

WTM/ AB / EFD-1/ DRA-1/02/2019-20

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 Kashyap Technologies Limited

In respect of:

Sr. No.	Name of the Noticee	PAN/ DIN
1.	Kashyap Technologies Limited	AAACK4451A
2.	Clifford Capital Partners A.G.S.A	Not Available
3.	Mr. A. Venkatramani	AABPV3960F
4.	Mr. A. Ganesan	AACPG8259M
5.	Mr. R. Dakshinamurthy	AAGPD2888M
6.	Mr. A Sivakumaran	AIYPS4944H
7.	Mr. R. Gopalan	00018966

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 arrangement 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 Kashyap Technologies Ltd. (hereinafter referred to as ‘**Kashyap / KTL/ the Company**’) for its GDR issue made on December 27, 2007, details of which is tabulated as below:

GDR Issue Date	No. of GDRs Issue (million)	Capital raised (USD million)	Local custodian	No. of equity shares underlying each GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited
December 27, 2007	4,92,500	16.50	ICICI Bank Ltd., Mumbai	330 equity shares of face value Rs. 1/- (issued at price of Rs. 4/- per share)	The bank of New York, USA	Bremer Bugmann Seiler Capital Partners Ltd, Switzerland	Banco Efisa S.A. Lisbon

2. During the investigation, it was noted that the GDRs of KTL were subscribed by only one entity Clifford Capital Partners A.G.S.A (formerly known as Seazun Ltd. and hereinafter referred to as ‘**Clifford**’), by obtaining loan through credit agreement from the Banco Efisa, S.F.E., S.A., a bank based in Lisbon (hereinafter referred to as ‘**Banco**’) and further the Noticee No. 1 (KTL) had secured the loan obtained by Clifford from Banco by pledging the GDR proceeds through account charge agreement with the Banco.

SHOW CAUSE NOTICE, REPLY AND HEARING:

3. Based on the findings made by the investigation, a show cause notice dated February 01, 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 No. 2 to 7. The Noticees were called upon to show cause as to why suitable directions under Section 11(1),

11B and 11(4) of the SEBI Act, 1992 should not be issued against them. The copies of documents relied upon in the SCN, were also provided to the Noticees, as detailed below:

Annexure No.	Details
1.	KTL letter dated June 10, 2015 to SEBI
2.	ICICI Bank Ltd. e-mail dated October 19, 2015
3.	Dollar term loan facility agreement dated October 19, 2007 entered into between Clifford Capital Partners A.G.S.A with Banco
4.	Drawdown notice for an amount of US \$16,500,000.
5.	Copy of the resolution passed by the Sole director of Clifford dated October 16, 2007
6.	Extracts of the resolution dated October 04, 2007 passed in the Board of KTL
7.	Annual Report of KTL for the FY 2007-08
8.	KTL letter dated August 12, 2017 submitting the copy of deposit account application of Banco
9.	Statement of KTL bank account with Banco
10.	HDFC Bank account statement of KTL for the period of January 01, 2007 to December 31, 2012
11.	Bank statement (Details of receipt of GDR proceeds in the KTL's bank a/c with Banco)
12.	ICICI email dated October 19, 2015 (Custodian (ICICI Bank) providing the details of conversion of GDRs

4. Subsequently, a supplementary show cause notice dated June 18, 2018 (hereinafter referred to as '**supplementary SCN**') was issued to the Noticee No. 1 (Kashya Technologies Ltd) calling upon to show as to why suitable directions including the direction to bring back an amount of USD 10.39 million should not be issued under Sections 11, 11(4) and 11B of the SEBI Act, 1992.
5. Replies were received from all the Noticees. In respect of SCN dated February 01, 2018, Mr. V Arunagiri, Advocate has submitted reply dated March 13, 2018 on behalf of Noticee No. 1 and Noticees 3 to 7. Noticee No. 2 has submitted its reply vide letter dated March 07, 2018. Subsequently, in respect of supplementary SCN dated June 18, 2018 to Noticee No. 1, Mr. V Arunagiri, Advocate has submitted reply dated August 18, 2018 on behalf of Noticee No. 1.
6. In compliance with the principles of natural justice, the Noticees were also provided an opportunity of personal hearing on January 16, 2019 when Mr. V Arunagiri, Advocate appeared before me on

behalf of Noticee No. 1 and Noticee Nos. 3 to 7 and made submissions mainly on the lines of replies filed on behalf his clients. During the course of hearing, Mr. V Arunagiri, Advocate requested two weeks' time for filing written submission which was allowed. SEBI has received written submissions dated January 23, 2019 from Mr. V Arunagiri, Advocate. The hearing notice was sent to all the three available address of Noticee No. 2 including one which is mentioned in their reply dated March 07, 2018. However, the Noticee No. 2 neither appeared before me for availing the opportunity of hearing nor made any communication in this respect.

7. The contentions raised by the Noticees vide their replies and written submissions, while denying the allegations made in the SCN dated February 01, 2018 and Supplementary SCN dated June 18, 2018, are summarized as under:

Noticee No.1 and Noticee No. 3 to 7:

- a. That Noticee No. 1 has disclosed every material development in respect of the GDR issue to the stock exchange including the outcome of Extra General Meeting (EGM) of the Company held on January 05, 2007 wherein issue of GDR was placed before the shareholders. Since the fact of the GDR issue was itself disclosed to the stock exchange and approved by the shareholders of the company, the other procedural requirements like opening of bank account with Banco, appointing a banker to the issue. etc. are not required to be disclosed.
- b. That the authority to Banco to use the funds of the company as security was at that point of time a standard condition provided and required by Banco to act as banker to the GDR issue. As part of the standard documentation, such a condition to keep the funds as security was insisted upon by Banco and agreed to by the company upon insistence of the merchant banker.
- c. That there is nothing on record to suggest that the company was aware that the charge over the account of the company would be utilized by Banco as security for the loan taken by Noticee No. 2. If that was the case then, the Board would have recorded this fact, in the minutes of its meeting dated January 05, 2007 that such an arrangement exists. That the company was not aware that the security which was authorized to be created would be used as security for loan taken by Noticee No. 2.
- d. That the Account Charge Agreement was executed at the insistence of Banco and was part of

multiple agreements, documents executed with Banco for GDR issuance and that there is no allegation in the SCN that by the very fact of executing the account charge agreement, Noticee No. 1 has violated any provision of law.

- e. The SCN fails to establish that a fraud was committed in the GDR issue. The SCN has in no manner throughout produced any charge, document, evidence, material or suggestion as to what exactly was the wrongdoing as regards the scheme of GDR is concerned and has not even suggested any provision of law or regulation applicable to GDR issuance which has been violated. The Noticee has also stated that the fraud, even in civil proceedings, must be established beyond reasonable doubt. In support of its contention, the Noticee has referred to the following rulings:

- a. UOI vs. Chaturbhai M, Patel (AIR 1976 SC 712)
 - b. Parsoli Corporation vs. SEBI (SAT Order dated August 12, 2011)
 - c. Sterlite Industries vs. SEBI (SAT Order dated October 22, 2001)
 - d. KSL & Industries Ltd. vs. SEBI (SAT Order dated September 30, 2009)
 - e. UOI vs. H C Goel (AIR 7964 SC 364)
 - f. L.D. laisinghani vs. Naraindas N Punjabi (AIR 1976 SC 373)
 - g. Razikram vs. Chauhan (AIR 7975 SC 667)
 - h. Ambalal vs. UOI (AIR 1961 SC 264)
 - i. Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734)
 - j. Gorkha Security Service vs. Govt. of NCT Delhi (2014 9 SCC 105)
 - k. S L Kapoor vs. Jagmohan & Ors (1980) 4SCC 379 vs. UOI (AIR 1961 SC 264)
- f. That predominant allegation has been of non-disclosure whereas the Company had always kept the stock exchange and its shareholders informed regarding the issuance of GDRs and its process.
- g. That the Noticee No. 1 has become sick and non-functional since 2012 and as the company could not meet its basic expenditure including payment of rent for its registered office, the same was vacated/ evicted in the year 2016 by the Order of Hon'ble XIV Small Causes Court of Chennai vide RCOP No. 137 of 2015 and vide execution petition having CNR No. TNCH090004072016. Because of eviction of its registered office many of company's records

are missing.

- h. In respect of Supplementary SCN dated June 18, 2018, it is submitted that since no primary violation has been made out against his client, the question of imposition of penalty or directions under Sections 11, 11(4) and 11B does not arise.
- i. Vide written submissions dated January 23, 2019, it is submitted that USD 10.39 million was adjusted by the Banco towards Clifford's loan amount which was not intimated to the Noticee No. 1 and, therefore, Noticee No. 1 is not in a position to provide any information on this aspect. It is also mentioned that these transactions were done by Banco and lead manager. Noticee No. 1 has further sought for a copy of the reply filed by the Noticee No. 2 (Clifford) and has also requested to verify the original records submitted by the Banco, Clifford and others before taking any decision in the matter.
- j. In respect of allegations made against Noticee No. 3 to 7, vide the same reply dated March 13, 2018, it is submitted that these Noticees have denied the allegations made in the SCN as the same are false, baseless and motivated and liable to be quashed. It was also mentioned that they reserve rights to file additional statement or reply, however, till date no specific reply has been received for and on behalf of Noticee Nos. 3 to 7.

Noticee No. 2

- k. Clifford (Noticee No. 2), vide its letter dated March 07, 2018 has submitted that it had applied for the credit facility with Banco up to a maximum amount of USD 16,500,000 and had signed a credit agreement dated October 19, 2007 to subscribe the GDR issue of KTL. It has further stated that during the entire process of credit facility and subscription of GDR issue of KTL, it liaised only with Banco and was never in contact with the KTL.

CONSIDERATION OF ISSUES AND FINDINGS:

- 8. I have perused the SCN dated February 01, 2018 along with its annexures, supplementary SCN dated June 18, 2018 and the replies dated March 07, 2018, March 13, 2018 and August 18, 2018 and written submissions dated January 23, 2019 received from the Noticees, as detailed in para 5

to 7 above. The question now arises as to whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCN dated February 01, 2018 and Supplementary SCN dated June 18, 2018, as referred to in para 3 and 4 above.

9. Before proceeding on merit of the case, I note that the Noticee No. 1 vide its written submission dated January 23, 2019 has requested for a copy of the reply filed by the Noticee No. 2 (Clifford) and has also requested to verify the original records submitted by the Banco, Clifford and others before taking any decision in the matter. In this respect, I note that copies of all the relevant documents, relied upon in the SCN, were enclosed with the SCN and/ or the relevant portion of such documents are also reproduced in the SCN, as referred to in para 3 above. I note that the Noticees were given access to copies all the relevant documents which are relied upon or referred to during the course of present proceedings. I also note that the most of the documents which are annexed with the SCN (except Annexure Nos. 2 to 5 and 12) are pertaining to Noticee No. 1 itself (like its letter, annual report, board resolution, bank statement, etc.). The Annexure No. 2 and 12 are email received from ICICI in respect of conversion of GDR issue of KTL and print outs of the same are provided along with the SCN. The Annexure Nos. 3 to 5 of the SCN are copies of documents executed outside India by party located outside India and the original of same is not available with SEBI and copies of the same are already provided to the Noticees along with the SCN. Thus, the request made by the Noticee No. 1 to allow inspection of original of the documents are not tenable. Further, in respect of request made by the Noticee No. 1 for providing a copy of reply filed by the Noticee No. 2, I note that it would not be appropriate to share the reply filed by one noticee to another. Unlike normal court proceedings, in proceeding before the quasi-judicial authority each noticee has to present its own case in respect of SCN issued to them and the reply or submission filed by one entity is not open to be countered or disputed by other entity as these are not judicial or adversarial proceedings. Without prejudice to these observations, it is on record that the Noticee No. 2 vide its reply dated March 07, 2018 has simply denied the knowledge of arrangement of KTL, which is referred to in para 7(k) above.
10. The relevant provisions which are alleged to have been violated by the Noticees, in the aforesaid SCNs, 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 iKTLude 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.

11. KTL (Noticee No.1) was listed on the Bombay Stock Exchange (hereinafter referred to as ‘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 KTL (Noticee No. 1) vide announcements made on BSE on December 28, 2007 stated that, ‘a meeting of the Committee of Board of Directors of the Company was held on December 27, 2007, to consider and allot Global Depository Receipts (GDRs) aggregating to US\$ 1,64,98,750 (app. 16.5 Million US\$). The Committee approved the allotment of 4,92,500 GDRs of US\$ 33.50 each amounting to US\$ 1,64,98,750 representing 16,25,25,000 equity shares of Rs. 1 each issued at a price of Rs. 4 per share (including Rs. 3 premium per share).’. Further, during the course of investigation, the Noticee No. 1 vide its reply dated June 10, 2015 (**Annexure 1 to SCN**) provided a list of initial allottees of GDR which is as under:

Sr. No.	Name of the GDR subscriber	Number of GDR subscribed
1.	Geolog S A	1,05,000
2.	Aguanave Limited	1,40,000
3.	Animar Limited Miucl Bombarda	1,50,000
4.	Zorbex Limited	97,500
	Total	4,92,500

12. The SCN dated February 01, 2018 alleged that on December 27, 2007 KTL issued 0.49 million GDRs (amounting to USD 16.50 million) which was subscribed by only one entity i.e. Noticee No. 2 and the subscription amount was paid by the subscriber (Noticee No. 2) by taking a loan of USD

16.50 million from Banco through credit agreement dated October 19, 2007 (**Annexure 3 to SCN**) and draw down notice (**Annexure 4 to SCN**). On perusal of the said credit agreement dated October 19, 2007, it is noted that, as per para 2 of the said agreement, the Bank (i.e. Banco) agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto USD 16,500,000. Further, the purpose of the borrowings is mentioned in para 3 of the account charge agreement dated October 23, 2007 which states that the borrower shall use the proceeds of the advance for subscribing the GDR to the value of USD 16,500,000 issued by KTL. The facility and purpose of the loan obtained by Clifford from Banco, as described in the said credit agreement dated October 19, 2007, is reproduced as under :

Facility- *Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto \$16,500,000.*

Purpose- *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to \$16,500,000 issued by KTL on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.*

13. It is also noted that the drawdown notice for an amount of USD 16,500,000 and Board resolution of KTL dated October 04, 2007 were part of the credit agreement dated October 19, 2007 entered into between Clifford and Banco. The Board of KTL (Noticee No. 1) had passed a resolution in its meeting on October 04, 2007 for opening of a bank account with Banco, and also authorizing Banco to use the GDR proceeds as security against loan. The relevant terms of the Board resolution dated October 04, 2007 are as under:

“RESOLVED THAT the bank account be kept opened with Banco Efisa S.A. ("the Bank") or any branch of Banco Efisa S.A., including the Offshore Branch, for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of USD 16.5 million of the Company.

RESOLVED FURTHER THAT Mr. A. VENKATRAMANI, Chairman and Managing Director, of the company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank, if and when so required.

RESOLVED FURTHER THAT Mr. A. VENKATRAMANI, Chairman and Managing Director, be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa S.A. or any of branch of Banco Efisa S.A, including the 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."

14. The KTL (Noticee No. 1) vide aforesaid Board resolution dated October 04, 2007 had approved for opening of an account with the Banco for the purpose of receiving of GDR proceeds, authorized Mr. A Venkataramni (Noticee No. 3) to sign, execute any application or agreement with the Bank (i.e. Banco) and also authorized the Bank (i.e. Banco) to use the funds so deposited in that bank account (i.e. GDR proceeds) in connection with loan, if any. It is noted above that an extract of the minutes of the meeting of the Board of KTL dated October 04, 2007 (Annexure 6 to SCN) was also annexed with the credit agreement dated October 19, 2007. This reveals that KTL has not only extended security to the loan of Noticee No. 2, but also aided the subscriber in obtaining the dollar term loan facility from Banco.
15. As mentioned in the SCN dated February 01, 2018, the investigation noted that KTL had entered into an account charge agreement dated October 23, 2007 with the Banco. The relevant extracts of the said account charge agreement dated October 23, 2007 are reproduced as under:
 1. **Loan agreement:** *Loan agreement means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Clifford Capital the maximum amount of up to US \$16,500,000.*
 2. **Account Charge:**
*Subject to the terms of this agreement, Kaashyap deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US \$16,500,000 as security for all the obligations of Clifford Capital under the Loan Agreement (hereinafter the **Secured Obligations**) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.*
Upon payment of all or part of the amounts due under the Loan Agreement, Kaashyap may withdraw from the account the equivalent amount.
Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the parties shall automatically cease and terminate and the Bank shall, at the request of Kaashyap, release the deposit made in the account.
Kaashyap covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.
At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in its discretion determines.

Kaashyap hereby irrevocably appoints by way of security the Bank as the attorney of Kaashyap with full power in the name and on behalf of Kaashyap to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Kaashyap to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created.

Kaashyap hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Kaashyap itself and KTL hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English and unless otherwise provided, shall be made by letter or Fax to :

Kaashyap

New No 33/8, 2nd Floor, CP Ramaswamy Road, Alwarpet, Chennai-18.

Attention: Mr. Annaswamy Venkatramani

16. The very opening para of the account charge agreement refers to the loan agreement executed by Clifford (as borrower) with the Banco for borrowing an amount of USD 16.50 million. I further note that the KTL had deposited an amount not exceeding US \$16,500,000 (GDR proceeds received from Clifford) as security for all the obligations of Clifford under the Loan Agreement (i.e. credit agreement dated October 19, 2007) entered into between Clifford and the Banco whereby Clifford had taken the loan of USD 16.50 million from Banco for the purpose of subscribing the GDR issue of KTL. It is very categorically mentioned in the said account charge agreement that upon payment of all or part of the amounts due under the Loan Agreement (which has also been referred to as secured obligations), KTL could have withdrawn equivalent amount from its account with the Banco. The account charge agreement was also registered with the Companies House (UK's Registrar of Companies) with the following descriptions:
- a. Account charge (the Charge) made between the company and Banco Efisa, S.F.E, S.A(the bank)*
 - b. All obligations of Clifford Capital Partners A.G.S.A (a company incorporated in the British Virgin Islands with number 400452) under a loan agreement dated 19 October 2007 with the Bank (the Secured Obligations)*
 - c. As continuing security for the due and punctual payment and discharge of the Secured Obligations, the company with full title guarantee hereby assigns to and charges by way of*

first fixed charge in favour of, the bank all the rights, title and interest in and to its designated account with the bank (the Account), all monies standing to the credit of the Account from time to time and all interest payable thereon (together the Deposit).

- d. The company covenants not to purport to withdraw the Deposit or any part thereof or sell, assign, mortgage, charge or otherwise encumber, dispose of or deal with or grant or permit third party rights to arise over or against all or any part of the Deposit or attempt or agree so to do.*

17. From the above, I note that Clifford (Noticee No. 2) had entered into credit agreement dated October 19, 2007 with Banco for obtaining loan for an amount of USD 16.50 million with the only purpose of subscribing the GDR issue of KTL (Noticee No. 1) and, further, KTL had entered into an account charge agreement dated October 23, 2007 with the Banco for securing the loan of Clifford taken from Banco under the credit agreement dated October 19, 2007. I, further, note from the terms of account charge agreement dated October 23, 2007 entered into between KTL and the Banco that only upon payment of all or part of the amounts due under the said credit agreement (entered into between Clifford and Banco), KTL (Noticee No. 1) could have withdrawn an equivalent amount from its bank account with Banco. The account charge agreement dated October 23, 2007 was executed within four days of entering into credit agreement dated October 19, 2007 between Clifford and the Banco. The said account charge agreement entered into between KTL and the Banco specifically mention the loan obtained by Clifford from Banco and provide security to the same to Banco. The terms of the registration of the account charge agreement with Companies House, as referred to in para 16 above, also refers to provide security to all obligations of Clifford under the loan agreement dated October 19, 2007 with the Bank (i.e. Banco). I also note that in the reply dated March 13, 2018, the KTL (Noticee No. 1) has admitted the execution of account charge agreement as part of the GDR issue. Thus, KTL (Noticee No. 1) had pledged the GDR proceeds with the Banco, under said account charge agreement dated October 23, 2007, to secure the rights of Banco against the loan given to Clifford (Noticee No. 2) for subscribing the GDR issue of KTL (as mentioned in credit agreement).

18. I also note from the above that the account charge agreement dated October 23, 2007 (entered into between KTL and Banco) and credit agreement dated October 19, 2007 (signed between Clifford and Banco) were executed as a part of the arrangement which enabled Clifford (Noticee No. 2) to avail a loan of US \$16.50 million from Banco to subscribe the GDR issue of KTL (Noticee No. 1). On perusal of the bank account statement of KTL with Banco (Annexure 9 to SCN), it is observed that the entire GDR proceeds were received by KTL on December 27, 2007 in its bank account bearing A/c.

no. 6312955.15.001 held with Banco from only one entity. It is, therefore, observed that the GDR issue of KTL was subscribed by only one entity i.e. Noticee No. 2 and not by four entities as was stated in KML's letter dated June 17, 2015 (part of Annexure 1 to SCN) addressed to investigating authority. The above arrangement facilitated the subscription of GDR issue by only one entity (i.e. Clifford) by taking loan from the Banco and that loan was further secured by KTL by pledging the GDR proceeds. In other words, had this mechanism was not adopted, the GDR issue of KTL would not have been subscribed. Thus, I find that KTL had facilitated subscription of its own GDR issue by entering into an arrangement where subscriber (Clifford) obtained loan from the Banco for subscribing the GDR issue of KTL, and KTL pledged the GDR proceeds with Banco for securing the loan taken by Clifford from the Banco.

19. I note that Noticee No. 1 has contended that the decision of authorizing Banco to use the funds of the company as security was, at that point of time, a standard condition provided and required by Banco to act as banker to the GDR issue and as part of the standard documentation, such a condition to keep the funds as security was insisted upon by Banco and agreed to by the company upon insistence of the merchant banker. However, I do not find any merit in such a contention, since the Noticee No. 1 has not provided any specific provision of law or any guidelines or evidence to show that Banco or the merchant banker specifically insisted on keeping the proceeds of GDR issue as security or that the execution of the account charge agreement was part of the standard documentation. On the contrary, any such practice or requirement would vitiate the very purpose of issuance of securities which is done to mobilize capital by the issuer Company. Further, as a normal banking practice, keeping the funds marked as lien/pledge would only be insisted by a banker, if the customer intends to avail any credit facility or act as guarantor/security on behalf of a third party. As such, there is no merit in the contention of the Noticee No. 1.
20. The SCN dated February 01, 2018 refers to the observations made by the investigation that KTL had raised funds from GDR issue in four tranches which is also confirmed by the Noticees in their reply dated March 13, 2018. The said four GDR issues were made by KTL on May 25, 2007, July 02, 2007, December 27, 2007 and October 09, 2007. The investigation further noted that out of these four issues, the GDR proceeds of the first three issues i.e. dated May 25, 2007, July 02, 2007, December 27, 2007 (amounting to US \$25 million) were credited to KTL's bank account (account no. 6312955.15.001) with Banco. On perusal of the KTL's bank a/c with Banco (Annexure-9 to SCN), the details of the receipt of GDR proceeds are noted as below:

GDR Issue	GDR Issue size (US \$)	Date of credit of GDR proceeds into the bank account of KTL with the Banco	Amount credited to KTL Bank a/c (US\$) with the Banco
I	6,000,000	25-May-07	5,999,988
II	2,500,000	29-Jun-07	2,499,956
III	16,500,000	27-Dec-07	16,500,000
Total			24,999,944

21. The GDR proceeds of three issues were credited into the same bank account of KTL with Banco and also the same were not transferred immediately to KTL's Indian bank account. As such, it was not possible to differentiate the trail of GDR proceeds for any specific GDR issue. On perusal of the account statement of KTL with Banco, it is noted that out of USD 24.99 million only an amount of US \$16.72 million (Rs. 67.04 crore) was received into KTL's Indian Bank account with HDFC Bank having account no: 01412050000266 during the period June 15, 2007 and May 28, 2009 (**Annexure 10 to SCN**).
22. It is further noted from the KTL's deposit account (a/c no: 631295525005) with Banco that an amount of US \$10.345 million was transferred to its current account with Banco (i.e. a/c no: 6312955.15.001) on February 06, 2009 and thereafter almost no balance was lying in the said deposit account as on February 06, 2009. It is, thus, observed that an amount of US \$ 10.39 million (principal of US\$ 10,345,000 + Interest of US\$ 32.309.27 + prepayment fee of US\$ 10,345) was transferred to Clifford from KTL's current account with Banco on February 06, 2009 in respect of repayment of loan which was dues from Clifford to Banco.
23. In view of the above, I find that an amount of USD 10.39 million from the GDR proceeds of KTL was utilized for the purpose of repayment of the loan of Clifford taken from Banco for the purpose of subscribing the GDR issue of KTL. This being so, the GDRs of KTL to the extent of USD 10.39 million were issued at free of cost and, more particularly, at the cost of KTL and its investors.
24. Investigation further noted that the disclosure made by KTL to the BSE vide its corporate announcement dated December 28, 2007 did not mention about execution of account charge agreement dated October 23, 2007 by KTL securing the loan availed by the Clifford for subscribing of its GDR issue. Instead, KTL in its corporate announcement dated December 28, 2007, with regard to GDR issue stated that, "*The Committee approved the allotment of 4,92,500 GDRs of US\$*

33.50 each amounting to US\$ 1,64,98,750 representing 16,25,25,000 equity shares of Rs. 1 each issued at a price of Rs. 4 per share (including Rs. 3 premium per share).”. 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. KTL 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. Clifford which had subscribed to the GDR issue of KTL by obtaining loan from the Banco and that loan was further secured by the KTL itself by pledging the GDR proceeds. I, further, note that the KTL also tried to mislead the investigation by submitting to investigating authority, vide its reply dated June 10, 2015, that the said GDR issue dated December 27, 2007 were subscribed by four entities.

25. The Noticee No. 1 has contended that the Board of KTL in its Extra Ordinary General Meeting (EGM) held on January 05, 2007 had already approved the use of GDR proceeds as security and the relevant disclosures were also made to the stock exchange, hence, no separate disclosure was required when the account charge agreement was executed by KTL. In this respect, I note that the decision for opening bank account with Banco and authorizing Banco to use the funds as security in connection with loan, was taken in the Board Meeting of KTL held on October 04, 2007 which was, subsequently, acted upon by the KTL by entering into arrangement of executing account charge agreement dated October 23, 2007 providing security to the loan obtained by Clifford (Noticee No. 2) to subscribe the GDR proceeds of KTL itself. Thus, KTL facilitated the subscription of its own GDR issue which was subscribed by only one entity i.e. Clifford by obtaining loan from Banco which was secured by KTL by depositing the GDR proceeds. In the given facts and circumstances, this was material information in respect of issuance of GDR and the KTL failed to disclose the same on stock exchange.
26. As discussed above, false and misleading corporate announcements were made by the KTL and it also suppressed the material and price sensitive information viz. (i). execution of account charge agreement dated October 23, 2007 by KTL in favor of Banco pledging the GDR proceeds for providing security to the loan taken by Clifford, (ii) execution of loan agreement dated October 19, 2007 by Clifford for obtaining loan from the Banco for subscribing the GDR issue of KTL, (iii) Clifford was the only subscriber of 4.92 million GDR issued by KTL and (iv) US \$ 10.39 million was debited from KTL's current account with Banco to meet with the loan obligation of Clifford

towards Banco. I find that all these four events were price sensitive information and could have impacted the scrip price of KTL. I note that on December 28, 2007, the scrip price of KTL closed at 4.93% above its previous day closing price. I, thus, find that the corporate announcements made by KTL on December 28, 2007 regarding allotment of GDR issues might have mislead the investors and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the KTL itself had facilitated subscription of its GDR issue wherein the subscriber (Clifford) obtained loan from the Banco for subscribing the GDR issue of KTL, and KTL secured that loan by pledging the GDR proceeds with the Banco and also, subsequently, repaid the loan up to an amount of USD 10.39 million for Clifford.

27. The Noticee No. 1 in its reply dated March 13, 2018 has mentioned some case laws of Hon'ble Supreme Court and Hon'ble SAT, which are referred to in para 7 above, in support of its contention that the SCN does not establish as to whether any fraud committed in the GDR issue of KTL and that fraud, even in civil proceedings, should be established beyond reasonable doubt. In this respect, I note that the SCN has dealt with the arrangement of KTL in facilitating the subscription of its own GDR issue which was subscribed by only one entity (Clifford) by obtaining loan from the Banco and, KTL secured the loan taken by Clifford from Banco by depositing the GDR proceeds with Banco in terms of account charge agreement dated October 23, 2007 entered into between KTL and the Banco. I also note that the copies of relevant documents, relied upon in the SCN, were enclosed with the SCN and/ or the relevant portion of such documents are also reproduced in the SCN. The above facts along with the relevant provisions of SEBI Act, 1992 and FUTP Regulations, 2003, as referred to in para 3 above, were specifically mentioned in para 28 of the SCN. In terms of para 30 and 31 of the SCN, the Noticees were given opportunity to file their reply to the SCN and also to indicate, if so desire, for availing the opportunity of hearing. Further, as mentioned in para 6 above, an opportunity of hearing was provided to all the Noticees on January 16, 2019 when Mr. V Arunagiri, Advocate appeared before me and made submissions on behalf of Noticee No. 1 and Noticee Nos. 3 to 7.
28. I note that the act of KTL, as discussed in para 11-25 above, has 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.”

29. 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”.

30. In view of the above, I note that the scheme of arrangement of KTL, in allotting GDR issue to only one entity i.e. Clifford which subscribed the GDR issue of KTL by obtaining loan from Banco and the same was again secured by the KTL by pledging its GDR proceeds, seen along with the misleading corporate announcements made by KTL on December 8, 2007, lead to conclusion that the same were done in a fraudulent manner which might have mislead or induced the investors to 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. Further, I note that in addition to said violations, as discussed in para 20 to 23 above, the Noticee No. 1 has also caused loss of its GDR proceeds to the extent of USD 10.39 million by making repayment of loan taken by Clifford from Banco.
31. I, further, note that, on behalf of KTL, the said account charge agreement dated October 23, 2007 was signed by Mr. A Venkataramni (Noticee No. 3), Managing Director of KTL. In this respect, as per Board resolution dated October 04, 2007 (**Annexure 5 to SCN**), the Board of KTL had approved and passed a resolution for opening of a bank account with Banco for the purpose or

receiving the proceeds of GDR to the extent of USD 16.50 million and also authorized the Banco 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. The said Board resolution (**Annexure 5 to SCN**) also authorized Mr. A Venkataramni (Noticee No. 3), Managing Director 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 Banco. A certified copy of the Board resolution dated October 04, 2007 (**Annexure 5 to SCN**), is available on record and a copy of the same was also annexed with the SCN dated February 01, 2018. No other document like minutes of the Board meeting etc. are provided by the KTL. It is noted from the Annual Report of the Company filed for the year 2007-08 (**Annexure 7 to SCN**) that total nineteen Board meetings of KTL were held during that financial year and its directors namely directors namely Mr. A. Venkatramani (Noticee No. 3), Mr. A. Ganesan (Noticee No. 4), Mr. R. Dakshinamurthy (Noticee No. 5), Mr. A Sivakumaran (Noticee No. 6) and Mr. R. Gopalan (Noticee No. 7) had attended all those Board meeting held in the F.Y. 2007-08. It is, therefore, concluded that at least these five Noticees i.e. Noticee No. 3 to 7 had attended the Board meeting dated October 04, 2007 (**Annexure 5 to SCN**) wherein KTL approved, *inter alia*, opening of bank account with Banco for receiving GDR proceeds, Mr. A Venkataramni (Noticee No. 3) to sign and execute all agreement required by Banco and also authorized the Banco to use its funds as security in connection with the loans which was implemented by the Noticee No.1 in order to facilitate the subscription of its own GDR issue. Moreover, the Noticee No. 1 in its reply dated March 13, 2018 has admitted the execution of account charge agreement with the Banco.

32. As mentioned in para 7 above, the Noticees (Nos. 3 to 7) vide reply dated March 13, 2018 have denied the allegations made in the SCN as the same are false, baseless and motivated and liable to be quashed. It was also mentioned in their reply that they reserve rights to file additional statement or reply, however, till date no specific reply has been received from these Noticees. In respect of liability of directors, 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.”

33. The Noticee No. 3 to 7, who had participated in the Board meeting dated October 04, 2007, have not provided any document or material indicating that they had raised any objection to the resolution dated October 04, 2007 wherein it was approved to open bank account with Banco and authorized the bank (i.e. Banco) to use the GDR proceeds as security in connection with the loan, if any. It is also observed in the above paras that the account charge agreement dated October 23, 2007 was signed by Mr. A Venkataramni (Noticee No. 3) on behalf of KTL and, as such, the Noticee No. 3 was not only having the knowledge but also played an active role in executing the account charge agreement dated October 23, 2007 which actually facilitated the subscription of GDR issue of KTL and also authorized the Banco to use the GDR proceeds of KTL as security to the loan obtained by Clifford.
34. In view of the above, I find that the Noticee No. 3 to 7 who participated in the Board meeting of KTL on October 04, 2007 wherein approvals were made to, *among other*, authorizing the Banco to use the GDR proceeds as security in connection with the loan and the same was acted upon by KTL (Noticee No. 1) in which the Noticee No. 3 had signed and executed the account charge agreement dated October 23, 2007 on behalf of KTL (Noticee No.1). Thus, the Noticees No. 3 to 7 were part of the arrangement of KTL (Noticee No.1) in facilitating the subscription of its own GDR wherein subscriber (Clifford) obtained loan from Banco for the purpose of subscribing the GDR issue of KTL and, KTL pledged the GDR proceeds with the Banco securing the loan taken by Clifford. The Noticee No. 1 also gave a false and misleading corporate announcement that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Clifford by obtaining loan from the Banco which was again secured by the KTL (Noticee No.1) by pledging the GDR proceeds. Thus, the directors of KTL (Noticee No. 1) namely Mr. A. Venkatramani (Noticee No. 3), Mr. A. Ganesan (Noticee No. 4), Mr. R. Dakshinamurthy (Noticee No. 5), Mr. A Sivakumaran (Noticee No. 6) and Mr. R. Gopalan (Noticee No. 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
35. Noticee No. 2 has claimed that it was never in contact with the KTL and they were not party to the

alleged scheme. I note that the credit agreement dated October 19, 2007 executed between Noticee No. 2 and Banco included some conditions precedent provided at Schedule 1 to the credit agreement, which were essentially required to be fulfilled before disbursement of any loan amount by the bank (Banco). One of the condition precedent was that Banco should have received, and Noticee No. 2 should have been notified of the receipt, the certified copies of Board minutes and resolutions of KTL approving and authorizing the execution, delivery and performance of security obligations under the credit agreement. Thus, I find that Noticee No. 2 had the knowledge of the fact that the KTL (issuer of GDR) itself was acting as a security provider for the loan being taken by Noticee No. 2 for subscribing the GDR issue of KTL. As observed in above paras 20 to 23, an amount of US \$ 10.39 million was transferred to Clifford from KTL's current account with Banco on February 06, 2009 in respect of default of Noticee No. 2 in repayment of loan to Banco. I, therefore, find that the Clifford (Noticee No. 2) acquired the GDR of KTL, to the extent of USD 10.39 million, for free and at the cost of investors of KTL which cleared the loan of Clifford from the GDR proceeds. Thus, the claim of Noticee No. 2 that it was not a party to the scheme is untenable and not acceptable. Therefore, I find that the Noticee No. 2 has also violated provisions of sections 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1) of SEBI (PFUTP) Regulations, 2003.

DIRECTIONS :

36. 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 direct as under:
- a. Kashyap Technologies Ltd. (Noticee No. 1) shall continue to pursue the measures to recall the outstanding amount of USD 10.39 million from Noticee No. 2 and bring the money back into KTL's bank account in India. It is clarified that Noticee Nos. 3 to 7 and the other present directors of KTL shall ensure the compliance of this direction by KTL, and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction.
 - b. Kashyap Technologies Ltd. (Noticee No. 1) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including

units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, starting from the date of this Order which will continue till the expiry of five years from the date of bringing the money back into KTL's bank account in India, as directed in para 36 (a) above. During the period of restraint, the existing holding of securities (including units of mutual funds) of Noticee No. 1 shall remain frozen.

- c. The following Noticees are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of this Order. During the period of restraint, the existing holding of securities (including units of mutual funds) of the following Noticees shall remain frozen:

Noticee No.	Name of the Noticee	PAN/ DIN
2.	Clifford Capital Partners A.G.S.A	Not Available
3.	Mr. A. Venkatramani	AABPV3960F
4.	Mr. A. Ganesan	AACPG8259M
5.	Mr. R. Dakshinamurthy	AAGPD2888M
6.	Mr. A Sivakumaran	AIYPS4944H
7.	Mr. R. Gopalan	00018966

37. This Order shall come into force with immediate effect.

38. 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.

39. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action.

Place: Mumbai

Date: April 12, 2019

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA