BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In the Matter of GDR Issue of Nakoda Limited.

In respect of –

Sr. No.	**Noticee**	**PAN/Other Identifying Number**
1.	Nakoda Limited (Under CIRP, Moratorium u/s 14 of the IBC declared)	AAACN7282L
2.	D.B. Jain	ADTPJ4655Q
3.	B.G. Jain	ABNPJ1251A
4.	S. K. Bhoan	AAKPB0324N
5.	Arun Panchariya	AEVPP6125N
6.	Mukesh Chauradiya	AAVPC0966A
7.	Vintage FZE	NA
8.	India Focus Cardinal Fund	AABCI9518D
9.	European American Investment Bank AG	(FII Registration No.) INASFD211608

1. Background –

1.1. The present matter emanates from an investigation by Securities and Exchange Board of India ("**SEBI**") into the issuances of Global Depository Receipts ("**GDRs**") in overseas markets by Indian companies, allegedly with the intention of defrauding Indian investors. During the course of such investigation, it came to SEBI's knowledge that there were several other GDR issues wherein a loan was availed of by a foreign entity and the security of the loan was provided by the GDR issuing company by signing an account charge/ pledge agreement. One such company was Nakoda Limited ("**Nakoda**"/ "**the Company**").

1.2. The focus of the investigation was to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures, if any, were made by Nakoda with respect to GDRs issued by it on November 26, 2010. The period under investigation was the period around which the issuance of GDRs by the Company took place, i.e. November 1, 2010 to December 31, 2010 ("**Investigation Period**").

2. Summary of Show-cause Notice(s) - (i) The Scheme (ii) The Modus Operandi and Fund Flow.

2.1. Pursuant to the findings of the Investigation Report, a common Show-cause Notice dated July 28, 2017 was issued to the Noticees (hereafter referred to as the "**SCN**"). By way of the SCN, all the Noticees were called upon to show cause as to why suitable directions should not be issued against them under Sections 11, 11(4) and 11B of the SEBI Act.

2.2. In this regard, the SCN, relying on the Investigation Report, has alleged that—

A. The scheme of issuance of GDRs was fraudulent as Noticee No. 1, the Company, had entered into a Pledge Agreement with the bank, European American Investment Bank AG ("**EURAM Bank**") for a loan that had been availed by Vintage FZE ("**Vintage**"), also known as Alta Vista International FZE, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 7, Vintage was a party to this fraudulent scheme. Noticee No. 2, D.B. Jain, who was the Joint Managing Director of Nakoda, signed the Pledge Agreement with EURAM Bank, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs of Nakoda. D.B. Jain along with Noticee No. 3 (B.G. Jain) and Noticee No. 4 (S.K. Bhoan), who were also Directors on the Board of Nakoda, in the board meeting dated September 23, 2010 authorized D.B. Jain and B.G. Jain to sign the Pledge Agreement allowing EURAM bank to use the GDR proceeds

account as security for the loan availed by Vintage. Noticee No. 6, Mukesh Chauradiya signed the Loan Agreement on behalf of Vintage for the subscription of GDRs of the Company. Noticee No. 5, Arun Panchariya was director and beneficial owner of Vintage.

B. Noticee No. 8, India Focus Cardinal Fund was a sub-account of FII EURAM Bank. Arun Panchariya was the beneficial owner of Noticee No.8. FII sub-account India Focus Cardinal Fund received GDRs, converted them and sold the converted equity shares of Nakoda in the Indian stock exchanges. Noticee No. 8 acted as a conduit for Arun Panchariya and his connected entities, and sold the converted equity shares of Nakoda, which had been acquired by Vintage, free of cost, through the fraudulent scheme.

C. Noticee No.9, EURAM Bank did not make any investment in India except investments made by its sub-account, India Focus Cardinal Fund. So, the FII namely, EURAM Bank, acted as a conduit for Arun Panchariya and facilitated India Focus Cardinal Fund to sell the underlying shares of the GDRs in the Indian stock exchanges.

2.3. (I) ***The Scheme***

A. The Company came out with the issuance of 20,00,000 GDRs amounting to USD 24.25 million on November 26, 2010. A summary of the said GDR issuance is provided hereunder:

Table - 1

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**
26-11-2010	2.00	24.25	DBS Bank, Mumbai	6,00,00,000 equity shares of Rs.5 each at a price of Rs.18 per share (30 shares each for every GDR)	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange

B. A bank account was opened by Nakoda with EURAM Bank under the client number 580034 to deposit the GDR proceeds. Accordingly, a total of USD 24.25 million was credited to this account. Vintage had subscribed to the total GDR issue of Nakoda.

C. It was observed during investigation that of the total 24.25 million USD taken as loan by Vintage, it did not repay any amount. Subsequently, it defaulted on the said loan, and the funds in the GDR proceeds account were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage. Considering that Vintage was the only subscriber of the GDR issue, and the Company had in effect paid for Vintage owing to the default by it in servicing the loan, and the same being satisfied from the GDR proceeds account of Nakoda, it was concluded that the GDRs, and the underlying equity shares in turn, to the tune of 24.25 million USD, were issued by Nakoda to Vintage without any consideration, at the cost of shareholders / investors of Nakoda. This is the fraudulent scheme that had been conceived.

2.4. (II) ***The Modus Operandi and Fund Flow***

A. On September 23, 2010, the Board of Directors of Nakoda passed a resolution resolving that a bank account be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Also, at the said board meeting, EURAM Bank was authorized to use the GDR proceeds as security against loans, if any.

B. Vintage entered into a loan agreement dated November 12, 2010 with EURAM Bank for a loan facility of USD 24.25 million, so as to "*provide funding enabling Vintage FZE to take down GDR issue of 20,00,000 Luxembourg public offering and may only be transferred to EURAM account no.580034, Nakoda.*"

C. On November 12, 2010, a Pledge Agreement was executed between Nakoda (as pledger) and EURAM Bank and the same was signed by D.B. Jain of Nakoda. As per the Pledge Agreement, Nakoda's designated account with

EURAM Bank bearing no. 580034 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.

D. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed concurrently. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of Nakoda. As already stated, the GDR proceeds to the tune of 24.25 million USD were deposited in the Company's bank account bearing number 580034 maintained with EURAM Bank.

E. As Vintage had defaulted, an amount of USD 24.32 million (USD 24.25 million along with accrued interest of USD 0.07 million) was adjusted from the account of Nakoda, in conformity with the Pledge Agreement dated November 12, 2010, towards the outstanding loan amount owed by Vintage.

F. Even though consideration had not effectively passed from Vintage to Nakoda, the GDRs issued were, however, allowed to be converted into equity shares, and these shares were sold in the Indian capital market. on April 04, 2011, Vintage had transferred 14,500 GDRs to FII-sub account, India Focus Cardinal Fund ("IFCF") *i.e.* Noticee No. 8. On April 07, 2011, 14,500 GDRs were converted into 4,35,000 equity shares by IFCF.

G. Further, India Focus Cardinal Fund was registered as sub account of FII, EURAM Bank (Noticee No. 9). India Focus Cardinal Fund was the only sub account to be registered with EURAM Bank. Also, as an FII, EURAM Bank did not make investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by India Focus Cardinal Fund. The FII, namely, EURAM Bank (Noticee No. 9) facilitated the sale of the equity shares, received by way of fraudulent issue of GDRs.

H. On October 25, 2012 and November 20, 2012, Nakoda wrote two letters to Bank of New York Mellon (Global Depository) (hereinafter referred to as

`BNY Mellon') requesting that no shares be transferred or sold without its consent.

I. BNY Mellon sent a resignation letter dated December 06, 2013 to Nakoda informing it of the termination of GDR program, and asked Nakoda to appoint a successor depository bank on or before April 07, 2014, failing which it would terminate the GDR program. On April 16, 2014, BNY Mellon announced its termination notice publicly. As per the termination notice, the GDR holders had two options i.e., to take the possession of underlying shares or to receive the sale proceeds of shares once BNY Mellon sold underlying shares in Indian Stock exchanges.

J. Thereafter, BNY Mellon began to sell the shares underlying the GDRs held in its custody account in January 2015 and completed the sale of shares in October 2015. BNY Mellon sold the underlying shares through DBS Bank (Local custodian). DBS Bank vide email dated February 22, 2017 informed SEBI that, based on the instruction of BNY Mellon, it had sold 5,95,65,000 shares of Nakoda for Rs. 1,81,83,538.71 (including income tax). I note that the same was directed to be kept in an escrow account as per SEBI's interim order dated June 16, 2016.

2.5. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 1 to 9 have violated the following provisions of the SEBI Act, 1992 and SEBI PFUTP Regulations, 2003: Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. In addition to the above provisions, the Company (Noticee No. 1) has been alleged to have also violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

2.6. Consequent to the issuance of the SCN, a Supplementary Show-cause Notice dated August 26, 2019 was issued to Nakoda (Noticee No. 1) *inter alia* calling upon it to show cause as to why suitable directions, including direction to bring back the money to the extent of the loan default should not be passed against it.

3. Inspection, Personal Hearing, and Replies and Written Submissions from the Noticees.

3.1. The SCN was served on all the Noticees. Pursuant to the SCN, some of the Noticees filed their replies. Some of the Noticees also sought inspection of documents. Based upon the request of the Noticees, opportunities of inspection of the records/ documents (which were relied upon by SEBI for the purpose of the SCN) were provided to the Noticees. Details with respect to the same are furnished hereunder:

Table-2

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
6	Mukesh Chauradiya	April 17, 2018	Mr. Devendra Dhanesha, Chartered Accountant

3.2. The details of the personal hearings in the matter are tabulated below:

Table- 3

Notice e No.	Name of the Noticee	Date of Hearing	Represented by
2 and 3	D.B. Jain and B.G. Jain	July 22, 2021	Mr. Gaurav Joshi, Senior Counsel
4	S. K. Bhoan	July 22, 2021	Ms. Rishika Harish, Advocate
5	Arun Panchariya	October 20, 2020	Mr. P.R. Ramesh, Advocate
6	Mukesh Chauradiya	June 16, 2020	Mr. Devendra Dhanesha, Chartered Accountant
9	EURAM Bank, Austria	June 16, 2020	Mr. Shouryendu Ray, Advocate, Wadhwa Law Offices

3.3. Noticee No. 1 did not appear for the hearing, however, written submissions were filed on its behalf. Noticee Nos. 7 and 8 neither availed the opportunity

of personal hearing nor filed any reply in response to the SCN. The details with respect to the service of the SCN and Hearing Notices to the other Noticees are provided hereunder:

Table- 4

Noticee No.	Name of the Noticee	Details
7	Vintage FZE	▪ SCN dated July 28, 2017 was sent to the said Noticee at the address: J-04, Emirates hills, Jhulnar Street-2, Emirates Hills, Dubai, United Arab Emirates. The same could not be delivered. The SCN was thereafter delivered by to Arun Panchariya, the beneficial owner of Vintage. ▪ Hearing Notice for the personal hearing scheduled for February 26, 2021 was served via email to Arun Panchariya.
8	India Focus Cardinal Fund	▪ SCN dated July 28, 2017 was sent to the said Noticee at the address: C/o Cardinal Capital Partners, Suite 501, St. James Court, St Dennis Street, Port Louis, Mauritius and 365 Royal Road, Rose Hill, Mauritius. The same could not be delivered. Subsequently, the SCN was delivered by email to the liquidator i.e. m.reaz@intent.mu. ▪ Hearing Notice for the personal hearing scheduled for February 26, 2021 was served via email to the liquidator i.e. m.reaz@intent.mu.

3.4. A summary of the replies as submitted by the Noticees is provided hereunder:

Noticee No. 1 (Nakoda Ltd.) (Reply dated February 11, 2021 and July 22, 2021)

3.4.1. Shri Vikas Prakash Gupta has been appointed as the Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) vide order dated July 12, 20121 by the Ahmedabad Bench of the NCLT.

3.4.2. A moratorium has been declared under Section 14 of the IBC, and by virtue of the same, proceedings against the Corporate Debtor (Nakoda) may not be continued.

Noticee Nos. 1, 2 and 3 (Nakoda Ltd., D.B. Jain and B.G. Jain) (Reply dated February 11, 2021 pertaining to Noticee Nos. 1, 2 and 3; reply dated July 21, 2021, July 22, 2021 and August 4, 2021 pertaining to Noticee Nos. 2 and 3)

3.4.3. The Noticees have not been provided copies of several documents on the ground that all the relevant documents have already been supplied by SEBI. The same is contrary to the judgment of the Supreme Court in *Securities and Exchange Board of India vs. Price Waterhouse* (Civil Appeal No. 6003-6004/2012).

3.4.4. Prospect Capital Limited (Prospect), the Lead Manager had confirmed that the GDRs were subscribed by 7 different entities and provided details of the amount subscribed to by each entity. Noticees No. 1 to 3 made the disclosure based on the information represented to it at the time. Vintage FZE was not listed as one of the seven entities that had subscribed to the GDRs.

3.4.5. SEBI has relied on the Escrow Statement of the Account of Noticee No. I. held with EURAM Bank, which states that Vintage was the only subscriber to the GDRs. It is submitted that in view of EURAM Bank's clear connection with and connivance in the fraud that has been perpetrated on Noticees Nos. 1 to 3, any document from EURAM Bank cannot and ought not to be relied upon by SEBI as the same might be forged, false or fabricated.

3.4.6. The Pledge Agreement is entirely false, forged and fabricated. The submissions of the Noticees in this regard are as follows:

a. the Loan Agreement is dated November 12, 2010 but the acceptance of it by Mr. Mukesh Chauradiya (Authorized Representative of Vintage FZE) was only on November 24, 2010 and thus the Loan Agreement came into effect on November 24, 2010. Hence, the Pledge Agreement could not have been signed on November 12, 2010 because an arrangement of pledge of security/funds to secure a loan could be

entered only after an arrangement for lending of money has been determined;

b. from the copies of passport of Noticee Nos. 2 and 3 it can be seen that they were not present in Dubai on or around November 12, 2010;

c. on the date of the Pledge Agreement the balance in the account of Noticee No. 1 was nil and they did not know what amount it would receive in the GDR issue. Noticee Nos. 1 to 3 only became aware of the alleged Pledge Agreement on September 10, 2012;

d. the Pledge Agreement was never signed by Noticee No. 2 on behalf of Nakoda, as alleged or at all. It was never agreed to pledge the GDR securities on behalf of Vintage;

e. in respect of the notarization of the amendment in the Pledge Agreement dated November 12, 2010, it is submitted that Noticee No. 2 had signed the said amendment letter thinking that the same was required in continuation of his witnessing the agreement signed on October 14, 2010 by EURAM Bank;

f. Noticee No. 1 received a copy of the Pledge Agreement from EURAM Bank vide letter dated September 10, 2012. Thereafter, the Company Secretary of Noticee No. 1 had immediately challenged the authenticity of the pledge agreement; and

g. a copy of the purported forensic audit has never been supplied by EURAM Bank AG to Noticee No. 1, 2 or 3.

3.4.7. The Loan Agreement and the Pledge Agreement are all part of a scheme perpetrated by EURAM Bank AG along with Arun Panchariya, Vintage and Mukesh Chauradiya, and Noticee Nos. 1 to 3 are a victim of the said fraud.

3.4.8. EURAM Bank had created a pledge on the GDRs issued to Vintage FZE, and there was no requirement for creating any pledge on the GDR proceeds raised by Noticee No. 1. Conversely, if the pledge had been created on the liquid GDR

proceeds, there was no requirement to create any pledge on the GDRs issued to Vintage FZE in the first place.

3.4.9. With respect to the Board Resolution of September 23, 2010, it is submitted as follows:

a. the language of the resolution makes it clear that it was in the nature of a general authorization and that it necessarily must be read to mean that the proceeds could be utilized by EURAM Bank as security in connection with a loan, if any, taken by the company Nakoda itself;

b. in any event, when the resolution of September 23, 2010 was passed, Vintage FZE was nowhere in the picture.

3.4.10. Nakoda has till date not received any portion of the proceeds of the GDRs nor have any of the securities been returned to the Noticee, even after the default of Vintage FZE. In the year 2015, BNY Mellon has sold 5,95,65,000 shares of Nakoda Limited (19,85,500 GDRs) in the Indian securities market for a total consideration of Rs. 1,81,83,538.71/- but the proceeds of such a sale has till date not been received by Noticee No. 1.

3.4.11. The fact that EURAM Bank permitted Vintage to transfer 14,500 GDR that were pledged with it to IFCF on April 04, 2011 is in itself suspicious and reeks of malafides.

3.4.12. The Noticees had challenged the validity of the pledge agreement and written to Euram Bank regarding the same.

Noticee No.4 (S.K. Bhoan) ***(Reply dated September 25, 2017, July 20, 2021 and August 2, 2021)***

3.4.13. The Noticee has stated that he was an Independent Director of the Company from April 24, 2007 to December 20, 2013, and was in no way involved in the day to day management and affairs of the Company. He did not have any relationship with the other directors of the Company, nor with the promoters and any of the members of the senior management of the Nakoda.

3.4.14. The board resolution was passed for opening bank account with EURAM Bank for issuing GDRs and to grant authority to. D. B. Jain and. B. G. Jain for the purpose of operation of and dealing with EURAM Bank Account. Further, it was authorized that EURAM Bank can use the funds (GDR proceeds) as security for any possible loans, obtained by the company and had no mention of granting authority for using GDR proceeds as security in relation to loans obtained by any third party, i.e. Vintage.

3.4.15. Being an Independent Director, who is not involved in the day to day workings of the Company, he would never get to know about any alleged fraudulent and manipulative intent of the Managing Directors behind the passing of the Board Resolution as alleged.

3.4.16. Loan Agreement and the Pledge Agreement was never put before the Board

3.4.17. The Board was never made aware of any kind of arrangement between Nakoda, Vintage and EURAM Bank with regard to pledging, loan and subscription to the GDR.

3.4.18. The said Noticee has, in his replies, *inter alia* relied on the following case laws:

a. K.K Ahuja vs. V.K. Vora and Ors. [(2009)10 SCC 48] to contend that "person in charge of the business of the company" refers to a person who is in overall control of the day to day business of the company.

b. SEBI order in the matter of Amazan Capital Limited (WTM/GM/EFD/38/2017-18 dated August 03, 2017) to contend that the liability of a director should flow out of knowledge and consent or connivance in the alleged act;

c. Pritha Bag vs. SEBI (SAT Appeal no. 291 of 2017, Order dated February 14, 2019) to contend that unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) of the Companies Act cannot be invoked against the appellant;

d. Adesh Jain vs. SEBI (SAT Appeal no.217 of 2020, Order dated November 19,2020) and Chromatic India Ltd. Vs. SEBI (SAT Appeal No. 393 of 2020, Order dated May 12, 2021), Prafull Anubhai Shah Vs. Sebi (SAT Appeal No. 389 of 2021, Order dated June 28, 2021), Adi Cooper Vs. SEBI (SAT Appeal No. 124 of 2019, Order dated November 5, 2019) and Rajesh Shah Vs. SEBI (Appeal No. 433 of 2021, Order dated July 5, 2021) to contend that the board resolution did not indicate any resolution for execution of the loan or the pledge agreement and that an independent director who was not involved in the day to day affairs of the company could not be held liable.

e. Hon'ble Supreme Court in Gorkha Security Services vs. Govt. (NCT of Delhi), (2014) 9 SCC 105 to state that the material/grounds and penalty/action which is proposed to be taken should be mentioned in the SCN.

f. Union of India vs. H.C. Goel (AIR 1964 SC 364), L.D. Jaisinghani vs. Narindas N. Punjabi (1976) 1 SCC 354: AIR 1976 SC, M.S. Bindra vs. Vol [1988] 1 SCC 310, Ambalal vs. Union of India AIR 1961 SC 264, and KSL & Industries Ltd. vs. SEBI (SAT Appeal no.9/2003 decided on 30.09.2009), to contend that a charge of fraud cannot survive on mere conjecture and surmises;

g. Hon'ble Supreme Court in Razikram vs. J.S. Chauhan- AIR 1975 SC 667: (1975) 4 SCC 769) and Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734) to state that there is no difference between the general rules of evidence in civil and criminal cases.

Noticee No. 5 (Arun Panchariya) (Reply dated November 15, 2020)

3.4.19. In his replies, Arun Panchariya has stated that he has been a non-resident Indian for the last 20 years or more, has certifications in finance and has been in the financial services industry in the Middle East and Europe.

3.4.20. The Noticee has challenged the jurisdiction of SEBI to initiate the present proceedings. In this regard, the Noticee has submitted that —

a. SEBI has no jurisdiction to initiate action against natural persons resident outside India as the scope of the SEBI Act extends to the whole of India only, and not outside India;

b. the Noticee was never registered with SEBI or the RBI, or any other regulatory agency in India, and he never had a place of business in India and has not carried out any activities within India;

c. Vintage FZE, which was a limited liability company incorporated under the relevant laws of the UAE, was established by him;

d. Cardinal Capital Partners, a company incorporated in Mauritius, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund;

e. the activities of Vintage, Cardinal Capital Partners and India Focus Cardinal Fund were carried out wholly outside India; and

f. the subscription by Vintage of the GDRs issued by Nakoda was a purely commercial arrangement outside India, under the relevant laws, and SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations.

3.4.21. The said Noticee has also denied all the allegations and charges made against him in the Show Cause Notices. In this regard, the Noticee has submitted that—

a. the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years, and the Noticee is completely in the dark about what exactly SEBI has in mind;

b. there is no justification to issue the SCN in the name of the Noticee, in his personal capacity, ignoring the existence of corporate entities

and transactions executed by way of legal and binding agreements between such entities;

c. the legal entities are incorporated under respective foreign jurisdictions and many of them are also regulated by the respective financial market regulator of their respective jurisdictions, which shows that these legal entities are real, and there is no case for looking through them and arraigning the Noticee in his personal capacity;

d. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary;

e. the entities whose veil have been lifted are not entities incorporated in India, and hence the assumption of powers by SEBI to lift the corporate veil and issue an SCN to the Noticee in his personal capacity is beyond the scope of the powers of SEBI under the SEBI Act;

f. numerous other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI in the year 2011;

g. the investigation carried out by SEBI has been highly prejudiced and biased;

h. the allegations in the SCNs are exclusively based on Xerox/Photostat copy of documents, the originals of which are not available with SEBI. Thus, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied. The photostat copies of the documents relied upon by SEBI cannot be and should not be admissible as evidence in the present proceedings;

i. SEBI has passed various orders in which no action has been taken against the investors like Cliford Partners, Solec Company Limited, Seviron Company Limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of "issue estoppel", the Noticee must be granted similar relief and the charges against it be dropped as per the

previous decisions of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues;

j. the Noticee was a director in Vintage FZE till 2007, and has already resigned from it;

k. the decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management;

l. the Noticee was neither a whole-time director nor the managing director of IFCF, and during the time when the Noticee was a director, investment decisions of IFCF were taken collectively by its Board of Directors; and

m. the scheme of subscription to the GDR is not a fraudulent device as the GDR issue was made under the 1993 GDR Scheme governed by the GOI Guidelines and FEMA.

3.4.22. The said Noticee has in his replies *inter alia* relied on the following case laws:

a. UMC Technologies Pvt Ltd. vs. Food Corporation of India (Civil Appeal 3687 of 2020 before the Hon'ble Supreme Court) 2021) 2 SCC 551, to contend that impugned show cause notices does not specify what action SEBI proposes to take;

b. Salomon vs. A. Salomon & Co. Ltd [1897] AC 22 - to state that the facts and circumstances of the case do not warrant lifting of the corporate veil;

n. Smt. J. Yashoda vs. Smt. K. Shobha Rani, (2007) 5 SCC 730 and Hariom Agarwal vs. Prakashchand Malaviya, (2007) 12 SCC 49- to contend that photostat copies of documents cannot be relied upon since the same have not been certified by any of the authorities from which they have been obtained.

o. Dilip S Pendse vs. SEBI (SAT Appeal No.80 of 2009, decided on November 19, 2009) to state that the more serious the offence, the stricter should be the degree of proof.

p. SEBI vs. Kanaiyalal Baldevbhai Patel (CA 2595/2013 before the Hon'ble Supreme Court) (2017) 15 SCC, to contend that the charges under PFUTP Regulations need to be established as per the applicable standards rather than on mere conjectures and surmises; and

q. Hon'ble SAT in Appeal 6/2018, PWC vs. SEBI, to contend that it must be proved by cogent evidence that the appellants are guilty of "inducement".

Noticee No.6 (Mukesh Chauradiya) (Reply dated September 5, 2017, March 22, 2018 and June 21, 2020 enclosing affidavit dated June 20, 2020)

3.4.23. The Noticee in his replies has *inter alia* submitted the following:

a. The Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in Jebel Ali Free Zone Authority, UAE (JAFZA), under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage.

b. In the Shareholder's list as on September 30, 2009/ 2010/ 2011/ 2012/ 2013 in relation to Ramsai Investment Holding Private Limited (later known as Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held more than 99% of the shares, so Arun Panchariya was the beneficial owner of the company.

c. Administrative fine statement passed by the Dubai Financial Services Authority (DFSA) imposing fine of USD 12,000 on Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE.

d. Arun Panchariya was initially the sole director. Subsequently, somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE.

e. The copy of the JAFZA Visa of Arun Panchariya for the period January 12, 2010 to January 11, 2013 shows his designation to be Managing Director.

f. The Noticee has never been the Director or Managing Director of Vintage FZE, as alleged in the SCN, and that he only held the position of Manager.

g. The copies of the Noticee's resident-permits for the period September 14, 2005 to September 9, 2017 show that his designation/position was General Manager and not Director or Managing Director.

h. The Employment Card issued to the Noticee by JAFZA shows that he has always been an employee of Vintage FZE, and not a Director or Managing Director.

i. The decisions to subscribe to the GDRs issued by Nakoda and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it.

j. In respect of the loan agreement signed by the Noticee, it has been stated by the Noticee that he signed the document, on instructions from Arun Panchariya, owing to the conflict of interest that existed as Arun Panchariya was the Director and President of Euram Bank Asia, and he held a stake in Euram Bank Asia.

k. The title "Managing Director" was pre-printed or part of the proforma of the Bank, and it was by oversight continued to be so.

l. The loan availed by Vintage from Euram Bank was for the sole purpose of subscribing to the GDR of Nakoda, and the same was applied for the purposes for which it was obtained.

m. Taking a loan for subscribing to a GDR issue per-se is not a violation of any laws, especially that of UAE and JAFZA, and also is not a violation of any Indian laws.

n. The Noticee was not aware of any arrangement that Arun Panchariya may have had with Nakoda in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction.

o. He did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

p. The Noticee being a nominee director in some of the subsidiaries is true, though the same has nothing to do with the allegations contained in the present matter of GDR issue is concerned.

Noticee No. 9 (EURAM Bank) (Reply dated August 10, 2017, June 16, 2020 and June 22, 2020)

3.4.24. In its replies, it has been submitted by the Noticee that there is not a single finding against Euram as an FII, in either the SCN or otherwise, that it has violated any provision of the SEBI Act or the PFUTP Regulations or FII Regulations.

3.4.25. The Noticee in its submissions has made the following preliminary submissions:

a. the matter pertained to 2010, and the SCN in the matter was issued only in 2017, after a period of almost seven years. It is humbly submitted that, this could not be construed as a reasonable period of time;

b. in the order of the Hon'ble Member dated January 25, 2012 (WTM/PS/ISD/64/01/2012), which was passed over 8 years ago, it was directed that "*SEBI shall expeditiously complete the investigation in the matter, in the interest of justice and thereafter shall immediately take appropriate actions in accordance with law.";* and

c. so, the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches.

3.4.26. The Noticee has made its submissions on merits under three broad heads:

a) Euram Bank has no connection with Arun Panchariya;

b) Euram Bank was not involved in any fraudulent practice in relation to the Indian stock markets; and

c) issues in the present matter have already been dealt with by SEBI in its earlier orders.

3.4.27. With respect to the assertion that there was no connection between EURAM Bank and Arun Panchariya, it has been submitted by the Noticee that —

a. Arun Panchariya was never a director or had any material role in Euram Bank, EURAM's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited;

b. EURAM Bank set up EURAM Bank Asia Limited to explore business opportunities in the Middle East region, which has now been dissolved;

c. EURAM was misled into entering into a joint venture with Arun Panchariya and at that time, due to representations by Arun Panchariya, thought it to be a way for EURAM to connect with private investors in the Middle East.;

d. Ever since EURAM learnt of Arun Panchariya's involvement in the GDR manipulation, it has taken steps to end this JV and it was ultimately dissolved in December 30, 2013;

e. SEBI has relied on the Dubai Financial Services Authority's Administrative Fine Statement, whereby Arun Panchariya was fined USD 12,000 for failure to disclose his directorship and control over various entities to DFSA, to establish Arun Panchariya's connections with and control over Pan Asia Advisors, Vintage FZE and IFCF, but SEBI has failed to note that there is no mention of EURAM in that list of entities in which Arun Panchariya has control or directorship;

f. EURAM Bank Asia Limited has not at any point dealt in or provided any assistance in connection with any transaction related to the Indian securities market, including the transactions that were undertaken by IFCF through Euram as an FII;

3.4.28. With respect to the assertion that Euram Bank was not involved in any fraudulent practice in relation to the Indian stock markets, it has been submitted by the Noticee that —

a. EURAM Bank's dealings as a bank incorporated in Austria were regulated by the Austrian regulators, and as such, do not fall under the jurisdiction of SEBI;

b. EURAM Bank has been extensively investigated by the Austrian Financial Market Supervisory Authority and the Austrian Public Prosecutor for White Collar Crime and Corruption and both have cleared EURAM from all regulatory, civil and criminal charges;

c. The White Collar Crime and Corruption while dealing with a complaint against Euram by one of the GDR issuer companies, alleging fraud in the execution of the pledge agreement therein, has cleared EURAM Bank and its directors of all criminal charges and noted that the structure i.e., of granting Vintage a loan to subscribe to the GDRs of the company, secured by way of pledge on the GDR proceeds, was sound from an economic analysis perspective and there was no wrongdoing attributable to Euram;

d. Euram had simply lent a sum of money to Vintage for the specific purpose of subscribing to the GDR issue., for which Euram sought adequate security and towards that end, obtained Nakoda's pledge, thereby creating a charge on the proceeds from the GDR issuance in favour of Euram;

e. Euram Bank's dealings were entirely on an arm's length basis, and as per banking best practices as followed in Austria, where it was incorporated and operated;

f. Euram exercised due diligence to verify that the persons executing the loan and pledge agreements were appropriately authorized to do so by the board of the GDR issuer company;

g. while registering IFCF as a sub-account, EURAM Bank exercised necessary precaution, and only after conducting a thorough diligence viz., checking all of the prescribed credentials of IFCF and it fulfilling the mandated KYC norms, did it give IFCF registration as its sub-account, which has also been validated by SEBI;

h. Euram had no control over the investment strategies and decisions of IFCF, and it cannot be held responsible for the same;

i. Euram offered a bouquet of financial services, one of which was to offer a terminal for its clients to make investments — the investments themselves were made directly by the clients;

j. Euram cannot be penalized merely for not having invested directly in the Indian markets, and it would be a stretch to say that Euram registered itself as an FII merely to facilitate transactions by IFCF, without any actual finding to that end;

k. Euram was the FII for IFCF only for a limited period of time up till July 19, 2011, after which a transfer was granted by SEBI and Cardinal Capital Partners became the FII for IFCF;

l. Euram Bank extended all support to the investigation and in fact had also reported suspected money laundering by AP to the Austrian Federal Criminal Police Office under the Federal Ministry of the Interior. Cooperation and support was extended by Euram to the investigation process which has helped SEBI establish key elements of the fraudulent scheme; and

m. Euram made no unwarranted gains out of the scheme, it simply lent money to one entity and when that entity failed to repay, Euram proceeded to enforce the security, as such, it had no interest or reason to be part of the fraudulent scheme.

3.4.29. With respect to the assertion that the issues in the present matter have already been dealt with by SEBI in its earlier orders, it has been submitted by the Noticee that —

a. in previous decision dated September 5, 2017, the Hon'ble Whole Time Member, SEBI in the matter of *Alleged Market Manipulation Using GDR Issues by Asahi Infrastructure & Projects Ltd; Avon Corp. Ltd.; CAT Technologies Ltd.; IKF Technologies Ltd.; K Sera Sera Ltd; and Maars Software Intl. Ltd.* (Order No. SEBI/WTM/SR/EFD/64/09/2017), covering essentially the same facts and addressing the same issues as in the present matter, has granted relief to Euram, so similar relief should be granted in the present matter and the charges should be dropped;

b. the Hon'ble Supreme Court has held that issue estoppel is established if the same issue of fact had already been decided in an earlier case;

c. the defense of issue estoppel, not only applies to proceedings before judicial authorities proper but extends to quasi-judicial authorities and administrative authorities; and

d. Therefore, the present authority can afford the benefit of such cardinal principles as issue estoppel to Euram.

3.4.30.The said Noticee has in his replies *inter alia* relied on the following case laws:

a. Samir Arora vs. SEBI, (2005) 59 SCL 96 (SAT), Nirmal Bang Securities (P) La vs. SEBI, (2004) 49 SCL 421 and KSL & Industries Ltd vs. SEBI (SAT Appeal No. 9 of 2003) to contend that where serious malpractices such as insider trading and fraudulent trade practices are concerned, charges must be proved based on cogent materials and in accordance with law.

b. Rakesh Kathotia & Ors. vs SEBI in (SAT Appeal No. 7 of 2016), Sanjay Jethalal Soni vs. SEBI, (SAT Appeal no. 483 of 2018), Subhkam Securities Private Limited vs. SEBI (SAT Appeal no. 73 of 2012) and Khandwala Securities vs. SEBI (SAT Appeal no. 19 of 2012), to state that SEBI is required to exercise its powers within a reasonable period.

c. Hope Plantation Ltd. vs. Taluk Land Board, (1999) 5 SCC 590, Vijayabai vs. Shriram Tukaram, (1999) 1 SCC 693 and Bhanu Kumar Jain vs. Archana Kumar, (2005) 1 SCC 787 to contend that the doctrine of issue estoppel is a key element of res judicata;

3.5. **Relevant Provisions**

3.5.1.Provisions of the SEBI Act —

Section 12 A (a), (b), (c)

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"

3.5.2.Provisions of the SEBI (PFUTP) Regulations, 2003 —

Regulation 3(a), (b), (c) and (d)

3. Prohibition of certain dealings in securities

*"*No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

Regulation 4 (1) and (2)

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2)Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(a) … ;

(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."

4. Issues

I. Whether Nakoda (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No.7) towards the subscription of GDRs issued by Nakoda, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors?

II. Whether the Directors of Nakoda, namely, D.B. Jain (Noticee No.2), B.G. Jain (Noticee No. 3) and S. K. Bhoan (Noticee No. 4) who authorized EURAM Bank to use the GDR proceeds as security in connection with the loan acted as party to the fraudulent scheme, and whether the Directors of Vintage namely, Arun Panchariya (Noticee No.5) and

Mukesh Chauradiya (Noticee No. 6) also acted as party to the fraudulent scheme?

III. Whether the sub-account namely, India Focus Cardinal Fund (Noticee No. 8), and the FII, namely, EURAM Bank (Noticee No. 9) through whom the sub-account traded in the Indian securities market account acted pursuant to the fraudulent scheme?

IV. Whether Nakoda (Noticee No. 1) should be directed to bring back the money?

5. Consideration and findings –

5.1. Before proceeding with the merits of the matter, it would be relevant to deal with the preliminary objections raised by certain Noticees.

Jurisdiction of SEBI challenged as GDR issue was done outside India

5.2. Noticee No. 5, Arun Panchariya has raised this objection and stated that since the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. I note that the said question has already been answered by the Hon'ble Supreme Court of India in its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India vs. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013, (2008) 13 SCC 369***. The case came before the Hon'ble Supreme Court pursuant to an appeal by SEBI against the order dated September 30, 2013, passed by the Hon'ble Securities Appellate Tribunal ("**SAT**"), Mumbai, in Appeal No.126 of 2013. The Hon'ble SAT by way of its above mentioned order had set aside SEBI's Order dated June 20, 2013, whereby SEBI had debarred Pan Asia Advisors and Arun Panchariya for a period of ten years from dealing in securities in view of their roles in the issuance of GDRs by six companies. In this background, the Hon'ble Supreme Court through the said judgement has clarified the scope of SEBI's territorial jurisdiction, especially with respect to the issuance of GDRs by companies. The Hon'ble Supreme Court noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the

Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of ***GVK Industries Officer vs. Income Tax Officer (2011) 4 SCC 36***, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in India or related to India and Indians in terms of impact, effect of consequence*". The court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of the above-mentioned reasons, the Hon'ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors.

Proceedings not maintainable owing to delay

5.3. With respect to the submission of Noticees, including EURAM Bank, that there has been a delay in the proceedings, it is seen from the record that documents *inter-alia* in the captioned matter were obtained from the Financial Market Authority, Austria in 2016. Details were also obtained from entities like BNY Mellon across jurisdictions. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of Nakoda and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated July 28, 2017 was issued to the Noticees. Further, a Supplementary Show-Cause Notice dated August 26, 2019 was issued to Noticee No. 1. Also, as many of the Noticees were based out of India, the service of the said Show-Cause Notices involved processes which required more time, especially as some of the Noticees were not traceable. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.

5.4. In this connection, it is worth mentioning that in another GDR matter, namely ***Jindal Cotex Limited and Ors Vs. SEBI*** (Date of Decision: February 5, 2020, SAT Appeal No. 376 of 2019), the Hon'ble SAT held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the entire manipulative GDR issue and appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

5.5. Again, in the matter of ***G.V. Films Ltd. Vs. SEBI*** (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's as follows:

> *"Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time."*
>
> (Underline added)

5.6. In view of the above, I do not accept that the delay in the matter would vitiate the proceedings.

Specificity of Violations Alleged in the SCN:

5.7. The Noticees have also submitted that the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 11 years and the Noticees are completely in the dark about what exactly SEBI has in mind. In the instant proceedings, the SCN has been issued for breach of provisions of securities law, which confer discretion upon SEBI to take such measures as it thinks fit in the interest of investors and securities market. In this regard, it is further noted that the SCN issued to the Noticees has clearly spelt out the provisions under which the desired preventive/remedial measures, etc. if found necessary, would be issued and also clearly indicate the specific nature of violations that have been alleged against it in terms of different provisions of the PFUTP Regulations, 2003. Therefore, it is observed that specific allegations

were unambiguously conveyed to the Noticees and further, opportunity was given to the Noticees for tendering their response thereto. It is, therefore, incumbent on the part of the Noticees to explain their position with support of relevant evidence in response to various allegations made against it in the SCN. Only after examining and considering the explanation offered by the Noticees to the allegations levelled under the SCN, it would be possible for the Competent Authority to determine as to what directions are required to be issued against them, depending on its role in the alleged violations and the impact of the alleged violations on the securities markets. It is to be noted here that the provision of Sections 11(1), 11(4) and 11B of the SEBI Act vest in the quasi–judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be crystallized and formulated before the adjudication of issues involved.

Investigation Report/ Documents Not Provided by SEBI:

5.8. The Noticees have submitted that a copy of the Investigation Report/ other documents on the basis of which the SCN was issued, was not provided to them despite the request made by them. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees. Further, on a comparison of the SCN and the Investigation Report, it is observed that the SCN has largely reproduced the contents of the Investigation Report.

5.9. In this regard, it would be appropriate to refer to the *Order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI (Appeal No. 28 of 2020)* wherein, it was observed that: "*The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed*

procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon." In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable.

5.10. Accordingly, I now proceed to deal with the other issues in the matter.

Issue I- Whether Nakoda had devised a scheme with Vintage to defraud the investors?

5.11. The SCN has alleged that the issuance of GDRs by Nakoda was fraudulent as the Company had entered into a Pledge Agreement with EURAM Bank for a loan that had been availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors.

5.12. No reply has been received from the subscriber of the GDRs i.e., Vintage.

5.13. In this regard, I note that Nakoda vide letter dated August 05, 2015 submitted the list of subscribers to its GDRs to SEBI, which is summarized as follows:

Table - 5

SI. No.	Name of the subscriber	Country of subscriber	Amount in USD
1	Creative Stone Holdings Ltd.	Hong Kong	37,58,750
2	Sholari Investment Ltd	Singapore	36,37,500
3	Uranus Global Ltd	Singapore	33,95,000
4	Scheme Capital Ltd	Hong Kong	31,52,500
5	ALTG Holdings Ltd	Hong Kong	33,95,000
6	Santis Family holdings Inc	UAE	35,16,250
7	Icon Holdings Ltd	UAE	33,95,000
		TOTAL	2,42,50,000

5.14. However, it was observed from the escrow account details obtained from EURAM bank that, on November 25, 2010, Nakoda had received USD 24.25 million from one entity viz., *i.e.,* Vintage and not from the above list of seven entities. Further the total amount of USD 24.25 million was received as a lump sum amount in a single transaction. In this regard, Nakoda and its directors have

submitted that they were informed of the list of subscribers by Prospect Capital Ltd., the Lead Manager to the issue. Even during investigation, the Noticee had stated the same. However, the Investigation Report states that the Company had not produced any evidence that the list of subscribers to GDRs was received from the Lead Manager. Now, before me, the Noticees have submitted a purported letter received from the Lead Manager. I note that the letter is unsigned, which makes the veracity of the same doubtful. Moreover, as discussed above, Nakoda received the entire subscription amount from only one entity *i.e.* Vintage. Nakoda also executed the Pledge Agreement, which refers to the Loan Agreement signed by Vintage for subscription of GDRs. Hence it is clear that that there was only one subscriber to the issue, and that Nakoda and its directors were aware of the same.

5.15. So, to consider the allegation made in the SCN, it is relevant to place a chronology of the events associated with the GDR issue:-

a. ***September 23, 2010***– The Board of Directors of Nakoda passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company's GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

"...RESOLVED FURTHER THAT ANY ONE of Shri BG Jain and Shri DB Jain, Directors of the Company, be and are hereby severally and singly authorized to sign, execute, any application, agreement, escrow agreement, documents, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required…"

" RESOLVED FURTHER THAT 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."

b. ***November 12, 2010*** – Vintage entered into a Loan Agreement with EURAM Bank dated November 12, 2010 (signed by Mr. Mukesh Chauradiya as Managing Director on behalf of Vintage on November 24, 2010) for availing

a loan facility of USD 24.25 million with respect to the subscription of GDRs issued by Nakoda.

c. ***November 12, 2010***– Nakoda entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank. The GDR proceeds became the security for all the obligations of Vintage under the loan agreement.

d. ***November 25, 2010*** – In the Escrow Account maintained by Nakoda with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 24.25 million was made. The said amount had been deposited by Vintage for subscription of 100% of the GDR issue.

e. ***November 17, 2011*** – EURAM Bank vide its letter dated November 17, 2011 informed to Nakoda that:

"We refer to our recent discussion and inform you that the interest rate on deposit in the amount of the current outstanding facility amount of the Loan Agreement will be changed to 0.25% p.a. (interest calculation method ACT/360) effective with 25th November 2011.

All other terms and conditions of the original ***pledge agreement dated 12th November 2010*** *will remain unchanged".* (emphasis added)

This letter had been acknowledged by Nakoda, notarized at Surat and sent to EURAM bank on December 27, 2011.

f. ***August 09, 2012 to August 14, 2012*** – on August 9, 2012 Nakoda requested a transfer of interest earned, *i.e.,* USD 2,75,000 from Euram Bank. On the same day, one Julia Batliner (Julia.Batliner@eurambank.coni) replied to Rashmi Bhatt (bhattrt@yahoo.co.in) and BG Jain (bgjain@nakoda.co.in) of Nakoda, stating:

> *"in respect of your transfer request received today we have to inform you that only an amount of USD 218,581— can be transferred due to the fact that all accounts held under customer number 580034 are* ***pledged as security for loan K121110-002 Alta Vista International FZE according Pledge Agreement***

dated 12 November 2010*. If you want to transfer USD 218,581— please send new transfer request and confirm with your codeword."*. (emphasis added)

g. ***August 20, 2012*** – D.B. Jain requested transfer of USD 2,18,581.00 (transfer effected on August 23, 2012) to Nakoda's bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai in India. Thus, D.B. Jain and B.G. Jain were aware of the fact that all accounts held under customer number 580034 were pledged as security for loan to Vintage (now known as Alta Vista International FZE) according to Pledge Agreement dated November 12, 2010.

h. ***September 17, 2012*** – A letter was issued by EURAM Bank informing Nakoda that the loan of Vintage under loan agreement no K121110-002 was due on May 25, 2012 and that despite multiple demands for repayment, the outstanding loan amount of USD 24.25 million plus interest amounting to USD 72,413.20 had not been repaid. EURAM bank informed that it would therefore realize the balances of time deposit account held under customer number 580034 (held in the name of Nakoda), as per the pledge agreement dated November 12, 2010 and amendment to pledge agreement dated November 17, 2011. EURAM bank further advised Nakoda to pay the outstanding debt of USD 24.32 million and assume the position as pledgee regarding 19,85,500 GDRs of Nakoda, which were held as additional security by EURAM Bank.

i. ***October 18, 2012*** – EURAM Bank transferred USD 24.32 million from the account of Nakoda to Vintage with remarks *"Realization of pledge in respect of the loan K121110-002"*.

j. ***October 19, 2012*** – EURAM Bank informed Nakoda that it had proceeded to realize the balances of pledged deposit account held under the customer number 580034 (Nakoda) in conformity with the pledge agreement dated November 12, 2010 for a total amount of USD 24.32 million, in order to repay the outstanding loan of Vintage.

5.16. The above chronology brings out that there was a clear understanding between Nakoda and Vintage (which later became Alta Vista International FZE) to bring

about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 24.25 million on November 12, 2011. It is pertinent to note that the loan as per the said Loan Agreement was granted to Vintage on the pledge of the following assets:

> *"....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 deemed by the Bank:*
> *1)Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
> *2)Pledge of the account no. 580034 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."*

5.17. It is stated that the separate pledge agreement as mentioned above, which forms an integral part of the Loan Agreement, is the Pledge Agreement entered between Nakoda and EURAM Bank. The Pledge Agreement provided that the purpose of the pledge was "…*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*…" So, the purpose of the Pledge Agreement is to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provides the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances are:

> "*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 Pledge 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, as 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."

5.18. Thus, from a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, it is quite clear that the pledging of the proceeds of the GDR issue by way of a Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that Nakoda was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 24.25 million was received from Vintage on November 25, 2010 in the Escrow Account maintained by Nakoda in EURAM Bank for the GDR proceeds. As noted above, on October 18, 2012, EURAM Bank transferred USD 24.32 million from the account of Nakoda to M/s Alta Vista International FZE with remarks *"Realization of pledge in respect of the loan K121110-002"*. It was observed from an examination of the annual report of Nakoda for Financial Year (FY) 2014-15 that Nakoda had written off USD 24.32 million (USD24.25 million + accrued interest of USD 0.07 million) on account of loan default by Vintage for which it had provided the pledge. However, Nakoda's disclosures made on BSE during FY 2011-15 were examined and it was observed that Nakoda did not disclose the write off details to its investors.

5.19. Nakoda and its directors D.B Jain and B.G. Jain have stated that the pledge agreement has been forged; I am, however, not able to accept their contention for the following reasons:

a. The notarized copy of the amendment dated November 17, 2011 to the pledge agreement refers to the pledge agreement dated November 12, 2011. In this regard, it has been submitted that Noticee No. 2 had signed the said

amendment letter thinking that the same was required in continuation of his witnessing the agreement signed on October 14, 2010 by EURAM Bank AG. However, the date of the pledge agreement is clearly mentioned therein. Further, the subject of the letter was *"Re: Client number 580034, Amendment No.I, To Pledge Agreement dated 12th November 2010"*. It cannot be accepted that the Noticees could have been so callous as to not make any enquiries regarding the contents of the same.

b. The emails dated August 13, 2012 and August 9, 2012 (which was also marked to B.G. Jain) from Euram Bank to Nakoda clearly mention that all accounts under customer number 580034 (Nakoda) were pledged as security for loan taken by Vintage according to Pledge Agreement dated November 12, 2011. The bank informed Nakoda that due to the pledge, only an amount of USD 2,18,581.00 could be transferred. Rather than objecting to the same, on August 20, 2012, D.B. Jain requested transfer of USD 2,18,581.00 (transfer effected on August 23, 2012) to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai.

5.20. Thus, D.B. Jain and B.G. Jain were aware of the fact that all accounts held under customer number 580034 were pledged as security for loan to Vintage (now known as Alta Vista International FZE) according to Pledge Agreement dated November 12, 2010.

5.21. The above facts show that the entire consideration received from Vintage, for the GDRs subscribed by it, was pledged and ultimately used for repayment of the loan taken by Vintage to subscribe to the GDR. Post cancellation of GDRs/ conversion into shares, IFCF converted 14,500 GDRs and sold 4,35,000 shares of Nakoda for INR 56,04,582.29 (pre-termination of GDR scheme) in the Indian securities market. Considering the fact that Vintage FZE was the sole subscriber of GDRs and it defaulted on the loan repayment, it was concluded that shares sold by IFCF were also issued without consideration.

5.22. Thus, I find that Nakoda, in connivance with Vintage, devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration, at

the cost of shareholders/ investors of Nakoda. Accordingly, I find that the allegation that Nakoda and Vintage have violated Section 12A(a), (b) and (c) of SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003, stands established.

5.23. Additionally, it has been alleged that Nakoda had made wrong disclosures to the stock exchanges regarding the investment in GDRs by foreign investors. As already brought out, the Loan Agreement had reference to the Pledge Agreement entered into between Nakoda and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage for the purpose of subscribing to the GDRs of Nakoda. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock Exchanges. However, the Company reported to the stock exchange on November 26, 2010 that "…*the GDR Committee of Board of Directors of the Company at their meeting held on November 26, 2010, have allotted 6,00,00,000 Equity shares of Rs. 5/- each at a price of Rs. 18/- per share underlying 2,000,000 GDRs* ..." without disclosing the pledge/loan arrangement that it had with regard to the subscription of its GDR issue. Such a disclosure may have led the investors to believe that the said GDR issue was genuinely subscribed. Therefore, in my view, such publication/disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of Nakoda. Accordingly, I find that Nakoda has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

Issue II. Whether the Directors of Nakoda and Vintage can be held liable for the fraudulent scheme?

A. Directors of Nakoda

D.B. Jain (Noticee No.2), B.G. Jain (Noticee No.3) and S.K. Bhoan (Noticee No.4).

5.24. The details regarding the Noticee directors and their attendance in the board meetings of the Company, as seen from the Annual Report for the year 2010, are provided hereunder:

Table - 6

Name of Directors	Category of Directors	No. of Board Meetings attended during 2010	Attended last AGM
B. G. Jain	Chairman & Managing Director	7	Yes
D.B. Jain	Joint Managing Director	7	Yes
S. K. Bhoan	Independent, Non-Executive	5	No

5.25. During the investigation period, as seen from the Annual Report, B.G. Jain (Noticee No.3) was the Chairman & Managing Director (CMD) and D.B. Jain (Noticee No.2) was the Joint Managing Director (JMD). By way of the Board Resolution dated September 23, 2010, Noticee Nos. 2 and 3 were authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. By way of the said Board Resolution, the above-named directors were also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of the Company.

5.26. It is further noted that the Pledge Agreement entered into by Nakoda with EURAM Bank, whereby a deposit account of Nakoda maintained with EURAM Bank having USD 24.25 million was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by D.B. Jain. The letter dated November 17, 2011 from EURAM Bank regarding the change in interest rate which clearly mentions the Pledge Agreement dated November 12, 2011 also had been signed by D.B. Jain. The email dated August 9, 2012 from Euram Bank which states that all the accounts of Nakoda are pledged as security for the loan taken by Vintage was marked to B.G. Jain.

5.27. Both B.G. Jain (Noticee No.3) and D.B. Jain (Noticee No.2) have submitted that the Pledge Agreement was forged. However, as noted above, in several correspondence subsequent to the same, the Pledge Agreement has been mentioned. In fact, when vide email dated August 9, 2012 the Company was informed that all its accounts were pledged as security for loan given to Vintage,

they did not dispute the same. Rather they requested Euram to transfer the exact amount of USD 2,18,581 to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai (as discussed in para 5.19(b) above), which Euram had stated was available after accounting for the principal amount and interest due from Vintage. The Noticees did not raise any query regarding the same.

5.28. The Noticees have stated that they challenged the pledge agreement and had written to Euram Bank regarding the same from September 13, 2012 onwards. However, from the above paras, I note that Nakoda and its directors were aware of the pledge agreement much prior to that. Further, not only were they aware of the same, their conduct of requesting Euram to transfer the available amount of USD 2,18,581 to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort, Mumbai (as discussed in para 5.19(b) above), attests to their acceptance of the existence of the pledge agreement. Moreover, the Noticees have not submitted details of any complaints made to any law enforcement agency, which further shows their involvement, especially given that a substantial amount of USD 24.32 million was at stake.

5.29. Further, as noted above, B.G. Jain was the CMD of the Company and D.B. Jain was the JMD. Moreover, from the Annual Report for 2010, 2011, 2012, 2013 (pages 6/7) it is noted that they were part of the Management Committee which was constituted to carry out the day to day activities of the Company. D.B. Jain was also a member of the Audit Committee.

5.30. At the time of the personal hearing, Noticee Nos. 2 and 3 were asked why the amount raised by the GDR issue in November 2010 was kept with Euram Bank till May 2012 without being used. The two Noticees were also asked to provide the rationale for pledging the *proceeds* of the issue as security for a loan. In this regard, it was submitted that the GDRs were issued with the objective of funding a portion of its total capital expense towards setting up of new plants/ augmentation of existing production capacity. The Noticee has also stated that *at the point when the Company and the Board of Directors were authorized to raise money through issue of GDR, there was a continuing expansion project of Noticee No. 01 which was financed completely through term loans from banks, financial institutions and internal accruals*

of the Company, and so it was decided that the proceeds of the GDR issue would be used for a future project. I note from the submissions of the Noticees, that even at the time of authorizing the GDR issue, the Company had no plans of using the proceeds. Despite the same, the Board Resolution authorized pledging of the liquid asset *i.e. proceeds of the GDR issue* to secure a loan. It is not clear why the Company would need to raise further loans when the directors have stated that they had sufficient finances and did not even need to utilize the GDR proceeds itself. I am of the view that the same points to mala fide intent given the whole scheme of manipulation.

5.31. Noticee Nos. 2 and 3 have also submitted that they could not have pledged the proceeds on November 12, 2010 as the amount was received in the account only on November 25, 2010. However, it is evident that since Euram, Vintage, Nakoda and the Noticee directors were all involved in the scheme, all parties were assured that the amount would be received in the relevant account.

5.32. Further, S.K. Bhoan (Noticee No.4) has stated that he was an Independent, Non-Executive Director. The Noticee has submitted that he was not in charge of the day to day management of the Company and that the Board Resolution authorized pledging of the GDR proceeds as security for a loan availed by Nakoda itself and not any third party. During the personal hearing granted to Noticee No.4, he was asked whether he had raised any query or sought any clarifications regarding the GDR proceeds. In his post hearing written submissions dated August 2, 2021, Noticee No.4 has stated that he was informed that the GDR proceeds would be used in projects to be implemented after 2012. The Noticee has again reiterated that he was not involved in the day to day affairs of the Company. However, from the Annual report of the Company for the years 2010-2013, it is noted that S.K. Bhoan was the part of the Management Committee till he resigned on December 20, 2013, which, as noted above, was constituted to carry out the day to day activities of the Company. Further, the Noticee in his own submissions has stated that he was a director in Nakoda from 2007 to 2013.

5.33. It must be emphasized that the role of independent directors is to work as a watchdog, help in managing risk and safeguard the interests of minority shareholders. Though S.K. Bhoan has denied being in charge of day to day affairs of the Company, it is clear from the Annual Reports that apart from D.B. Jain and B.G. Jain, it was only S.K. Bhoan who was part of the Management Committee, which, as noted above, was constituted to carry out the day to day activities of the Company. Hence, S.K. Bhoan cannot contend that he was not in-charge of the day to day affairs of the Company. In such a scenario, I find that the submissions of S.K. Bhoan are not acceptable and he cannot plead ignorance. In this context, I also note that in another GDR case, namely, *Mohandas Shenoy Adige Vs. SEBI* (Appeal No. 511 of 2020, Order dated July 28, 2021), the Hon'ble SAT noted that the Appellant was a director in the company for several years and was the member of the audit committee which handled/reviewed the financial matters of the Company during the period when the GDR proceeds vanished from the accounts of the Company. In view of the same, the Tribunal held that *"Taking into consideration all these facts, in our view it would be naive to conclude that the appellant Mohandas was only an independent director and had innocently consented to the Board decision authorising Mr. P.V.R. Murthy to deal with the GDR including loan if any."* Similarly, in the instant matter too, I am unable to accept the contention of S.K. Bhoan that he should be exonerated.

5.34. The Noticee directors have also cited matters such as *Adi Cooper & Anr. Vs. SEBI* (SAT Appeal No. 124 of 2019) to contend that the resolution passed by the Company did not authorize Euram Bank to utilize the GDR proceeds as security in connection with a loan given to third party. However, the Hon'ble Supreme Court, vide order dated September 21, 2021, has reversed the order of the Hon'le SAT in *Adi Cooper Vs. SEBI* and held that such a resolution facilitated the transaction with Vintage, and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through the stock exchange(s). Accordingly, the Hon'ble Supreme Court upheld the view taken by SEBI in the matter. Further, vide an order of the same date, *i.e.,* September 21, 2021, the Hon'ble Supreme Court also set aside the order dated

November 16, 2020 of the Hon'ble Tribunal in *Adesh Jain Vs. SEBI,* which has also been cited in this regard by the Noticees. The Hon'ble Supreme Court *inter alia* observed that the Tribunal's order in *Adesh Jain Vs. SEBI* had relied upon Tribunal's order in *Adi Cooper Vs. SEBI.* Since the latter has been reversed, the Hon'ble Supreme Court relegated the parties before the Hon'ble SAT for reconsideration of the appeal afresh.

5.35. I note that another argument put forth by the directors is that because of the declaration of moratorium under Section 14 of the IBC on proceedings against Nakoda, the proceedings initiated against them in their capacity as directors can also not be continued. I do not find any merit in this argument. The moratorium/ prohibition under IBC is on the pending suits or proceedings which are mainly in the nature of recovery of money from the corporate debtor which may further adversary affect its financial position in the resolution process. Further, the moratorium is only in relation to the Corporate Debtor (*i.e.* Nakoda here) and not in respect of the directors/management of the Corporate Debtor.

5.36. In view of the above, I am of the view that the directors of the Company, namely D.B. Jain, (Noticee No.2), B.G. Jain (Noticee No.3) and S.K. Bhoan (Noticee No.4) have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

B. Directors of Vintage
Arun Panchariya (Noticee No.5)

It has been stated in the SCN that Arun Panchariya (AP) was connected to various entities involved in the GDR issue. Details of the same are given below:

Table -7

Sl. No.	Name of entity	Connection/association of AP with entity
1	Vintage FZE (now known as Alta Vista International FZE)	AP was Managing Director as on June 06, 2007 as well as beneficial owner.

Sl. No.	Name of entity	Connection/association of AP with entity
2	India Focus Cardinal Fund (IFCF)	AP was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner.
3	EURAM Bank, Austria	AP was connected to Pan Asia Advisors Ltd. Pan Asia Advisors Ltd. had a joint venture with EURAM Bank, which was known by the name of EURAM Bank Asia Limited.
4	Euram Bank Asia Limited	AP was director and president (resigned on September 22, 2011)
5	Mr. Mukesh Chauradiya	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and director.

6.1. From the above, it was noted that IFCF, EURAM Bank, Vintage and Mukesh Chauradiya were connected to each other and Arun Panchariya was holding ownership in Vintage, IFCF, Euram Bank Asia Limited.

6.2. Arun Panchariya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the primary grounds of defense taken by the said Noticee in respect of the allegations made in the SCN –

a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;

b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;

c. the Noticee was a director in Vintage FZE only till 2007; and

d. decisions of Vintage FZE including loan default was taken in the circumstances in the best interest of the Company by its management.

6.3. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. I note that as per the KYC documents of Vintage submitted with EURAM Bank, Arun Panchariya was the beneficial owner and Managing Director of Vintage FZE as on June 6, 2007. With respect to the submission of Arun Panchariya that he was a director in Vintage only till 2007, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya (by way of which, a fine of USD 12,000 was imposed on him), that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. Further, from the Annexure to Form 20B filed by Ramsai Investment Holding Private Limited, I note that the list of shareholders of Ramsai Investment Holding Private Limited for the period 2009-2013, shows that Vintage held more than 99% shares of the said company through its director, Arun Panchariya. Hence, Arun Panchariya was named as the director of Vintage till atleast 2013.

6.4. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done, Arun Panchariya had a controlling position in Vintage. Thus, I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme.

6.5. In addition to the above, I note that Arun Panchariya and his connected entities have been found in several other matters pertaining to GDR Issues of listed Indian Companies, including Nakoda. Arun Panchariya was central to and instrumental in the fraud perpetrated on the investors in the Indian securities market. Arun Panchariya had influence at several stages of GDRs i.e. he was connected to Euram Bank, which was the FII and also gave the loan for GDR subscription on pledge of the GDR proceeds; he was connected to Vintage, which was the sole subscriber of the GDR issue; he was also connected to IFCF which sold converted shares in the Indian securities market.

6.6. Accordingly, I find that Arun Panchariya has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Mukesh Chauradiya

6.7. It has been alleged in the SCN that Mukesh Chauradiya served as Managing Director and director of Vintage.

6.8. Mukesh Chauradiya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the important grounds of defense taken by the said Noticee in respect of the allegations made in the SCN –

a. he has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;

b. the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee had no role to play in it; and

c. the Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

6.9. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Mukesh Chauradiya on behalf of Vintage, and in the space for providing the "Title" of the signatory, Managing Director has been mentioned. In addition to the above, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mention his occupation as General Manager.

6.10. It is seen from the above that the Noticee has represented himself to be the Managing Director/ General Manager. Having thus represented himself, the Noticee cannot seek relief from the consequences of such representation by

asserting that he was merely an employee. The circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. In this regard I note that a similar contention had been raised by Mukesh Chauradiya before the Hon'ble SAT in ***Mukesh Chauradiya vs. SEBI*** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

> *"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.*

6.11. As held by the Hon'ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in which he could put his signature in the Loan Agreement with EURAM Bank under the

designation of Managing Director. From the facts of the case, it is apparent that the Mukesh Chauradiya was holding a position by way of which he could execute binding agreements on behalf of Vintage. Accordingly, I am of the opinion that Mukesh Chauradiya held key position in Vintage and cannot plead ignorance of the scheme of manipulation. In view of the same, I find that Mukesh Chauradiya in has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue – III: Whether India Focus Cardinal Fund (Noticee No. 8) and the FII, EURAM Bank (Noticee No. 9) have acted in pursuance of the fraudulent scheme?

6.12. It has been alleged in the SCN that India Focus Cardinal Fund, by selling the equity shares of Nakoda in the Indian Securities Market acted as conduit to Arun Panchariya, which were acquired by Vintage free of cost to the extent of USD 24.25 million through the fraudulent scheme.

6.13. It has been further alleged in the SCN that EURAM Bank got registered as FII to facilitate in India Focus Cardinal Fund becoming its sub account and sell the converted shares of Nakoda in the Indian securities market.

6.14. In this regard, the liability of the above-named Noticees is being taken up for consideration in two parts: a) role of India Focus Cardinal Fund; and b) role of EURAM Bank.

India Focus Cardinal Fund

6.15. In response to the allegations made in the SCN, India Focus Cardinal Fund has not filed any replies/submissions to SEBI.

6.16. India Focus Cardinal Fund received 4,35,000 equity shares of Nakoda upon conversion of 14,500 GDRs. The equity shares received by India Focus Cardinal Fund were then sold by it in the Indian capital market between April 25, 2011 to May 02, 2011for Rs.56,04,582.29.

6.17. In this regard, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority (DFSA), as discussed earlier, against Arun Panchariya, in which DFSA had imposed a fine of USD 12,000 for non-disclosure of certain directorships that he was holding, while applying for

authorization as a Licensed Director of a Firm in Dubai International Financial Centre(DIFC). Such information furnished by him, which was false, misleading or deceptive, included *inter alia,* the failure to disclose his directorship/ controlling position in IFCF. This has not been refuted by the Noticee. Arun Panchariya in his submissions before me has also stated that Cardinal Capital Partners, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund. I also note that Arun Panchariya was the Investment Officer (100% shareholder) and beneficial owner of IFCF. From the above, I find that that India Focus Cardinal Fund was controlled by Arun Panchariya.

6.18. In the present proceedings, the allegation is that India Focus Cardinal Fund, sold the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Nakoda. It has also been brought out above that India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) is owned and controlled by Arun Panchariya. In view of the same, I am convinced that India Focus Cardinal Fund worked as a conduit for Arun Panchariya by acting as a vehicle to sell the illegally acquired shares of Nakoda in the Indian securities market. Accordingly, I find that India Focus Cardinal Fund has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

EURAM Bank (in its capacity as the FII for IFCF):

6.19. EURAM Bank in its submissions/replies to SEBI has refuted the allegations made in the SCN. The essential grounds of defense taken by the said Noticee in respect of the allegations made in the SCN are provided hereunder –

a. in previous decisions, covering essentially the same facts and addressing the same issues as in the present matter, the Whole Time Member, SEBI has granted relief to EURAM Bank, so similar relief should be granted in the present matter and the charges should be dropped on the basis of issue estoppel/cause of action estoppel;

b. Euram Bank's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited and he had no material role in EURAM Bank; and

c. Euram Bank offered a bouquet of financial services, including providing a terminal to sub-accounts to make investments — the investments themselves were made directly by the clients.

6.20. The Noticee has specifically placed reliance on *Hope Plantation Ltd. vs. Taluk Land Board, (1999) 5 SCC 590* and *Vijayabai and Others vs. Shriram Tukaram, and Others (1999) 1 SCC 693 and Bhanu Kumar Jain vs. Archana Kumar, (2005) 1 SCC 787* to assert issue estoppel / cause of action estoppel. In respect of the assertion made by the Noticee, it would be relevant to examine the principle as laid down in the above-mentioned cases. The specific references made by the Noticee are as follows:

Hope Planation Ltd. –

" When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operated in subsequent suits between the same parties in which the same issue arises."

"*Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."*

Vijayabai –

" It would be impermissible to permit any party to raise an issue, inter se, where such an issue under the very Act has been decided in an early proceeding. Even if res judicata in its strict sense

may not apply but its principle would be applicable. Parties who are disputing now, if they were parties in an early proceeding under this very Act raising the same issue, would be stopped from raising such an issue both on the principle of estoppel and constructive res judicata."

Bhanu Kumar Jain –

Reliance has been placed by the Noticee on the undermentioned English cases, which were cited by the Hon'ble Supreme Court in the above-mentioned matter.

" In Thoday vs. Thoday, 1964 (1) All ER 341, Lord Diplock held: "cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does: he is estopped per rem judicatam."

The said dicta was followed in Barber vs. Staffordshire Country Council, (1996) 2 All ER 748. *A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion."*

6.21. At this juncture, I find it relevant to upfront clarify that the Order referred to by the Noticee, wherein EURAM Bank has been discharged of the allegations made in the SCN was purely based on the facts and circumstances as available on record, in that case. However, this does not entitle it to advance the ground of issue estoppel/ cause of action estoppel in relation to the present proceedings, in view of the difference in the factual matrix. In this regard, reliance is placed on the case of ***Gopal Prasad Sinha vs. State of Bihar (1970) 2 SCC*** **905**, whereby the Supreme Court held that the fundamental principle underlying the rule of issue estoppel is that the same issues of fact and law should have been determined in the prior litigation. So, for the invocation of the principle of issue estoppel, the issues of fact and law in the present matter, as they relate to the Noticee, should be the same as that determined in the Order referred to by the

Noticee. It is seen that the SCN, from which the present proceedings emerge, has alleged that EURAM Bank facilitated India Focus Cardinal Fund to become its sub account and sell the converted shares of Nakoda in the Indian securities market. As regards SEBI's Order of September 05, 2017 bearing number SEBI/WTM/SR/EFD/64/09/ 2017, it is seen that the allegation in the said matters pertained to the facilitation of EURAM Bank for the sale of converted equity shares of Asahi Infrastructure & Projects Limited, Avon Corporation Limited, CAT Technologies Limited, IKF Technologies Limited, K Sera Sera Limited and Maars Software International Limited. So, it is evident that the facts in issue in the matters decided earlier were distinct from the facts in issue in the present matter. Thus, the principle of issue estoppel is inapplicable in the present proceedings. Similarly, cause of action estoppel will also not lie.

6.22. Coming to the merits of the allegation made against EURAM Bank, which is that it facilitated India Focus Cardinal Fund to become its sub account and sell the converted shares of Nakoda in the Indian securities market. EURAM Bank was registered as FII in India during the period November 21, 2008 to November 20, 2011. IFCF was a Sub–account of EURAM Bank during the period December 12, 2008 to July 19, 2011. It has already been established in the previous part of this order that the issuance of GDRs to Vintage (an Arun Panchariya related entity) was illegal. It has also been established that India Focus Cardinal Fund was controlled and managed by Arun Panchariya. It is relevant, in this connection, to note that Arun Panchariya was a director in EURAM Bank Asia Ltd. (incorporated in Dubai), which was a joint venture between EURAM Bank (incorporated in Austria) and Pan Asia Advisors Ltd., admittedly another Arun Panchariya entity. It has been stated by EURAM Bank that "*AP was never the director or had any material role in Euram Bank*". However, I find that in the Pledge Agreement signed between Nakoda and EURAM Bank, a stamp mark reads, "*Signature verified Dir. AP*". It is quite clear that the arm's length relationship between EURAM Bank Asia Ltd. and EURAM Bank, as asserted by the Noticee, was not existing or maintained in fact. There was certainly a relationship between EURAM Bank and Arun Panchariya which existed beyond EURAM Bank Asia Ltd. Further, it has been brought out that

during the relevant period the sub-account availing the services of EURAM Bank as an FII again happened to be an Arun Panchariya entity. In this regard, EURAM Bank has contended that they provided a bouquet of services, which included the sub-account facility to clients, and that it was simply a business decision. I am not convinced with this defense. It is a matter of record that as an FII, it did not make any direct investments in the Indian securities market, but was using its FII status to provide sub-account facilities to its clients to access the Indian securities market. As noted above, IFCF (which was registered as a sub account of FII Euram Bank) converted 14,500 GDRs and sold 4,35,000 shares of Nakoda for Rs.56,04,582.29 in the Indian securities market. Thus, it cannot be a simple business decision or coincidence that the entity availing the sub-account facility happens to be an entity managed and controlled by Arun Panchariya, at a time when EURAM Bank was in a joint venture with him and he was signing/ verifying the agreements that were being entered into by EURAM Bank. There is a clear and evident nexus between EURAM Bank and Arun Panchariya. Thus, I find that EURAM Bank in its capacity as an FII, was acting as a conduit of Arun Panchariya and facilitated India Focus Cardinal Fund to become its sub-account and sell the converted shares of Nakoda in the Indian securities market. Accordingly, I find that EURAM Bank (in its capacity as the FII for IFCF) has violated Section 12A(a), (b), and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

IV. Whether Nakoda (Noticee No. 1) should be directed to bring back the money?

6.23. As already stated, a Supplementary Show-cause Notice dated August 26, 2019 was issued to Noticee No. 1 with respect to bringing the money back to the extent of the loan default. It has been brought out in the previous part of this Order that EURAM Bank had utilized the cash, amounting to USD 24,322,413.20 (USD 24.25 million + USD 72,413.20 interest) lying in Nakoda's bank account for the realization of the outstanding loan amount of Vintage. I note that the amount was due to the Company, as it was the entire GDR

proceeds. As noted above, that GDRs to the extent of USD 24.25 million were issued by Nakoda to Vintage without any consideration and thus, has caused loss to the shareholders to the tune of USD 24,322,413.20 (USD 24.25 million + USD 72,413.20 interest) Accordingly, I find that Nakoda has to bring back the amount of USD 24,322,413.20 million to the Company.

6.24. Further, I note that in its letter dated July 22, 2021, Noticee No.1 (Nakoda) has submitted that vide order dated July 12, 2021, passed by the Hon'ble NCLT, Ahmedabad, Corporate Insolvency Resolution Process has been initiated against it. Vide the said order of the Hon'ble NCLT, an IRP has also been appointed with respect to Noticee No.1 and a moratorium has been declared in terms of Section 14 of the IBC prohibiting *inter alia* the continuation of pending suits or proceedings against the corporate debtor (Noticee no.1) from the insolvency commencement date. I note that the moratorium/ prohibition under IBC is on the pending suits or proceedings which are mainly in the nature of recovery of money from the corporate debtor, which may further adversely affect its financial position in the resolution process. In the present matter, I note that the supplementary SCN was issued to Nakoda with respect to bringing the money back that had been utilized for payment of Vintage FZE's outstanding loan amount to Euram Bank. I am of the view these amounts were legitimately due to the Company but because of the fraudulent scheme, are not available with the Company. In such a case, the prohibition contained in Section 14 of the IBC may not apply at this stage to the extent that a direction to recover the GDR proceeds is not a claim against the Company.

7. Conclusion –

7.1. Thus, from the above, it is concluded that Nakoda in connivance with Vintage devised a fraudulent scheme whereby Nakoda received GDRs without paying any consideration, at the cost of the shareholders /investors of Nakoda. Although the bank account in which GDR proceeds were held was in the name of Nakoda, the amount deposited therein was not at the free disposal of the Company as the same was kept as collateral prior to issuance of GDRs, for the loan availed by Vintage. Further, the directors, B.G. Jain, D.B. Jain and S.K.

Bhoan are liable for the above mentioned fraudulent scheme as they were involved in the day-to-day activities of the Company, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. Vintage, was part of the fraudulent scheme and as a consequence of the same, it received a large number of GDRs without payment of consideration. Similarly, Arun Panchariya, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Thus, effectively there was no fund movement after the GDRs of Nakoda were subscribed as the subscription amount running into several million USD was not available to the Company. Mukesh Chauradiya, a key manager in Vintage was involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of Nakoda. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, sub-account of EURAM Bank. These entities were related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same, IFCF and Euram Bank (in its capacity as an FII) acted as a conduit for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

7.2. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market. Arun Panchariya was instrumental in structuring the GDR Issues and had influence at several stages of GDRs i.e. from subscription of GDRs to the sale of converted shares to the Indian investors. Arun Panchariya in connivance with several listed Indian Companies, Vintage FZE, IFCF, Mukesh Chauradiya, EURAM Bank and other connected entities had devised the fraudulent GDR schemes and committed fraud on investors in

the Indian securities market through concealment of information regarding execution of Pledge Agreement, disclosure of GDR related news in a distorted manner to stock exchanges, etc. which in turn resulted in such investors believing that GDRs were genuinely subscribed. In this context, it is noted that in the matter of ***Pan Asia Advisors Limited and Another vs. SEBI*** (Appeal No. 126 of 2013), the Hon'ble SAT, while dismissing the appeal filed by the appellants therein (against the SEBI Order inter alia prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had inter alia observed: *"… apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by Arun Panchariya. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted. …"* Further, in the matter of ***Jindal Cotex Limited and Ors vs. SEBI*** (Date of Decision: February 5, 2020 Appeal No. 376 of 2019), the Hon'ble SAT had observed: *"This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include PAN Asia Advisors Limited and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR Issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the*

company itself which enables the subscription to the GDR. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted." It appears that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also apparently participated in such schemes. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of the offences that have been perpetrated by Arun Panchariya, I am of the considered opinion that stern measures need to be taken against him and his connected entities.

7.3 Further, as noted above a moratorium has been declared in terms of Section 14 (1) of the IBC prohibiting *inter alia* the continuation of pending suits or proceedings against the corporate debtor (Noticee no.1) from the insolvency commencement date. I note that the proceedings in the present case have been initiated under Section 11, 11(4) and 11B of the SEBI Act, 1992 which includes the power to issue directions to restrain the Noticee from accessing the securities market and prohibiting it from buying, selling or dealing in securities. Further, it also includes the power to issue other directions in the interest of investors. As discussed above, the moratorium/ prohibition under IBC is on the pending suits or proceedings mainly in the nature of recovery of money from the corporate debtor which may further affect its financial position in resolution process. In the instant matter, the GDR proceeds amounting to USD.24.32 million are legitimate assets belonging to the Company, though not in the possession of the Company. Accordingly, I am inclined to direct the Company to recover the amount.

8. Directions –

8.1. I, in exercise of powers conferred upon me under sections 11, 11 (4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby pass the following directions:

a. In view of the observations in para 7.3 above, Noticee No. 1 (Nakoda Ltd.)

i. shall continue to pursue the measures to bring back the outstanding amount of USD 24,322,413.20 into its bank account in India. In case the money is recovered, Noticee No. 1 shall furnish a Certificate from a Chartered Accountant of ICAI along with necessary documentary evidences, certifying the compliance of this direction to "*The Division Chief, EFD, DRA–1, Securities and Exchange Board of India, SEBI Bhawan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051;* and

ii. shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years from the date of this direction becoming effective against Noticee no.1, depending on the outcome of the CIRP.

b. Noticee No. 2 (D.B. Jain), Noticee No.3 (B.G. Jain), Noticee and No.4 (S.K. Bhoan) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years;

c. Noticee No. 2 (D.B. Jain), Noticee No.3 (B.G. Jain), Noticee and No.4 (S.K. Bhoan) shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI

d. Noticee No.5 (Arun Panchariya) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 10 years;

e. Noticee No.5 (Arun Panchariya) shall also be restrained for a period of 10 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

f. Noticee No. 6 (Mukesh Chauradiya) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years ;

g. Noticee No. 6 (Mukesh Chauradiya) shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

h. Noticee No. 7 (Vintage FZE) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years ;

i. Noticee No. 8 (India Focus Cardinal Fund) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years.

j. Noticee No. 9 (EURAM Bank) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 2 years.

8.2. This Order shall come into force with immediate effect. The obligation of the Noticees debarred in the present Order, in respect of settlement of securities, if

any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/ prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticees debarred in the present Order, in the F&O segment of the Stock Exchanges, are permitted to be squared off, irrespective of the restraint/ prohibition imposed by this Order.

8.5. The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in para 8.1 above, who may already be undergoing any period of debarment with respect to the issue of GDRs.

8.6. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognized Stock Exchanges and the Depositories for necessary action.

8.7. A copy of this order may also be sent to the Resolution Professional of Nakoda Ltd., Reserve Bank of India, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: October 14, 2021

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA