

WTM/ AB / EFD-1/ DRA-1/27/2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : ANANTA BARUA, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992
in the matter of Bhoruka Aluminum Limited

In respect of:

Sr. No.	Name of the Noticee	PAN
1.	Bhoruka Aluminium Limited	AAACB8073D
2.	Mr. Ajay kumar Dalmia	AAIPD2539D
3.	Mr. Panduranga Setty	ACIPP7049J
4.	Mr. Amla Bansi Lal	ABXPA7328R
5.	Mr. Prabir Chakravarti	ACIPC5246N
6.	Mr. Rajkumar Aggarwal	AAPPA8159F
7.	Mr. Rajat Aggarwal	AEYPA0496E

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

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) noticed some fraudulent schemes being perpetrated by certain persons/ entities in respect of issuance of Global Depository Receipts (hereinafter referred to as “**GDR**”) and therefore conducted investigation into the GDR issue of various companies including Bhoruka Aluminum Ltd. (hereinafter referred to as ‘**Bhoruka**/

BAL/ the Company’) for its GDR issue made on December 03, 2010, the details of which is tabulated as below:

GDR Issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
03-Dec-2010	1.12 (at USD 9.25 per GDR)	10.38	DBS Bank	1,12,26,280 of Rs. 10/- each	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

- During the investigation, it was noted that the GDRs of Bhoruka were subscribed by only one entity i.e. Vintage FZE, Dubai now known as Alta Vista International FZE (hereinafter referred to as ‘**Vintage**’), by obtaining loan from the European American Investment Bank AG, Austria (hereinafter referred to as ‘**EURAM Bank**’) and further the Noticee No. 1 (Bhoruka) had secured the loan obtained by Vintage (the GDR subscriber), by pledging the GDR proceeds with the Euram Bank.

SHOW CAUSE NOTICE, REPLY AND HEARING:

- Based upon the findings made by the investigation, a show cause notice dated July 10, 2018 (hereinafter referred to as, “**SCN**”) was issued to the Noticees, alleging violation of Section 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {‘**PFUTP**

Regulations, 2003’} by Noticee No. 1 and violations of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003 by Noticee Nos. 2 to 7. The Noticees were asked to show cause as to why suitable directions under Section 11(1), 11B and 11(4) and of the **SEBI Act, 1992** should not be issued against them. The copies of following documents which were relied upon in the SCN, were also provided to the Noticees:

Annexure No.	Details
1.	Copy of Bhoruka letter dated June 23, 2015 to SEBI
2.	Bhoruka’s corporate announcement dated December 03, 2010
3.	Copy of loan agreement dated November 23, 2010 entered into between Vintage and Euram Bank
4.	Copy of Bhoruka’s Board resolution dated September 28, 2010
5.	Copy of Minutes of BoD meeting dated September 28, 2010
6.	Relevant pages of Bhoruka annual report for the year 2010-11
7.	Copy of pledge agreement entered into between Bhoruka and Euram Bank on November 23, 2010
8.	Copy of Bank account statement of Vintage
9	Copy of Retail Bank account statement of Bhoruka
10	Copy of Escrow account statement of Bhoruka

4. Necessary steps were taken for serving the SCN upon all the Noticees, however, the same was not delivered upon all. Replies were received from Noticee Nos. 1, 3, 6 and 7. The Noticee No. 1 vide its two separate letters, both dated August 03, 2018 communicated that the Noticee No. 4 and Noticee No. 5 have expired and, in this regard, also submitted a copies of their death certificate. The Service of SCN and hearing notice upon Noticee No.2 was served by way of newspaper publication made on December 15, 2018 and January 25, 2019, respectively. Further, pursuant to requests made by Noticee Nos. 6 and 7, inspection of documents were also afforded on August 27, 2018. After completion of inspection of document, a common reply dated October 04, 2018 has been received from Noticee Nos. 1, 3, 6 and 7.
5. In compliance with the principles of natural justice, the Noticees were also provided an opportunity of personal hearing on February 11, 2019 when Ms. Shailshree Bhaskar, Practising Company

Secretary appeared on behalf of the above Noticee No. 1, 3, 6 and 7. She further informed that the Noticee Nos. 4 and 5 have already expired and, therefore, prayed to abate the proceedings qua these two Noticees. The Noticee No. 1 vide its two separate letters, both dated August 03, 2018, has submitted a copy of the death certificate of these two Noticees.

6. As mentioned in para 4 above, the SCN and hearing notice to the Noticee No. 2 was served by way of newspaper publication made on December 15, 2018 and January 25, 2019. However, the Noticee No. 2 has neither appeared for hearing nor filed any reply.
7. A summary of reply dated October 04, 2018 and submissions made during the course of hearing on February 11, 2019, which was mainly based upon the said reply, are summarized as under:
 - a. While admitting the said issue of GDR, the Noticees denied that there was only one subscriber to their GDR issue and stated that, as per information provided by their Lead manager, they had submitted the details of three allottees. In support of their contention, the Noticees have referred to an email dated December 07, 2010 received from their Lead Manager Pan Asia Advisor providing the details of issuance of GDR to said three allottees.
 - b. The Noticees have denied any knowledge of Vintage taking loan from the Euram Bank as the same does not pertain to them.
 - c. In respect of Board resolution dated September 28, 2010 approving open of account with Euram Bank, it is submitted that the same was required for the purpose of GDR issue. However, in respect of pledge agreement entered into between and Bhoruka and Euram Bank, the Noticees have denied any knowledge of the same and stated that first time they have come to know about such agreement entered into and executed by the Noticee No. 2. The Noticees have also alleged that the seal of the Company used on the pledge agreement is not the same which they have and that there is also no signature of any witness on the said pledge agreement. The Noticees have admitted that they should have been more vigilant and careful but stated that they relied upon the Noticee No. 2; Mr. Ajay Kumar Dalmia who was also the Chief Financial Officer (CFO) of Bhoruka.
 - d. The Noticees have stated that the said Board resolution authorized their CFO to only sign and

execute application, agreement, escrow agreement etc., which may be required by the Bank and that the Bank was authorized to use the funds so deposited as security in connection with loan, if and when required. Also denied that the issuance of GDR was part of any fraudulent scheme.

- e. The Noticees have denied that the entire GDR proceeds amount were backed by the loan amount raised by Vintage from the Euram Bank. Also denied that they have provided any wrong information or made wrongful disclosure to the stock exchange.
- f. The Noticees have submitted that they were planning a major expansion which needed money and as advised by their CFO (Noticee No. 2), they explored the possibility of issuance of GDR. Also stated that they were not benefitted by the GDR issue and that they were cheated by the plans and ideas of Noticee No. 2 (CFO).
- g. During the course of hearing held on February 11, 2019, Ms. Shailshree Bhaskar, Practicing Company Secretary appeared for Noticee Nos. 1, 3, 6 and 7 and reiterated the same.

CONSIDERATION OF ISSUES AND FINDINGS:

- 8. I have perused the SCN dated July 10, 2018 issued to the Noticees along with the documents annexed therewith, the reply filed by the Noticees and considered the submissions made during the course of hearing on February 11, 2019. The question now arises as to whether the Noticees, by their acts and omission, have violated the provision of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCN dated July 10, 2018 and referred to in para 3 above.
- 9. Before proceeding further, the relevant provisions which are alleged to have been violated in the SCN dated July 10, 2018, by the Noticees, are reproduced as below:

SEBI Act, 1992

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

Section 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 recognised 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;*
- (d)*

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly

- (a) buy, sell or otherwise deal in the 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. 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 iBhoruka ude all or any of the following, namely:—*
 - (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.

10. I note that the Bhoruka (Noticee No. 1) is listed on BSE and, by virtue of being a listed company, it was required to make all the material disclosures that would have had an impact on the price of its scrip including important corporate announcements to the stock exchanges to enable the investors to take an informed decision. I note that the Bhoruka (Noticee No. 1) had made several corporate announcements in the year 2010 (**Annexure 2 to SCN**) and from the same it is noted that on December 03, 2010, Bhoruka had announced that it has *"Issued and allotted 1,122,628 GDR at USD 9.25 each underlying 11,226,280 Equity shares of Rs. 10/- each at Rs. 41.10 (Rupees forty one paise ten only) each to "The Bank of New York Mellon" in its capacity as a depository."* In this respect, during the course of investigation, the Noticee vide its letter dated June 23, 2015 (**Annexure 1 to SCN**) submitted a list of three allottees who were stated to have subscribed its GDR issue which was as under:

S.N	Name of the subscriber	No. of GDRs	No. of Shares	Value (USD)
1	Axinite Capital INC	3,22,628	810,000	29,84,309
2	Cruise Waterford Investments Limited	4,50,000	750,000	41,62,500
3	Creative Stone Holdings Limited	3,50,000	720,000	32,37,500
	Total	11,22,628	112,26,280	103,84,309

11. During the investigation, it was noted that the Board of Bhoruka had passed a resolution on September 28, 2010 (**Annexure 4 to SCN**) for opening an account with the Euram Bank for the purpose of receiving of subscription money in respect of proposed GDR issue and authorized Mr. Ajay Kumar Dalmia (Noticee No. 2), Chief Financial Officer (CFO), to sign and execute any application, agreement, escrow agreement, document etc. which may be required by the Euram Bank. A copy of certified copy of Bhoruka 's Board resolution dated September 28, 2010 was annexed with the SCN dated July 10, 2018 and provided to the Noticees. On perusal of the copy of said Board resolution, it is noted that Euram Bank was authorized to use the funds deposited in that bank account as security in connection with the loans, if any. The relevant terms of the Board

resolution dated September 28, 2010, are reproduced as under:

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

“RESOLVED FURTHER THAT Shri Ajay kumar Dalmia, CFO and Authorized Signatory of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.”

RESOLVED FURTHER THAT Shri Ajay kumar Dalmia, CFO and Authorized Signatory of the Company, be and hereby severally authorized 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 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.”

12. On perusal of the retail account statements and escrow account statements of the Bhoruka (**Annexure 9 and 10 to SCN**), which was opened with the Euram Bank, it is noted that GDR issue was made for USD 10,384,309 which were received in Bhoruka's Escrow account no. AT96193400-580032-0021 held with EURAM Bank on December 02, 2010 and on the same day transferred to Retail account no. AT70193400-580032-0101 held with Euram Bank. It further reveals that the subscription amount in respect of its GDR issue was received from only one entity i.e. Vintage. The investigation further noted that Vintage (subscriber of GDR issue) had obtained loan, from the Euram Bank for the purpose of subscribing/ taking down the GDR issue of Bhoruka, by executing loan agreement dated November 23, 2010. A copy of the said loan agreement dated November 23, 2010, executed between the Vintage and Euram Bank, was also annexed along with the SCN dated July 10, 2018 as **Annexure 3**. On perusal of the said loan agreement, I note that the same specifically mentions under the head ‘*nature and purpose of facility*’ that the loan is being provided for funding Vintage enabling it to subscribe/ take down the GDR issue of Bhoruka. Further, in respect of security for the loan amount, in para 6 of the loan agreement under the head ‘*security*’, it refers to the pledge of certain securities held in the borrower's account no. 540012 and also the pledging of the account no. 580032 (which pertains to Bhoruka's) held with the Euram Bank and also stated that the same forms an integral part of the loan agreement. The relevant extracts of the said loan agreement dated November 23, 2010 is reproduced as below:

1. Currency and the amount of facility:

USD 10,384,309.-

2. Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 1,122,628 Luxembourg public offering and may only be transferred to EURAM account nr. 580032, Bhoruka Aluminium Limited”

6. Security

6.1. In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- 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. 580032 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.

13. It was also noted during the investigation that the Bhoruka had entered into a pledge agreement on the same date i.e November 23, 2010 with the Euram Bank. A copy of the said pledge agreement dated November 23, 2010 was annexed with the SCN dated July 10, 2019 (**Annexure 7**) and was provided to the Noticees. On perusal of the pledge agreement (**Annexure 7 to SCN**), I note that the very opening paragraph of the agreement, under head ‘*preamble*’, refers to the loan granted by the Euram Bank to Vintgae for an amount USD 10,384,309 and states that the pledger has received a copy of said loan agreement and acknowledge and agrees to the terms and conditions mentioned therein. Further, as per paragraph 2.1 of the said pledge agreement (**Annexure 7 to SCN**), Bhoruka pledged its rights, title and interest in the securities deposited from time to time and the balance funds upto the amount of USD 10,384,309 existing from time to time on the securities account no. 580032. It is noted that the account no. 580032 was pertaining to Bhoruka which was opened with the Euram Bank for the purpose of receiving of GDR proceeds. Further, in respect of realization of the pledge, it is mentioned in para 6.1 of the said pledge agreement that in case of failure by the borrower in making payment on due amount, the pledger granted express consent that the bank (Euram Bank) was entitled to apply the funds in the pledged account to settle the obligation. The relevant extracts of the pledge agreement is reproduced as below:

1. Preamble

By loan agreement K231110-003 (hereinafter referred to as the "Loan Agreement") dated 23 November 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in

the amount of \$ USD 10,384,309.-. The Pledgor has received a copy of the Loan Agreement No. K231110-003 and acknowledges and agrees to its terms and conditions."

2. Pledge

a. In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **Borrower** towards the bank under the Loan Agreement and any and all respective amendments 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** – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") **the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:**

i. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of \$ USD 10,384,309 existing from time to time at present or hereafter on the **securities account(s) no. 580032** held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

ii. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580032 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% p.a.

(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

b. The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged securities and funds.....

6. Realisation of the Pledge:

6.1. In the case that the **Borrower fails to make payment** on any due amount, or defaults in accordance with the Loan Agreement, The Pledgor herewith grants its express consent and the **Bank is entitled to apply the funds in the Pledged 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

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

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

14. I note from the above that Vintage had availed loan from Euram Bank solely for the purpose of subscribing/ taking down the GDR issue of the Bhoruka that too with the support of the pledge agreement dated November 23, 2010 executed by Bhoruka with the Euram Bank pledging the GDR

proceeds with the only purpose to provide security to the loan availed by the Vintage for subscribing its GDR issue. The loan agreement and pledge agreement both are dated November 23, 2010 and were executed simultaneously making cross reference.

15. The above arrangement facilitated the subscription of GDR issue by only one entity (i.e.) Vintage by taking loan from the Euram Bank and that loan was further secured by Bhoruka by pledging the GDR proceeds. In other words, had this mechanism was not adopted, the GDR issue of Bhoruka would not have been subscribed. I, therefore, find that Bhoruka had facilitated subscription of its own GDR issue by entering into an arrangement where subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of Bhoruka and Bhoruka further pledged the GDR proceeds with Euram Bank for securing the loan taken by Vintage from the Euram Bank.
16. The above finding is further supported by the fact that, as and when the said loan amount was repaid by the Vintage to Euram Bank, almost on the same date or after a day or two exactly the same or similar amount was being transferred from the Bhoruka's bank account with Euram Bank to the Indian bank account of Bhoruka or to its UAE's subsidiary bank account. On perusal of bank account of Bhoruka with Euram Bank (customer no. 580032) (**Annexure 9 to SCN**) and Vintage's bank account (customer no. 540012) (**Annexure 8 to SCN**) reveals the details of repayment of loan by Vintage to Euram Bank and then transfer of same or similar amount from Bhoruka's Euram Bank account to its Indian bank account or its UAE's subsidiary bank account, which are tabulated as under:

Date	Repayment By Vintage (A)	Payment by Bhoruka (B)	Remarks
1-Feb-11	503,000	500,000	Bank charges upto 1-Feb-11 is USD 2,698.08
28-Mar-11	2,000,000	2,000,000	
7-Apr-11	4,500,000	4,500,000	
15-Apr-11	2,000,000	2,000,000	
26-Apr-11	1,000,000	1,000,000	
26-Apr-11	381,309	4,17,364	Interest earned by Bhoruka (36,055)
	10,384,309	10,417,364	Total

17. On perusal of bank account statement of Bhoruka, it is noted that Bhoruka earned an interest of USD 36,055 and incurred bank charges of USD 2,698 leaving a balance of USD 10,417,666 in its account, out of which, a sum of USD 10,417,364 was transferred to the UAE subsidiary of Bhoruka and a miniscule amount of USD 302 was transferred to Bhoruka's own bank account in India.

Further, on perusal of account statement of Bhoruka (produced in above table), it is clear that each transfer from Bhoruka's bank account with Euram Bank, either its own account or to its UAE's based subsidiary account, was in sync with the date and amount of loan being repaid by Vintage to Euram Bank. Thus, the amount being transferred from the Bhoruka's bank account was fully dependent upon the repayment of loan being made by the Vintage to Euram Bank. These records further strengthen the above findings that the loan taken by Vintage was secured by Bhoruka by pledging the GDR proceeds with the Euram bank and, therefore, the GDR proceeds was not available at the disposal of Bhoruka until Vintage completely repaid the loan taken from Euram Bank. I note that the Noticee No. 3, 6 and 7 had attended the Board meeting of Bhoruka (Noticee No. 1) held on September 28, 2010 when Noticee No. 2 was authorized to sign and execute all the agreement with the Euram Bank for opening bank account with the Euram Bank, and the Euram Bank was also authorized to use the fund deposited in its (Bhoruka's) account as security in connection with loan. The Noticee No. 2 acted as per authorization given by the Board of Noticee No. 1 which included Noticee No. 3, 6 and 7 and, subsequently, the GDR proceeds were available to the Noticee No. 1 for disposal only, as and when, Vintage (subscriber of GDR issue) has repaid the loan to Euram Bank. Thus, the contention of the Noticees Nos. 1 and 3, 6 to 7 that they were not aware of any existence or execution of pledge agreement with the Euram Bank or that the seal used on pledge agreement was not the regular seal of Noticee No. 1, appears an afterthought arguments and the same cannot be relied upon.

18. Investigation further noted that the disclosure made by Bhoruka in its corporate announcement dated May 20, 2010 did not mention about execution of any pledge agreement dated November 23, 2010 by Bhoruka with the Euram Bank pledging the GDR proceeds for the purpose of securing the loan availed by the Vintage for subscribing of its GDR issue. Instead, Bhoruka in its corporate announcement dated December 03, 2010 (**Annexure 2 to SCN**), with regard to completion of GDR issue stated that, "*Issued and Allotted 1,122,628 Global Depository Receipts, (GDR) at USD 9.25 each underlying 11,226,280 Equity shares of Rs. 10 (Rupees Ten Only) each at Rs. 41.10 (Rupees forty one paise ten only) each to "The Bank of New York Mellon" in its capacity as a depository.*" This announcement neither mentioned nor indicated that the GDRs were allotted to, or subscribed by, a single entity and rather it tends to give a message that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. Bhoruka has acquired a good reputation in terms

of investment potential and, therefore, foreign investors have successfully subscribed the GDR issue when in effect there was only one subscriber i.e. Vintage which had subscribed to the GDR issue of Bhoruka by obtaining loan from the Euram Bank and that loan was further secured by the Bhoruka itself by pledging the GDR proceeds.

19. I note that the Bhoruka in its letter dated June 23, 2015 has submitted a list of three investors stated to have subscribed its said GDR issue and in this respect, it has also referred to an email dated December 07, 2010 stated to have been received from the Lead manager. However, reliance cannot be placed on the same as there are various other factors on records like the entire GDR proceeds were received in the Escrow Account of Bhoruka on December 02, 2010 in a single transaction from one entity and, further, Bhoruka was not able to use the GDR proceeds unless repayment of loan was made by Vintage to Euram Bank. Further, the very first para of the pledge agreement (Annexure 7 to SCN) refers to the loan taken by Vintage and also states that the pledger has received a copy of the said loan agreement and acknowledge the same. Thus, the plea of the Bhoruka that it had no knowledge that there was a single subscriber to its GDR issue or that Vintage had obtained loan from Euram Bank for subscribing the GDR issue, cannot be relied upon.
20. As discussed above, false and misleading corporate announcements were made by the Bhoruka and it also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated November 23, 2010 by Bhoruka in favor of Euram Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) execution of loan agreement dated November 23, 2010, 2010 by Vintage for obtaining loan from the Euram bank for subscribing the GDR issue of Bhoruka and (iii) Vintage was the only subscriber of GDR issued by Bhoruka. I find that all these three events were price sensitive information and could have impacted the scrip price of Bhoruka. I find that the corporate announcements made by Bhoruka on December 03, 2010 (**Annexure 2 to SCN**) stating that '*issued and allotted 1,122,628 GDR*', might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the Bhoruka itself had facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of Bhoruka and Bhoruka secured that loan by pledging the GDR proceeds with the Euram Bank.
21. The aforementioned act of Bhoruka resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble Securities

Appellate Tribunal (“SAT”) dated October 25, 2016 in Appeal No. 126 of 2013 (*Pan Asia Advisors Limited vs. SEBI*) wherein, while interpreting the expression of ‘fraud’ under the PFUTP Regulations, 2003, it was observed that:

“From the aforesaid definition (of ‘fraud’) 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. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.”

22. Similarly, in the matter of *Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC 1*, the Hon’ble Supreme Court has observed as under:

“if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities”.

23. In view of the above, I note that the scheme of arrangement of Bhoruka, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue of Bhoruka by obtaining loan from Euram Bank and the same was again secured by the Bhoruka by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by Bhoruka on December 03, 2010 (**Annexure 2 to SCN**) stating that the GDR was issued and allotted, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. Thus, the Noticee No. 1 has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.
24. I, further, note that the said pledge agreement dated November 23, 2010 was signed by Mr. Ajay Kumar Dalmia (Noticee No. 2) on behalf of Bhoruka. As per Board resolution dated September 28,

2010 (**Annexure 4 to SCN**), the Board of Bhoruka had approved and passed a resolution for opening of a bank account with Euram Bank for the purpose or receiving the proceeds of GDR and also authorized the Euram bank to use the funds as security in connection with the loans if any as well as to enter into any Escrow Agreement or similar arrangements. By the said Board resolution dated September 28, 2010 (**Annexure 4 to SCN**), Bhoruka had also authorized Ajay Kumar Dalmia (Noticee No. 2), CFO of the Company, to sign, execute, any application, agreement, escrow agreement and other paper(s) from time to time, as may be required by the Euram Bank. Copies of the Board resolution dated September 28, 2010 (**Annexure 4 to SCN**) and minutes of the meeting held on September 28, 2010 (**Annexure 5 to SCN**) are available on record. On perusal of the same, it is noted that the Noticee No. 3 to 7 had attended the Board meeting held on September 28, 2010 wherein Bhoruka approved, *inter alia*, opening of bank account with Euram Bank for receiving GDR proceeds, and authorized Mr. Ajay Kumar Dalmia (Noticee No. 2) to sign and execute all agreement required by Euram Bank and also authorized the Euram Bank to use its funds as security in connection with the loans.

25. It is noted in above paras nos. 5, 6 and 7 that no reply has been filed by or on behalf Noticee No. 2 neither he nor his any representative appeared during the personal hearing provided to him. A reply dated October 04, 2018 was filed on behalf of Noticee No. 1, 3 6 and 7 wherein they have, *among other*, stated that the said Board resolution authorized their CFO to only sign and execute application, agreement, escrow agreement etc., which may be required by the Bank and that the Bank was authorized to use the funds so deposited as security in connection with loan, if and when required. They have also denied that the issuance of GDR was part of any fraudulent scheme and stated that no benefit was received from the GDR issue and they were cheated by their CFO. In this respect, as discussed in above paras (10-24), the proceeds of GDR issue was pledged with the Euram Bank and the same was also not available to Bhoruka for disposal until the same was, as and when, repaid by the Vintage to Euram Bank. As such, the contention of these Noticees that approval was granted only for the purpose of openen account with the Euram Bank, cannot be relied upon.
26. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer, SEBI (Civil Appeals No. 4112-4113 of 2013)* has observed a sunder:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors.

They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

27. As noted above, Mr. Ajay Kumar Dalmia (Noticee No. 2) has signed the Pledge Agreement dated May 07, 2010 (**Annexure 7 to the SCN**) for and on behalf of the Bhoruka and the seal of Bhoruka is also affixed thereon. Vide this pledge agreement, Euram Bank was authorized to use the funds of Bhoruka as security in connection with loan obtained by Vintage (subscriber of GDR issue of Bhoruka) from the Euram Bank. As such, the Noticee No. 2 was not only part of the fraudulent arrangement of Bhoruka but also played an active role in executing the pledge agreement dated November 23, 2010 which actually facilitated the subscription of GDR issue of Bhoruka.
28. The Noticee No. 3, 6 and 7 had participated in the Board meeting of Bhoruka on September 28, 2010 wherein approvals were made to, *among other*, authorizing the Euram bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by the Company (Noticee No. 1) in which the Noticee No. 2 has signed and executed the pledge agreement dated November 23, 2010 on behalf of the Company (Noticee No.1). Thus, the Noticees No. 2, 3, 6 and 7 were part of the fraudulent scheme and arrangement of Bhoruka (Noticee No.1) in facilitating the subscription of its own GDR wherein subscriber (Vintage) obtained loan from Euram Bank for the purpose of subscribing the GDR issue of Bhoruka and, Bhoruka pledged the GDR proceeds with the Euram Bank securing the loan taken by Vintage. The Noticee No. 1 also gave a false and misleading corporate announcement giving an impression that its GDR issue was successfully subscribed whereas the same was subscribed by only one entity i.e. Vintage by obtaining loan from the Euram Bank which was again secured by the Bhoruka (Noticee No.1) by pledging the GDR proceeds. Thus, the CFO and directors of Bhoruka (Noticee No. 1) i.e. Noticee Nos. 2, 3, 6 and 7 have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.
29. During the course of proceedings, it has been brought on record that Mr. Amla Bansi Lal (Noticee No. 4) and Mr. Prabir Chakravarti (Noticee No. 5) have expired on December 05, 2016 and

February 05, 2017, respectively and requests were made to abate the proceedings against them. Copies of their death certificates have also been submitted which confirms the same.

DIRECTIONS :

30. In view of the above, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the SEBI Act, 1992, hereby restrain M/s Bhoruka Aluminium Ltd. (Noticee No.1), Mr. Ajay Kumar Dalmia (Noticee No. 2), Mr. Pandurang Setty (Noticee No. 3), Mr. Rajkumar Aggarwal (Noticee No. 6) and Mr. Rajat Aggarwal (Noticee No. 7) from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, either directly or indirectly, for a period of **five years** from the date of this order. It is, further, clarified that the existing holding of securities of the Noticees, including the units of mutual funds, shall remain frozen during the period of restraint.
31. The proceedings initiated against Mr. Amla Bansi Lal (Noticee No. 4) and Mr. Prabir Chakravarti (Noticee No. 5) shall abated.
32. This Order shall come into force with immediate effect.
33. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

Place: Mumbai

Date: March 22, 2019

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA