Lyka Labs Limited

Corporate Office : Ground floor, Spencer Building, 30, Forjett Street, Grant Road (West), Mumbai - 400 036
• Phone : 6611 2200/290 Website : www.lykalabs.com • Email : enquiry@lykalabs.com

LYKA
Healthcare Through Innovation

09th June, 2020

The BSE Limited 1st floor, New Trading Ring Rotunda Bldg, P.J Towers Dalal Street, Mumbai -400 001	The National Stock Exchange of India Ltd Exchange Plaza, 5th Floor Plot No. C/1, G. Block Bandra Kurla Complex Bandra (East), Mumbai – 400 051
Script Code: 500259	Script Code: LYKALABS

Dear Sir/Madam,

Subject: Material Disclosure in terms of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), 2015

SEBI order dated 05th June, 2020 in respect of GDR Issue.

With respect to GDR Issue made in the year 2005, the SEBI passed following order;

The Company is restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of three years from the date of this order. It is clarified that during the period of restraint, the existing holding of securities of the Noticee including units of mutual funds, shall remain frozen.

The copy of order is enclosing for your information

Thanking you,
For Lyka Labs Limited

LYKA LABS LIMITED * MUMBAI *

Piyush Hindia
Company Secretary & Compliance Officer

Encl. A/a

WTM/SM/IVD/ID4/7861/2020-21

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	Lyka labs Ltd.	AAACL0820G
2.	Mr. N. I. Gandhi	ADNPG4447P

In the matter of

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation pertaining to issuance of Global Depository Receipts (hereinafter referred to as **"GDR"**) by Lyka Labs Ltd. (hereinafter referred to as **"Lyka/Company/Noticee no. 1")** for the period from November 1, 2005 to December 31, 2005. The Company had issued 0.80 million GDR on December 7, 2005 for raising 5 million US$.

2. The investigation conducted by SEBI revealed that the Company had engaged in a fraudulent arrangement for facilitating the financing of the subscription to its GDR issue and had made misleading disclosures to the market and to the investors at large.

Accordingly, a common Show Cause Notice dated July 21, 2017 (hereinafter referred to as **"SCN"**) was issued to the Company (Noticee no. 1) and its Chairman and Managing Director **(CMD)**, Noticee no. 2 for the alleged violation of provisions of SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**), calling upon them to show cause as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act.

3. Pursuant to receipt of the SCN, Noticee no. 1 (on its own behalf and also on behalf of Noticee no. 2) had requested for copies of various documents relied upon in the SCN . In this regard I note that on September 15, 2017, the Noticee was granted inspection of various relevant documents which were collected during the investigation and relied upon in the SCN, and also was provided with the copies of those documents vide letter dated October 27, 2017. Both the Noticees were provided with opportunities of Personal Hearing before me on November 13, 2018 and again on February 12, 2019 however, the Noticees had sought adjournment of the hearing on both the occasions on the ground of serious illness of Noticee no. 2 and also in view of the fact that the Noticees had filed settlement applications with SEBI. I note that the Personal hearing was again scheduled for the Noticees on August 29, 2019 but the same had to be postponed after receiving an intimation from the Noticee no.1 that Noticee no. 2 had expired on July 10, 2019 and due to an internal communication gap, the Noticee no. 1 could not attend the hearing on August 29, 2019. I also note from the records that the Noticees had applied for settlement of the present proceedings in terms of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, however, the applications filed by the Noticees for settling the issues

under the settlement mechanism have not been considered favourably. Consequently, another opportunity of personal hearing was granted in response to which, Noticee no.1 through its Authorised Representative, attended the said hearing on January 9, 2020. During the personal hearing, the Authorised Representative presented its arguments followed by which the Company has also filed its written reply to the SCN vide letter dated January 22, 2020.The explanations offered and arguments advanced by the Noticee through its Personal hearing as well as through its written reply have been perused and considered.

4. I note that Noticee no. 2 is deceased as on date, therefore, the proceedings in respect of Noticee no. 2 stands abated.

ISSUES FOR CONSIDERATION AND FINDINGS:

5. I have perused the SCN dated July 21, 2017 including all the annexures as referred to in the SCN, reply received from the Noticee to the aforesaid SCN and all other relevant materials available on record, and note that the only pertinent issue that requires consideration in this matter is as under:

Whether the Company i.e. Noticee no. 1 has violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of PFUTP Regulations?

