WTM/ AB /EFD-1/DRA-1/04/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: SHRI ANANTA BARUA, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Jindal Cortex Ltd.

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	M/s. Jindal Cortex Ltd.	AAACJ4400A
2	Mr. Sandeep Jindal	AAYPJ5790N
3	Mr. Rajinder Jindal	ABDPJ7406R
4	Mr. Yash Paul Jindal	ACDPJ8198B

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

Background:

1. SEBI investigated the issuance of Global Depository Receipts ('**GDRs'**) in overseas market by Jindal Cortex Limited (hereinafter referred to as "**the company/ JCL**") for the period of June 01, 2010 to July 31, 2010 which revealed that JCL issued 5.00 million GDRs (amounting to USD 38.75 million) on June 30, 2010 on the Luxembourg Stock Exchange, equivalent to 2,00,00,000 equity shares. Summary of the GDR issue of JCL is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
30-June-2010	5.00 (at USD 7.75 each GDR)	38.75	JP Morgan Chase Bank	2,00,00,000	JP Morgan Chase Bank	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange

Show Cause Notice, Reply and Personal Hearing:

2. A Show Cause Notice dated May 21, 2018 ('**SCN**') containing the findings of the investigation was issued to the Noticees asking them to show cause as to why action should not be taken for the alleged violation of the provisions Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992 ('**SEBI Act'**) read with Regulations 3 (a), (b), (c), (d) and of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('**SEBI (PFUTP) Regulations'**). Along with the SCN, copies of following documents relied on to substantiate the allegations, were enclosed as Annexures:

Annexure No.	Details of Annexure
1	Letter from JCL dated 08/05/2018
2	List of Corporate Announcements made by JCL on BSE from 1/04/2010 to 31/ 07/2010
3	Loan Agreement dated June 11, 2010
4	Certified Extracts of Board resolution, pertaining to the opening of bank a/c with EURAM Bank.
5	Pledge Agreement dated June 11, 2010
6	Bank Account statement of Vintage (Alta Vista Intl FZE) maintained with EURAM Bank
7	Retail Bank Account statement of JCL maintained with EURAM Bank.

3. The aforesaid SCN contained following allegations:
    a. JCL issued 5.00 million GDRs (amounting to USD 38.75 million) on June 30, 2010, equivalent to 2,00,00,000 equity shares of Rs. 10 each.

b. Vintage FZE ("**Vintage**") was the only entity who had subscribed to 5.00 million GDRs (amounting to USD 38.75 million) of JCL and the subscription amount was paid by obtaining loan from European American Investment Bank AG ("**EURAM Bank**").

c. JCL provided security towards the loan obtained by Vintage, through Pledge Agreement signed between JCL and EURAM Bank on June 11, 2010 ('**Pledge Agreement'**), wherein JCL pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of JCL.

d. Noticee no. 2, Managing Director of JCL, executed the Pledge Agreement with EURAM Bank (i.e. JCL provided security for loan availed by Vintage from EURAM Bank for subscription of GDRs of JCL). The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank on June 11, 2010 ('**Loan Agreement'**) (i.e. Vintage availed loan of USD 38.75 million from EURAM Bank for subscription of GDRs of JCL). These agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of JCL. The GDR issue would not have been subscribed had JCL not given any such security towards the loan taken by Vintage.

e. The company reported to the stock exchange (BSE) on June 30, 2010 that *"…the Board of Directors of the Company at its meeting held on June 30, 2010 has concluded the placement of 5,000,000 Global Depository Receipts / Shares at US$ 7.75 per Global Depository Receipts / Shares (Representing 20,000,000 equity shares of Rs. 10/-) each totaling USD 38.75 million…"* which might have made investors believe that the said GDR issue was genuinely subscribed. Further, JCL furnished wrong information to SEBI by providing false list of GDR subscribers. Therefore, the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the

arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements mislead Indian retail investors and induced investors to deal in shares of JCL in Indian capital market. Thereby, the scheme of issuance of GDRs was fraudulent and thereby alleged to have been violated the provisions of section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Noticee no. 2,3 and 4 have violated section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

