharma	Sai Sant Advisory (India) Private Ltd.	01/12/2009	18/03/2016
3	Anant Kailash Chandra Sharma	Vintage FZE (India) Private Limited	22/12/2009	18/03/2016
4	Anant Kailash Chandra Sharma	Ramsai Investment Holdings Private Limited	01/09/2015	18/03/2016

5.69. It is seen from the MCA website that between 2009 and 2016, the tenure of Arun Panchariya as a director coincided with Anant Sharma's tenure as a director in the following companies :

Table-14

Serial No.	Director	Company	Start Date	End Date
1	Arun Panchariya	Sai Sant Advisory (India) Private Ltd.	31/08/2007	20/10/2010
2	Arun Panchariya	Ramsai Investment Holdings Private Limited	04/02/2008	18/08/2010

5.70. Further, between 2009 and 2016, the tenure of Mukesh Chauradiya as a director coincided with Anant Sharma's tenure as a director in the following companies :

Table-15

Serial No.	Director	Company	Start Date	End Date
1	Mukesh Chauradiya	Alka India Limited	31/01/2006	01/06/2010
2	Mukesh Chauradiya	Ramsai Investment Holdings Private Limited	17/08/2010	17/03/2015

5.71. Furthermore, from the MCA website it is seen that between 2009 and 2016, the tenure of Satish Panchariya and Ashok Panchariya (related to Arun Panchariya) as directors coincided with Anant Sharma's tenure as a director in the following companies :

Table-16

Serial No.	Director	Company	Relevant Period
1	Satish Ramswaroop Panchariya	Alka India Limited	01/02/2000 onwards
2	Ashok Ramswaroop Panchariya	Alka India Limited	29/04/2005 onwards
3	Ashok Ramswaroop Panchariya	Ramsai Investment Holdings Private Limited	17/03/2016 onwards
4	Ashok Ramswaroop Panchariya	Sai Sant Advisory (India) Private Ltd.	17/03/2016 onwards
5	Ashok Ramswaroop Panchariya	Vintage FZE (India) Private Limited	30/09/2007 onwards

5.72. So, from the above-mentioned tables, it is seen that Anant Sharma was a director in the companies where the directorships were either held by Arun Panchariya or Arun Panchariya related entities.

5.73. Also, it would be relevant to see the shareholding pattern of the company in which Anant Sharma held directorship:

Table- 17

Serial No.	Company	Shareholding Pattern
1	Vintage FZE (India) Private Limited	<p><i>As on September 30, 2010</i></p> <ul style="list-style-type: none"> ▪ Vintage FZE – 99.98 % (9998 shares) ▪ Arun Panchariya – 0.01% (1 share) ▪ Mukesh Chauradiya – 0.01% (1 share) <p><i>As on September 30, 2013</i></p>

		<ul style="list-style-type: none"> ▪ Vintage FZE – 99.99 % (9998 shares) ▪ Mukesh Chauradiya – 0.02% (2 shares)
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5.74. Thus, it is seen from the above that Anant Sharma was involved in such businesses which were owned/managed by Arun Panchariya or related entities. It is to be noted that Anant Sharma became the owner of Golden Cliff upon receiving the shares from Reema Narayan Shetty. The connection that exists between Anant Sharma and Reema Narayan Shetty, is that both are related to Arun Panchariya. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff.

5.75. With respect to KBC Aldini Capital Limited, it is seen from the reply of KBC Aldini Capital Limited that in 2009-2010 it set up a sub-fund in Mauritius by the name KBC Aldini (Mauritius) Capital Ltd whose FII was KBC Aldini Capital Ltd, Dubai. It has also been stated in the reply that KBC Aldini Capital Ltd Mauritius was closed and the name changed to Highblue Sky Emerging Market Fund in 2010. Furthermore, it has been stated that Daniel Baumslag was a director of KBC Aldini Capital Limited.

5.76. Further, it is seen from the record that Daniel Baumslag was a director of Highblue Sky Emerging Market Fund from March 05, 2010 to May 16, 2011. He was also the beneficial owner of Highblue Sky Emerging Fund between March 05, 2010 and June 14, 2011. Thus, it is quite clear that Highblue Sky Emerging Fund was started by KBC Aldini Capital Limited and Daniel Baumslag at various points held the

directorship and beneficial ownership of Highblue Sky Emerging Fund. Furthermore, it has already been brought out that on April 21, 2014 Golden Cliff became the beneficial owner of Highblue Sky Emerging Fund.

5.77. In the present proceedings, the allegation is that Golden Cliff and KBC Aldini Capital Limited, registered FIIs, facilitated Highblue Sky Emerging Market Fund, their sub-account to sell the illegally acquired shares in the Indian securities market.

5.78. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Edserv. It has been brought out above that Highblue Sky Emerging Market Fund had been setup by KBC Aldini Capital Limited. It has also been brought out that Golden Cliff, subsequently acquired the ownership of Highblue Sky Emerging Market Fund. Further, it has also been established that Highblue Sky Emerging Market Fund, which came to possess the GDRs and converted them into equity shares, and Golden Cliff were both Arun Panchariya related entities. Thus, it is quite clear that Highblue Sky Emerging Market Fund, KBC Aldini Emerging Market Fund are intricately connected with each other on one hand and with Arun Panchariya on the other.

5.79. In view of the same, I am convinced that Golden Cliff and KBC Aldini Capital Limited worked as a conduit for Arun Panchariya and Highblue Sky Emerging Market Fund to sell the illegally acquired shares of Edserv in the Indian securities market. Accordingly, I find that Highblue Sky Emerging Market Fund, Golden Cliff and KBC Aldini Capital Limited have violated Section 12A(a), 12A(b), 12A(c)

of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

V. Whether Vintage (Noticee No. 7), Pan Asia Advisors Ltd. (Noticee No.8), India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10) should be directed to disgorge the illegal gains?

5.80. As already stated a Supplementary Show-cause Notice dated June 18, 2018 was issued to Noticee Nos. 7, 8, 9 and 10 for the disgorging of profits made through the sale of shares, upon conversion of fraudulently acquired GDRs of Edserv.

5.81. I note that Noticee Nos. 9 and 10 sold shares of Edserv, upon conversion of GDRs, in the Indian capital market and earned **Rs. 47,83,791** and **Rs. 12,38,07,187** respectively. Thus, the said two Noticees made a total gain of **Rs. 12,85,90,978**. I also note that the acquisition of the GDRs was due to Noticee No.7, which had subscribed to the GDR issue of Edserv, transferring the GDRs to Noticee Nos. 9 and 10, who then converted the GDRs into equity shares and sold them in the market for the above mentioned amount. The above mentioned Noticees i.e. Noticee Nos. 7, 8, 9 and 10 were all owned and controlled by Noticee No. 5, Arun Panchariya, who had devised the whole scheme for making illegal gains. Thus, the total gain of Rs. 12,85,90,978 made was a consequence of the collective action of Noticee Nos. Noticee Nos. 7, 8, 9 and 10. In view of the above, as alleged in the Supplementary SCN, I find that Noticee Nos. 7, 8, 9 and 10 are jointly and severally liable to disgorge Rs.12,85,90,978. I find that the SCN/Supplementary SCN does

not identify any particular investor or any specific group of investors who have suffered losses due to manipulation by the above mentioned Noticees.

6. Conclusion –

6.1. Thus, from the above, it is concluded that Edserv in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying full consideration for the GDRs, at the cost of the shareholders / investors of Edserv. Further, the directors, G. Giridharan (Noticee No. 1) and G. Gita (Noticee No. 2), are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. Vintage FZE, Noticee No.7, was part of the fraudulent scheme as a consequence of which, it received the GDRs without payment of full consideration. Arun Panchariya, Noticee No. 5, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, Noticee No. 6, was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of Edserv. Further, Pan Asia Advisors Ltd., Noticee No. 8, the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the

Indian securities market by India Focus Cardinal Fund, Noticee No. 9 and Highblue Sky Emerging Market Fund, Noticee No. 10. The above entities were sub-accounts of Cardinal Capital Partners, Noticee No. 13; Golden Cliff, Noticee No. 11; and KBC Aldini Capital Ltd, Noticee No. 12. These entities were all related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same, Noticee Nos.9 to 13 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

6.2. As already stated, as a consequence of the collective action of Noticee Nos. 7, 8, 9 and 10, a total gain of Rs. 12,85,90,978 was made by Noticee Nos. 9 and 10 and, as such, the said Noticees are jointly and severally liable to disgorge the above amount.

6.3. The above summary brings out that Arun Panchariya was the principal architect in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Edserv and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through India Focus Capital Fund, Highblue Sky Emerging Market Fund, Cardinal Capital Partners, EURAM Bank and Golden Cliff) with the intention of making illegal gains.

6.4. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters

involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market. In this context, it is noted that in the matter of *Pan Asia Advisors Limited and Another vs. SEBI Appeal No. 126 of 2013*, the Hon'ble SAT while dismissing the appeal filed by the appellants therein (against the SEBI Order *inter alia* prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had *inter alia* observed: "... apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. Even though all GDRs were not converted and sold, it is apparent that the *modus operandi* adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by Arun Panchariya. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted. ...” Further, in the matter of *Jindal Cotex Limited and Ors vs. SEBI (Date of Decision: February 5, .2020 Appeal No. 376 of 2019)*, the Hon'ble SAT had observed: “This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few

companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include PAN Asia Advisors Limited and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR Issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.” It appears that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also apparently participated in such schemes. Accordingly, as brought out in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of the offences that have been perpetrated by Arun Panchariya, I am of the considered opinion that stern measures need to be taken against him and his connected entities as well as the promoters/directors of the Indian companies.

7. Directions –

7.1. I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B the Securities and Exchange Board of India Act, 1992 hereby pass the following directions:

7.1.1. Noticee No. 1 (**G. Giridharan**), Noticee No.2 (**G. Gita**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years ;

7.1.2. Noticee Nos. 1 and 2 shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.3. Noticee No.5 (**Arun Panchariya**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 10 years ;

7.1.4. Noticee No.5 shall also be restrained for a period of 10 years from holding any position of Director or key managerial personnel in any listed company or

any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.5. Noticee No. 6 (**Mukesh Chauradiya**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years ;

7.1.6. Noticee No. 6 shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.7. Noticee No. 7 (**Vintage FZE**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years ;

7.1.8. Noticee No. 8 (**Pan Asia Advisors**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or

otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years; and

7.1.9. Noticee No. 9 (**India Focus Cardinal Fund**) and Noticee No. 10 (**Highblue Sky Emerging Market Fund**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years

7.1.10. Noticee No. 11 (**Golden Cliff**); Noticee No. 12 (**KBC Aldini Capital Ltd.**); and Noticee No. 13 (**Cardinal Capital Partners**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 2 years.

7.1.11. Noticee No. 7 (**Vintage FZE**), Noticee No. 8 (**Pan Asia Advisors**), Noticee No. 9 (**India Focus Cardinal Fund**) and Noticee No. 10 (**Highblue Sky Emerging Market Fund**) are further directed to disgorge illegal gains of a total gain of Rs. 12,85,90,978, made by way of sale of equity shares of Edserv along with interest of 12% per annum from February 20, 2013 till the payment of disgorgement amount, within a period of 45 days from the date of this order. As already stated, the liability of Nos. 7, 8, 9 and 10 to disgorge the said amount shall be joint and several. In the event, Noticee Nos. 7, 8, 9 and 10 fail to comply with the said direction, SEBI shall be free to recover

the said amount from the Noticees under Section 28A of SEBI Act, 1992 and the said Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, whichever is later.

7.1.12. In view of the findings in the Order, the present proceedings initiated against Noticee No. 3 (**T.S. Ravichandran**) and Noticee No. 4 (**S.Arvind**) vide the Show-cause Notice dated January 15, 2018 is disposed of without any directions.

7.2. The above directions shall come into force with immediate effect. The obligation of the Noticees debarred in the present Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticees debarred in the present Order, in the F&O segment of the Stock Exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

7.3. The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in 7.1 above, who may already be undergoing any period of debarment with respect to the issue of GDRs.

7.4. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

7.5. A copy of this order may also be sent to the Official Liquidator at the Honorable High Court of Madras, Reserve Bank of India, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: October 14, 2021

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**