6. Before I proceed to examine the afore stated issue and decide as to whether on the facts of the matter, the aforesaid violations alleged in SCN stand established or not, it would be proper to reproduce hereunder, the relevant provisions of SEBI Act and PFUTP Regulations alleged to have been violated by the Noticee in the instant matter and the same are reproduced as under:

SEBI Act :

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;

SEBI (PFUTP) Regulations :

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.

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

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

(a) ……

(b) …….

……….

(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.

7. Investigation conducted by SEBI into the matter revealed that the Board of Directors of Lyka had passed a Resolution in its Meeting on August 9, 2005, wherein a decision was taken *inter alia,* **to open an account with Banco Efisa, S.A. (hereinafter referred to as "Banco Bank/Bank") and also to authorize Banco Bank to use the GDR proceeds as security (emphasis supplied)** against loan. Relevant extracts of the aforesaid Board Resolution are as under:

> *"RESOLVED THAT a bank account be opened with Banco Efisa, S.A. ("the Bank") or any branch of Banco Efisa S. A., including the off-shore branch, outside India for the purpose of receiving subscription money in respect of Global Depository Receipt issue of the Company.*
>
> *RESOLVED FURTHER THAT Mr. N.I.Gandhi, Chairman & Managing Director be and is hereby authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, common seal of the Company thereon, if and when so required.*
>
> *RESOLVED FURTHER THAT Mr. N.I.Gandhi, Chairman & Managing Director, be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any of branch of Banco Efisa S.A., including the off-shore 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." (emphasis supplied)*

8. On a perusal of the aforesaid Board Resolutions (copy enclosed as annexure -6 to the SCN), I note that the said Resolutions were approved by the Board on August 9, 2005 authorising the Company *inter alia*, for opening a bank account with Banco Bank for the purpose of receiving subscription money from the GDR issue of the Company. Further, in terms of the said resolutions, Noticee no. 2, Mr. N.I.Gandhi, Chairman & Managing Director of the

Company was authorized to sign, execute any application, agreement, etc. as may be required by the Banco Bank. Accordingly, the Company had opened an account no. 6247383 in its name in Banco Bank. As stated earlier, it was further resolved by the Board to authorize the Bank to use the funds so deposited in the said bank account as security in connection with loans, if any. A comprehensive reading of all the above said Board Resolutions indicates that a decision was taken as early as on August 9, 2005, about the proposed issuance of GDR and at that very stage itself a decision was taken to open a bank account with Banco Bank. Moreover, the Board had also contemplated on the date of passing of the said Resolution itself, that the funds/proceeds to be received from the proposed GDR would be used as a security for loans. Passing of such a Resolution by the Board thereby deciding about the future use of the GDR proceeds as a security against a loan, indicates that the Company did not intend to utilize the GDR proceeds immediately for the objects for which the GDRs were to be issued. In this regard, I note that the information with regard to the said resolution about keeping the GDR proceeds as security against loan if any, was not known to the public shareholders of the Company. Consequently, the Company kept the investors in dark by concealing such an important piece of information from them.

9. It was further observed that Banco Bank had entered into a Credit Agreement dated November 3, 2005 (hereinafter referred to as the **"Credit Agreement"**) with Fusion Investment Ltd. (hereinafter referred to as **"Fusion"**) therein agreeing to grant a loan to them so as to enable them (Fusion) to pay towards subscription to the GDRs to be issued by Lyka for a sum upto US$ 6.50 million. In this regard some of the relevant clauses of the

said Credit Agreement signed by Fusion with Banco Bank which are worth referring to, are cited here under:

"1. Definitions and interpretations

……..

Deposit Charge *means the charge over the deposit made by Lyka with the Bank dated on or around the date of this Agreement.*

……..

Financing Documents *means this Agreement and the Security Documents.*

……

Obligor *means each of the Borrower* ***and Lyka.***

……

Security Documents *means the Deposit Charge and any other guarantee or document creating, evidencing or acknowledging security in respect of any of the obligations and liabilities of any Obligor under any Financing Document.*

2. Facility

Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower a Dollar term loan facility in the maximum principal amount of up to US $6,500,000.

3. Purpose

The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to US $6,500,000 issued by Lyka on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange.

……

4. Conditions Precedent

Notwithstanding any other term of this Agreement, the Bank shall not be under any obligation to make the Facility available to the Borrower unless it has notified the Borrower that it has received all the documents listed in Schedule 1 (in form and content satisfactory to it).

10. Security

The obligations and liabilities of the Borrower to the Bank under this Agreement shall be secured by the interests and rights granted in favour of the Bank under the Security Documents.

……..