4. The Noticees were advised to file their reply within a period of 21 days from the date of receipt of the SCN. In response to SCN, the company had filed its reply dated 21/06/2018, inter alia praying for copies certain documents. SEBI vide its letter dated 29/06/2018 had replied that all documents that have been relied upon in the SCN have been provided with the SCN itself. The Noticees vide letter dated 14/09/2018 from SEBI were conveyed the date of hearing. However, vide letters dated 14/11/2018 and 27/11/2018, the Noticees had asked for adjournment of the hearing which was granted for 14/12/2018. Vide their letter dated 17/10/2018, the Noticees had sought for inspection of documents relied upon by SEBI in the instant matter. The physical inspection of documents was granted to Mr. Mahipal Gupta, acting on behalf of the Noticees on 12/11/2018. The Advocates for Noticee no. 1 to 4 were heard at the personal hearing held on 14/12/2018 and the said Advocates were granted time till January 7, 2019 to file their detailed replies. However, vide letters dated 04/01/2019 and 28/01/2019 Noticee no. 1 asked for extension of time to file the reply. Finally on 07/02/2019, Noticee no. 1 to 4 filed their reply dated 05/02/2019 with SEBI. The following are summary of the contentions raised by the Noticees:

a. The Lead Manager (Prospect Capital) introduced its team member-Vintage as selling syndicate, and requested to provide an additional security to EURAM Bank (i.e. by keeping GDR proceeds under lock-in for 6 months with EURAM bank), so that funds could be borrowed by Vintage. Precedents of various GDR issues of the recent past were shown to the Noticees and it was informed that pledge agreements for keeping GDR proceeds under a lock-in with an overseas bank have been a normal legal practice in GDR issues.

b. GDR proceeds were utilized for the objectives stated in the Offer Document of the GDR issue.

c. The loan was repaid by Vintage much prior to the sale of GDR and conversion of underlying shares. Therefore, full repayment of loan by Vintage cannot by any reasonable measure be said to be connected with the conversion of GDR.

d. The promoters and management of the Company did not possess expert knowledge relating to GDR issue and relied upon the guidance/advice of legal advisors, lead managers, company secretary .etc.

e. The Company had got the list of subscribers from the Lead Manager (Prospect Capital). There was no means to know the list of subscribers to the GDR issue and that the Company had to rely on the information received from the Lead Manager. The list of subscribers as received from the Lead Manager was shared with SEBI.

f. The SCN alleges charges under Reg 4(2)(f), (k) and (r) of SEBI (PFUTP) Regulations on account of purportedly not disclosing the Pledge Agreement with the EURAM Bank, despite the fact that no specific requirement of such disclosure is mandated under the law. If the said disclosure was required, even then non-disclosure of such

information cannot by any stretch of analogy become fraudulent. Reliance is placed on the observations of the Supreme Court in the matter of *Shrisht Dhavan v. Shaw Brothers AIR 1992 SC 1555*.

g. The SCN is based on hind sighted pre-supposition and manifests bias. Para 9 at Page 4 of SCN reproduces clauses of a pledge agreement which does not belong to the Company but some other entity. This elucidated that the SCN is not only based on a cut and paste approach, but it goes on to show the pre-supposed mindset, conjecture and surmises, which unfortunately has yielded into a negative bias against the Noticees. The allegations of para 16 and 25 of the SCN.

h. The proceedings have been initiated by the said SCN after a period of nearly eight years of the alleged violation. The Noticees argue that there has been an inordinate delay which has adversely effected their ability to defend themselves. The Noticees have placed reliance on the order of Hon'ble SAT in the matter of *H B Stockholding Ltd. v. SEBI (Appeal no. 114 of 2012).*

***Consideration of issues and findings*:**

5. I have considered the SCN along with the findings of the Investigation and all the Annexures to the SCN, replies received to the aforesaid SCN and submissions made by the Noticees pursuant to the hearing granted to them; and all other relevant material available on record.

6. Before proceeding further, the relevant provisions of law are reproduced hereunder:

SEBI Act –
Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock

exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the Rules or the Regulations made thereunder;

SEBI (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 include 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.

7. I note that Vintage had opened a loan account (a/c no. 540012-039-4) with EURAM Bank and JCL had opened a retail account (a/c no. 5800240101) with EURAM Bank. SCN observed that Vintage obtained loan of USD 38.75 million by entering into a Loan Agreement dated June 11, 2010 with EURAM Bank. The Loan Agreement was signed by Mr. Arun Panchariya in his capacity of Managing Director of Vintage for subscription of GDRs of JCL. I note that Loan Agreement states: *"Nature and purpose of facility" is "To provide funding enabling Vintage FZE to take down GDR issue of 5,000,000 Luxembourg public offering and may only be transferred to Euram account nr. 580024, Jindal Cotex Limited."* I note that this account is same where JCL deposited its GDR proceeds. Further, with regard to securities for the loan, the Loan Agreement states: "*....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:*

   1) ----------
   2) *Pledge of the account no. 580024 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."*

8. From the above clauses of the Loan Agreement, I find that Vintage had availed the loan facility to the extent of USD 38.75 million from EURAM Bank to subscribe to GDRs of JCL.

9. I note that a Pledge Agreement dated June 11, 2010 was entered into between JCL (as Pledgor) and EURAM Bank (as Pledgee). Pledge Agreement was signed by Noticee no. 2 (Managing Director of JCL). The preamble of the Pledge Agreement states as under:

"By loan agreement K110610-001 (hereinafter referred to as the "Loan Agreement") dated 11 June 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 38,750,000.- The Pledgor has received a copy of the Loan Agreement No. K110610-001 and acknowledges and agrees to its terms and conditions."

The pledge created in the Pledge Agreement is stated below:

"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 bill 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 USD 38,750,000.- existing from time to time at present or hereafter on the securities account(s) no. 580024 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. 580024 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

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 pledge established pursuant to section 2.1 hereof."

Further, following conditions were provided in the Pledge Agreement for realization of the pledge:

"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 Account 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 transaction, a 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."

10. Perusal of the aforesaid Loan Agreement and Pledge Agreement reveals that EURAM Bank granted loan to Vintage specifically for subscription of GDRs of JCL.

11. I observe that subscription of GDRs was done through loan availed by Vintage from EURAM Bank. The, Escrow account statement of JCL maintained with EURAM Bank shows that GDR subscription money was received from only one entity i.e. Vintage. Further, it is observed that the bank account in which GDR proceeds were deposited, was in name of the JCL but the amount deposited in the account was not at the free disposal of the JCL as same was kept as collateral prior to issuance of GDRs for the loan availed by Vintage. This is also evident from the JCL's retail bank account statement held with EURAM Bank where GDR proceeds were deposited and Vintage's loan account statement that only after Vintage repaid the loan amount, more or less equal amount of money was transferred from JCL's EURAM Bank account to 1) JCL's bank account in India, 2) JCL's UAE based subsidiary's bank account and 3) certain entities for payments. From the above, it is evident that the amount transferred from JCL's EURAM Bank account was dependent on the repayment of the loan by Vintage. I further note that the Noticees in their reply dated February 2, 2019 have admitted that there was a lock-in on the GDR proceeds received in the bank account of JCL maintained with EURAM Bank.

12. Further on perusal of certified copy of JCL's Board Resolution dated April 26, 2010, provided by EURAM Bank, I find that, the said resolution pertains to opening of bank account with EURAM Bank, Austria for GDR issue. Resolution states that:

"RESOLVED THAT 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."

Resolution also states that:
"RESOLVED FURTHER THAT Shri Sandeep Jindal, Managing Director or Rajinder Jindal, Whole Time Director of the Company, be and is hereby authorized severally 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."

Resolution further states that:
"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."

13. Thus, in accordance with the aforesaid board resolution as received from EURAM Bank, the board of directors of JCL authorized EURAM Bank to use the JCL's GDR proceeds deposited with EURAM Bank as security in connection with loan if any and authorized Mr. Sandeep Jindal (Managing Director of JCL) or Mr. Rajinder Jindal (Whole Time Director of JCL) to sign, execute, any application, agreement etc. as may be required by the bank. I note that, copy of the resolution available with EURAM Bank was certified by 1) Mr. Sandeep Jindal- Noticee no. 2 (Managing Director of JCL), 2) Mr. Rajinder Jindal – Noticee no. 3 (Whole Time Director of JCL) and 3) Mr. Yash Paul Jindal – Noticee no. 3 (C

Chairman of JCL).

14. I note that a certified copy of the Board resolution dated April 26, 2010 was provided to the EURAM Bank by JCL, wherein an authorization has been given to Noticee no. 2 & 3 for opening of bank account with EURAM Bank and EURAM Bank was authorized to use the funds in the account as security in connection with loans etc. The said resolution was certified by the Noticee nos. 2 to 4. I also note that Noticee no.1 has vide letter dated October 10, 2017 (sent to SEBI during investigation, vide email dated

October 10, 2017), enclosed as Annexure 1, the copy of original minutes of the Board meeting of the Noticee No.1 held on April 26, 2010. On perusal of the said minutes of the Board meeting, I note that no such resolution to open account with EURAM Bank and use the funds in such account as security in connection with loan .etc., was stated in the said minutes. Neither was there any agenda item, nor any discussion took place in the meeting of Board of Directors on April 26, 2010 in respect of the purported resolution. I also note that, even though the Noticees have filed detailed reply/written submissions dated February 05, 2019 along with many other enclosures, but conveniently not furnished, either the minutes, agenda or Board resolution (as submitted with EURAM Bank) of the meeting of the Board of Directors dated April 26, 2010.

15. I note that based on the aforesaid copy of Board resolution submitted to EURAM Bank, Mr. Sandeep Jindal (Noticee no. 2), Managing Director of JCL signed a Pledge Agreement dated June 11, 2010 wherein JCL pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank. Thus, company's authorization to EURAM Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, depicts that the abovementioned board resolution was to provide security in connection with the loan.

16. I note that JCL did not disclose to stock exchange, the execution of the Pledge Agreement, meant for securing the loan availed by Vintage for subscribing of its GDR issue. Instead, JCL reported to the stock exchange (BSE) on June 30, 2010 that *"...the Board of Directors of the Company at its meeting held on June 30, 2010 has concluded the placement of 5,000,000 Global Depository Receipts / Shares at US$ 7.75 per Global Depository Receipts / Shares (Representing 20,000,000 equity shares of Rs. 10/-) each totaling USD 38.75 million..."*. This announcement neither mentioned nor indicated that the GDRs were allotted to, or subscribed by, a single entity on the basis of pledge of GDR proceeds and rather it tends to give a message to the market that there was considerable demand for

its GDR in the overseas market and the same were successfully subscribed. I, thus, find that the corporate announcement made by JCL on June 30 2010, regarding allotment of GDR issues was distorted and 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 JCL itself had facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from EURAM Bank for subscribing the GDR issue of JCL, and JCL secured that loan by pledging the GDR proceeds with the EURAM Bank.

17. The Noticees have contended that the Lead Manager (Prospect Capital), had made Noticees believe that keeping GDR proceeds as pledge was a normal legal practice. They further submit that precedents of various GDR issues of the recent past were shown to the Noticees and it was informed that pledge agreements for keeping GDR proceeds under a lock-in with an overseas bank have been a normal legal practice in GDR issues. I note that the purpose of GDR issue is to raise further capital from overseas market for the company. If the same proceeds are pledged for the purpose of facilitating the subscriber to subscribe to the GDR issue, then the purpose of raising capital itself is defeated. Hence, I do not find any merit in such contention of the Noticees.

18. The Noticees have contended that the loan was repaid by Vintage much prior to the sale of GDR and conversion of underlying shares. Therefore, according to the Noticees, full repayment of loan by Vintage cannot by any reasonable measure be said to be connected with the conversion of GDR. I note that, in the instant case, the repayment of loan by Vintage and sale of GDR's and conversion of underlying shares are two separate events. SCN has not alleged that the consideration received from sale of shares underlying GDR's/sale of GDR's were used for repayment of loan by Vintage. Hence, the factum of repayment of loan by Vintage much prior to the sale of GDR/ conversion of underlying shares is irrelevant, for the purpose of this proceeding.

19. The Noticees have contended that the inordinate delay on part of SEBI to initiate proceedings in the present matter has adversely jeopardized the ability of the Noticees to defend themselves. I note that SEBI initially investigated the GDR issues by seven Indian companies in overseas market and the investigations revealed that a Dubai based Non Resident Indian, Mr. Arun Panchariya perpetrated fraudulent schemes in connivance with the promoters/ directors of those issuer companies. While examining the bank account statements of Vintage in connection with its involvement in other GDR issues, it was observed in the year 2014 that Vintage has dealt with the GDRs of several other companies and where the Lead Managers were also common in many of the said suspected companies, SEBI found similar modus operandi. In view of many such GDR issues, scrip-wise investigation has been carried out against the entities involved. JCL was one such scrip where such a fraudulent scheme was also observed and the investigation was completed in January 2018. I also note that collation of information/documents and examination of evidence received from various entities outside India, through the assistance of various international agencies including securities market regulators from different jurisdictions was a time consuming and tedious process. I note that after the investigation was completed, the SCN was issued to the Noticees in May 2018.

20. I note that there is no provision in the SEBI Act, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on 27.08.2013, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') while referring to its own decision in *HB Stockholdings Ltd. v.SEBI (Appeal no. 114 of 2012 decided on 27.08.2013)* and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.)*, held as under:

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

The ratio laid down by Hon'ble SAT in the aforesaid case, was upheld and reiterated by it, in a recent order in the matter of *Kunal Pradip Savla & Ors v. SEBI (Appeal no. 231 of 2017) decided on 13/04/2018*. Therefore, I am unable to accept the contention of the Noticees in the facts and circumstances of the case as elaborated above, more particularly in para 19 of this order.

21. It is the case of the Noticees that the promoters and management of the Company did not possess expert knowledge relating to GDR issue and relied upon the guidance/advice of legal advisors, lead managers, company secretary .etc. However, I note that Noticee no. 1 being a listed company and Noticee no. 2 to 4 being the executive directors of the listed company are expected to ensure adherence and compliance with the provisions of securities laws and also legitimately expected to exercise diligence while raising capital and issuance of securities by the Company. Hence, such contention by the Noticees has no merit and I find that the Noticees are attempting to evade the consequences of this proceeding by putting the

onus on the various agencies/intermediaries/consultants appointed by JCL for the purpose of GDR issue.

22. It is argued by the Noticees that JCL had received the list of allottees to GDR issue from the Lead Manager and the same was provided to SEBI (during investigation) and that they had no means to know the subscribers to the GDR issue, but to rely on the information provided by the Lead Manager. I note that the Lead Manager was not the only source to get the list of subscribers. The list of subscribers to the GDR issue may also have been sought from the Overseas Depositry Bank. Furthermore, the list of subscribers could also have been verified/cross checked from the entries of funds credited into the Escrow Account maintained with EURAM Bank during GDR issue. In the instant case, while JCL has provided a list of seven allottees to the GDR issue, to SEBI during investigation, but I note that at the time of GDR issue the funds were received into the EURAM Bank Escrow A/c. of JCL only from one subscriber i.e. Vintage. Therefore, JCL had provided incorrect 'list of allottees' of GDR to SEBI (during investigation).

23. One of the contentions raised by the Noticees is that the SCN allegedly charges Noticee no. 1 with violation of Reg 4(2)(f), (k) and (r) of SEBI (PFUTP) Regulations on account of purportedly not disclosing the Pledge Agreement with the EURAM Bank, despite the fact that no specific requirement of such disclosure is mandated under the law. It is further contended that if the said disclosure was required, even then non-disclosure of such information cannot by any stretch of imagination leads to fraud. In this connection, I note that, JCL reported to the stock exchange (BSE) on June 30, 2010 that *"…the Board of Directors of the Company at its meeting held on June 30, 2010 has concluded the placement of 5,000,000 Global Depository Receipts / Shares at US$ 7.75 per Global Depository Receipts / Shares (Representing 20,000,000 equity shares of Rs. 10/-) each totaling USD 38.75 million…"*. This announcement did not give a true

picture of the GDR issue. The said corporate announcement did not disclose the fact that there was a subsisting Pledge Agreement that facilitated the subscriber to subscribe to the GDR issue or the GDRs were allotted to, or subscribed by, a single entity. The said corporate announcement rather tends to give a message to the market that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. I, thus, find that the corporate announcement made by JCL on June 30 2010, regarding allotment of GDR issues was distorted and might have mislead/induced the investors, dealing in securities, and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the JCL itself had facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from EURAM Bank for subscribing the GDR issue of JCL, and JCL secured that loan by pledging the GDR proceeds with the EURAM Bank. Hence, I find that Noticee no. 1 has violated Reg 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

24. I note that the Noticees have relied upon the Judgment of the Hon'ble Supreme Court in the matter of *Shrisht Dhavan v. Shaw Brothers AIR 1992 SC 1555*. However, I find that the facts of the present case are distinguishable from the facts and legal position in the referred case. In the aforesaid case, the ratio that *'non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud',* may not apply to the facts and circumstances of the present case, since the referred case pertains to a dispute between the landlord and tenant, whereas in the present case, the alleged violations has to be read in the context of securities market where investors take investment/disinvestment decisions on the basis of the disclosure made by the listed company. The violations in the present case must also be read in the context of SEBI (PFUTP) Regulations, which seeks to prohibit fraudulent practices in the securities market, to enable the investors to take an informed decision.

25. The Noticees have contended that the important elements attracting the violations of alleged provision in the SCN is 'Fraud and misrepresentation'. Placing reliance on the judgment of the Hon'ble Supreme Court of India in the matter of *Ram Chandra Singh Vs. Savitri Devi & Ors. 2003 8 SCC 319*, the Noticees submit that they have not induced any person nor did they make any representation which was false. I note that, 'fraud and misrepresentation', in the instant case must be read in the context of SEBI (PFUTP) Regulations. As noted in the preceding para 23, failure to disclose the Pledge Agreement and the entire backend arrangement of facilitating the subscription of its own GDR issue, was fraudulent. The limited disclosure of 'Successful Placement of GDR' on BSE on June 30, 2010 was incomplete, distorted and misleading and also did not give a complete picture of the GDR issue. The said disclosure might have indoced the investors in India to invest in JCL. It would be appropriate to refer to the Order of the Hon'ble 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."*

26. 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".

26. *There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human 27 ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.*

27. *On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.*

27. It is contended by the Noticees that the SCN is based on hind sighted pre-supposition which manifests bias by citing Para 9 at Page 4 of SCN which reproduces clauses of a pledge agreement which the notices claim that does not belong to the Pledge Agreement executed by the Company but belongs to an agreement executed by some other entity. I have perused the said clauses of the Pledge Agreement and the SCN and I emphatically note that the clauses of the Pledge Agreement dated June 11, 2010, that was executed between EURAM Bank and JCL, have been reproduced at Para 9 (page 4) of SCN albeit there has been a error in respect of amount of USD 27,021,601.20 instead of USD 38,750,000/- and the securities

account number as 580011 instead of 580024. Except this I also note that there is no error in the reproduction of those paras in the SCN. It is important to note that, a copy of the aforesaid Pledge Agreement (as obtained from EURAM Bank) and a copy of the retail bank account statement maintained by JCL with EURAM Bank, was provided to the Noticees as part of the Annexures to the SCN. Hence, I do not find any merit in this argument by the Noticees. Further, in support of their argument, the Noticees have placed reliance on the judgment of the Hon'ble Supreme Court of India in the matter of *Supreme Advocates-on-Record-Association and Ors. Vs. Union of India. (2016) 5 SCC 1*, to highlight that *'an adjudicator should not entertain a prejudice against either party to a dispute, nor should he be favorably inclined towards any of them.'* I note that, the proceedings in the instant case were initiated on the basis of the SCN which included as Annexures, all the documents that were relied upon therein (as referred in para 2 above). Thus all the relevant documents relied upon were made available to the Noticees. Hence, the SCN is not prejudiced or biased against any of the Noticees as contended by them. The SCN is rather fair and calls upon the Noticees to show cause as to why certain directions should not be passed against any of them, in view of the alleged violations observed by investigation.

28. In view of the above, I find that JCL had mislead the investors into believing that the GDR issue was successful, whereas at the backend, there was only one subscriber i.e. Vintage and subsisting arrangement of Loan Agreement (between Vintage and EURAM Bank) and Pledge Agreement (between JCL and EURAM Bank) which made the GDR issue successful. Had JCL not given security for the loan taken by Vintage, Vintage would not have got finance to subscribe to GDR's, consequently the GDR issue would not have been successful as Vintage was the only allottee to the issue. By entering into the Pledge Agreement for facilitating the subscription of its own GDR's, JCL has played a fraud on the securities market and mislead the investors and created a false impression about the Company in the securities market. Hence, I find that, JCL. has violated

the provisions of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), Reg. 4(2) (f), (k), (r) and Reg. 4(1) of SEBI (PFUTP) Regulations, 2003. Further pursuant to the findings at para 14, I find that, directors of JCL namely Noticee no. 2, 3 and 4, who certified the board resolution submitted to EURAM Bank to be true and Noticee no. 2 who executed the Pledge Agreement, acted as party to fraudulent scheme. Thereby, the aforesaid directors namely Noticee no. 2, 3 and 4 are also in violation of section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

DIRECTIONS:

29. In view of the above, and in the peculiar facts and circumstances of the matter, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct as under:

(a) The following Noticees are hereby restrained from accessing the securities market and further prohibit them 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 (including units of mutual funds) of the following Noticees shall remain frozen:

Noticee No.	**Name of the Noticees**	**PAN**
1	M/s. Jindal Cortex Ltd.	AAACJ4400A
2	Mr. Sandeep Jindal	AAYPJ5790N
3	Mr. Rajinder Jindal	ABDPJ7406R
4	Mr. Yash Paul Jindal	ACDPJ8198B

30. This order shall come into force with immediate effect.

31. A copy of this order shall be served on all recognized stock exchanges, depositories and RTA's of Mutual funds to ensure compliance with above directions.

Sd/-

Date: April 24, 2019 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA