WTM/SKM/EFD1-DRAI/ 14 /2018-19

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

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

In the matter of M/s. Tulsi Extrusions Limited

S.No.	Names of the Noticee	PAN
1.	M/s. Tulsi Extrusions Limited	AAACT8441P
2.	Mr. Omprakash S. Jhavar	ACWPJ2948N
3.	Mr. Sanjay Taparia	ABLPT6544N
4.	Mr. Gopaldas Maheshwari	AJJPM3286G
5.	Mr. Rajesh B Jhunjhunwala	AATPJ3401H
6.	Mr. Jaiprakash B. Kabra	AFSPK7761D
7.	Mr. Pradip J Mundhra	AAUPM2754K

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the issue of Global Depository Receipts (hereinafter referred to as "GDR") by M/s. Tulsi Extrusions Limited (hereinafter referred to as "Tulsi/Company/Noticee no. 1"). The relevant period of investigation was from August 01, 2010 to September 30, 2010.
2. It was observed that Tulsi had issued 12,50,000 GDR for USD 14.325 million, (approximately Rs. 67.50 Crore) on August 23, 2010. Details of the GDR issue as furnished by the Company is tabulated below:

Table no. 1

GDR issue date	**No. of GDR issued (mn)**	**Capital raised (USD mn.)**	**Local custodian**	**No. of equity shares underlying GDR**	**Global Depository Bank**	**Lead Manager**	**Bank where GDR proceeds deposited**	**GDR listed on**
August 23, 2010	1.25	14.325	DBS Bank Limited	1,25,00,000 (10 shares for each GDR)	The Bank of New York Mellon	Prospect Capital Limited	EURAM Bank, Austria	Luxembourg Stock Exchange

3. The investigation revealed that European American Investment Bank AG (hereinafter referred to as "EURAM Bank" or "Bank") had granted loan to Vintage FZE (hereinafter referred to as "Vintage") by way of a Loan Agreement dated August 11, 2010 (hereinafter referred to as the "Loan Agreement") for making payment towards subscription to the entire GDR issued by Tulsi. The loan amount sanctioned to Vintage was the same as the amount of GDR issued by

Tulsi i.e., USD 14.325 million, and, it was observed that the entire 1.25 million GDR were subscribed by only one entity, i.e. Vintage.

4. Investigation further revealed that the Company had pledged the entire GDR proceeds to EURAM Bank as security against the loan availed by Vintage from EURAM Bank for subscribing to GDR of Tulsi by entering into a Pledge Agreement dated August 11, 2010 with EURAM Bank (hereinafter referred to as the "Pledge Agreement"). The aforesaid Pledge Agreement was found to be an integral part of the Loan Agreement entered into between Vintage and EURAM Bank. Thus, both Loan and Pledge Agreements were executed with EURAM Bank concurrently, by Vintage and Tulsi respectively.
5. It was further observed that Vintage had transferred the entire stock of 12,50,000 GDR issued to it by Tulsi to the India Focus Cardinal Fund, Clariden LEU AG and Investec Zurich. GDR were subsequently converted into equity shares and sold in the Indian Capital Market. It was also observed that only after Vintage repaid loan in installments to EURAM Bank, EURAM Bank allowed transfer of GDR issue proceeds from Tulsi's account. Based on the above, it was observed that the amount transferred from Tulsi's EURAM Bank account was dependent on the repayment of the loan by Vintage, apparently due to the fact that Tulsi had pledged its GDR proceeds to the EURAM Bank against loan advanced by the EURAM Bank to Vintage.
6. It was also observed during investigation that the Board of Directors of Tulsi had passed a resolution dated May 7, 2010, authorizing EURAM Bank to use the GDR proceeds deposited with it as security in connection with loan. On the strength of the said resolution passed by the Board, the Company had entered into the Pledge Agreement with EURAM Bank. Thus the Pledge Agreement executed by Tulsi has enabled Vintage to avail loan from EURAM Bank for subscribing to the GDR of

Tulsi. The bank account in which GDR proceeds were to be deposited, was in the name of the Tulsi but on account of the Pledge Agreement, the GDR proceeds deposited in the said account were not at the disposal of the Company to utilize for its own needs till such time Vintage repaid the loan to EURAM Bank.

7. On the backdrop of the above stated facts, it was observed that the Company has made selective disclosure to Bombay Stock Exchange (hereinafter referred to as "BSE") about the outcome of its Board meeting held on May 07, 2010, by only disclosing that the Board has approved the GDR issue to the extent of USD 15 million. The Company had suppressed the information that in the same meeting the Board had also authorized EURAM Bank to use the GDR proceeds as security in connection with loan to be availed if any. The underlying intention behind the said Board Resolution to use the GDR proceeds as security against the loan to be availed by the would be subscriber, i.e. Vintage was never disclosed to the Exchange. Thus, as per the SCNs served on the Noticees, the entire scheme conceived by the Company and its Directors starting from passing of the resolution authorizing the Company to enter into a Pledge Agreement, making partial disclosure to BSE about the GDR issue, making corporate announcement on August 24, 2010 declaring that the GDR were successfully subscribed, to suppression of the above mentioned Pledge and Loan Agreements from the knowledge of the investors, have allegedly resulted in publication of information on the platform of the stock exchanges, in a distorted, misleading and fraudulent manner to the detriment of Public Interest.
8. The Company (Noticee no. 1), the Directors of Tulsi (Noticees no. 2 to 6) who attended the Board Meeting on May 7, 2010 and authorized the Company to sign the Pledge Agreement and the Noticee no. 7 who executed the Pledge Agreement are alleged to have concealed material information and allowed wrong and

misleading information to be disclosed through the Exchange. Therefore, they are alleged to have acted as colluding parties to the above stated scheme contrived to issue GDR in a fraudulent manner. The above acts of concealing and suppressing material facts from the shareholders and the fraudulent arrangement of the Pledge and Loan Agreements by the Noticees to issue GDR have been alleged to be in 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").

SHOW CAUSE NOTICE, REPLY AND HEARING

9. Under the aforesaid facts and circumstances, Show Cause Notice (hereinafter referred to as "SCN") dated June 21, 2017 was issued to all the Noticees, calling upon them as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act. The Company vide letter dated July 19, 2017 sought some time to file reply and subsequently has submitted a written reply dated August 22, 2017 on behalf of all the Noticees. I also note that Mr. Jaiprakash Kabra (Noticee No. 6) has submitted an additional written reply which was received on October 23, 2018. Mr. Omprakash S. Jhavar (Noticee No. 2) also has submitted an additional reply dated October 25, 2018. The submissions of all the Noticees in brief are summarized as under:

    - The Noticees have denied knowledge of the Pledge Agreement and stated that they have come to know about the Pledge Agreement only from the SCN. They have submitted that the 'round seal' affixed on the Pledge Agreement does not belong to the Company and the said Pledge Agreement does not bear the common seal of the Company. They have also enclosed

copies of some other documents executed by the Company at the relevant time to support their submission that the round seal on the Pledge Agreement is not the seal of the Company. The Noticees have also pointed out to some inconsistencies about the Pledge Agreement in support of their claim that the Pledge Agreement is fake.

- The Noticees have contended that the Board of the Company has not passed any resolution authorizing the Company to enter into any Pledge Agreement. With regards to the resolution dated May 7, 2010, they have stated that as part of the banking arrangements entered into by the Company with EURAM Bank, they anticipated availing of certain other facilities from the Bank which required adequate security to be provided to the Bank. Since GDR proceeds were to be deposited with the Bank, it was decided to provide the said bank account as security in case of any loan or facility that were to be availed by the Company from EURAM Bank.
- They have confirmed that the GDR proceeds of USD 14.325 million were received into the Company's account no. 580026 with EURAM Bank however out of the same approx. 8.3 million USD was subsequently repatriated to their account in Jalgaon, Maharashtra. Therefore, the allegation in the SCN that the entire GDR proceeds were diverted to their UAE subsidiary to help Vintage repay their loan is baseless. The Noticees have submitted that the rest of 6 million USD from the GDR proceeds was transferred from EURAM Bank to their subsidiary at UAE to enable it to carry its operation in terms of the GDR Offering Circular wherein it was mentioned that the GDR funds would be used for modernization of machinery, establishment of overseas subsidiary, etc. They have therefore

submitted that the GDR proceeds have been utilized in conformity with the objects of the GDR issue as stated in the Offering Circular.

- The Noticees have stated that the Company as well as its directors have not violated the provisions of PFUTP Regulations and SEBI Act. Further, Noticee no. 2, Mr. Omprakash S. Jhavar, Noticee no. 4, Mr. Gopaldas Maheshwari, Noticee no. 5, Mr. Rajesh B. Jhunjhunwala and Noticee no. 7, Mr. Pradip J. Mundhra are stated to have resigned from the Company.

10. The written submissions made by the Noticees were considered, and in the interest of principle of natural justice, Noticees were subsequently provided with an opportunity of personal hearing on November 20, 2018. The hearing date was rescheduled to January 22, 2019 and Noticees were informed vide letter dated November 05, 2018 to ensure that they appear and present their case before me on the said date. However, no one appeared on behalf of any of the Noticees on the date of hearing nor any letter from the Noticees requesting for another date for personal hearing has been received till date. This shows that the Noticees are not interested in availing of any opportunity of personal hearing before me. Under the circumstances I deem it fit to examine and decide the matter on merit based on the facts available from records, the SCN and the written replies submitted by the Noticees.

ISSUES FOR CONSIDERATION AND FINDINGS

11. I have considered the SCN dated June 21, 2017 including all the Annexures as referred to in the SCN, replies received to the aforesaid SCN and all other relevant material available on record and based on them, I frame the issues for consideration in this case as under:

(i) Whether the Company i.e. Noticee no. 1 has violated Sections 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?

(ii) Whether the directors i.e. Noticee nos. 2 to 7 have violated Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations?

ISSUE NO. 1: *Whether the Company i.e. Noticee no. 1 has violated Sections 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?*

12. Before I proceed to examine as to whether on the facts of the matter, the aforesaid violations alleged in SCN stand established or not, it would be proper to extract the relevant provisions of SEBI Act and PFUTP Regulations alleged to have been violated by the Noticees, which are as under:

12A. No person shall directly or indirectly—

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or

proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

3. 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.

13. I note that the Company had issued 1.25 million GDR on August 23, 2010 for raising 14.325 million US$. The Table no. 1 presented on page no. 2 shows that the number of underlying shares issued by the Company for the said 1.25 million GDR issue were 1,25,00,000. Thus the ratio of number of GDR issued to equity shares of the Company was 1:10.

14. As stated in the beginning, the Board of Tulsi had passed a resolution in its meeting on May 7, 2010, wherein inter alia, a decision was taken to open an account with EURAM Bank and also to authorize EURAM Bank to use the GDR proceeds as security against loan. Relevant extracts of the Board Resolution are as under:

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

RESOLVED FURTHER THAT Mr. Pradip J. Mundhra, Director and Mr. Sanjay R. Taparia, Director of the Company, be and are hereby severally or individually 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. Pradip J Mundhra, Director and Mr. Sanjay R. Taparia, Director of the Company, be and are 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. ……."(emphasis supplied)

15. According to the Noticees, the said resolution never meant to authorize execution of any Pledge Agreement, but to authorize opening of a bank account for the Company. It is however contended by the Noticees that while authorizing the opening of a bank account, they foresaw availing of certain facilities from the Bank in future, hence, thought it fit to provide for the same in the Board resolution so as to use the funds in the bank account as security in case of any loan or facility that were to be availed by the Company. On a perusal of the aforesaid Board Resolution (copy enclosed as Annexure -2 of the SCN), I note that the said Resolution was approved by the Board on May 7, 2010 for opening of a bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Mr. Pradip J Mundhra and Mr. Sanjay R. Taparia, Directors of the Company were authorized to sign, execute any application, agreement, etc. as may be required by the EURAM Bank. Accordingly, the Company has opened an account no. 580026 in its name in EURAM Bank. It was further resolved by the Board to authorize the EURAM Bank with which the account was to be opened to use the funds so deposited in the said bank account as security in connection with loans if any. A comprehensive reading of the said

Board resolution indicates that the Company and the Board of Directors had already decided at least as far back as on May 7, 2010 about making a GDR issue and had even decided at that very stage to open a bank account with EURAM Bank for receiving the GDR proceeds. Further, the wording of the resolution also suggests that much before the actual issuance of the proposed GDR, the Company and its directors had contemplated on the date of passing of the said resolution itself, to use the funds/proceeds of the proposed GDR to be received in their EURAM Bank account as a security for loans. Such a resolution by the Board involving 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 GDR were to be issued.

16. I further note that Vintage had signed a Loan Agreement No. K110810-001 dated August 11, 2010 with EURAM Bank for availing a loan of 14.325 million US$ so as to subscribe to the full amount of the GDR issue of Tulsi worth of US$ 14.325 million. Towards this end, Vintage had opened an exclusive loan account (a/c no. 540012-043-2 titled as Loan J10080002) with the EURAM Bank for using the loan amount for the exclusive purpose of making subscription to GDR of Tulsi. In this regard some of the relevant clauses of the said Loan Agreement are cited as under:

> "2. *Nature and purpose of facility*:
> *To provide funding enabling Vintage FZE to take down GDR issue of 1,250,000 Luxemburg public offering and may only be transferred to Euram account nr. 580026, Tulsi Extrusions Limited.*
>
> 3. *Draw down*:
> *The Bank makes the Facility available to the Borrower subject to the fulfillment of the conditions precedent as set out in section 9 of this Loan Agreement and solely for the purpose as set forth above……*
> ……..

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 a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 580026 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……..."*

17. I also note that on the strength of aforestated authorization given by the Board to *"use the funds so deposited in the aforesaid bank account as security in connection with loans if any"* Mr. Pradip J. Mundhra had signed a Pledge Agreement with EURAM Bank dated August 11, 2010 and pledged the entire GDR proceeds as security against loan availed by Vintage from EURAM Bank for subscribing to GDR of Tulsi. Some of the relevant clauses of the Pledge Agreement signed by the Company are quoted as under:

"1. Preamble

By Loan Agreement K110810-001 (hereinafter referred to as the "Loan Agreement") dated August 11, 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 14,325,000.00. The pledgor has received a copy of the Loan Agreement no. K110810-001 and acknowledges and agrees to its terms and conditions.

2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments 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:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of US$ 14,325,000.00 existing from time to time at present or hereafter on the securities account(s) no. 580026 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580026 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….

(the pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral").

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

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

…….

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…….."

18. The contents and the averments made in the Loan and Pledge Agreements extracted above are carefully examined and the following observations are made:-

a) I note that the Pledge Agreement was executed mainly to secure the obligations of the borrower, Vintage, which was granted a loan for 14.325 million USD by EURAM Bank. The Pledge Agreement mentions that the Pledgor received a copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. Further, the Pledge Agreement also mentions that the Pledgor (Tulsi) pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds upto 14.325 million USD in the A/C no. 580026 maintained with EURAM Bank (hereinafter referred to as "Pledged Accounts"). I note that account no. 580026 was the escrow account of the Company where the GDR proceeds of Tulsi were to be deposited and the same was pledged by Tulsi as security for the loan taken by Vintage vide Pledge Agreement dated August 11, 2010 executed by Tulsi much before the actual GDR issue that took place on August 23, 2010.

b) In terms of the clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), Tulsi had given consent to the EURAM Bank to apply the funds in the Pledged Accounts in case of default of repayment by the borrower, i.e. Vintage for settling their obligations as the borrower.

c) As a consequence to such pledge terms, I note that even after the GDR issue, Tulsi could not get the GDR proceeds at its disposal for utilization until repayment of the loan by Vintage.

d) Further, on a perusal of the Bank statement of Tulsi's A/C no. 580026 and Vintage's Loan A/C no. 540012 enclosed as Annexure -5 and 6 to the SCN, I note that Vintage repaid its loan in several installments from August 23, 2010 to November 18, 2010. I also note that the payment in installments by the borrower is linked with the sale of the underlying equity shares (converted from the GDR) in the Indian Market. It is also noticed that after repayment of each loan installment by Vintage, almost identical sum of money was made available in Tulsi's EURAM Bank A/C for onward transfer to various accounts of Tulsi including the account of its subsidiary companies. The particulars of receipt of GDR proceeds in the Tulsi 's bank A/C maintained with EURAM Bank in Austria is presented in the Table no.2 below while details of transfer of funds from the EURAM Bank account of Tulsi immediately after receipt of loan installments by the Bank from Vintage, are presented in Table no. 3 hereunder.

Table no. 2

Date of credit of funds	**Credit amount (USD)**
August 23, 2010	14,325,000.00

Table no. 3

source: EURAM bank a/c statement

Date	Amount (USD) of Loan repaid by Vintage	Date	Amount (USD) of money transferred from Tulsi's EURAM account to its own domestic account and other offshore affiliate entities	Interest earned/ (Bank Charges)
27-Sep-10	1,320,000	27-Sep-10	1,317,000	(2,691)
01-Oct-10	1,200,000	01-Oct-10	1,200,000	
14-Oct-10	50,000	18-Oct-10	50,000	
27-Oct-10	1,500,000	27-Oct-10	1,500,000	
04-Nov-10	1,000,000	04-Nov-10	1,000,000	
04-Nov-10	1,000,000	04-Nov-10	1,000,000	
08-Nov-10	3,000,000	08-Nov-10	3,000,000	
09-Nov-10	2,000,000	09-Nov-10	2,000,000	
11-Nov-10	800,000	12-Nov-10	800,000	
16-Nov-10	1,500,000	16-Nov-10	1,500,000	
18-Nov-10	955,000	18-Nov-10	982,797	27,797
		09-Feb-12	309	
	14,325,000		14,350,106	25,106

e) It is noted that both the agreements are dated August 11, 2010. The Pledge Agreement was incorporated in the Loan Agreement and was annexed to the Loan Agreement. Although the Company disclosed to BSE that its Board in its meeting dated May 7, 2010 had approved the GDR issue upto 15 million, no disclosure to the shareholders about the Board authorizing the EURAM Bank to use the GDR proceeds as security for a loan to be availed by a third party was made.

f) As per clause 2 and 3 of the Loan Agreement the said loan was sanctioned for the purpose of subscribing to the GDR issue and the sanctioned amount could only be transferred to the escrow account of Tulsi with

EURAM Bank bearing Account No. 580026. However clause 6 of the Pledge Agreement authorized the EURAM Bank to realize the proceeds lying in the account of Tulsi to settle the loan liability of Vintage in case of default by the borrower. The clause further authorized the EURAM Bank to realize the said GDR proceeds lying as security even in the event when Bank has a reason to believe that the payment by borrower/subscriber is contestable. Thus, the Noticee Company has authorized vide the Pledge Agreement that in all eventuality, in case of any default by the borrower, the security including proceeds of GDR to be deposited in its account would be realizable by EURAM Bank. The Loan Agreement and Pledge Agreement were inextricably connected in a manner that clearly points out that the Noticee Company Tulsi (the Pledgor) had consciously facilitated the loan to Vintage so as to ensure sure success of issuance of GDR and to create a good market impact about the stock of the Company, knowing well that the GDR proceeds cannot be used for its business, until the repayment is made by the borrower.

19. Keeping in view my aforesaid observations, I do not find force in the submissions of the Company that it had foreseen a possibility of availing some facilities from the EURAM Bank in future for which it had intended to keep the GDR proceeds as a security in lieu of availing those facilities. The reasoning advanced by the Company is as ambiguous as the resolution itself. The resolution does not spell out as to which loan and for what purpose and under what circumstances the Company plans to take loans from EURAM Bank. It doesn't clarify as to why there would be any necessity to take loan in future against GDR proceeds as security when the GDR proceeds are themselves available for meeting its financial

requirements. No answer is found as to why would the Company decide to pledge its cash proceeds from GDR to avail an interest bearing loan. The unexplained rationale of the Board resolution strongly points out that the Company and its Board knew in advance on May 7, 2010 itself that the 'loan' mentioned in the resolution actually referred to a loan to be taken by a third party i.e. Vintage and not by the Company.

20. Interestingly, I find that although the two agreements are dated August 11, 2010, in terms of the relevant clauses of the Loan Agreement, the Pledge Agreement has been made a part of the Loan Agreement. Thus chronologically, the Pledge Agreement should have been executed prior to the Loan Agreement, so as to be made part of the Loan Agreement. Since, the Pledge Agreement had to be executed by Tulsi prior to the Loan Agreement in order to enable Vintage to execute its Loan Agreement, it establishes conclusively that the Board of the Company was very much aware about the impending execution of both the agreements dated August 11, 2010. Moreover, the execution of Loan Agreement dated August 11, 2010 i.e. much before the GDR issue on August 23, 2010 shows that Vintage was already pre decided to be the sole subscriber to the GDR issue and Company was aware about its would-be subscriber much before the actual issuance of GDR. Company was also aware as on August 11, 2010 that the proceeds to be realized against the issuance of GDR would be kept as security towards the loan amount availed by Vintage and by executing the Pledge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR for a considerable period of time.

21. Further, I also notice that the Company, despite being aware about the prospective single subscriber to its proposed GDR in favour of whom it pledged the proceeds of GDR to secure the subscription by the said single subscriber, deliberately made

a partial disclosure and concealed material facts from the knowledge of the investors. The Company (Tulsi) deliberately misled its investors to believe in its so called successful GDR issue by concealing such an important information and by disseminating information in a distorted manner.

22. I have seen the corporate announcements made by Tulsi to BSE during the period from April to August, 2010. The Company had informed BSE that their Board of Directors at their meeting held on May 7, 2010 had approved the issuance of GDR to the extent of USD 15 million. On August 24, 2010, the Company informed BSE that in its meeting dated August 23, 2010 the Company has allotted 12,50,000 GDR @ USD 11.46 each, underlying 1,25,00,000 equity shares of Rs 10 (Rupees ten only) each @ Rs.54/- (Rupees fifty four only) each to "The Bank of New York Mellon" in its capacity as a depository. However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with Vintage and EURAM Bank, the material facts surrounding the Loan and Pledge Agreements have been concealed from the investors. Instead of following a fair and transparent process, the Noticees have made a distorted and partial disclosure deliberately to conceal material information pertaining to its decision to pledge the proceeds to be realized pursuant to GDR issue. The investors were never allowed to know that the proceeds would be kept as security towards the loan taken by the subscriber and in case of default by the subscriber the proceeds would be utilized by Bank to settle the loan obligations of the borrower/Subscriber.

23. The disclosures made by the Company on August 24, 2010 on the platform of the Exchange about successful subscription of GDR issue without disclosing the arrangement undertaken by it with Vintage to ensure the full subscription to its GDR has given a misleading impression to the Investors and the market about the

strong potential of the Company. The above acts of the Noticees represent a fraudulent and unfair trade practice, 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 foreign investors hence, the Company has a great value for investment in India as well. Such misleading inferences and false positive expectations about the shares of the Company were caused by the Company's own acts of collusive arrangement with the GDR subscriber as well as by concealment of actual material facts from 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.

24. In this context, I refer to judgment of Hon'ble Supreme Court dated July 6, 2015 in *SEBI v. PAN Asia Advisors Ltd & anr.,* wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, 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…."

25. In their replies the Noticees have denied the execution of Pledge Agreement, on the ground that round seal affixed on the agreement does not pertain to the Company. I note that the Company has furnished copies of some documents which bear the round seal of the Company to support their contention that their round seal contains some distinguishing marks from the one affixed on the Pledge Agreement. By implication, the Noticees claim there has been forgery and fabrication of their round seal on the Pledge Agreement. In this regard I note that the SCN was issued in the month of .June 2017, however, the Company till date, has not taken any steps to enquire into the forgery/fabrication of the seal affixed on the said Pledge Agreement. The Company has not shown any interest to contest the execution of the Pledge Agreement in its name before any Court of Law or before EURAM Bank or any other forum. It is seen that the Pledge Agreement bears the signature of Mr. Pradip J Mundhra, who was the Managing Director of Tulsi and was duly authorized vide Board resolution dated May 07, 2010 to sign and execute any application, agreement, escrow agreement etc., as may be required by the Bank. Noticees have disputed the execution of the Pledge Agreement merely on the ground that it does not bear the required seal of the Company without explaining how then they allowed such a fake agreement to pledge their GDR proceeds against the loan availed by Vintage from the same EURAM Bank to subscribe to their GDR. It is interesting to note that Mr. Pradip J Mundhra, M.D. of Tulsi is not disputing the authenticity of his signature on the

Pledge Agreement, yet is contending that he had no knowledge of the Pledge Agreement and that the Pledge Agreement is a fake agreement. At the same time the Noticees are not in a position to produce any documents to show that they have made any effort to question either 'Vintage' or the EURAM Bank or anybody about the existence of the Pledge Agreement which deprived the Company of its right to utilize the GDR proceeds. In view thereof, I find the submissions of the Noticee to be grossly misleading, untenable, ambiguous and an afterthought excuse to escape their onus to explain the whole scheme that they had crafted with Vintage prior to issuance of GDR.

26. Further, the Company in its submissions has neither disputed nor offered any explanations with regards to the allegation in the SCN that the GDR proceeds were transferred from its EURAM Bank account only after Vintage repaid the loan installments to the Bank. The Noticees have not made any submissions or placed any record to substantiate and justify the reasons for such deferred/delayed realization of the GDR proceeds only after repayment of loan in installments by Vintage. I find that the GDR were issued in the Month of August 2010 but the proceeds were made available to the Company for onward remittances only after the borrower made repayments from the end of September onwards. I also note that the repayment of the loan has been made by the borrower only subsequent to conversions of GDR to equity shares and their sale in the Indian Securities Market. These facts further corroborate the fact that the Pledge Agreement was indeed executed by the Company to facilitate financing subscription to its GDR issue. The Company's contentions in disputing the authenticity of the Pledge Agreement is merely an afterthought excuse to avoid the consequences of the present proceedings. Further, from the documents submitted by the Company it is

observed that the Company has at least two different seals, viz. mentioning Jalgaon/Mumbai therein. The documents placed by the Company before me does not in any way substantiate that the round seal affixed on them are the only seal of the Company and the seal affixed on the Pledge Agreement did not belong to Company. There was no bar on the Company to have different types of seal for using for different purposes. Further, the Company has also not provided any policy/documents or rule/regulations to prove the exact number of seals it possessed at that point of time. As regards utilization of the GDR proceeds is concerned, from the available records I note that the Company has submitted in its reply that out of the total GDR proceeds received by the Company, approx. 8.3 million USD was transferred to their account in Jalgaon and that the rest of 6 million USD was transferred to their subsidiary at UAE in terms of the GDR Offering so as to use the funds for modernization of machinery, establishment of overseas subsidiary, etc. Herein, I would like to point out that the justification for transfer of 6 million USD to its subsidiary in UAE raises looming doubts regarding its actual usage, considering the fact that the UAE subsidiary was incorporated immediately prior to the GDR issue and the Company's annual report stated that the Dubai subsidiary did not undertake any business operations. In view of the above, the end use of GDR proceeds remains unascertainable in the investigation conducted by SEBI. However, since the SCN has not brought out any specific allegation with respect to the utilization of GDR proceeds, this issue remains out of the purview of the instant Proceedings.

27. Keeping in view the discussions and my observations in the preceding paragraphs, I find that the entire scheme created by the Company (Tulsi) starting with selective disclosure of the resolution passed by the Company in its meeting held on May 7, 2010, entering into the Pledge Agreement, making a corporate announcement on

August 24, 2010 that the GDR have been successfully allotted and then not disclosing the Pledge and Loan Arrangement or about the pre-decided GDR subscriber to the investors, cumulatively resulted in publication of misleading and concocted news to the stock exchanges which contained information in a distorted manner. Such a scheme and arrangement involving the Company, the subscriber and the EURAM Bank can be viewed as satisfying 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 material facts about the arrangement of the Pledge and Loan Agreements, Tulsi 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 by the artificially created positive outlook of the Company's performance, hence is 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.

28. In this regard it is appropriate to refer to a decision by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated October 25, 2016 in the case of *PAN Asia Advisors Ltd. & anr. v. SEBI* in which 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"

ISSUE NO. 2: *Whether the directors i.e. Noticee nos. 2 to 7 have violated Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations?*

29. I note from the minutes of the Company's Board Meeting dated May 7, 2010 that the directors of Tulsi namely Mr. Omprakash S Jhavar (Noticee No.2), Mr. Sanjay Taparia (Noticee No.3), Mr. Gopaldas Maheshwari (Noticee No.4), Mr. Rajesh B Jhunjhunwala (Noticee No.5) and Mr. Jaiprakash B Kabra (Noticee No.6) had attended the said Board Meeting and have passed the resolution to the effect that GDR proceeds to be deposited with EURAM Bank would be utilized by EURAM Bank as security in connection with loan and on the force of such a resolution, Mr. Pradip J Mundhra (Noticee No.7) has signed the above mentioned Pledge Agreement with EURAM Bank.
30. I have taken note of the submissions made by Mr. Jaiprakash B. Kabra (Noticee no. 6) vide letter received on October 23, 2018. Shri Kabra has submitted that he had resigned from the directorship of the Company almost a year back and that he was an independent director with no financial stakes. As per his claim, he was appointed to look after HR matters of the Company and was in no way connected

with other functions of the Company. He has also submitted that Mr. Pradip Mundhra was the MD and was in charge of all financial matters. Mr. Omprakash S. Jhavar (Noticee no. 2) vide letter dated October 25, 2018, has submitted that he had resigned from the directorship of the Company on December 28, 2015 and that he was associated with the Company as an independent director and had no role in decision making or financial matters of the Company . I also note that the Company, in its reply on behalf of all the Noticees has denied any violation of provisions of PFUTP Regulations by the directors. However, apart from the above named two directors and the common reply addressed by the Company on behalf of all the Noticees, none of the other directors has submitted any written reply.

31. The main contentions of Mr. Jaiprakash B. Kabra and Mr. Omprakash S. Jhavar are that they have resigned from the Company subsequently and they were independent directors of the Company. I find that these two directors have not disputed their directorship during the relevant period of GDR issue or their participation in the Board Meeting held on May 7, 2010. It also remains undisputed that they remained directors during the period when the Company made those incomplete, partial and misleading disclosures to the BSE and to the public at large. The submissions that they have resigned subsequently would not have any relevance to their liability as charged under the SCN served on them. With regards to their submissions that they were merely independent directors and were not involved in any decision making, etc., I find that as directors, they have not only failed to perform their duties cast upon them as independent directors but also, by passing the above mentioned Board resolution, have acted in a manner to promote the unscrupulous design of the Company to perpetrate a fraud upon the investors of Securities Market at large. They have not produced before me any evidence or any submission to support that they have actually acted responsibly

and have raised all pertinent issues before the Board at the relevant time as expected to be performed by them. It is not known if these directors have made due enquiries or have confronted the management by asking pertinent questions as to why GDR proceeds should be kept as security for any loan in an overseas bank and how the GDR proceeds is proposed to be used in terms of the objects of issue. They have also not raised any question on the delayed/deferred receipt of the GDR proceeds. Their subsequent resignation from the Board does not absolve them from their expected duties and responsibilities during their tenure as directors of the Company, which cast a responsibility on them to act diligently in the interest of Company and the shareholders. The phrase of acting diligently embodies in itself the duty not be careless and casual in approach while taking decisions. The Hon'ble Supreme Court in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* has observed that;

"*A Director may be shown to be so 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 the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially*".

32. I note that the provisions under Companies Act, 1956 do not make any distinction with regard to the liability under the Act, between executive and non-executive/independent director. The provisions governing **legal duties, responsibilities and liabilities of executive and non-executive directors are the same**. There is no disagreement over the fact that the non-executive directors by their position are not involved in day to day affairs and management of a company nevertheless, their role as being part of the Board cast a fiduciary duty towards the company and they must act in the best interests of the company.

Being non- executive/independent directors, they are at least required to challenge, question and advise the management of the Company on crucial issues to bring an independent perspective to decision-making. As observed earlier, the Company has used the GDR mechanism to mislead and induce the Indian investors. The Company has not divulged its fraudulent arrangement of the Loan Agreement and Pledge Agreement in its disclosure about GDR in the Indian market and by stating that the GDR were successfully placed, has presented a misleading appearance of the so called great value and potential of the stock of the Company in the domestic markets. Such a misleading disclosure tantamounts to fraud on the investors with a motive to further the interest of the Company in the Securities Markets at the cost of gullible investors who may easily fall prey to the artificially created successful GDR issue and get induced to invest in its shares expecting better returns. The above finds force from the fact that the price of the scrip of the Company has witnessed a steep progression from approx. Rs. 33 in July 2010 to a high of approx. Rs. 97 in October 2010 and then it declined to approx. Rs. 30 in December 2010, during which period, majority of the shares of the Company (converted from GDR) have been offloaded and sold in the stock exchanges. This makes it apparent that several innocent investors who may have invested in the Company at seemingly artificially high prices pursuant to the news of a successful GDR issue by the Company in the market, must have suffered from the erosion in the price of the scrip subsequently. Noticees No 2, 4, 5 and 6 being non-executive directors of the Company, ought to have taken due precautions and diligence before agreeing on the resolution of the Board that sowed the seeds of the Pledge Agreement against a loan taken by an unrelated third party as part of a collusive scheme to mislead and defraud the investors. Similarly, Noticees no. 3 and 7, being the CEO and MD respectively and in charge of day to day affairs of the Company,

have devised the fraudulent arrangement with the subscriber, i.e. Vintage and have also actively perpetrated such acts of the Company to mislead the investors.

33. In this regard, I rely on the judgment of Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading, holding* 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* have further 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."*

34. Hon'ble Supreme Court, in the above case have appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market is not a platform for any fraudulent or unfair trade practice. Hon'ble Court

has further observed that *"The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market."*

35. There is no escape from the fact that the Board of Directors of Tulsi vide resolution dated May 07, 2010, authorized Noticee No 3 & Noticee No 7, to sign, execute, any application, agreement and other paper(s) on behalf of the Company from time to time as may be required by the EURAM Bank. Noticee no. 3, Shri Sanjay Taparia is the CEO while the Noticee no. 7, Shri Pradeep J. Mundhra is the MD of Tulsi. Both of them are wholetime executives who are responsible for the day to day business affairs of the Company. Apart from authorizing them to sign all relevant documents for the GDR issue, the Board of Directors had further authorized the Bank to use the funds deposited in the bank account of the Company opened with EURAM Bank towards subscription money of GDR issue as security in connection with loans, if any. Although Noticees no. 2, 4, 5 and 6 were non-executive directors of the Company, all of them had attended the aforesaid meeting and had passed the above Board resolution in connection with the GDR issue. The minutes of the said Board meeting does not provide any rationale or justification for passing the said resolution authorizing the EURAM Bank to use the GDR proceeds as security against loan, nor does the minutes suggest if any of these non-executive directors (Noticees no. 2, 4, 5 & 6) has raised any query to the MD (Noticee no. 7) or to the CEO (Noticee no. 3) about the reasons for proposing such a clause in the resolution for using the GDR proceeds as security. Apparently none of the directors has even raised any query with regard to the 'loan' that the resolution refers to, which means, either the directors were knowing the details of the proposed loans for which the GDR proceeds were proposed to be kept as security or they have agreed to the resolution of the Board

in a careless and casual manner without application of mind. Issuance of GDR was a very crucial decision by the Company and no director – whether whole time or independent can afford to be part of such a crucial decision without knowing the detailed strategy and the justification of taking such a decision. As regards the CEO (Noticee no.3) and MD (Noticee no. 7) who were in charge of day to day affairs of the Company, it was certainly their primary duty to come completely clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a resolution before the Board. They were in the driving seat of the Company and knew how to steer the GDR issuance and therefore ought to have clarified to the Board members about the arrangement with Vintage and EURAM Bank and the proposed Pledge Agreement that was being planned to be executed with the Bank. Even assuming for a moment that the MD and CEO have acted fraudulently by keeping the Board members in dark about the proposed Pledge Agreement and the arrangement with Vintage, the Board members, by not raising any red flag about the proposed clause in the resolution regarding keeping the GDR proceeds as security for a loan are also to be blamed for the fraud committed by the MD and CEO due to their negligence. Under the circumstances, it is not possible to persuade myself that the non-executive directors (Noticee no. 2, 4, 5 & 6) were innocent about the Pledge Agreement with EURAM Bank which was the core to the fraudulent nexus with Vintage to mislead the investors. Therefore, apart from the MD & CEO, the other non-executive directors have also not acted in the interest of Securities Market.

36. To sum up the preceding discussions, the Loan Agreement was integrally linked to of the Pledge Agreement and vice versa, and both were executed concurrently. The Pledge Agreement was signed by Mr. Pradip J. Mundhra (Noticee No. 7) on

behalf of the pledgor i.e., Tulsi in the capacity of its Managing Director. The Noticee directors facilitated the execution of the Pledge Agreement by passing a suitable Board resolution. The Loan and Pledge Agreements enabled Vintage to avail loan from EURAM Bank for subscription of GDR of Tulsi. This was made possible by Tulsi by providing its GDR proceeds as security for the loan extended by EURAM Bank to Vintage. The GDR issue would not have been subscribed if Tulsi had not given such a security towards the loan taken by Vintage. By entering into such an arrangement and not disclosing the same to investors, Noticees no. 2 to 7 have led the investors in India to believe that the issuer company i.e. Tulsi has got a good reputation in terms of investment potential because of which, foreign investors have successfully subscribed to its GDR while in reality, the GDR were subscribed by Vintage with the financial help of the Company (Tulsi) itself. Therefore, in effect the directors of the Company have facilitated the subscription of GDR by Vintage through a loan obtained by it from EURAM Bank against which, the GDR proceeds of Tulsi were pledged in advance on the basis of the authorization given by the Board of Directors through the resolution passed by them on the May 7, 2010. Therefore, in my view all the directors and the MD and CEO of the Company have also violated the provisions of Sections 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the PFUTP Regulations.

DIRECTIONS

37. In view of the above discussions and my concluding observations with respect to the two issues that were considered by me in the matter, in exercise of powers conferred upon me under Sections 11, 11B 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 considering the facts of the case as well as the specific role played by the respective Noticees 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, for a period of five years from the date of this order.

b) The following Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, from the date of this order, for the period as given below:

S.No.	Names of the Noticee	PAN	Period
2	**Mr. Omprakash S. Jhavar**	**ACWPJ2948N**	**Two years**
3	**Mr. Sanjay Taparia**	**ABLPT6544N**	**Five years**
4	**Mr.Gopaldas Maheshwari**	**AJJPM3286G**	**Two years**
5	**Mr. Rajesh B Jhunjhunwala**	**AATPJ3401H**	**Two years**
6	**Mr. Jaiprakash B. Kabra**	**AFSPK7761D**	**Two years**
7	**Mr. Pradip J Mundhra**	**AAUPM2754K**	**Five years**

38. It is clarified that during the period of restraint, the existing holding of the Noticees including units of mutual funds, shall remain frozen.

39. The Order shall come into force with the immediate effect.

40. A copy of this order shall be forwarded to the Noticees, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: MARCH 28, 2019 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**