

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/GR/KG/2020-21/9267]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957

In respect of:

1. Aqua Logistics Limited (CIN:L63090MH1999PLC121803)

In the matter of GDR Issue of Aqua Logistics Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigations into the alleged irregularities in the GDR (Global Depository Receipts) Issue by Aqua Logistics Limited (hereinafter referred to as “Company” /”AQUA”) during the period from January 15, 2011 to February 28, 2011 (hereinafter referred to as “Investigation Period”).

2. AQUA is a company whose shares are listed on the NSE and BSE Ltd. The investigations, *prima facie*, revealed that AQUA had issued 4.112 million GDRs (amounting to USD 62.379 Million, approximately Rs. 284.32 Crore at RBI exchange rate of Rs. 45.58 per USD) on February 10, 2011, equivalent to 9,45,76,000 equity shares of Re. 1 each, and the said issue was subscribed by one entity viz. Vintage FZE (now 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 (**EURAM Bank**) by entering into Loan Agreement dated February 3, 2011 with EURAM Bank. It was observed that directors of AQUA in its board meeting held on September 9, 2010, had passed board resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of AQUA and also for using the funds deposited in the said bank account as security in connection with loans, if any. AQUA had signed a pledge agreement dated February 3, 2011 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. M.S. Sayad, Whole Time Director (hereinafter referred to as “WTD”) of AQUA. Vide the said loan agreement, AQUA had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of AQUA, thus securing Vintage FZE’s loan.

3. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. Annual Report of AQUA for FY 2010-11 was examined and it was observed that 12 board meetings of AQUA were held in the FY 2010-11 and three directors namely 1) Mr. Rajesh G Uchil 2) Mr. M.S.Sayad and 3) Mr. Harish G Uchil had attended Aqua the 12 board meetings of AQUA held in FY 2010-11. Therefore, it is observed that two directors namely Mr. Rajesh G Uchil and Mr. Harish G Uchil had attended the AQUA’s board meeting dated September 09,

2010 and authorized EURAM Bank to use the GDR proceeds in connection with loan, if any and Mr. M.S.Sayad was authorized to sign the agreement related to GDR issue of the AQUA. Further, Mr. Mukesh Chauradiya had signed the Loan Agreement dated February 3, 2011 on behalf of Vintage in the capacity of its Managing Director and on a perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Arun Panchariya was the beneficial owner of Vintage. Further, it was observed that Mr. Sanjay Aggarwal, the beneficial owner of 'Sea Dragons Worldwide Limited' who had acted as a conduit of Arun Panchariya and Vintage in the instant case through whom monies were routed to Vintage. It was therefore alleged that AQUA and the individuals named above had acted as parties to the fraudulent scheme.

4. SEBI had, therefore, initiated adjudication proceedings *inter alia* against AQUA under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Section 23E of the Securities Contracts (Regulation) Act, 1956, (**SCRA**) 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(2)(f),(k),(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 SCRA read with Clauses 32, 36(7) and 50 of the Listing Agreement.

5. **APPOINTMENT OF THE ADJUDICATING OFFICER**

Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide communiqué dated May 17, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the

SCRA the aforesaid violations alleged to have been committed by the Noticee. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated 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

6. Show Cause Notices No. EAD4/ADJ/SRP/HKS/OW/P/33563/1/2018, dated December 7, 2018 (hereinafter referred to as “SCN”) was issued to AQUA 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 by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “SEBI Adjudication Rules”) and Rule 4 of Securities Contracts (Regulation) (procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) rules, 2005 (hereinafter referred to as “SCRA 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) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement. The said SCN had returned undelivered from the address of AQUA (as available on the portal of the Ministry of Corporate Affairs) with the postal remarks “unclaimed”.
7. Thereafter, subsequent to the handing over of the proceedings to the undersigned, the email address of AQUA and the Official Liquidator attached to the Hon’ble Bombay High Court was obtained and the scanned copy of the SCN addressed to AQUA was mailed to the said

addresses with digital signature of the undersigned vide email dated March 11, 2020 (including the official liquidator for AQUA) and an opportunity of personal hearing was provided on March 23, 2020. The Official Liquidator attached to the Hon'ble Bombay High Court (hereinafter referred to as the "OL"), vide letter dated March 20, 2020, sought adjournment of the personal hearing in the ground of insufficient staff strength due to COVID-19 pandemic. Thereafter, another opportunity of personal hearing was provided to AQUA on April 17, 2020, vide email dated March 23, 2020. This hearing was also adjourned in view of the lockdown due to the pandemic. Thereafter, vide email dated August 10, 2020, AQUA was once again provided an opportunity of hearing on August 20, 2020. Vide letter dated August 19, 2020 (received vide an email of even date), the OL stated as reproduced herein below:

"With reference to the above subject, it is to inform you, that by an order dated 04.01.2013 passed by this Hon'ble Court Bombay in Company Petition No. 409 of 2010, the Official Liquidator attached to the Hon'ble High Court, Bombay was appointed as a liquidator of Aqua Logistics Limited (in Liqn.)

It is also stated that, the Official Liquidator had invited the claims from the workers/ creditors of the Company (in Liquidation) on 4.08.2014 through advertisement in local newspaper and last date of submission of claims with this office was 05.09.2014.

Further, it is stated that, in respect of Adjudication proceedings against the Company (in liquidation) you are requested to lodge your claim with this office in the prescribed form No. 66 (copy enclosed) to enable the Official Liquidator to adjudicate the same in accordance with the provisions of Section 529, 529A and 530 of the Companies Act, 1956."

Subsequently, vide email dated September 10, 2020, AQUA was provided the last and final opportunity of personal hearing on September 22, 2020. The Authorized Representative of the OL appeared on behalf of AQUA and reiterated the submissions already made vide the letter dated August 19, 2020. He further submitted that vide his letter dated September 17, 2020, the erstwhile directors of AQUA were advised to attend the hearing. However, none of the erstwhile directors of AQUA attended the hearing.

CONSIDERATION OF ISSUES

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

I. Whether AQUA 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) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement.

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

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

OBSERVATIONS AND FINDINGS

9. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, SCRA 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 [manipulative] fraudulent or an unfair trade practice if it involves [any of the following]:—

(f) [knowingly] publishing or causing to publish or reporting or causing to report by a person dealing in securities any information 12[relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals,] which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) [“disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;”]

(r) [knowingly] 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 Aqua 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.”

Clause 50 of the Listing Agreement:

“The company will mandatorily comply with Aqua the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time.”

Clause 32 of Listing Agreement:

“The Company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash

Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3.”

Issue I : Whether AQUA 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), 4(2) (f), (k), (r) of PFUTP Regulations and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement.?

10. From the material available on record, I note that AQUA had issued 4.112 million GDRs (amounting to USD 62.379 million) on February 10, 2011, equivalent to 9,45,76,000 equity shares of Rs.10 each. Summary of the aforesaid GDRs issued by AQUA as submitted by the custodian bank ICICI vide its letter dated June 2, 2016 and as obtained from the ‘offering Circular’ of AQUA, is tabulated below.

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
10-Feb-2011	4.112 (at USD 15.17 each	62.38	ICICI Bank	9,45,76,000 equity shares of Rs.10	Deutsche Bank Trust Compa	Prospect Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

	GDR)			each	ny, NY, USA			
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11. BSE vide email dated November 14, 2017, provided list of subscribers to GDRs of AQUA as submitted by AQUA to BSE and the list is tabulated as under:

Sl. No.	Name of the subscriber	No. of GDRs	No. of Shares
1	Calculus Capital Limited	4,10,000	94,30,000
2	Comet Group Holdings Limited	4,30,000	98,90,000
3	Icon Holdings Limited	3,95,000	90,85,000
4	Micromax Corporation	4,15,000	95,45,000
5	Prism International Holdings Limited	3,00,000	69,00,000
6	Quantum Capital Limited	4,10,000	94,30,000
7	Ribber Partners Limited	4,75,000	1,09,25,000
8	Santis Family Holdings Inc	4,52,000	1,03,96,000
9	Tieze Group Holdings Limited	4,05,000	93,15,000
10	Ying Yang Finances Limited	4,20,000	96,60,000
	Total	41,12,000	9,45,76,000

12. SEBI Investigations have observed that subscription to the GDR was obtained through 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.

13. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as “**Vintage**”) had obtained a loan of USD 62.379 million by entering into a Loan Agreement dated February 3, 2011, with EURAM Bank to subscribe to the GDRs of AQUA. The aforesaid Loan Agreement was signed by Mr. Mukesh Chauradiya in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

1. Currency and the amount of facility:

USD 62,379,000.-

(The amount is exactly the same amount raised by AQUA 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 4,112,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580035, Aqua Logistics Limited’

(The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of AQUA. 580035 is the client account number of AQUA. (Explanation supplied).

6. Security

6.1 *In order to secure Aqua 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. (emphasis supplied)*
- *Pledge of the account no. 580035 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.*

14. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 62.379 million from EURAM Bank to subscribe to the GDRs of AQUA.

15. From the certified true copy of AQUA's Board Resolution dated September 9, 2010 provided by EURAM Bank, , 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”), Palais Esterhazy, Wallnerstrasse 4, 1010, Vienna, Austria 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 the Company hereby authorizes Mr. S. Sayed, Director,

1) 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.”

2. *****

3. 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”. [Emphasis supplied]

16. From the aforesaid resolution of the board meeting it is observed that the Board of Directors of AQUA had authorized, Mr. M. S. Sayed, Director, to sign, execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, Mr. M. S. Sayed was *inter alia* authorized to carry and use the seal of AQUA. 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. The aforesaid fact of opening of account with EURAM Bank for such purposes as stated in the Board resolution and reproduced above has not been refuted by AQUA.

17. I note from the records made available by EURAM Bank that subsequently AQUA had entered into a Pledge Agreement with EURAM Bank on February 3, 2011. The said Pledge Agreement was signed by Mr. M.S. Sayed on behalf of AQUA, in the capacity of WTD of AQUA. The salient Clauses of the Pledge Agreement are *inter alia* as under:

1. Preamble

By loan agreement K021210-002 (hereinafter referred to as the "Loan Agreement") dated 3 February 2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in K021210-002 and acknowledges and agrees to its terms and conditions."

“2. Pledge

2.1 In order to secure any and Aqua obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and Aqua respective amendments thereto and for any and Aqua 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 Aqua of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the “Pledged Securities”) and the balance of funds up to the amount USD 62,379,040 existing from time to time at present or hereafter on the securities

account(s) no. 580035 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and Aqua amounts credited at any particular time therein.

2.1.2 Aqua 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. 580035 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and Aqua amounts credited at any particular time therein....

(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 Aqua dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

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

6. Realisation of the Pledge:

6.1 In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of

Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transaction, as selected by the Bank.

6.3 The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable.”

18. I note that the Pledge Agreement refers to the Loan Agreement dated February 3, 2011 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 62,379,000, and it is stated that the Pledgor i.e. AQUA has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, AQUA 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 Pledgor had agreed to pledge Aqua 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. As already reproduced above, 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 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.”

Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated February 3, 2011. Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement.

19. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 62,379,000 to subscribe to the GDRs of AQUA. From the statement of Vintage’s bank account and the escrow account for the GDR issue, it is observed that vide letter dated February 3, 2011, Vintage had instructed EURAM to transfer an amount of USD 62,379,000 from its account and to credit it into the escrow account of AQUA. The said amount was credited to the account of AQUA on February 9, 2011. The bank account statement of AQUA clearly shows that the said amount as received from one entity only, i.e. Vintage. Further, Financial Market Authority (FMA) Austria vide email dated March 01, 2016 had informed that EURAM Bank has submitted that Vintage was the sole subscriber to GDR issue of AQUA. 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 AQUA comprising 4.112 million GDRs amounting to USD 62.379 million, was subscribed by only one entity, i.e. Vintage, and not by the ten entities (mentioned in the preceding paragraphs) as informed by AQUA to BSE. I further note that the loan agreement between Vintage and EURAM was signed on February 3, 2011 and on the same date Vintage had instructed EURAM to transfer the said amount of USD 62.379 million from its account to that of AQUA and that AQUA’s account was pledged with EURAM Bank under the Pledge Agreement.

20. It is observed from Vintage's loan account statement with EURAM Bank that Vintage repaid the loan amount to the extent of USD 41.64 million in nineteen instalments by February 03, 2012 and thereafter defaulted on the repayment of balance loan amount. Details of repayment of loan by Vintage as observed from information provided by EURAM Bank are tabulated below:

Date	Loan Amount repaid by Vintage (USD)	Date	Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)
22/02/2011	1877000	04/05/2011	195000	1877000	195000
29/06/2011	300000	01/07/2011	400000	2177000	595000
20/07/2011	4000000	20/07/2011	2000000	6177000	2595000
-	0	21/07/2011	2000000	6177000	4595000
28/07/2011	2000000	28/07/2011	2000000	8177000	6595000
03/08/2011	2500000	03/08/2011	2500000	10677000	9095000
11/08/2011	2000000	11/08/2011	2000000	12677000	11095000
30/08/2011	1250000	30/08/2011	1290000	13927000	12385000
07/09/2011	1250000	07/09/2011	1250000	15177000	13635000
15/09/2011	2350000	15/09/2011	2385000	17527000	16020000
03/11/2011	1250000	03/11/2011	1250000	18777000	17270000
07/12/2011	3000000	07/12/2011	3000000	21777000	20270000
13/12/2011	2500000	13/12/2011	2500000	24277000	22770000
10/01/2012	2500000	10/01/2012	2500000	26777000	25270000
13/01/2012	2500000	13/01/2012	2500000	29277000	27770000
17/01/2012	2465000	17/01/2012	2500000	31742000	30270000

Date	Loan Amount repaid by Vintage (USD)	Date	Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)
20/01/2012	2500000	20/01/2012	2500000	34242000	32770000
27/01/2012	2500000	27/01/2012	2500000	36742000	35270000
31/01/2012	2400000	31/01/2012	2400000	39142000	37670000
03/02/2012	2500000	03/02/2012	2500000	41642000	40170000

On perusal of the AQUA's EURAM Bank account statement and Vintage's loan account statement, it was observed that only after Vintage repaid loan installments, lesser amount of money was transferred from AQUA's EURAM Bank account to the Hong Kong based subsidiary of AQUA, Aqua Logistics HK Private Limited ("Aqua HK")'s bank account. From the above, it is evident that the amount transferred from AQUA's EURAM Bank account was dependent on the repayment of the loan by Vintage.

21. Vintage repaid loan amount of USD 41.64 million and thereafter defaulted on the repayment of balance loan amount of USD 20.79 million (includes interest on loan amount). It is observed from EURAM Bank's letter dated August 14, 2012 that an amount of USD 20.79 million (USD 20,737,040- Principal + USD 49,682.49- Interest) was due from Vintage, an amount of USD 20.74 million was adjusted by EURAM Bank on August 13, 2012 and an amount of USD 25,026.57 was due from Vintage. During the course of the investigation, it was further observed that vide letter dated July 09, 2012 signed by Mr. M. S. Sayad AQUA had submitted to EURAM Bank that-

“..We Aqua Logistics Ltd, 5th Floor, B wing, Trade Star, Andheri, Mumbai, India were informed by Alta Vista International FZE of your letters dated May 09, 2012 and 25th May 2012 that the loan in the amount of USD 20,737,040 is due and the loan has to be repaid within 10 days, otherwise the pledged cash deposit will be set off with the outstanding loan amount plus any outstanding interest.

We hereby confirm that the pledge agreement entered into by and between Aqua Logistics Limited and European American Investment Bank AG is valid was duly signed by Aqua Logistics Limited.

Further, we confirm that the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 20,737,040 USD.

As soon as European American Investment Bank AG has exerted its right to set off, Aqua remaining GDR's regarding Aqua Logistics Limited (ISIN: US03837W1027) held in deposit no: 540012 1 E of Alta Vista International FZE with European American Investment Bank AG shall be transferred by European American Investment Bank AG to the following deposit account:

Beneficiary Bank: Julius Bear & Co. Ltd., Singapore

Euro clear No of Bank: 13469

Contact details at bank: Mr. Roy Lin, roy.lin@juliusbaer.com, Phone: +65 68271838

....After such transfer has been effected, you shall close Aqua of Aqua Logistics Limited's accounts held with European American Investment Bank AG...”

22. EURAM Bank vide letter dated August 14, 2012 had intimated AQUA that-

“...We confirm receipt of your letter dated 09 July 2012 and kindly inform you that we have realized the balances of your pledged time deposit account held under customer number 580035 with EURAM Bank AG, in conformity with the pledge agreement dated 03 February 2011 in the total amount of

USD 20,761,695.82 in order to repay part of the outstanding loan no. K021210-002 of Alta Vista International FZE.....After realization of the pledged time deposit account Aqua accounts held under customer number 580035 were closed.....According your instructions we have transferred 890350 GDRs Aqua Logistics Ltd..... to Bank Julius Baer & Co., Singapore for further credit to account no. 3104410 Sea Dragon Worldwide Limited’.

23. From the details of fund transfer stated immediately above, I observe that only after Vintage repaid loan installments to EURAM Bank, that AQUA could make payments from its account maintained with the same bank and such payments were exactly for the same amount/ lesser amount that Vintage repaid to EURAM Bank except for adjustments on account of bank charges/ interest earned by AQUA. Therefore, it is evident that the amount transferred from AQUA’s EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.
24. Also, from the details of the fund transfer and the correspondences between AQUA and EURAM Bank stated above, proves the genuineness of the said pledge agreement. I note that the correspondence from EURAM Bank to AQUA was addressed to AQUA itself and not to any individual Director/ employee of AQUA. I observe that the said pledge agreement was signed by Mr. M.S. Sayed in his capacity as the WTD of AQUA. From the Board resolution dated September 9, 2010, it is clearly evident that Mr. M.S. Sayed was authorized to carry out Aqua such acts which may be necessary for dealing in the said accounts maintained with EURAM Bank. In the said resolution the bank was authorized to use the GDR subscription monies inter alia “*as security in connection with loans if any..*”. Therefore, it is inferred from these facts that Mr. M.S. Sayed did have the requisite authorization from AQUA to enter into the said pledge agreement which related to the subscription to its GDR issue. Therefore, the signing of the said pledge agreement by Mr. M.S. Sayed is deemed to be an act done by

AQUA (the principal) through its agent (Mr. M.S. Sayed) and the same cannot be disowned by AQUA at this stage. Further, the GDR proceeds received by AQUA was gradually transferred to Aqua HK, within a span of 12 months between February 2011 and February 2012.

25. It is further observed from the aforesaid letter dated August 14, 2012, that the EURAM Bank has informed AQUA that it has realized an amount of USD 20,761,695.82 from AQUA's pledged deposit account in order to repay part of the outstanding loan of Vintage. The aforementioned letter further stated that according to AQUA's instructions, EURAM Bank has transferred 890350 GDRs of Aqua Logistics Ltd to Bank Julius Baer & Co., Singapore for further credit to account no. 3104410 Sea Dragon Worldwide Limited. On request from SEBI, Monetary Authority of Singapore ('MAS'), Singapore's central bank and financial regulatory authority, *inter-alia*, has obtained the information from Bank Julius Baer & Co. Ltd., Singapore with regard to the 'account number-3104410 Sea Dragons Worldwide Ltd.' and submitted the copy of Know Your Customer Information (KYC) & bank account statement of a/c no-3104410 to SEBI vide letter dated January 17, 2017. On perusal of KYC of bank account having number 3104410 with Julius Baer & Co. Ltd, Singapore (Singapore), it was observed that the aforementioned bank account was opened in the name of the "Sea Dragons Worldwide Ltd" ("Sea Dragons") on August 12, 2011 and closed on January 17, 2013. Mr. Sanjay Raghunath Aggarwal ("**Sanjay Aggarwal**") was the authorized representative of the bank account and the beneficial owner of Sea Dragons.
26. On perusal of Sanjay Aggarwal's bank account statement with Julius Baer (a/c no: 3104410), it was observed that Sanjay Aggarwal has transferred amount from its bank account no: 3104410 with Julius Baer to Vintage's bank account no: 540012 with EURAM Bank for repayment of loan availed by Vintage for subscription of GDRs of AQUA.

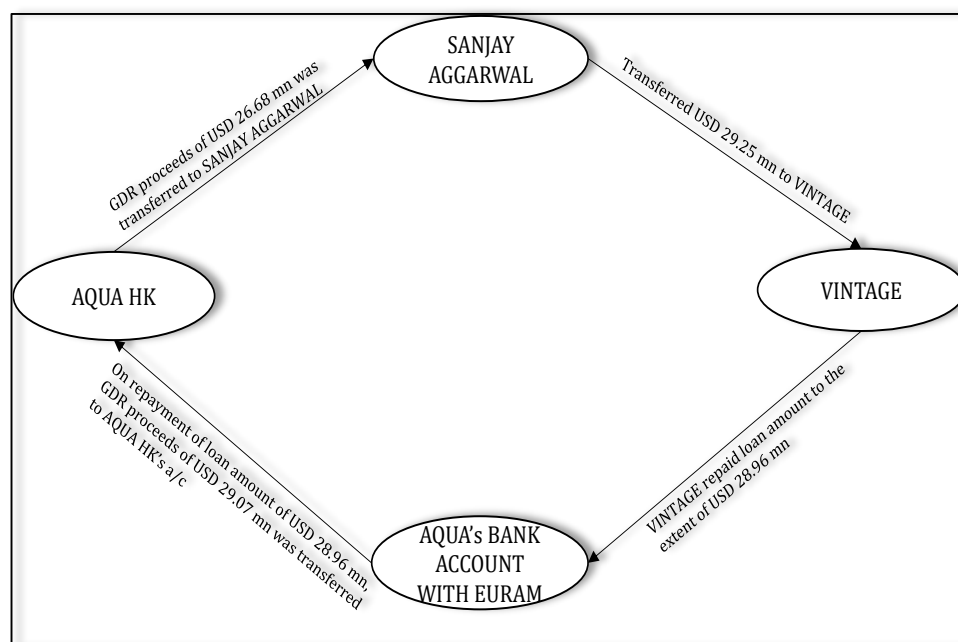
27. It was observed that subsequent to receipt of money from Sanjay Aggarwal, Vintage has repaid part of the loan to the extent of amount received from Sanjay Aggarwal and an amount to the extent of loan repaid by Vintage was transferred from AQUA's account with EURAM Bank (account no: 580035) to AQUA HK's bank account having number 400762217838 with HSBC bank in Hong Kong. Further, it was observed that amount transferred to AQUA HK's bank account was transferred to Sanjay Aggarwal's bank account (3104410) with Julius Baer.

28. The flow of funds from Sanjay Aggarwal to Vintage, Vintage to Euram Bank, AQUA's EURAM account to AQUA HK and AQUA HK to Sanjay Aggarwal is tabulated below:

Date of transfer by Sea Dragons	Amount transferred by Sanjay Aggarwal to Vintage (USD)	Date of credit to Vintage Bank account no 540012 with EURAM	Amount credited to Vintage's bank account no 540012 with EURAM	Date of repayment of Loan by Vintage	Loan amount repaid by Vintage (USD)	Date of transfer of GDR proceeds from AQUA EURAM a/c to AQUA HK	Amount transferred from AQUA's EURAM a/c to AQUA HK (USD)	Date of transfer by AQUA HK to Sea Dragons	Amount transferred by AQUA HK to Sanjay Aggarwal subsequent to receipt of funds from AQUA EURAM a/c
29/08/2011	1,250,275.00	30/08/2011	1,250,116.58	30/08/2011	1,250,000.00	30/08/2011	1,290,000.00	-	-
07/09/2011	1,250,200.00	07/09/2011	1,250,044.61	07/09/2011	1,250,000.00	07/09/2011	1,250,000.00	-	-
15/09/2011	2,350,250.00	15/09/2011	2,350,098.98	15/09/2011	2,350,000.00	15/09/2011	2,385,000.00	16/09/2011	1,249,975.00
								20/09/2011	1,099,975.00
02/11/2011	1,250,200.00	03/11/2011	1,250,048.10	03/11/2011	1,250,000.00	03/11/2011	1,250,000.00	04/11/2011	1,274,975.00
07/12/2011	3,000,000.00	07/12/2011	2,999,852.14	07/12/2011	3,000,000.00	07/12/2011	3,000,000.00	09/12/2011	1,249,975.00
								09/12/2011	1,249,975.00
								12/12/2011	499,975.00
13/12/2011	2,500,200.00	13/12/2011	2,500,052.78	13/12/2011	2,500,000.00	13/12/2011	2,500,000.00	14/12/2011	1,249,975.00
								15/12/2011	1,249,975.00
09/01/2012	2,500,248.00	10/01/2012	2,500,107.99	10/01/2012	2,500,000.00	10/01/2012	2,500,000.00	11/01/2012	1,249,975.00
								12/01/2012	1,249,975.00
12/01/2012	2,500,400.00	13/01/2012	2,500,260.10	13/01/2012	2,500,000.00	13/01/2012	2,500,000.00	17/01/2012	1,249,975.00
								17/01/2012	1,244,975.00
17/01/2012	2,650,290.00	17/01/2012	2,650,149.52	17/01/2012	2,465,000.00	17/01/2012	2,500,000.00	18/01/2012	1,249,975.00
								19/01/2012	1,249,975.00
19/01/2012	2,500,525.00	20/01/2012	2,500,383.86	20/01/2012	2,500,000.00	20/01/2012	2,500,000.00	25/01/2012	1,249,975.00
								26/01/2012	1,249,975.00
27/01/2012	2,500,355.00	27/01/2012	2,500,212.64	27/01/2012	2,500,000.00	27/01/2012	2,500,000.00	30/01/2012	1,249,975.00
								30/01/2012	1,249,975.00
30/01/2012	2,500,525.00	31/01/2012	2,500,380.40	31/01/2012	2,400,000.00	31/01/2012	2,400,000.00	01/02/2012	1,249,975.00
								02/02/2012	1,149,975.00
02/02/2012	2,500,525.00	03/02/2012	2,500,380.97	03/02/2012	2,500,000.00	03/02/2012	2,500,000.00	06/02/2012	1,249,975.00
								06/02/2012	1,249,975.00
								09/02/2012	152,725.00
								28/02/2012	13,225.00
TOTAL	29,253,993.00		29,252,088.67		28,965,000.00		29,075,000.00		26,685,400.00

It can be seen from the above table that an amount of USD 29.25 million was transferred by Sanjay Aggarwal to Vintage during the period August 29, 2011 to February 02, 2012.

Pursuant to receipt of USD 29.25 million from Sanjay Aggarwal, Vintage repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Vintage, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA HK's bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of US 26.68 million was received by Sanjay Aggarwal from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. The above mentioned flow of funds is pictorially presented below:



29. The entire trail of funds from the bank account of Vintage to that of AQUA/ Aqua HK and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and AQUA with respect to the subscription of the said GDR issue of AQUA. In this regard, it is appropriate to refer to the Hon'ble SAT Order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

“... in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available.”

[Emphasis supplied]

30. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by AQUA 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 AQUA’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. I note from the preceding paragraphs in this order that as and when, loan repayments were made by Vintage, AQUA used to transfer funds from its EURAM Bank account to the account of Aqua HK. In view of the above, I note that every transfer from AQUA to Aqua HK is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from AQUA’s EURAM account to its Hong Kong subsidiary 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. I also note 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 Securities Appellate Tribunal (“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. In the present matter, I note that the GDR subscription amount of USD 62.379 million was not available to AQUA for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on February 10, 2011, a partial amount of USD 195,000 could be made available to AQUA only on May 4, 2011, i.e. after a period of almost 3 months since the subscription money for the GDR issue was received in the EURAM Bank account of AQUA. The last installment towards amount of USD 62.379 million along with accrued interest was available to AQUA only in February 3, 2012, when the loan was fully repaid by Vintage to EURAM Bank. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred to the account of its Hong Kong based subsidiary by AQUA.
34. Moreover, it is noted that AQUA had provided incorrect information to BSE wherein it had stated that ten investors, as already named in the preceding paragraphs, subscribed the GDR issue. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. I also note that the Pledge Agreement, signed by the authorized representative of AQUA, refers to Vintage. The same also clearly shows that

AQUA was aware that the subscriber to the GDR issue was Vintage. Such actions also indicate *mala fide* intention on the part of AQUA.

35. As discussed above, false and misleading corporate announcements were made by AQUA and it had suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated February 3, 2011 by AQUA in favor of Euram Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated February 3, 2011 by Vintage for obtaining loan from the Euram bank for subscribing the GDR issue of AQUA and (iii) Vintage was the only subscriber of GDR issued by AQUA. I find that Aqua these three events were price sensitive information and could have impacted the scrip price of AQUA. I find that the corporate announcements made by AQUA on February 10, 2011, stating that ‘issued and allotted 4,112,000 GDR’, might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas AQUA had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of AQUA and AQUA secured that loan by pledging the GDR proceeds with the Euram Bank. 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 judgment, 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, Aqua these provisions get attracted in a situation....”.*

36. The aforementioned act of AQUA 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.”

37. In view of the above, I note that the scheme of arrangement of AQUA, 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 AQUA by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by AQUA on February 3, 2011, 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 with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. Thus, AQUA 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 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

38. Further, AQUA in its Annual Report for FY 2010-11 and 2011-12 stated as follows in the notes forming part of the accounts:

“The financial statements have been prepared to comply in Aqua material respects with the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India.....”

39. I note from the Annual Reports for FY 2010-11 & 2011-12, that AQUA showed cash and cash equivalent (“CCE”) as Rs. 295.08 and Rs. 94.37 crore on March 31, 2011 and March 31, 2012 respectively. However on a perusal of Vintage’s loan account statement, AQUA’s retail bank account statement with EURAM Bank and Pledge Agreement, it was observed that AQUA had pledged its GDR proceeds of USD 672.379 million with EURAM Bank against the loan availed by the Vintage and as on March 30, 2011, Vintage had repaid loan amounting

to only USD 1.87 million, therefore loan of USD 60.50 million (approximately Rs. 270.14 Crore, at RBI exchange rate of Rs. 44.65 per USD on 31/03/2011) was outstanding. Hence, Rs. 270.14 crore lying in AQUA's EURAM Bank account was not free cash as per AS-3 as at March 31, 2011. Further, it was observed that Vintage has repaid loan amount of USD 39.76 million during the FY 2011-12 and the loan amount outstanding as on March 31, 2012 was USD 20.74 million (approximately Rs. 106.08 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012). Hence, Rs. 106.08 crore lying in AQUA's EURAM Bank account was not free cash as per AS-3 as at March 31, 2012. In view of the above, AQUA has not complied with AS-3 by considering the amount lying in the EURAM Bank account as CCE. Hence, it is held that AQUA by not complying with AS-3 has violated the provisions of Clause 32 and Clause 50 of the Listing Agreement.

40. As observed earlier, AQUA had pledged its GDR proceeds of USD 62.379 million against the loan availed by Vintage for subscription of GDRs. As on March 31, 2011, Vintage repaid loan to the extent of USD 1.87 million and an amount of USD 60.50 million (approximately Rs. 270.14 crore, at RBI exchange rate of Rs. 44.65 per USD on 31/03/2011) was outstanding. Further, as on March 31, 2012, Vintage has repaid loan to the extent of USD 39.76 million during the FY 2011-12 and an amount USD 20.74 million was outstanding as on March 31, 2012 (approximately Rs. 106.08 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012). In the Instant matter, AQUA could utilize its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on AQUA for an amount of USD 60.50 million (approximately Rs. 270.14 crore) and USD 20.74 million (approximately Rs. 106.08 crore) as on March 31, 2011 and March 31, 2012 respectively (i.e. date of balance sheet) in the event of default of repayment of loan by Vintage which is of

contingent liability in nature and subsequently Vintage had indeed defaulted in the repayment of loan amount of USD 20.74 million. Therefore, a contingent liability to the extent of Rs. 270.14 and 106.08 crore was required to be disclosed by AQUA in its financial statements for the FY2010-11 and 2011-12 respectively. From the examination of the Annual Report of AQUA for FY 2010-11 and 2011-12, it was observed that AQUA did not disclose the aforementioned amounts (i.e. amount outstanding in Vintage's loan account with EURAM Bank) as contingent liabilities in its financial statements for the FY 2010-11 and 2011-12 as required in terms of 'Accounting Standard 29' and thereby AQUA has failed to comply with 50 of the Listing Agreement. Further, Accounting Standard-1 provides that an enterprise shall consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. It is observed that AQUA (in its financial statement for the Annual Report 2010-11 and 2011-12) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as it presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements. Thus, AQUA is held to have violated AS-1 as well.

41. I also see that the corporate announcement made by AQUA to the stock exchanges (BSE and NSE) during the period September 2010-February 2011, i.e., since the Board meeting dated September 9, 2010 to the conclusion of its GDR issue, receipt of proceeds from the said issue and allotment of shares pursuant to such GDR issue, it was observed that AQUA did not inform stock exchanges with regard to entering into Pledge Agreement with EURAM

Bank and pledging GDR proceeds against the loan availed by the Vintage for subscription of GDRs of AQUA which was price sensitive information and could have impacted the price of the scrip and thereby AQUA did not comply with clause 36(7) of the Listing Agreement and therefore violated section 21 of SCRA ,1956 r/w clause 36(7) of Listing Agreement.

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

42. 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.”

43. Thus, the violation 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, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement by AQUA make it liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, which 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 [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or*

three times the amount of profits made out of such practices, whichever is higher].”

The provisions of section 15 HA as it stood prior to its amendment before September 8, 2014, at the time of occurrence of the aforesaid violations is reproduced herein below:

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

As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigor of law, as was laid by the Hon’ble Supreme Court in *T. Barai vs. Henry Ab Hoe and Ors.* (07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

SCRA

“Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

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 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 AQUA had misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. Out of the GDR proceeds of USD 62.379 million, an amount of USD 40.17 million was transferred to AQUA HK and USD 20.74 million were adjusted by EURAM against the loan of Vintage. It is also observed that GDR proceeds to the extent of USD 26.68 million which were transferred by AQUA to AQUA HK was transferred back to Sanjay Aggarwal. Therefore, GDRs to the extent of USD 47.42 million {USD 26.68 mn+ USD 20.74 mn} were issued by AQUA (headed and managed by the Noticees at the relevant point in time) free of cost to Vintage, and this had caused a loss to the shareholders to the tune of USD 47.42 million. The said subscription of the GDRs by Vintage was funded by AQUA itself, which was executed by the Noticees. The magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 62.379 million.

ORDER

46. 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, 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 23-I of the SCRA read with Rule 5 of the SCRA (Adjudication) Rules, hereby impose a penalty of **Rs. 10,00,00,000/- (Rupees Ten Crore)** on **Aqua Logistics Limited** which shall be commensurate to the violations committed by it.

47. **Aqua Logistics Limited** 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT Orders Orders of AO PAY NOW

48. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (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

49. 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
50. In terms of the Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai

G. Ramar

Date: September 29, 2020

Adjudicating Officer