Live Smart

AKSH

AKSH OPTIFIBRE LIMITED

A-25, 2nd Floor,
Mohan Co-operative Industrial Estate, Mathura Road,
New Delhi-110044, INDIA
Tel.: +91-11-26991508, 26991509
Fax : +91-11-26991510
Email : aksh@akshoptifibre.com
Website : www.akshoptifibre.com
CIN NO. : L24305RJ1986PLC016132

March 2, 2020

To,

National Stock Exchange of India Ltd. Exchange Plaza, 5th floor, Plot No. C/1, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.	**BSE Limited** Phiroze Jeejeebhoy Towers Dalal Street, Mumbai. – 400 001.

Dear Sir,

Subject: Disclosure under Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

Pursuant to Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, please find attached a copy of the Adjudication Order No. Order/GR/AE/2019-20/7073-7078 dated February 28, 2020 passed by Adjudicating Officer of Securities and Exchange Board of India, which is self-explanatory.

The Company is analysing the SEBI Order and shall take appropriate legal recourse.

This is for your information and records please.

Thanking you,
for Aksh Optifibre Limited

Gaurav Mehta
Chief-Corporate Affairs & Company Secretary

(hereinafter referred to as **"Company / AKSH"**) during the period August 01, 2010 to September 30, 2010 (hereinafter referred to as **"Investigation Period"**).

2. AKSH is a company whose shares are listed on the Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") and National Stock Exchange Limited (hereinafter referred to as "**NSE**"). The investigations, *prima facie,* revealed that AKSH had issued 11,65,750 GDRs amounting to US $ 25 million on September 01, 2010, equivalent to 5,82,87,500 equity shares of Rs.5 each and the said issue was subscribed by one entity viz. Vintage FZE (presently known as Alta Vista International FZE) (hereinafter referred to as **"Vintage"**). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG (hereinafter referred to as "**EURAM Bank"**) by entering into Loan Agreement dated August 16, 2010 with EURAM Bank.

3. Further, it was observed that directors of AKSH i.e. Noticee 2 to 6 in its Board Meeting held on May 17, 2010, had passed Board Resolution *inter-alia* authorizing Noticee 2 viz. Dr. Kailash S. Choudhari (Managing Director), Mr. Satyendra Gupta (Chief Financial Officer) and Mr. Gaurav Mehta (Company Secretary) of the Company for opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of AKSH and also for using the funds deposited in the said bank account as security in connection with loans, if any. Thereafter, it was observed that Noticee 2 had signed and executed the Pledge Agreement dated August 16, 2010 with EURAM Bank pledging GDR proceeds as collateral against the aforesaid loan availed by Vintage for subscribing to GDRs of AKSH, thus securing Vintage's loan.

4. Investigations also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. Investigations further alleged that AKSH did not inform stock exchanges as required under clause 36(7) of Listing Agreement with regard to – i) Pledge Agreement entered into with EURAM Bank for subscription of GDRs, ii) delisting of GDRs on Luxembourg Stock Exchange, and iii) termination of GDR facility by the Global Depository i.e. The Bank of New York Mellon, which was price sensitive information that could have impacted the

price of the scrip. It was also alleged that the aforesaid Directors viz. Noticee 2 to 6 by approving the aforesaid Board Resolution dated May 17, 2010 and Noticee 2 by executing the Pledge Agreement dated August 16, 2010 acted as a party to the fraudulent scheme.

5. SEBI had, therefore, initiated adjudication proceedings *inter alia* against Noticee 1 under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**") and Section 21 of the Securities Contracts Regulations Act, 1956 (hereinafter referred to as "**SCRA, 1956**") read with Clause 36(7) of the Listing Agreement. Adjudication proceedings were also initiated against Noticee 2 to 6 for alleged violations of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

6. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (**AO**) in the said matter, vide communiqué dated May 15, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, 1956 of the aforesaid violations alleged to have been committed by the Noticees. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the said matter in the place of Shri Biju S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, vide communique dated May 22, 2019. These proceedings are therefore been carried forward where they had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice dated June 08, 2018 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and Section 23I of the SCRA read with Rule 4 of the SEBI (Procedure for Holding Inquiry and

Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clause 36(7) of Listing Agreement, as applicable.

8. Thereafter, in reply to the SCN, vide letter dated June 22, 2018, the Noticees *inter alia* denied all the allegations and charges made against them in the SCN. In addition to this, the Noticees requested to provide them copy of investigation reports relied upon by SEBI and they also requested for inspection of all the original documents of the annexed copies to the SCN. The Authorised Representatives of the Noticees carried out physical inspection of documents on July 12, 2018. Thereafter, the Noticees sought time of 4 weeks from the date of inspection of documents to submit their reply. Pursuant to the appointment of the undersigned as the AO in the present matter, in the interest of natural justice, the Noticees were granted an opportunity of personal hearing on September 04, 2019 vide Hearing Notice dated August 23, 2019. In reply to the Hearing Notice, the Noticees requested for adjournment of personal hearing vide letter dated August 29, 2019. Hence, vide email dated September 03, 2019 the Noticees were granted another opportunity of personal hearing on September 16, 2019. Further, once again the Noticees sought adjournment of personal hearing vide email dated September 13, 2019 and the same was granted to appear on September 25, 2019. Further, detailed submissions to the SCN were received by the following replies:

   - i) letter dated September 13, 2019 from Noticee 1,
   - ii) letter dated September 13, 2019 from Noticee 2, and
   - iii) letter dated September 13, 2019 from Noticees 3 to 6.

   The main submissions made by the Noticees vide their aforesaid replies are summarized hereunder:

i. The company denies all the allegations and charges made against them in the SCN.
ii. They were refused to be provided with any documents other than annexures to the said SCN and they were refused to inspect originals of the said annexures during the inspection.
iii. The documents and records annexed to the SCN are photocopies and these have not been duly authenticated and the annexures to the said SCN do not satisfy the requirements of the Indian Evidence Act, 1872.
iv. The SCN does not set out the exact penalty that is proposed to be imposed on the Noticees.
v. The Board of directors of the Company approved raising of funds upto 50 million USD through issue of GDRs in order to cater to fund requirements of the company to sell the manufacturing business and enter into service based business.
vi. The Board of the Company in its meeting held on September 01, 2010 allotted 1,165,750 GDR representing 58,287,500 underlying equity shares of Rs. 5 each (offering at Rs. 20/- each) at an offer price of USD 21.45 per GDR.
vii. The allotment of GDRs was made by the company as per the list of subscribers provided by the lead manager viz. Prospect capital Limited, London.
viii. The company decided to expand the telecom business in Africa so it transferred 24 million USD to a wholly owned subsidiary of the company, namely, AKSH FZE based at Dubai, UAE and the remittance was made through normal banking channels in tranches between October 29, 2010 and March 17, 2011. Subsequently, AKSH FZE transferred approximately 18 million USD to Africa One Telecom, RAK FZE, a Dubai based company in tranches between November 03, 2010 and December 23, 2010 as advance for acquiring telecom licences issued by AfricaOne Telecom.
ix. The amount provided to AKSH FZE and the amount provided by AKSH FZE to Africa One Telecom, RAK FZE for purchase of telecom licences are treated as an investment in books of accounts of the company.

x. The Company denied that it entered into any pledge agreement with Euram Bank.

xi. Copies of pledge and loan agreement provided by SEBI do not inspire confidence regarding their credibility due to the following reasons:

xii. The pledge agreement does not contain the common round seal of the company,

xiii. The purported signature of Noticee 2 is only on the last page of pledge agreement.

xiv. Further, the date of execution of the loan agreement was mentioned differently on the first page (as 16.08.2010) and on the last page (as 26.08.2018).

xv. Clause 2 of the loan agreement states that the loan is provided to Vintage to enable them to “take down” the GDR issue of 1,165,750 Luxembourg public offering while the SCN alleges that Vintage had availed the loan facility to subscribe to the GDRs of Noticee No. 1.

xvi. They are not provided with copies of investigation report and therefore are not aware of complete findings of the investigations.

xvii. The company was provided with the list of subscribers by the Lead Manager Prospect Capital Limited, which was provided to SEBI and hence they deny that they knew that the information provided to SEBI was wrong.

xviii. They were not a party to the loan agreement dated August 16, 2010 entered into Euram bank and Vintage FZE, Dubai.

xix. The Board of Directors of the company authorized Euram Bank to use the funds deposited in the bank account of the Company with Euram Bank as security for any loans to be availed by the company or to enter into an escrow arrangement or similar arrangements.

xx. They were not aware of the repayments done by Vintage towards the dues that it owed to Euram Bank in respect of loan availed by them. They were not aware of any restriction on the use of the funds – being proceeds of the GDR issue.

xxi. The price of scrip of the company fell by 1.66% on BSE and 1.43% on NSE on 03.09.2010 which shows that investors were not influenced by the

corporate announcement on 02.09.2010 by the company regarding successful closure of GDR issue.

xxii. Only GDR holders are impacted by delisting of GDRs and it doesn't have any impact on Indian equity shareholders to stay invested or exit the company and therefore it can't be considered as a price sensitive information. Further only GDR holders are impacted by the closure of the Depository program.

xxiii. Whole Time Member of SEBI has passed an order on June 28, 2019 in respect of same alleged violation and an appeal against the said order is pending against the SAT. Hence the present proceedings must be kept in abeyance until the Hon'ble SAT disposes the appeal filed by them.

9. Subsequently, the personal hearing in the matter was conducted on September 25, 2019 wherein the Authorized Representatives (**ARs**) of the Noticees reiterated their written submissions made vide their replies dated September 13, 2019 and requested for time till October 10, 2019 to make additional submissions. The Noticees' request in this regard was accepted during the hearing. The Noticees vide letter dated October 15, 2019 filed their reply stating that they had filed a Civil Writ Petition before the Hon'ble High Court at Rajasthan bearing No. 12422 of 2019 for hearing of the issues pertaining to the subject matter of the concerned SCN and after hearing both the parties the Hon'ble High court had orally directed the counsel for SEBI not to take any coercive steps as against them. Similar submissions were again made by the ARs of the Noticees vide their letters dated November 06, 2019 and December 17, 2019. However, from the material available on record, it is noted there was no such directions by the Hon'ble High Court as claimed by the Noticees.

<u>CONSIDERATION OF ISSUES</u>

10. I have carefully examined the allegations against the Noticees and their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are :

I. Whether the Noticees violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d) and 4(1) 4(2)(f), (k), (r) of

PFUTP Regulations, and Section 21 of SCRA, 1956 read with clause 36(7) of Listing Agreement, as applicable?

II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, 1956?

III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

11. Before I proceed further in the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, SCRA, 1956 and Listing agreement alleged to have been violated by the Noticees. The same are reproduced below:

SEBI Act, 1992:

"***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;"

PFUTP Regulations, 2003:

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 thereunder;

(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 thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

….

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

….

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

….

(r) planting false or misleading news which may induce sale or purchase of securities

……

Section 21 of SCRA 1956

[*Conditions for listing*.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.]

Clause 36 (7) of Listing Agreement:

"The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information…….,

The above information should be made public immediately."

<u>Issue I :</u> Whether the Noticees violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations and Section 21 of SCRA 1956, read with Clause 36 (7) of the Listing Agreement, as applicable?

12. From the material available on record, I note that AKSH had issued 11,65,750 GDRs (amounting to USD 25.00 million, approximately Rs.117.20 crore) on September 01, 2010, equivalent to 5,82,87,500 equity shares of Rs.5 each. Summary of the aforesaid GDRs issued by AKSH as submitted by AKSH vide its letter dated June 06, 2015 tabulated below.

Summary of GDR Issue (Source: Information provided by AKSH)

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
01-Sep-2010	1.17 (at USD 21.45 each GDR)	25.00	DBS Bank, Mumbai	5,82,87,500	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange

13. AKSH vide letter dated June 06, 2015 provided list of subscribers to its GDRs to SEBI and the list is tabulated as under:

Sl. No.	Name of the subscriber	Country of subscriber	No. of GDRs allotted
1.	Cruise Waterford Investments Ltd.	United Kingdom	150,000
2.	Creative Stone Holdings Ltd.	Hong Kong	110,750
3.	Trapezius Capital Limited	Germany	130,000
4.	Chromestar Assets Limited	Hong Kong	140,000
5.	Nahar Al Amazone FZE	UAE	125,000
6.	Nigella Ltd.	Bahrain	220,000
7.	Scholari Investments Ltd.	Singapore	150,000
8.	Uranus Global Ltd.	Singapore	140,000
Total			**1,165,750**

14. SEBI Investigations observed that subscription to the GDR was obtained through an arrangement involving a Loan Agreement as well as a Pledge Agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement.

15. On perusal of the said Loan Agreement dated August 16, 2010 entered by Vintage and signed by Mr. Arun Panchariya in the capacity of Managing Director of Vintage, I note that the following has been *inter alia* mentioned therein –

1. Currency and the amount of facility:
USD 25,005,337.50
(The amount is exactly the same amount raised by AKSH through the said GDR offering.) (Explanation supplied).

2. Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 1,165,750 Luxembourg public offering and may only be transferred to Euram account nr. 580027, Aksh Optifibre Limited.

(The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of AKSH. 580027 is the client account number of AKSH. Exactly, the amount of USD 25,005,337.50/- was credited to the escrow account of AKSH with Euram Bank on the same date of loan being debited to the account of Vintage i.e., September 01, 2010) (Explanation supplied).

6.Security

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement;*
- *Pledge of the account no. 580027 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.*

16. Further on perusal of the copy of minutes of the board meeting of AKSH held on May 17, 2010, it is observed that the following resolution was *inter alia* passed in the said meeting:

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

*"**RESOLVED FURTHER THAT** Dr. Kailash S. Choudhari, Managing Director and Mr. Satyendra Gupta Chief Financial Officer and Mr. Gaurav Mehta, the Company Secretary of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."*

*"**RESOLVED FURTHER THAT** 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."*

17. From the aforesaid minutes of the board meeting it is observed that Directors of AKSH i.e. Noticee 2 to 6 had authorized Dr. Kailash S. Choudhari (i.e. Noticee 2) and two other persons namely Mr. Satyendra Gupta, Chief Financial Officer and Mr. Gaurav Mehta, the Company Secretary of the company to sign, execute, any agreement and other paper(s) from time to time as may be required by the EURAM Bank. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

18. I also note that subsequently AKSH had entered into a Pledge Agreement with EURAM Bank on August 16, 2010. The said Pledge Agreement was signed by Noticee 2 on behalf of AKSH, in the capacity of Managing Director of AKSH. The salient Clauses of the Pledge Agreement *inter alia mentioned therein are* as under:

1. <u>Preamble</u>

*"By loan agreement K160810-002 (hereinafter referred to as the "**Loan Agreement**") dated 16 August 2010, the Bank granted a loan (hereinafter referred to as the "**Loan**") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "**Borrower**") in the amount of USD 25,005,337.50. The Pledgor has received a copy of the Loan Agreement No. K160810-002 and acknowledges and agrees to its terms and conditions."*

2. ***Pledge***

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the ***Borrower*** *towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the* ***Loan Agreement****- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")* ***the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank****:*

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of USD 25,005,337.50 existing from time to time at present or hereafter on the securities account(s) no. 580027 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580027 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

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

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

6. ***Realisation of the Pledge:***

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

Obligations*. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

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

19. From the above, I note that the Pledge Agreement refers to the Loan Agreement dated August 16, 2010, between the borrower i.e. Vintage and EURAM Bank, whereby Vintage was granted a loan of USD 25,005,337.50, and it is stated that the Pledger i.e., AKSH has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, AKSH is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledger had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

    "In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledger herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations".

    Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated August 16, 2010. Further, I also note that Clause 6.1

of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

20. From the statement of Vintage's bank account and the Escrow account for the GDR issue, it is observed that Vintage received the loan amount of USD 25.00 million on September 01, 2010 and the same was then transferred to the Escrow account of AKSH on the same date. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of AKSH comprising 1.17 million GDRs amounting to USD 25 million, was subscribed by only one entity, i.e. Vintage, and not by the eight entities as claimed in AKSH's letter dated June 06, 2015 mentioned at para 13 above. I further note that the amount was transferred to AKSH's retail account (no. AT24193400**580027**0101) held with EURAM Bank on September 01, 2010, and that AKSH's account was pledged with EURAM Bank under the Pledge Agreement.

21. As regards to the doubts raised by the Noticees vide their reply dated September 13, 2019 about the credibility of the Loan Agreement that it contains two dates of execution i.e. 16/08/2010 on the 1st page and 26/08/2010 on the last page, I note that the Preamble of the Pledge Agreement executed by AKSH refers to the Loan Agreement dated 16/08/2010 and identifies the Loan Agreement by its unique number viz. "K160810-002". Thus, I find that AKSH cannot deny knowledge of the Loan Agreement in the present case. It is possible that the date entered by Mr. Arun Panchariya, while signing on behalf of Vintage on the last page of the Loan Agreement, could have been inadvertently mentioned as 26/8/2010 instead of 16/8/2010. Further, it is noted that, whatever the case may be, the execution of the Loan Agreement and Pledge Agreement are both prior to the date of disbursement of the loan amount of USD25 million which occurred on September 01, 2010 which essentially shows that the GDR issuance / subscription would not have happened without the arrangement involving the Loan and Pledge Agreement.

22. AKSH vide its reply dated September 13, 2019 has denied the execution of the Pledge Agreement and also submitted that the Board of Directors did not authorize EURAM Bank to consider deposits in the Company's account to be considered as security for a third party's loan. It also contended that the purported Pledge Agreement does not contain the common round seal of the Company and the

signature of Noticee 2 is only on the last page of the purported Pledge Agreement. In this regard, I note that it is not a mandatory requirement of law to affix the common seal of the company. It may also be noted that signature of the executing parties on all pages of a deed/agreement is a matter of practice, but does not vitiate/invalidate the other clauses of the agreement/contract where signatures are not affixed on each page. In the present case, the Pledge Agreement bears the signature of Noticee 2, acting on behalf of AKSH, on the last page of the Pledge Agreement. Further, it is also observed that in some of the other cases of irregularities in GDR issues being handled by SEBI, involving aforementioned person Mr. Arun Panchariya, the affixing of signatures on the last page instead of all the pages of the contract seems to be a standard practice being followed by EURAM Bank.

23. I note that the Noticee 1 and 2 have plainly denied the execution of the Pledge Agreement. Noticee 3 to 6 have also stated that there is a denial on part of Noticee 2 regarding signing of the Pledge Agreement. But, I also note that no cogent evidence has been submitted by the Noticees in this regard. However, I note that the existence of the Pledge Agreement is also corroborated by the attending circumstances such as the Board Resolution of AKSH dated May 17, 2010 where the Board members authorized EURAM Bank to use the GDR proceeds as security in connection with loan if any and also authorized Noticee 2 to sign, execute any application, agreement, escrow agreement and other paper(s) from time to time as may be required by the bank. The pattern of withdrawal of the GDR proceeds by AKSH from its bank account congruently followed the pattern of repayment of loan by Vintage, which also showed the clear operation of the pledge on AKSH's EURAM Bank account (the same is discussed in subsequent paragraphs). Further, the signature of Noticee 2 in the Escrow Agreement and its schedules also clearly match with the signature of Noticee 2 in the Pledge Agreement, hence I find no merit in the claim that Noticee 2 did not sign the Pledge Agreement. All such factors clearly corroborate the existence of the Pledge Agreement and I find that it is only bald denial on the part of the Noticees regarding the Pledge Agreement. Hence, I do not find any merit in the contention raised by the Noticees in this regard.

24. Besides above, it is also contended by the Noticees that the documents and records annexed to the SCN are photocopies and these have not been duly authenticated and the annexures to the said SCN do not satisfy the requirements of the Indian Evidence Act, 1872. I note that the present adjudication proceedings are in the nature of quasi-judicial proceedings wherein the provisions of Indian Evidence Act, 1872 are not strictly applicable. Notwithstanding the applicability of the said Act, Section 65 (a) of the said Act itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court (EURAM Bank in the instant case). Since the documents such as the Pledge Agreement, Escrow Agreement, etc., were executed by Noticee 1, through Noticee 2, the originals/copies of the same should be available with them. Further, in accordance with section 66(6) of the Indian Evidence Act, 1872, it is not required to give notice to produce the secondary evidence if the person in possession of the document is not subject to the process of the court (EURAM Bank in the instant case). Thus, I find that even in accordance with the provisions of the Indian Evidence Act, 1872, the copies of the Pledge Agreement, Loan Agreement, Escrow Agreement, account statement of bank/loan accounts maintained with EURAM Bank are admissible as secondary evidence in the present proceedings. Further, I note that, copies of the documents relied upon were obtained by SEBI during investigation, through the overseas securities market Regulators in exercise of powers under Section 11(2)(ib) of the SEBI Act, 1992. Hence, I do not find any merit in the contention raised by the Noticees in this regard.

25. The Noticees have further contended that they have not been provided with the copies of the documents and records relied upon by SEBI, including but not limited to the investigation report and the originals (for verification) of Loan Agreement, Escrow Agreement and Pledge Agreement. In this regard, I note that the ARs of the Noticees were granted physical inspection of documents on July 12, 2018. Further, I also note that copies of the relevant documents relied upon in support of the SCN have been provided along with SCN. Further with regards to the above, I refer to the judgment of the Hon'ble Securities Appellate Tribunal (**SAT**), in the case of ***Mayrose Capfin Private Limited V/s. Securities and Exchange Board of***

India (Appeal No. 20 of 2012) dated 30.03.2012 wherein the Hon'ble SAT observed *"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count"*. Accordingly, I do not find merit in the above submission of the Noticees.

26. This apart, the Noticees have also contended that the SCN does not set out the particular penalty which is proposed to be imposed against the Noticees. In this regard reliance has been placed upon the judgment of *Hon'ble Supreme Court in Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors.(2014) 9 SCC 105*. On a perusal of the said judgment of the Hon'ble Supreme Court, I find that the same is factually distinguishable and not applicable to the present proceedings. In the present matter the SCN issued to the Noticees have clearly spelt out that if the alleged violations against the Noticees are established, then the same would make them liable for penalty under the specific provisions mentioned under the SCN. Thus, I do not find any merit in the aforesaid submission of the Noticees.

27. Finally, it is argued by the Noticees that the name(s) of the subscribers was(were) not known to the company and they had to rely on information provided by the Lead Manager/Overseas Depository. In this regard, I note that the Lead Manager was not the only source to get the list of subscribers as the list of subscribers to the GDR issue may also have been sought from the Overseas Depository Bank and the list of subscribers could also have been verified/cross checked from the entries of funds credited into the Escrow Account maintained with EURAM Bank during GDR issue. In the instant case, while AKSH has provided a list of eight allottees to the GDR issue, to SEBI during investigation, but I note that at the time of GDR issue the funds were received into the EURAM Bank Escrow A/c. of AKSH only from one subscriber i.e. Vintage. Therefore, I note that, AKSH had provided incorrect 'list of allottees' of GDR to SEBI during the investigation. Such actions also indicate *mala fide* intention on the Noticee's part.

28. It is observed from Vintage's loan account statement with EURAM Bank that the Vintage repaid the entire loan amount in several installments. Details of repayment of loan by Vintage as provided by EURAM Bank as well as transfer of fund by AKSH to its UAE based subsidiary (i.e. AKSH FZE) are tabulated below:-

Repayment of loan by Vintage and transfer of GDR proceeds by AKSH (Source: Vintage's loan account statement with EURAM Bank)

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from AKSH's EURAM Bank a/c to (1) AKSH's UAE subsidiary's bank a/c and (2) Other entities (USD)
29.10.2010	600,000.00	597,300.00
09.11.2010	2,000,000.00	2,000,000.00
24.11.2010	5,000,000.00	5,000,000.00
07.12.2010	4,000,000.00	4,000,000.00
14.12.2010	4,000,000.00	4,000,000.00
21.12.2010	2,500,000.00	2,500,000.00
28.12.2010	812,000.00	811,811.00
15.02.2011	2,000,000.00	1,999,998.32
16.02.2011	1,400,000.00	1,400,000.00
24.02.2011	250,000.00	250,000.00
28.02.2011	400,000.00	
02.03.2011	--	400,000.00
04.03.2011	--	2,488.98
17.03.2011	2,043,337.50	2,120,000.00
Total	25,005,337.50	25,081,598.30

29. From the details of fund transfer stated above, I observe that only after Vintage repaid loan instalments to EURAM Bank, that AKSH could make payments from its account maintained with the same bank and such payments were exactly for the same amount that Vintage repaid to EURAM Bank except for adjustments on account of bank charges/ interest earned by AKSH. Therefore, it is evident that the

amount transferred from AKSH's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

30. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by AKSH through the Pledge Agreement and accordingly, the subscription of the GDR issue was facilitated in the above manner. I note that due to such pledging of the GDR proceeds, the funds were not available at AKSH's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement.

31. Further, I also note that as and when loan repayments were made by Vintage, AKSH used to transfer funds from its EURAM Bank account to the account of AKSH's UAE subsidiary. In view of the above, I note that every transfer from AKSH to its UAE subsidiary is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from AKSH's EURAM account was dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

32. In this regard it is also pertinent to mention that with regards to the subscription of GDR issues of certain other listed Indian companies through the aforesaid *modus operandi* viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble SAT in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of **Pan Asia Advisors Limited vs. SEBI** had observed:

> *"28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted."*

33. From the above, in short, I find that false and misleading corporate announcements were made by the AKSH and it also suppressed the material and price sensitive information viz., (i) execution of pledge agreement dated August 16, 2010 by AKSH in favour of EURAM Bank pledging the GDR proceeds for providing security to the

loan taken by Vintage, (ii) execution of loan agreement dated August 16, 2010 by Vintage for obtaining loan from the EURAM Bank for subscribing the GDR issue of AKSH and (iii) Vintage was the only subscriber of GDR issued by AKSH. All these three events were price sensitive information and could have impacted the scrip price of AKSH. Not only that but also the corporate announcements made by AKSH on September 02, 2010 stating *"… the Company has successfully closed its GDR issue of US$ 25 Mn and the Board of Director of the Company in its meeting held on September 01, 2010 has allotted 58,287,500 equity shares underling 1165750 GDRs….*" might have misled the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the AKSH itself had facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the EURAM Bank for subscribing the GDR issue of AKSH and AKSH secured that loan by pledging the GDR proceeds with the EURAM Bank. However, AKSH has denied that it has violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (PFUTP) Regulations, 2003. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal baldevbhai Patel v. SEBI** has also observed that that

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

I note that the Hon'ble Supreme Court in the same judgement, has also observed that "*that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation....".*

34. Further, the aforementioned act of AKSH resulted in ‘fraud’ as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon’ble SAT in *Pan Asia Advisors Limited vs. SEBI* cited above wherein, while interpreting the expression of ‘fraud’ under the PFUTP Regulations, 2003, it was observed that:

“From the aforesaid definition (of ‘fraud’) it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.”

35. In this regards, the following observations made by the Hon’ble SAT in matter of *V.Natarajan vs. SEBI* (Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

“… we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from

indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities. …….”

36. In view of the above, I note that the scheme of arrangement of AKSH, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from EURAM Bank and the same was again secured by the AKSH by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by AKSH during the period August-September 2010 stating that the GDR was issued and allotted without disclosing the crucial details pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner. Thus, AKSH (Noticee 1) has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003. It is also observed that Noticee 2 in the capacity of Managing Director of Noticee 1 had signed and executed the Pledge Agreement dated August 16, 2010 by virtue of which AKSH pledged GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. It is observed that the Noticee 2 to 6 had approved the Board Resolution dated May 17, 2010 which was submitted to the EURAM Bank and based on which the Pledge Agreement was signed by Noticee 2 with EURAM Bank. Thus, Noticee 2 to 6 had acted as party to the fraudulent arrangement and have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

37. With regard to the allegation of non-disclosure of Pledge Agreement entered by AKSH to the stock exchanges under Clause 36(7) of the Listing Agreement, the Noticee 1 has inter alia submitted that they were not aware of and did not authorize signing of Pledge Agreement. However, as observed previously, the same is only a plain denial and I find no merit in the said claim. Further, I note that apart from

being an essential ingredient which resulted in the GDR subscription through the fraudulent scheme, the effect of the Pledge Agreement was that the entire amount of the GDR proceeds was pledged as collateral against the loan availed by Vintage (the subscriber). In this connection, it is to be noted that as stated earlier that the GDR proceeds was not available to the Noticee for utilization and the availability of the same depended on repayment of loan by Vintage. Needless to say, in the event of any default by Vintage, the lender i.e. EURAM Bank had full rights to realize such amounts from the bank account of AKSH in accordance with terms and conditions of the Pledge Agreement. In view of the same, I note that the signing of the Pledge Agreement was material event and was price sensitive information, and could have impacted the price of the scrip. It may further be noted that the underlying security of the GDRs are Indian shares which are listed on the stock exchange in India and in the present case the entire proceeds from the GDR issue were pledged through the Pledge Agreement. I also note from the corporate announcements made by the Noticee during the period August-September 2010, that AKSH did not inform Stock Exchange with regard to entering into Pledge Agreement with EURAM Bank and pledging GDR proceeds against the loan availed by Vintage for subscription of GDRs of AKSH. In view of the same, I find that AKSH has violated Section 21 of SCRA, 1956 read with clause 36(7) of Listing Agreement.

38. It was also alleged in the SCN that AKSH did not inform stock exchanges about the termination of the GDR program by the Depository Bank which was material event and price sensitive information, and thus alleged to have violated Section 21 of SCRA 1956, read with clause 36(7) of Listing Agreement. Further, it was also alleged in the SCN that AKSH did not inform stock exchanges about the delisting of the GDRs from the Luxembourg Stock Exchange, which was price sensitive information and could have impacted the price of the scrip, and thus alleged to have violated Section 21 of SCRA 1956, read with clause 36(7) of Listing Agreement.

39. In this regard, the Noticee 1 vide its reply dated September 13, 2019 to the SCN has submitted that delisting of GDRs does not have any impact on decision of Indian equity shareholders to stay invested or exit the company. It was further submitted that only GDR holders are impacted by delisting of GDRs and closure of the Depository program, and that they were well informed by the overseas

depository about these events. In this regard, I note that a termination notice was issued by the Global Depository i.e. The Bank of New York Mellon, to holders of GDRs of AKSH on March 16, 2015 which mentioned that the existing GDR facility will be terminated on June 15, 2015. It is noted that as on June 16, 2015, there were 1,52,000 GDRs (equivalent to 76,00,000 underlying equity shares) still outstanding, as per the GDR cancellation data provided by the custodian, DBS Bank. As such, the termination of the GDR program by the Depository Bank when such high amount of GDRs were still outstanding was a material event, and AKSH being a listed company ought to have disclosed to the stock exchanges where its shares were listed for dissemination to investors and public regarding the termination of its own GDR program by the Depository Bank. Thus, I do not find any merit in the submission of the Noticee 1 that AKSH was not required to disclose to the stock exchanges regarding the details of termination of its GDR facility. In view of the same, I find that AKSH has violated Section 21 of SCRA 1956, read with clause 36(7) of Listing Agreement.

40. Further, I note that as per Clause 36(7) of the Listing Agreement, the company was required to immediately inform the stock exchanges of all events which will have a bearing on the performance/operations of the company as well as price sensitive information. From the point of view of the Indian investors, it is a material information as to whether there is any listing or delisting of the company's GDRs in the overseas markets / exchanges. From the material available on record, I note that the GDRs of AKSH were listed on the Luxembourg Stock Exchange w.e.f. September 02, 2010 and delisted w.e.f. June 16, 2015. As already mentioned above, significant no. of GDRs were still outstanding on June 16, 2015. On perusal of the corporate announcements made by the AKSH during June 2015, it is seen that the Noticee did not inform stock exchange about delisting of GDRs on Luxembourg Stock Exchange which was a material event and price sensitive information and could have impacted the price of the scrip. Thus, I do not find any merit in the aforesaid contention of the Noticee 1. In view of the above, I find that AKSH has violated Section 21 of SCRA 1956, read with clause 36(7) of Listing Agreement.

***Issue II* : Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?**

41. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

42. I further note that the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer*, SEBI (Civil Appeals No. 4112-4113 of 2013) has observed as under:

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

43. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), and 4(2) (f), (k), (r) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement by AKSH (Noticee 1) makes it liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, and Section 23E of SCRA, 1956. The violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations by Noticee Nos. 2 to 6 makes them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992. The provisions of Section 15HA of the SEBI Act, 1992, and Section 23E of SCRA, 1956 reads as below –

SEBI Act, 1992

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

SCRA, 1956

Penalty for contravention where no separate penalty has been provided*.*

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

Issue III **: If yes, then what should be the quantum of penalty?**

44. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules, and Section 23J of SCRA, 1956 and Rule 5 of the SCR Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

    (b) the amount of loss caused to an investor or group of investors as a result of the default;

    (c) the repetitive nature of the default.

45. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. From the documents made available, it is noted that no prior default by the Noticees is on record. In the present case, I note that AKSH had issued 1.17 million GDRs worth **USD 25 million** to Vintage on September 01, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered

between Vintage and EURAM Bank, and Pledge Agreement entered between AKSH and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on August 16, 2010, and that the Pledge Agreement was an integral part of Loan Agreement. It is observed that the GDR issue would not have been subscribed had AKSH not given such security towards the loan taken by Vintage. Such facilitation of the GDR issue and its subscription was also not known to the public and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent. Thus, AKSH is observed to have acted in a fraudulent manner and has violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

46. It is also observed that Noticee 2 in the capacity of Managing Director of Noticee No.1 had signed and executed the Pledge Agreement dated August 16, 2010 by virtue of which AKSH pledged GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. It is also noted that directors of AKSH i.e. Noticee 2 to 6 passed the Board Resolution dated May 17, 2010 and authorized Noticee 2 to sign, execute, any agreement and other papers(s) from time to time as may be required by the EURAM Bank which lead to the execution of the Pledge Agreement. Thus, Noticee 2 to 6 had acted as party to the fraudulent arrangement, and have violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

ORDER

47. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992 and Section 23J of SCRA, 1956, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, and Section 23I read with Rule 5 of SCR Adjudication Rules, hereby impose the following penalty on the Noticees –

Noticee	Violation	Penal Provisions	Penalty (Rs.)

Noticee 1 (Aksh Optifibre Limited)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,00,000 (Rupees Ten Crore Only)
	Section 21 of SCRA, 1956 read with Clauses 36(7) of Listing Agreement *(3 instances)*	Section 23E of the SCRA, 1956	Rs. 15,00,000/- (Rupees Fifteen Lakh Only)
Noticee 2 (Dr. Kailash S Chaudhary)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 20,00,000/- (Rupees Twenty Lakh Only)
Noticee 3 (Mr. P.F. Sundesha)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 4 (Mr. B. R. Rakhecha)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 5 (Mr. Narendra Kumbhat)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 6 (Mr. Arun Sood)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Total		Rs. 10,75,00,000/- (Rupees Ten Crore Seventy Five Lakh Only)	

48. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

49. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The

Noticees shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

50. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

51. In terms of Rule 6 of the SEBI Adjudication Rules, and Rule 6 of the SCR Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **G Ramar**
Date: February 28, 2020 **Adjudicating Officer**