Schedule 1 – Conditions precedent

1. *A Certified Copy of the certificate of incorporation…..and the memorandum and articles of association of each of Lyka and the Borrower…..*
2. *……..*
3. *Certified Copies of board minutes and resolutions of Lyka approving and authorizing the execution, delivery and performance by it of each Security Document to which it is a party……" (emphasis supplied)*

10. I also note that prima facie, on the strength of the afore-stated authorization given by the Board to *"use the funds so deposited in the aforesaid bank account as security in connection with loans if any"* the Noticee no. 2, Mr. N. I. Gandhi, CMD of the Company had signed an Account Charge Agreement with Banco Bank dated November 21, 2005 (hereinafter referred to as the **"Account Charge Agreement"**), therein, undertaking to deposit in the designated account of Lyka with Banco Bank, an amount not exceeding the loan to be provided to Fusion for subscribing to GDR of Lyka, as a security against the obligations of Fusion under the said Credit Agreement. Some of the relevant clauses of the **Account Charge Agreement** signed by the Company with Banco Bank are quoted as under:

> ***"1. Definitions***
> ***……...***
> ***Loan agreement*** *means the Loan agreement signed between Fusion (as borrower) and the Bank dated on or around the date of this Agreement by which the Bank agreed to lend to Fusion the maximum amount of up to US$ 6,500,000.*
> ……
> ***2. Account Charge***
> *Subject to the terms of this Agreement, Lyka deposited in a designated account with the Bank* ***(hereinafter the Account)*** *an amount not exceeding US$ 6,500,000 as security for all the obligations of Fusion under the Loan Agreement* ***(hereinafter the Secured Obligations)*** *and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.*
>
> *Upon payment of all or part of the amounts due under the Loan Agreement, Lyka may withdraw from the Account the equivalent amount.*
>
> *Upon payment and final discharge in full of all the Secured Obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of Lyka, release the deposit made in the Account.*
>
> *Lyka covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.*
>
> *At any time after the Bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the Bank in its discretion determines.*

……..

11. Notices
(a) Method: *each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by letter or Fax.*
(b) Delivery: *any notice or other communication to be given by one Party to another under this Agreement shall ……..be given to that other Party at the respective addresses given herein under……..*

Lyka

……..

Attention: Mr. Narenda I Gandhi"

11. On a careful and combined examination of the contents of various clauses of the "Credit Agreement" and the "Account Charge Agreement", the following observations are made:-

a) The Account Charge Agreement was executed by Noticee No.2 on behalf of Noticee No.1 mainly to secure the obligations of the borrower i.e. Fusion, which was granted a loan for 6.5 million US$ by Banco Bank. The Account Charge Agreement also mentions that the Company will deposit in its designated account with the Banco Bank, an amount not exceeding US $6,500,000 as security, against all the obligations of Fusion under its (Fusion's) Credit Agreement and the Company assigns all the rights, title, interest and benefit accruing out of its designated account, as a continuing security for the payment and discharge of the obligations of Fusion under its Credit Agreement with the Bank.

b) In terms of the Account Charge Agreement, only upon payment of the amounts due under the Credit Agreement by Fusion, Lyka could withdraw equivalent amount from its designated account and only upon full payment and final discharge of all the obligations by Fusion under its Credit Agreement, the rights and obligations of the parties (Lyka and Banco Bank) under the Account Charge Agreement shall

cease and Banco Bank shall release the full amount of bank balance lying in its (Lyka's) designated account to the Company.

c) The Account Charge Agreement also mentions that Lyka has undertaken to pay and discharge the obligations of Fusion under their Credit Agreement to Banco Bank and Banco Bank will be entitled to apply all or any part of the deposit made by Lyka in their designated account (with Banco Bank) against the obligations of Fusion without further notice.

d) As a consequence to such terms & conditions contained in the Account Charge Agreement, I note that even after issuing the GDR successfully, Lyka was not entitled to receive the GDR proceeds at its disposal for its business utilization, until Fusion makes full repayment of its loan taken from Banco Bank.

e) As per clause 3 of the Credit Agreement the said loan was sanctioned to Fusion for the purpose of subscribing to the entire GDR issue of Lyka upto the value of $ 6,500,000. Further, as per clause 10 of the Credit Agreement, obligations of the borrower (Fusion) was secured *inter alia*, by a charge over the deposit (of GDR proceeds) made/to be made by Lyka with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor.

f) Thus, in the Credit Agreement executed by Fusion, the Company, Lyka, was christened as an obligor, although the Company was not a signatory to the said Credit Agreement. It implies that Fusion was completely assured by Lyka at the time of signing the Credit Agreement that Lyka will take the entire obligation of loan liability of Fusion. Accordingly, clause 2 of the Account Charge Agreement authorized Banco Bank to apply all or any part of the deposit made by Lyka in its designated Bank account to settle the loan liability of Fusion. It becomes clear that

the Noticee no.1 (Company) has authorized vide its Account Charge Agreement that, in all eventuality, in case of any default by the borrower (Fusion), the security in the form of proceeds of GDR to be deposited in its designated account would be realizable by Banco Bank.

g) I also note that a copy of Memorandum and Articles of Association of the Company along with copy of Board Resolution dated August 9, 2005 were enclosed to the Credit Agreement in terms of clause 4 and Schedule -1 of the Credit Agreement, even when the Company was not a party to the Credit Agreement and similarly, the Credit Agreement was made part of Account Charge Agreement, even though Fusion was not a party to the Account Charge Agreement.

h) The Credit Agreement and Account Charge Agreement were thus inextricably connected and executed in a manner that clearly points out that the Noticee no.1 i.e. the Company, had consciously facilitated the loan to Fusion so as to artificially ensure full subscription to its issuance of GDR and to create a good overseas market perception about the scrip of the Company. The above stated acts were performed by the Company knowing well that the GDR proceeds cannot be used for its business, until the repayment is made by the said borrower cum single subscriber to its entire GDR issue.

12. I will now deal with the contentions raised by Noticee no. 1. The Noticee has submitted that it has not been provided with the copy of modified Investigation Report. In this regard, I note that the allegations against the Noticees are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticees as enclosures to the SCN and it is the Noticees' responsibility to defend his case

by referring to the documents on which SEBI has relied upon in the SCN . Further, as noted earlier, the Noticee has already been granted inspection of all relevant documents and has been provided with the copies of documents collected during investigation by SEBI and relied upon in the SCN. Therefore, I do not find that the interest of the Noticees has been prejudiced in any manner, and the Noticee has not explained as to how its interest is getting prejudiced by not having a copy of the modified investigation report when the charges/allegations along with documents in support of the show cause have been clearly spelt out in the SCN and the detailed facts on the basis of which those charges have been framed are already contained in the SCN and the annexures enclosed to the said SCN. Under the circumstances, I find the Noticees's objection on the ground of non-receipt of investigation report is frivolous and unfounded, hence reject the same.

13. The Noticee has relied on the judgements of SAT viz:- *Rakesh Kathotia v. SEBI* and *Sanjay Jethalal Soni v. SEBI*, to contend that there has been inordinate delay in conducting investigation and initiating the present proceedings against it. In this regard, from the records I note that initially, SEBI was investigating a few cases of GDR issues, during which it was noticed that one Mr. Arun Panchariya, in connivance with different issuer companies and their promoters/directors, had conceived fraudulent schemes to help those companies to issue GDRs in certain overseas markets. While investigating those cases, information were sought from several entities including the Regulators of those overseas Territories (Countries). After analysing those information received from various sources, it was noticed that similar modus operandi was also followed in several other GDR issuances by the Companies listed in India. Under the circumstances, the investigations were

escalated and expanded further and a scrip wise investigation was undertaken by SEBI into a large number of GDR issue cases spanning over a period of almost 12 years.

14. In view of the fact that a large number of Indian listed scrips and their corresponding GDR issues were taken up for investigation collectively for which information had to be collected from different entities, mostly from the authorities situated outside India through regulatory coordination/arrangements with different overseas Regulators, it required substantial time for completion of investigation after which, SCNs had to be issued to a large number of such GDR issuer-companies. I note that major portion of relevant information in this regard was received from CMVM, Portugal (Portuguese Securities Market Regulator) vide letter dated March 18, 2016. In this regard, I further note that SEBI has passed an order dated June 16, 2016 in which it has recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. It is seen that Lyka was also one such GDR issuing company in respect of which the investigation was completed in January 2017 and SCN was issued to the Noticees on July 21, 2017. Therefore, the time taken for completion of collective investigation into such a large number of similar cases of GDR issuances spanning over a period of 12 years and also for issuing SCNs to a large number of Noticees is fairly understandable. Without prejudice to the above factual observation, I find that no provision under SEBI Act, prescribes any time limit for taking cognizance of the alleged breach of provisions of SEBI Act, and rules and regulations made thereunder. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of commission of the said violation. Whether a delay in a particular case is justified or not depends on the facts and

circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. v. SEBI* (SAT Appeal No. 97 of 2014 decided on 16.12.2015):

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

15. I also like to refer to refer to the recent judgement of Hon'ble SAT in the matter of *Jindal Cortex Ltd. v. SEBI*, (Appeal no. 376/2019; order February 5, 2020) wherein, while dealing with a similar fraudulent arrangement concerning GDR issue Hon'ble SAT has held that *"Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc."*

16. The Noticee has further submitted that the Resolution dated August 9, 2005 was passed by the Company to authorise Banco Bank to use the GDR funds in respect of loans to be availed by the Company and not by any third party. It is also submitted that the Company (Noticee no. 1) was not aware of execution of the Account Charge Agreement and further, there is no Company seal affixed to the Account Charge Agreement. It is further argued that Noticee no. 2 had executed the said agreement without authorisation and knowledge

of the Company or the Board, hence the Company could not have made the alleged disclosures. The Noticee has relied upon the statement of Noticee no. 2 recorded during investigation conducted by SEBI to substantiate that the aforesaid Resolutions were not minuted and that even though Noticee no. 2 has accepted that the signature on the Account charge Agreement was his, he had failed to recollect having signed the said agreement in view of the fact that he had signed several agreements at the time of GDR issue. It is also submitted that as per the SCN itself, the GDR funds were repatriated to the Company's India account with interest (92% within 3 years and remaining by June 2009) and that the SCN does not allege that the repatriation of funds from Banco Bank was linked to the repayment of the loan by Fusion.

17. The aforesaid arguments advanced by the Company have been carefully considered but are found to be grossly devoid of necessary factual evidence and not backed by any plausible rational to justify any favourable consideration. There are no two opinions that the Noticee no.1 is a publicly listed company in India, and its Directors owe the shareholders and other investors in the Indian Securities market an onerous duty to conduct its functioning in a transparent and diligent manner. Therefore, merely pleading ignorance about the execution of the above stated Account Charge Agreement by its CMD and not furnishing any explanations for the delayed receipt of GDR funds into its Indian account would not be acceptable. The Noticees are duty bound to explain their role in the entire process starting from the passing of Board Resolutions to the date of issuance of GDR and subsequent belated receipt of the GDR proceeds into their Indian accounts, so as to demonstrate as to how they have performed their duties while dealing with the GDR issue. I note that the Company has merely stated that there was delay in bringing back the GDR funds into India

due to unavoidable circumstances but has failed to explain as to what was that unavoidable circumstance that prevented the Noticee from bringing the GDR proceeds to its disposal in India immediately after the issuance of GDR, for utilization of the funds in terms of the stated objects of issuance of GDR. The Company has not submitted any documents to substantiate as to what prompted it to decide to open its GDR deposit account only with the Banco Bank (and not with any other overseas Bank) and under what circumstances it thought it fit and proper to execute the Account Charge Agreement with Banco Bank , which inter alia, fastened on it, the liabilities of a third party, i.e. the borrower (Fusion) in terms of its Credit Agreement with the same Bank, i.e. Banco Bank.

18. The Company has raised a technical objection to disown the Account Charge Agreement stating that the Account Charge Agreement did not bear the common seal of the Company, however, it is pertinent to mention here that the CMD of the Company, i.e. Noticee No.2, who has signed the said agreement, has not disputed his signature on the agreement but has merely stated that he cannot recollect having signed the said agreement as he had to sign many documents at the time of issuance of GDR. Such an irresponsible submission is not acceptable from a Listed Company and its Director who is expected to exercise the basic minimum diligence while running the affairs of the Company, especially when executing documents in a foreign jurisdiction in connection with raising funds by way of GDR issue in an overseas market. If the contention of the Company that it was unaware of the existence of the Account Charge Agreement (between the Company and Banco Bank) is to be believed, in that case by now or at least after receiving the SCN from SEBI, the Company should have initiated stringent legal action against Banco Bank and its own CMD who had executed such an agreement without the Company's knowledge and authorisation by

invoking the ground of criminal breach of trust. It is not possible that the Director of the Company will sign an agreement with Banco Bank pledging therein the entire GDR proceeds, against loans advanced by the Bank to an unrelated party (Fusion) without the knowledge of the Company since, had the said Account Charge Agreement not been executed with Banco Bank, the entire GDR proceeds would have been received by the Company into its Indian accounts immediately after the issuance of GDR, and not so belatedly (over three years) as happened in this case. In my view, instead of projecting itself as a victim, it is expected that the Noticee should have taken strong action against the signatories to the said Account Charge Agreement at least to show their *bona fide*, considering that the said agreement has deceptively fastened a huge liability on it by subjecting its GDR proceeds to be held as securities against the loan taken by an unrelated third party, with which the Noticees claim to have no connection. However, to my surprise, no action has been initiated by the Company against any of those persons/parties (viz: Banco Bank, Noticee No.2 or Fusion) so far despite receiving the SCN in 2017. Under the circumstances, the explanation furnished by the Noticees appears to be quite superficial and specious. The Company has sought refuge under a false plea only with a motive to avoid any likely enforcement actions against it for making wrongful disclosure to the public at large and for resorting to fraudulent acts against the shareholders as alleged in the SCN, hence, its explanation has no strength to deserve any consideration. It is the responsibility of the issuer Company and directors to manage the affairs of the Company with utmost sincerity and good faith and to verify the genuineness of any material information before disseminating the same to the public at large and it is not permissible to them to take shelter under the excuse that the Company was helpless or did not have knowledge about matters as crucial as execution of an Account Charge Agreement by its Director with a foreign bank

having significant bearing with its fund-raising through issuance of GDR in overseas jurisdiction.

19. The Company has not furnished any documents to prove its claim that the Board Resolutions have not been acted upon and instead, the signing and execution of the Account Charge Agreement and various stipulations made therein, clearly demonstrate that the Company has dutifully implemented all the resolutions passed by the Board. For illustration, in terms of the clause 2 of the Account Charge Agreement, *Lyka was to deposit in a designated account with the Bank an amount not exceeding US$ 6,500,000 as security for all the obligations of Fusion under the Loan Agreement and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof.* Further, Banco Bank was authorised to apply all or any part of the deposit made by Lyka in its designated Bank account to settle the loan liability of Fusion.

20. Thus, the afore-stated provisions in the Account Charge Agreement and the conduct of the Noticee successfully support that the intent and purpose of these provisions were only to secure the pledging of the amount to be received as subscriptions to the issuance of GDR, against the loan advanced by Banco Bank to Fusion to subscribe to the said GDR issue. It becomes blatantly clear that the Noticee no.1 (Company), by signing the Account Charge Agreement with Banco Bank, had deliberately bound itself with the condition that the amount lent by Banco Bank to Fusion for making subscription to the GDR issue of the Company, which was to be deposited in the Company's escrow account in the Banco Bank (towards GDR subscription proceeds), would in all eventuality remain pledged as a security

to secure the interest of the Banco Bank, in case of any default by the borrower (Fusion) and the Company wilfully agreed that it will not have any control or any say, over the said subscribed amount, till the final repayment of loan was made by the said subscriber i.e Fusion .

21. In sum, considering the sequence of events, viz : passing of the Board Resolution dated August 9, 2005, subsequent execution of the Account Charge Agreement and consequent inordinate delayed receipt of GDR proceeds into the Company's Indian account in tranches (over a period of more than three years) due to obligation to comply with the clauses/conditions laid down in the Account Charge Agreement, I find it extremely improbable to accept the contentions of the Noticee that it had not knowingly executed the said Account Charge Agreement or that the Board Resolution did not intend to pledge the GDR proceeds for securing the loan sanctioned to Fusion by Banco Bank. The aforesaid submissions made by the Noticees appear to be merely an afterthought exercise to evade the adverse consequences of the present proceedings. I further note that some of the afore-stated arguments advanced by the Noticee in this case, have also come for consideration before the Hon'ble SAT in the matter of *Cals Refineries Limited v. SEBI* (Appeal No 04 of 2014- Date of Decision 12.10.2017), wherein the Company and Directors had claimed that they are the victims of fraud and not vehicle of fraud. The Hon'ble SAT after having heard the parties at length, was pleased to find their submission as unsustainable. Relevant observations of Hon'ble SAT in the *Cals Refinaries (supra)* are as under:

> "*.....(f) Fact that the minutes as per the minute book of Cals does not contain any resolution to open a bank account with Banco cannot be a ground to infer that Cals had not intended to open an account with Banco because, firstly, on the basis of the Board resolution dated 30/10/2007 certified by Sundararajan, director of Cals, an account was in fact opened in the name of Cals with Banco for depositing the GDR subscription amount. Secondly, on issuance of GDRs, the GDR subscription amount*

was in fact deposited in the said account of Cals with Banco. Thirdly, apart from the Board resolution dated 30/10/2007 certified by Sundararajan, there is no other resolution passed by Cals to open an account for depositing the GDR subscription amount. Fourthly, the GDR subscription amount deposited in the said bank account with Banco has been withdrawn by Cals in installments from time to time which is in consonance with the Account Charge Agreement executed by Cals. Without opening a bank account, Cals could not have opened the GDR issue. Very fact that Cals operated the account opened with Banco on the basis of resolution dated 30/10/2007 certified by Sundararajan clearly falsifies the case put up by Cals that it had not authorized any one to open an account with Banco for depositing the GDR subscription amount.

(g) Similarly, argument that Cals had never authorized any person to sign any Account Charge Agreement is also without any merit, because, the Account Charge Agreement was signed by Goorha promoter-director of Cals. The Account Charge Agreement provides that all communications in relation thereto should be addressed either to Goorha or Sundararajan as they were the two authorized signatories to operate the Bank account of Cals with Banco. It is relevant to note that Goorha was the founder, promoter, director of Cals, whereas, Sundararajan was the director of Cals nominated by the Spice Energy group which had taken over Cals with a view to implement its refinery project through Cals by raising funds through issuance of GDRs. Admittedly, Sundararajan was in-charge of the entire GDR process. Thus, the bank account with Banco for depositing the GDR subscription amount was opened by Sundararajan, director representing the Spice Energy group and the Account Charge Agreement was signed by Goorha, director representing the promoter group of Cals. In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted. "

22. At this juncture, I also find it apt to refer to and rely on the views of the Hon'ble Supreme Court in the case of *SEBI v. Kishore Ajmera,* (2016) 6 SCC 368, wherein the apex court has made the following observations about the nature of evidence to be used while adjudicating a quasi-judicial proceeding:-

"……It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...

.....Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned....."

23. Applying the above test in the instant proceedings, I am of the view that there are enough evidences available on record which satisfactorily indicate the fraudulent intent on the part of the Noticee with a view to mislead the domestic investors by concealing material facts pertaining to the GDR issue from them so as to induce them to trade in the scrip of the Company hence, such fraudulent acts of the Noticees certainly fall within the ambit of PFUTP Regulations. I further find the observations of the Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Pvt. Ltd., (2018) 13 SCC 753* relevant to be relied upon at this juncture, wherein it was held that Regulation 4(1) of PFUTP Regulations in clear and unmistakable terms has provided that *"no person shall indulge in a fraudulent or an unfair trade practice in securities"* and while referring to its own judgment in the case of SEBI v. Shri Kanhaiyalal Baldevbhai Patel and Ors (2017) 15 SCC 1 the apex Court have held that;

"31 Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'……..
……Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."

24. It may be recalled here that the Company had informed BSE on December 7, 2005 that *"the GDR issue has been subscribed to the extent of US$5 million."* However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with the entity(Fusion), the crucial material facts surrounding the Credit and Account Charge Agreements and also about the single preordained subscriber were knowingly concealed from the investors. The investors were never allowed to know that the GDR proceeds would be kept as a security against the loan taken by the subscriber and that in case of default by the subscriber, the proceeds would be eventually utilized by the Bank to settle the loan obligations of the borrower/subscriber. It was also observed that soon after the issuance of GDRs to the single subscriber, the GDRs were converted into equity shares and sold in the Indian Securities Market. The afore mentioned declaration made by the Company on December 7, 2005 on the platform of the Stock Exchange about the successful subscription of GDR issue, without disclosing the actual behind the scene arrangement undertaken by it with the subscriber-cum-borrower (Fusion) to ensure full subscription to its GDR by facilitating a loan to the subscriber, has given an ostensible good impression to the investors and the market about the strong potential of the Company and an impression that investors outside India had shown overwhelming interest in subscribing to the securities issued by the Company. Whereas in reality, the Company with the active aid & support of Banco Bank and Fusion, had issued GDR to Fusion knowing fully well that it cannot bring the GDR proceeds back to India immediately.

25. The above described acts of the Company represent a serious fraudulent and unfair trade practices, inflicted on the Shareholders and also on the innocent investors in the Securities Market at large. The investors including its own Shareholders were made to believe that

the shares of the Company have a good market abroad and have been very well received by investors abroad, hence, the Company has a great value for investment in India as well. Such misleading inferences and deceptive positive expectations about the shares of the Company were caused by the Company's own acts by devising a scheme through which, it ensured a successful issuance of GDR beyond the knowledge of its Shareholders. The investors were not aware about the artifice created by the Company through which it enforced the successful subscription to its GDR with the help of a pre-meditated arrangement with Fusion and Banco bank.

26. In this context, I further find it proper to refer to observation of Hon'ble Supreme Court of India dated July 6, 2015 in *SEBI v. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, have observed the following;

> "*the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank……..*
> *….that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs……..*
> *To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none…."*

27. I also find it appropriate to refer to a decision by the Hon'ble Securities Appellate Tribunal (DOD 25.10.2016) in the case of *PAN Asia Advisors Ltd. & anr. v. SEBI,* wherein the Hon'ble Tribunal have observed the following:

> *"The expression 'fraud' is defined under the PFUTP Regulations……..*
> *……..from the aforesaid definition it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not……..*
> *…….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".*

28. In view of the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by the Company (Lyka) starting with passing of the impugned Board Resolution, followed by entering into an Account Charge Agreement with Banco Bank so as to permit use of its GDR proceeds as a security against a loan taken by Fusion from the same Bank, making an announcement on December 7, 2005 that the GDRs have been successfully allotted and then not disclosing to the Public about the said impugned Board Resolutions, and the details of Account Charge Agreement which reveal the Company's blatant commitment to secure the loan obligation of its GDR subscriber etc, have cumulatively succeeded in misleading as well as inducing the susceptible investors at large. Such a scheme and arrangement has in it, all the ingredients that comprise a fraudulent activity in the Securities Market. In view of the above, I hold that by its acts of

concealing and suppressing vital material facts about execution of the Credit and Account charge Agreements, the Noticee Company has committed a fraudulent act upon its own existing Shareholders and also upon all the investors of the Securities Market who might have been induced to deal in the shares of the Company due to the artificially created positive outlook about the Company's performance. Under the circumstances, the above stated acts of the Company, such as indulging in a fraudulent scheme for GDR issuance as discussed above and concealing material information from the knowledge of the shareholder and overall engaging in such trade practices as highlighted in my observations in the preceding paragraphs, are bound to be held to be in violation of provisions of Section 12A(a), (b), (c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1),4(2)(f),(k),(r) of PFUTP Regulations.

29. To sum up the preceding discussions, I find that the Credit Agreement was inseparably linked to the Account Charge Agreement and vice versa, and both were executed consecutively. The Account Charge Agreement was signed by Mr. N.I.Gandhi, CMD of the Company (Noticee No. 2) on behalf of the Pledger i.e., Lyka. The Credit Agreement and the Account Charge Agreement enabled Fusion to avail loan from Banco Bank for subscription to the GDRs of Lyka. This was made possible by the Company by offering its GDR proceeds as security for the loan extended by Banco Bank to Fusion. The GDR issue would not have been subscribed, if the Company had not given such a security against the loan taken by Fusion. By entering into such an arrangement, the Noticee has led the investors in India to believe that the issuer Company i.e. Lyka has got a good reputation in terms of investment potential because of which, foreign investors have enthusiastically subscribed to its GDR, whereas in reality, the GDRs were subscribed by Fusion with the

help of the Company itself. Therefore in effect, on the basis of authorisation given by the Board of Directors, the Company has facilitated the subscription to its GDR issue by Fusion on the strength of a loan obtained by it from Banco Bank against which, the GDR proceeds of the Company were kept as security. All the aforesaid transactions and activities were undertaken behind the back of the Shareholders and other investors of the Securities Market. It is only when Fusion presumably repaid the loan by liquidating the underlying shares of the GDRs in the Securities Market, that the Company could get back its GDR proceeds from Banco Bank for its utilisation. In my view, the Issuer Company (Lyka) i.e. Noticee no.1 has failed to advance any credible explanation supported by any evidence to prove its innocence, hence, it constrains me to hold that the Company has indeed acted fraudulently in breach of the provisions of SEBI Act and PFUTP Regulations alleged in the SCN.

30. I have also taken into consideration the submissions of the Noticee that it has always been compliant with the statutory rules and has not been found guilty of any violations and is a respected pharmaceutical manufacturer company and that *albeit* delay, the entire GDR proceeds were repatriated to India and were used for the objects envisaged, negating any mala fide intention of the Company. In my view, such an explanation taking shelter under the act of repatriation of GDR proceeds to India, *albeit* belatedly, would not absolve the Company of its sacrosanct duty to make full and complete disclosure to public, and to maintain high standards of governance & transparency in its conduct towards its public shareholders. Moreover, it is also observed that the Company is still listed on BSE and continues to be publicly listed company in India.

DIRECTIONS:

31. Keeping in view of the foregoing discussions and my concluding observations, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the Securities Market and also considering the facts of the case and to meet the ends of justice, I hereby issue the following directions:

a) Noticee no. 1, the Company is restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of three years from the date of this order. It is clarified that during the period of restraint, the existing holding of securities of the Noticee including units of mutual funds, shall remain frozen.

b) As stated in the beginning, since Noticee no. 2 has expired during the pendency of the proceedings, the instant proceedings qua him are now rendered infructuous.

c) The Order shall come into force with the immediate effect.

d) A copy of this order shall be forwarded to the Noticee, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: JUNE 05 , 2020 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA