WTM/SM/IVD/ID4/9169/2020-21

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

S. No.	Name of the Entity	PAN
1	**Mr. Vipin Sharma**	**ABHPS7947N**

In the matter of Chromatic India ltd.

---

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation relating to issuance and disclosure of Global Depository Receipts (hereinafter referred to as **"GDR"**) by Chromatic India Limited (hereinafter referred to as **"Chromatic / *Company*"**).

2. Based on the facts unearthed in the course of investigation, wherein, it was noticed that European American Investment Bank AG (hereinafter referred to as **"EURAM Bank/Bank"**) had granted loan to Vintage FZE (hereinafter referred to as **"Vintage")** by way of a Loan Agreement dated October 12, 2010 (hereinafter referred to as the **"Loan Agreement"**) for making payment towards subscription to the GDR issued by Chromatic and the entire 4.20 million GDR issued by Chromatic were subscribed by only one entity, i.e. Vintage. It was further noticed that the Board of Chromatic had passed a Resolution in its Meeting held on August 13, 2010, wherein *inter alia*, a decision was taken to open an account with EURAM Bank and also to authorize EURAM Bank to use the GDR proceeds as security against loan.

3. Under the aforesaid facts and circumstances, a common Show Cause Notice (hereinafter referred to as **"SCN"**) dated June 28, 2017 was issued to the *Company* and its Directors who had attended and approved the above noted Resolution passed in the meeting held on August 13,

2010, calling upon them to show cause as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act, 1992. In the SCN, it was alleged that the *Company* and its Noticee Directors have indulged in a fraudulent scheme of issuance, allotment of GDR. The said fraudulent scheme was executed behind the back of the shareholders and investors, who were not informed about the said pre-fabricated scheme whereby the GDR proceeds were observed to have been pledged as security with EURAM Bank to facilitate the loan availed by Vintage from EURAM Bank solely for subscribing to the GDR of Chromatic, by entering into a Pledge Agreement dated October 12, 2010 with EURAM Bank (hereinafter referred to as the **"Pledge Agreement"**). It was therefore alleged that the Noticees have committed fraud within the realm of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations, 2003"**). The SCN has also narrated that the GDR were subsequently converted into equity shares and sold in the Indian Securities Market, the GDR proceeds were made available to the *Company* i.e. Chromatic for its utilisation only after the repayment of loan by Vintage.

4. After hearing the *Company* and other Noticees, it was found established that the *Company* was indeed engaged in the aforesaid fraudulent arrangement to make its GDR issue successful by facilitating a loan to Vintage and the Directors of the *Company*, by their act of authorising the *Company* to enter into such Pledge Agreement to artificially ensuring GDR subscription by a single subscriber i.e. Vintage, were found to have facilitated the above fraudulent arrangement. Accordingly, an Order dated September 30, 2019 (hereinafter referred to as **"Final Order"**) was issued recording the finding that the *Company* and its Directors, particularly those who had attended the Board meeting of the *Company* held on August 13, 2010, have acted in violation of provisions of SEBI Act, 1992 read with PFUTP Regulations, 2003 hence, suitable directions were also issued against the Noticees of the said SCN.

5. Subsequent to the issuance of the aforesaid Order, Mr. Vipin Sharma, one of the Directors of the *Company* (against whom also directions were passed and hereinafter referred to as **"*Noticee*")** appealed against the aforesaid Order dated September 30, 2019 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT")** on the ground that the aforesaid Order *qua* him was passed without adhering to the principle of nature justice as he was not served

with a copy of SCN and relevant documents. Accordingly, the Hon'ble SAT vide Order dated February 6, 2020, have allowed the *Noticee*'s appeal and directed him to appear before SEBI on February 20, 2020 and collect the SCN. Accordingly, the *Noticee* was duly served with a copy of the SCN in response to which, he has submitted a written reply dated March 6, 2020, stating that:

a) He has not been provided with a copy of Investigation Report and has not received a copy of Annexure-2 to the SCN as mentioned in his letter dated February 24, 2020.

b) That the present proceedings are barred by limitation due to delay and latches.

c) He was appointed as Additional Director of the *Company* w.e.f. September 7, 2009, and, was not appointed as regular Director at the Annual General Meeting (AGM) held by the *Company* dated September 29, 2009. He was not aware that by operation of Section 161 of Companies Act, 2013, he had ceased to hold the office as a Director w.e.f. September 30, 2009 and he continued to attend Board Meetings after September 30, 2009.

d) He had submitted his resignation letter dated September 4, 2010 to the *Company* through registered post-dated September 23, 2010. However, the *Company,* in violation of Section 161 of the Companies Act, 2013 appointed him as regular Director at its AGM on September 20, 2010. Therefore, he sent another resignation letter dated September 29, 2010 which was taken on record by the *Company* and Form 32 was filed with Registrar of Companies (ROC).

e) As an Independent director, he had attended only two Board Meetings in the FY 2010-11 viz: - May 29, 2010 and June 15, 2010 and was not involved in day to day affairs of the *Company*. He has discharged his duties as Independent Director with diligence, honesty and sincerity. He had no involvement in the GDR issue of Chromatic.

f) His signature on the purported true copy of the Board Resolution dated August 13, 2010 is forged and has requested for signature verification at his cost. Further, he had neither received any notice for the Board Meeting dated August 13, 2010 nor did he attend the said Meeting.

g) He had tendered his resignation from the *Company* on September 29, 2010 therefore any events pursuant to the date do not pertain to him.

6. Subsequent to receipt of his written reply, the *Noticee* was granted an opportunity of Personal Hearing before me through video conference on July 7, 2020 (on account of COVID-

19 pandemic). The *Noticee*'s Authorised Representative attended the Personal Hearing on behalf of the *Noticee* and presented oral arguments on the lines of his written reply. After hearing the arguments on behalf of the *Noticee*, the Authorised Representative was asked to respond to a few queries raised during the Personal Hearing and to furnish certain information as requested for during the Hearing. The *Noticee* has furnished that information vide email dated August 5, 2020.

7. I note that in the Order dated September 30, 2019, after having considered all the facts and attendant circumstances of the case, I have held in detail as to how the *Company* and Directors have fraudulently arranged subscription to the GDR through a pre-fabricated arrangement of a Pledge Agreement and Loan Agreement with the EURAM Bank so as to create a false impression and perception in the domestic market about the success of its GDR issue abroad as well as to provide misleading disclosures to the Stock Exchanges about its successful GDR issue. For the sake of brevity, the findings recorded in Order dated September 30, 2019 are not being repeated herein and this Order may be read with the Order dated September 30, 2019 wherever deemed necessary. In view of the above, the limited issue arising for consideration in the present proceedings is to ascertain as to whether on the basis of submissions made by the *Noticee* and documents furnished in support thereof, the *Noticee* deserve benefit of doubt and thereby exoneration from the charges made in the SCN and findings already recorded in the Order dated September 30, 2019.

8. Before proceeding further, I note that the *Noticee* has submitted that he has not been provided with copies of certain documents including a copy of the Investigation Report. At the outset, it has to be clarified that Investigation Report is not a document collected from an external source in the course of investigation to substantiate the violations as alleged in the SCN. It is a report prepared based on the information gathered in the course of the investigation after which the SCN was issued by framing allegations based on those findings. I note that in this case, all the findings of facts as gathered during the investigation have been duly narrated in the SCN and therefore, the submissions of the *Noticee* that non furnishing of the Investigation Report has resulted in miscarriage of justice is not justified. In this respect, it may be noted that similar issues have also been raised before the Hon'ble SAT in the matter of *Anant R Sathe vs. SEBI,* (Appeal no. 150/2020; Order dated July 17, 2020) wherein, the Hon'ble SAT, while reiterating the position of law has held as under:

"The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence……In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted."

9. I also note that the allegations and the detailed facts based on which the charges have been framed against the *Noticee* have been clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been duly made available to the *Noticee* not only as enclosures to the SCN but also during the subsequent Inspection undertaken by the *Noticee* as per his request. Therefore, the interest of the *Noticee* has not been prejudiced in any manner. Under the circumstances, I find the *Noticee*'s grievance of not being furnished with the copy of Investigation Report to be unfounded. Further, with regard to his submission that he has not been furnished with the Annexure-2 to the SCN as mentioned in his letter dated February 24, 2020, I note from the records that the same has also been provided to the *Noticee*'s Authorised Representative during the course of Inspection on March 3, 2020, therefore, there has been no prejudice meted out to the *Noticee* on that count too.

10. The *Noticee* has further submitted that the present proceedings are barred by delay and latches and has relied upon some cases decided by Hon'ble Supreme Court and SAT viz: - *Corporation Bank & anr. vs. Navin J. Shah,* (2000) 2 SCC 628 and *Ashok Shivlal Rupani vs. SEBI,* (Appeal no. 417/2018; Order dated August 22, 2019). While dealing with the above submissions of the *Noticee*, it has to be brought on record here that initially SEBI was investigating a few cases of GDR issues, during which it was noticed that one Mr. Arun Panchariya, in connivance with different issuer companies and their Promoters/Directors, had conceived fraudulent schemes to help those companies to issue GDRs in certain overseas markets. While investigating those cases, information was sought from several entities including the Regulators of various overseas Territories (Countries). After analysing those information received from various overseas sources, it was noticed that similar *modus operandi* were also followed in several other GDR issuances by many more companies listed in India. Under the circumstances, the investigations were escalated and expanded further so as to carry out scrip wise investigation by SEBI, into a large number of GDR issue cases that were observed over the period of time.

11. In view of the fact that a large number of Indian listed scrips and their corresponding GDR issues were taken up for investigation collectively for which information had to be collected

from different entities, mostly from the authorities situated outside India through regulatory coordination/arrangements with different overseas Regulators, it required substantial time for completion of those investigation and only after completion of those investigations, SCNs came to be issued to a large number of GDR issuer-companies. I note that a major portion of relevant information in this regard was received from Financial Market Authority, Austria (Austrian Financial Regulator) in March 2015. In this regard, I further note that SEBI had passed an order dated June 16, 2016 in which, it was recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. It is seen that Chromatic was also one such GDR issuing company in respect of which the investigation was completed in March 2017 and SCN was issued to the *Noticee* on June 28, 2017. Therefore, the time taken for completion of collective investigation into such a large number of similar cases of GDR issuances and also for issuing SCNs to a large number of entities is fairly understandable. Without prejudice to the above factual observation, I find that though no provision under SEBI Act, 1992 prescribes any time limit for taking cognizance of the alleged breach of provisions of SEBI Act, 1992 and rules and regulations made thereunder, however, Notwithstanding the above, in my view in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of commission of the said violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. vs. SEBI* (Appeal no. 97/2014; Order dated December 16, 2015):

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

12. At this stage, I would also like to refer to the observations made by the Hon'ble SAT in the matter of *Jindal Cortex Ltd. vs. SEBI,* (Appeal no. 376/2019; Order February 5, 2020) wherein, while dealing with a similar issue of limitation in initiating action against the allegations of fraudulent arrangement concerning GDR issue, the Hon'ble SAT have observed as under:

> *"Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc."*

13. The *Noticee* has placed reliance on few cases decided by Hon'ble Supreme Court viz: -*Pooja Ravinder Devidasani v. State of Maharashtra & Another* (Criminal Appeal Nos. 2604-2610 of 2014; Order dated December 17, 2014) and *SEBI & Others v. Gaurav Varshney & Others* (Criminal Appeal nos. 827-830 of 2012; Order dated July 15, 2016) to contend his role as a Director in a Company. I have perused the relied upon decisions and find the same to be factually distinguishable and hence not applicable to the facts of the present matter. I also note that the *Noticee* has relied on the findings of Hon'ble SAT in the case of *Adi Cooper vs. SEBI,*(Appeal no. 124/2019, Order dated November 5, 2019) to impress upon that no fraud can be logically inferred from the reading of the contents of the Board Resolutions and therefore basing the entire allegations of fraud as being founded and built upon the said Board Resolution is not correct, more so when he claims to be not present in the Board Meeting of the *Company* held on August 13, 2010 and also that he was not a Director of the *Company* when the GDR issue and Pledge Agreement/Loan Agreement were executed. In this regard, it is noted that similar contentions and arguments also came for consideration before the Hon'ble SAT in the matter of *Cals Refineries Limited vs. SEBI* (Appeal No 04 of 2014; Date of Decision October, 12, 2017), wherein the *Company* and Directors had claimed that from the contents of the Board Resolutions, it would not be justified to allege and conclude that 'loan' mentioned in the Board Resolution was ever intended for third party loan as alleged in the SCN. The Hon'ble SAT after having heard the parties at length, was pleased to find their submission as unsustainable. Relevant observations of Hon'ble SAT in the *Cals Refineries (supra)* are as under:

> *"…..(f) Fact that the minutes as per the minute book of Cals does not contain any resolution to open a bank account with Banco cannot be a ground to infer that Cals had not intended to open an account with Banco because, firstly, on the basis of the Board resolution dated 30/10/2007 certified by Sundararajan,*

director of Cals, an account was in fact opened in the name of Cals with Banco for depositing the GDR subscription amount. Secondly, on issuance of GDRs, the GDR subscription amount was in fact deposited in the said account of Cals with Banco. Thirdly, apart from the Board resolution dated 30/10/2007certified by Sundararajan, there is no other resolution passed by Cals to open an account for depositing the GDR subscription amount. Fourthly, the GDR subscription amount deposited in the said bank account with Banco has been withdrawn by Cals in installments from time to time which is in consonance with the Account Charge Agreement executed by Cals. Without opening a bank account, Cals could not have opened the GDR issue. Very fact that Cals operated the account opened with Banco on the basis of resolution dated 30/10/2007 certified by Sundararajan clearly falsifies the case put up by Cals that it had not authorized any one to open an account with Banco for depositing the GDR subscription amount.

(g) Similarly, argument that Cals had never authorized any person to sign any Account Charge Agreement is also without any merit, because, the Account Charge Agreement was signed by Goorha promoter-director of Cals. The Account Charge Agreement provides that all communications in relation thereto should be addressed either to Goorha or Sundararajan as they were the two authorized signatories to operate the Bank account of Cals with Banco. It is relevant to note that Goorha was the founder, promoter, director of Cals, whereas, Sundararajan was the director of Cals nominated by the Spice Energy group which had taken over Cals with a view to implement its refinery project through Cals by raising funds through issuance of GDRs. Admittedly, Sundararajan was in-charge of the entire GDR process. Thus, the bank account with Banco for depositing the GDR subscription amount was opened by Sundararajan, director representing the Spice Energy group and the Account Charge Agreement was signed by Goorha, director representing the promoter group of Cals. In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted."

14. I also note that subsequent to the decision of *Adi Cooper*, the Hon'ble SAT has upheld *inter alia* the orders passed by SEBI in *Transgene Bioteck* and *Jindal Cortex* matters, which were also involving similar Board Resolution and wherein the scheme was found and upheld to be fraudulent following the similar interpretation. In view of the above, I find that in the instant matter also the *Company* had opened the bank account, executed the Pledge Agreement and facilitated the execution of Loan Agreements to secure the subscription to the GDR solely by

Vintage. Further, as stated above that the above observations of Hon'ble SAT have been affirmed in other GDR appeals. I find that the reliance on the findings of Hon'ble SAT in the *Adi Cooper* would not be helpful to the *Noticee,* as in the case of *Adi Cooper* the Hon'ble SAT has also found another Independent Director guilty of similar violations alleged in the SCN. Moreover, with respect to the case of *Adi Cooper* (*supra)* relied upon by the *Noticee*, I am also informed that an appeal has already been preferred by SEBI against the said Order before the Hon'ble Supreme Court, and the Hon'ble Supreme Court after having satisfied with case advanced by SEBI, has been pleased to issue a notice vide its order dated January 27, 2020. Therefore, seeking exoneration merely based on the observation of Hon'ble SAT in the case of *Adi Cooper*, would not be proper, considering the fact that the matter is ceased and sub-judice before the Hon'ble Supreme Court of India.

15. Further, the fraudulent arrangement indulged in by the *Company* to ensure successful completion of GDR issuance is not the solitary one. As noted above that SEBI has found that as many as 51 Indian companies have made 59 GDR issues over the period and in all GDR issues, companies have been seen resorting to almost exactly similar and identical arrangement, wherein even the contents of Board Resolution passed by respective companies was also seen to be exactly similar. It has been brought to my notice that outcome of many of such investigation have been contested before the judicial forum, wherein the allegations and findings pertaining the fraudulent scheme have been recognised and upheld. Therefore, considering the background of the facts and conduct of *Company* and its Board indulging in conceiving of a scheme and arrangement to ensure successful subscription of GDR has all the ingredients that comprise a fraudulent activity in the Securities Market and the *Noticee Company* has been found to have committed a fraudulent act not only upon its own existing Shareholders but also upon all the investors of the Securities Market who might have been induced to deal in the shares of the *Company* due to the artificially created positive outlook about the *Company*'s performance.

16. Having dealt with the preliminary and technical submission of the *Noticee*, now I proceed to deal with his submissions on merit. The *Noticee* has submitted that he was appointed as Additional Director of the *Company* w.e.f. September 7, 2009, however, was not confirmed as a regular Director in the next Annual General Meeting (AGM) held by the *Company* on September 29, 2009. He has stated that he was not aware that by operation of Section 161 of Companies Act, 2013 he had ceased to hold office as a Director w.e.f. September 30, 2009 and inadvertently

continued to attend Board Meetings of the *Company*. He has also stated that subsequently, he submitted his resignation letter dated September 4, 2010 to the *Company* through registered post on September 23, 2010. However, the *Company* in violation of Section 161 of the Companies Act, 2013 appointed him as regular Director at its AGM on September 20, 2010. Therefore, he sent another resignation letter dated September 29, 2010 which was taken on record by the *Company* and accordingly Form 32 was filed with ROC effecting his resignation as a Director from the *Company*.

17. From the above, it is clear that the *Noticee* has admittedly acted as the Director of the *Company* and has discharged the duties of a Director. His submissions are that since his appointment was not confirmed in the next AGM of the *Company,* by operation of law, had ceased to be a Director of the *Company* and therefore he could not be fastened vicariously with any responsibility as a Director of the *Company*. In this regard, it is noted that though the *Noticee* has placed reliance on Section 161 of the Companies Act, 2013, the same is not proper as the event in this case pertains to the period 2009-2010, however, it is also noted that the provisions under the Companies Act, 1956 (section 260) also contained and recognised similar provisions. Nonetheless, in my view, the above submissions of the *Noticee* is fraught with contradictions. On the one hand, the *Noticee* has claimed that he was never appointed as a Director of the *Company* and had ceased to hold the office of a Director with effect from September 29, 2009 itself when his appointment was not approved in the AGM of the *Company*, whereas on the other hand, despite knowing the fact that his Directorship was not considered for approval by the Board of the *Company*, he continued and the Board of the *Company* allowed him to continue to act as a Director of the *Company* without any force and under influence and he also continued to attend Board Meetings in his capacity of a Director. The Board of the *Company* never informed him that his attendance in the Board Meetings was without its approval and rather allowed him to attend the Board Meeting as a Director, which again contradict the claim that his appointment as a Director of the *Company* was not approved in the AGM. The *Company* and its Board of Directors certainly would not have allowed the *Noticee* to continue as a Director in contraventions of the Companies Act, 1956. The very fact that the Board of the *Company* has invited him to participate in the Board Meetings as a Director, the claim of the *Noticee* that his Directorship was not approved by the AGM and that he had ceased to be a Director from September 30, 2009 holds no ground. It is also relevant to note that the Annual Report of the *Company* for 2009-10 mentions that the *Noticee* herein (Mr. Vipin Sharma) was appointed as an Additional Director on September

7, 2009 and that he was re-appointed on September 29, 2009 by the Board of Directors which further demolishes the authenticity of the submissions so advanced by the *Noticee*. Under the circumstances, the submissions of the *Noticee* has no credence and rather seem to be an afterthought exercise to escape the consequences of the present proceedings and are fraught with inconsistencies and contradiction as highlighted above.

18. It is not disputed that the *Noticee* continued his association with the *Company* as one of the Directors of the *Company* and further attended Board Meetings as a Director of the *Company*. Therefore, it is not proper for the *Noticee* to raise legal defects/errors in his Directorship when the MCA records/Annual Reports clearly show him as a Director, specifically when the facts disputed by him cannot be verified in the absence of any verifiable evidence to the contrary and necessary parties to corroborate his claims. His ignorance of law or any legal error pertaining to his Directorship status ought to have been disputed by him before the Competent Forum and not here at this stage. Without prejudice to the aforesaid, it is observed that by his own actions, the *Noticee* has held out himself as a Director of the *Company* to the Shareholders of the *Company* as well as to the investors at large (who do not have access to internal affairs of the *Company*) who have been made to believe and trust that their rights and interests are being protected by the Board of Directors comprising *Noticee* as one of the Directors. Therefore, the submissions of the *Noticee* that he ought not to be made liable for any irregularities committed by the *Company* of which he was admittedly a Director and has performed his duties as a Director of the *Company,* cannot be viewed as a tenable proposition to exonerate him from the obligations that he owed to the *Company* as a Director during the relevant period.

19. It has been further submitted that the *Noticee* had attended only two Board Meetings in the FY 2010-11 viz: - May 29, 2010 and June 15, 2010 in the capacity of an Independent Director, and he has enclosed outcomes of the said meetings as obtained from moneycontrol.com to substantiate that he was not a party to the GDR issue discussion as such. He has denied having any involvement in the GDR issue and has claimed to be not a part of any GDR Committee and that no documents pertaining to GDR issue were placed for discussion nor has he signed any documents pertaining to GDR issue. He has disputed his attendance in the crucial Board Meeting dated August 13, 2010 and has claimed that his signature on the certified true copy of the Board Resolution passed in the said crucial Board Meeting dated August 13, 2010 has been forged. During the Personal Hearing before me, the *Noticee* has offered to provide his specimen signature

for verification and has further submitted that his signature verification may be undertaken at his cost in order to verify his submissions. He has also sent a legal notice through his advocate to the *Company* asserting the above claims.

20. I have taken note of the aforesaid submissions of the *Noticee*, but I find that he has not been able to substantiate his submissions and claims with any conclusive/supporting proof, nor has he been able to support his assertions through his bonafide conduct. It was incumbent upon him to furnish either the attendance register of the Board Meetings of the *Company* maintained by the Company Secretary / Compliance Officer or a Court Order bearing testimony to his claim that he did not attend the Board Meeting dated August 13, 2010 or that his signature on the certified copy of the Board Resolution was forged. In the absence of any verifiable support, I am constrained to go by the available records to determine as to whether or not he had attended the aforesaid Board Meeting, more particularly when the documents clearly suggest otherwise. In this regard, it is relevant here to capture the following chronology of events.

Date	Event
07/09/2009	*Noticee* appointed as Additional Director in the *Company*.
29/09/2009	*Noticee* claimed that AGM did not confirm his appointment but he continued to perform as a Director under bonafide belief.
29/05/2010	*Noticee* admittedly attended Board Meeting of the *Company*.
15/06/2010	*Noticee* admittedly attended Board Meeting of the *Company*.
13/08/2010	*Noticee* attended Board Meeting of the *Company*, as evident from the Annual Report and minutes of the Board Meeting signed by the Chairman and the Certified copy of the Board Resolution bears the signature of the *Noticee*. However, *Noticee* denies his attendance in their Board Meeting.
04/09/2010	*Noticee* says that he resigned from the Directorship of the *Company*, but dispatched the letter on 23/09/2010.
23/09/2010	*Noticee* claims to have sent his resignation letter dated September 04, 2010 by registered post to the *Company*.
20/09/2010	AGM of the *Company* appointed the *Noticee* as a regular Director.
29/09/2010	*Noticee* sent another resignation letter to the *Company* after which the requisite form 32 was filed with ROC.

21. The aforesaid chronology of events clearly reveals that the *Noticee*, pursuant to his appointment as a Director of the *Company* on September 07, 2009 has continuously functioned as a Director and has further admitted that in the FY 2010-11 he had attended the Board Meetings of the *Company* held on May 29, 2010 and June 15, 2010, in the capacity of a Director of the *Company*. Notwithstanding his claim of the disapproval by the AGM held in September 2009 about his directorship, in his own words, his resignation letter dated September 29, 2010 was accepted and acted upon by the *Company* whereby Form 32 was filed before the ROC in the year 2010 only. Therefore, from September 07, 2009 till September 29, 2010, the *Noticee* had undisputedly remained a Director of the *Company* and had also acted as a Director of the *Company* and the same is evident from his attending Board Meetings of the *Company*.

22. The *Noticee* has admitted to have attended two Board Meetings in the FY 2010-11, however, he is not ready to admit his attendance in the subsequent Board Meeting held on August 13, 2010, in which the crucial Board Resolution pertaining to opening of bank account for the GDR issue and authorisation to the *Company* to use the GDR proceeds as security so as to ensure successful subscription to the GDR was passed. Further, on perusal of the minutes for the Board Meeting dated August 13, 2010 (enclosed as Annexure-5 to the SCN), it emerges that the proposal to issue GDR was approved by the Board of Directors in the Meeting dated January 29, 2010. The Annual Report of the *Company* for 2009-10 mentions that the *Noticee* had attended the said meeting on January 29, 2010, however he has remained silent about his attendance in the Board meeting dated January 29, 2010. The *Noticee* has claimed a foul play and forgery of his signature, but without any evidence to support his claim, whereas before me, the records filed with the Stock Exchange (Annual Report) and the minutes of the said Board Meeting, duly signed by the Chairman of the *Company*, are clearly mentioning the name of the *Noticee* as a participating Director. Similarly, the certified true copy of the above stated crucial Board Resolution dated August 13, 2010 bears the signature of the *Noticee* as singed and certified on September 15, 2010, which also falls in the duration of his undisputed tenure as a Director of the *Company*. It appears that the *Noticee* in an attempt to maintain a distance from the certified true copy of the Board Resolution dated September 15, 2010 has claimed that he had tendered his resignation vide letter dated September 04, 2010 i.e. before the date of issuance of the said certified true copy, but has not explained as to why he posted his resignation letter purportedly signed on September 04, 2010 only on September 23, 2010, by which time the *Company* through its AGM had already appointed him as a regular Director as well as the certified true copy of the Board Resolution was signed

and issued on September 15, 2010. Therefore, it becomes all the more glaring that the submissions of the *Noticee* about his resignation letter is nothing but an attempt to disassociate himself from the certified true copy of the Board Resolution dated September 15, 2010 which bears the signature to which he vehemently objects.

23. It is also observed that such an explanation to contend the authenticity of the signature long after the true copy of the said Board Resolution was signed, will not be of any help to the *Noticee*, since, the *Noticee* has never raised this point either before the *Company* or before the Competent authority, including ROC nor has ever taken effective legal steps to validate the claim of his absence in the said Board Meeting held on August 13, 2010 and to establish the forgery of his signature on the certified true copy of the Board Resolution, so as to prove his *bonafide*, before me. It must also be considered that the instant proceedings before me is not the right forum wherein the *bonafide* of signature of a person can be forensically verified and adjudicated upon, more particularly, when the proceedings are confined to *Noticee* only and I am bereft of an opportunity to get the counter views by confronting the same with other Directors of the *Company* who had attended the Board Meeting held on August 13, 2010 and had also signed the same certified copy of Board Resolution along with the *Noticee*. Further, the disputed signature pertains to the year 2010 and changes, modification in the signature of any person with the passage of time can also be not ruled out, which further has constraining impact in adjudicating on the authenticity of a signature after lapse of 10 years. In these circumstances, it is neither feasible nor practically possible to adjudicate the issue of disputed signature and record with certainty my views on the same in the instant proceedings, more so when the corroborating evidence in the form of Board Meeting Minutes, Annual Report and certified true copy of the Board Resolution explicitly suggest that the *Noticee* was present in the said crucial Board Meeting held on August 13, 2010 to pass necessary resolutions about the GDR issue.

24. It is also noted that after coming to know about the Order dated September 30, 2019, the *Noticee* became aware of the nature of allegations levelled against him and the factual basis of those allegations, however, the *Noticee*, for the reasons best known to him, has still not taken any serious steps to gather corroborative evidence in order to prove his innocence. The conduct of the *Noticee* in not even initiating any action against the *Company* raises serious doubts on the claim of his not attending the Board Meeting held on August 13, 2010 and his claim of forgery of his signature on the certified true copy of the Board Resolution doesn't inspire any credence as he

himself has not taken any criminal action against the *Company*. It is only through post hearing submissions, the *Noticee in response to the query asked in the Personal Hearing* has informed to have got a legal Notice dated July 30, 2020, issued to the *Company*, which in my view is not sufficient to inspire any confidence on the *bonafide* of the *Noticee* as the same is a mere afterthought attempt to escape the possible consequences of the instant proceedings and not enough to prove the *bonafide* of his claims. Forgery is a serious offence, the *Noticee* ought to have taken strong action against all those who are suspected by him to be involved in the said forgery of his signature to prove his credibility in the eyes of law, if he really believes that his signature has indeed been forged on the certified true copy of the Board Resolution.

25. The *Noticee*'s submission that he was an Independent Director of the *Company* for a year and has resigned on September 29, 2010 before the actual GDR issue took place on October 22, 2010, hence any events pursuant to his resignation do not pertain to him. During the Personal Hearing the *Noticee* was asked to explain the circumstances causing him to tender his resignation within a short span of a year. The *Noticee* made a general observation that he tendered his resignation to the *Company* after the Chartered Accountants of the *Company* (Statutory Auditors) left the *Company* in August 2010 which made him uncomfortable, however no specific reason or circumstances were highlighted before me to justify as to how the resignation of the then Statutory Auditors could have compelled him to resign from the post of Director. In the circumstances, even though he may not be held guilty of the disclosures made by the *Company* subsequent to his resignation, it is difficult to discharge him from the allegation of being part of arrangement whereby the Board Resolution was passed authorising the execution of Pledge Agreement so as to keep the GDR proceeds as lien or security to ensure a successful subscription to the GDR of the *Company*.

26. I have also taken note of *Noticee's* submissions that he was not involved in the day to day affairs of the *Company*. However, the determination against the *Noticee* in the present proceedings is confined to the accusation that he was also part of the fraudulent scheme where under, he along with other Directors had authorised the management of the *Company* for execution of a Pledge Agreement by passing a suitable resolution in the Board Meeting held on August 13, 2010, thereby fraudulently facilitating the financing of subscription to the GDR issue of the *Company* and letting the *Company* to file misleading disclosures to the Stock Exchange by concealing the true and correct facts behind the issue of GDR.

27. Having considered the same, based on submissions so advanced, documents so submitted in support thereof coupled with the conduct and diligence shown by the *Noticee* to prove his innocence, in my view the *Noticee* does not deserve exoneration from the charges levelled against him in the SCN. Under the circumstances, I am constrained to reject the contentions of the *Noticee* on the face of overwhelming supporting evidence about his directorship and his participation in the Board Meeting and hold that the *Noticee* had enjoyed directorship in the *Company* from September 07, 2009 to September 29, 2010.

28. I have already held in my O*rder* that the entire scheme orchestrated by the *Company* (Chromatic) started with *passin*g of the Board Resolution referred to above, followed by entering into the Pledge Agreement with EURAM Bank so as to facilitate the use of the GDR proceeds deposited in its account with EURAM Bank as a security against the loan sanctioned and disbursed by the EURAM Bank in favour of Vintage, the sole subscriber to the GDR issue and thereby artificially ensuring successful subscription and allotment of GDR under the said fraudulent scheme. I have also held that the Board Resolution passed in the Board Meeting of the *Company* held on August 13, 2010 was very crucial, as based on this Board Resolution, the *Company* got its GDR account opened in the Euram Bank and facilitated the successful subscription of GDR by executing the Pledge Agreement. The *Noticee* has failed to produce sufficient evidence to rebut the allegations made in the SCN or to support his claim of not being present in the Board Meeting held on August 13, 2010 and that his signature on the certified true copy is forged one.

29. I also note that the *Noticee* has not produced any evidence or any submission to show that as an Independent Director, he had acted responsibly and raised pertinent issues and had asked relevant questions before the Board during the period of his directorship. The *Noticee* has also not furnished any satisfactory explanation about his sudden severance with the *Company*. As noted above, the *Noticee* has not taken any substantive steps to support his claims which further reinforces the suspicion that the *Noticee* was very much aware of the facts and the objectives behind passing of the aforesaid Board Resolution in connection with the GDR issue of the *Company*. He has rather conducted himself in co-ordination, actively or passively, with other Directors in conceiving and implementing the GDR issue in a fraudulent and non-transparent manner, to the detriment of the interest of the investors in the Securities Market. The *Noticee* therefore, has failed to look after the best interests of the *Company*.

30. Under the circumstances, having considered and held in the Order dated September 30, 2019 that even after the receipt of GDR proceeds, its utilisation by the *Company* was conditionally attached to the repayments to be made by the sole subscriber, viz: - Vintage, it was also found to be a fraud perpetrated by the *Company* and its Directors upon the shareholders as well as investors of the Securities Market, I find the *Noticee* liable for the part of the charges made in the SCN.

31. Based on the above, I am constrained to hold that *Noticee* has not presented any tangible evidence to rebut the allegation of his presence during the Board Meeting of the *Company* held on August 13, 2010 and to deny the issuance of certified true copy dated September 15, 2010 by him certifying the minutes of the Board Resolution passed in the Board Meeting held on August 13, 2010, hence, and for reasons recorded above, I find the *Noticee* to be in violation of the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN.

32. At the same time, I cannot overlook the facts of the case in totality, specially the fact of resignation tendered by the *Noticee* on September 29, 2010 and further the fact that the *Noticee* has already undergone debarment and restrain for a period more than five months pursuant to the Order dated September 30, 2019. Keeping the aforesaid facts into account, while exercising powers conferred upon me under Sections 11(1), 11(4), 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 I find that it would be sufficient to meet the end of justice by directing that this proceedings *qua* the *Noticee* are disposed of by issuing a word of 'caution' to the *Noticee* to be careful and exercise diligence in future while dealing in Securities Market, specifically while associating himself with any Listed Company in any capacity.

33. Copy of this order shall be forwarded to the *Noticee* and the recognized Stock Exchange.

34. The order shall come into force with immediate effect.

-Sd-

DATE: SEPTEMBER 25, 2020 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA