

WTM/ AB / EFD-1/ DRA-1/18 /2018-19

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**CORAM : ANANTA BARUA, WHOLE TIME MEMBER**

**FINAL ORDER**

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Nissan Copper Limited**

In respect of:

<b>Sr. No.</b>	<b>Name of the Noticee</b>	<b>PAN</b>
1.	Nissan Copper Limited	AABCN0105B
2.	Mr. Ratanlal Mardia	AJTPM2056N
3.	Mr. Atul Mardia	ADYPM7131K
4.	Mr. Praveen Kumar Shah	ABEPS3974Q]

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

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**BACKGROUND:**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) noticed some fraudulent schemes being perpetrated by certain persons/ entities in respect of issuance of Global Depository Receipts (hereinafter referred to as “**GDR**”) in overseas market and therefore conducted investigation into the GDR issue of various companies including Nissan Copper Ltd. (hereinafter referred to as ‘**Nissan/ NCL/ the Company**’) for its GDR issue made on May 20, 2010, details of which is tabulated as below:

<b>GDR Issue date</b>	<b>No. of GDRs issued (mn.)</b>	<b>Capital raised (USD mn.)</b>	<b>Local custodian</b>	<b>No. of equity shares underlying GDRs</b>	<b>Global Depository Bank</b>	<b>Lead Manager</b>	<b>Bank where GDR proceeds deposited</b>	<b>GDRs listed on</b>
20-May-2010	5 (at USD 4.48 per GDR)	22.40	HSBC, Mumbai	25,000,000	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange

2. During the investigation, it was noted that the GDRs of NCL were subscribed by only one entity i.e. Vintage FZE, Dubai now known as Alta Vista International FZE (hereinafter referred to as ‘**Vintage**’), by obtaining loan from the European American Investment Bank AG, Austria (hereinafter referred to as ‘**EURAM Bank**’) and further the Noticee No. 1 (NCL) had secured the loan obtained by Vintage (the GDR subscriber), by pledging the GDR proceeds with the Euram Bank.

#### **SHOW CAUSE NOTICE, REPLY AND HEARING:**

3. Based upon the findings made by the investigation, a show cause notice dated June 26, 2018 (hereinafter referred to as, “**SCN**”) was issued to the Noticees, alleging violation of Section 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {‘**PFUTP Regulations, 2003**’} by Noticee No. 1 and violations of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2, 3 and 4. The Noticees were asked to show cause as to why suitable directions under Section 11(1), 11B and 11(4) and of the **SEBI Act, 1992** should not be issued against them. The copies of

documents relied upon in the SCN, were also provided to the Noticees, as detailed below:

Annexure No.	Details
1.	Extract of Information received from the Custodian HSBC
2.	Copy of Corporate Announcement January 2010 to June 2010 of NCL
3.	Copy of Loan Agreement dated May 07, 2010 between Vintage and Euram Bank
4.	Copy of Board resolution of Nissan dated March 16, 2010
5.	Copy of the page no. 25 of Annual Report for FY 2009-10
6.	Copy of Pledge Agreement dated May 07, 2010 between Nissan and Euram Bank
7.	Vintage Loan account statements
8.	Nissan's Escrow Account statement (Account with Euram Bank)
9	Nissan Bank retail Account statement (Account with Euram Bank)
10	Details of cancellation details of GDRs

4. The SCN was sent to the Noticees at their addresses available on record, however, the same returned undelivered and, therefore, attempts were made to serve the same by way of affixture/ public notice at their last known address. Service of SCN was completed against Noticee Nos. 1, 2 and 4 by making affixture on their last known address and upon Noticee No. 3 by giving public notice in newspaper on September 13, 2018.
5. In compliance with the principles of natural justice, the Noticees were also provided an opportunity of personal hearing on December 17, 2018. The service of hearing notice was completed by sending email to Noticee No. 3 and 4 (procured subsequently) who confirmed also for attending and availing the opportunity of hearing. The service of hearing notice in respect of Noticee No. 1 and 2 was completed by giving public notice in newspaper on November 30, 2018 (Maharashtra Times, Navbharat Times and Times of India).
6. On the date of hearing, only Noticee No. 4 appeared before me in person and submitted his reply

in writing but did not make any other submission and, instead, made a request to consider the said written reply. I note that all possible efforts were taken to serve the SCN and hearing notice to the other Noticees, however, no other Noticee (except Noticee No. 4) turned up for availing the opportunity of personal hearing nor did they file any reply in respect of the allegations made against them in the said SCN dated June 26, 2018.

7. On perusal of the reply submitted by the Noticee No. 4, it is noted that the same appears to have been made in respect of show cause notice dated June 28, 2018 issued by the Adjudicating Officer in the Adjudication Proceedings initiated by SEBI for imposing monetary penalty. However, the Noticee No. 4 has added in the subject that the same reply is being submitted in respect of the present proceedings initiated by the issuance of SCN dated June 26, 2018. Be that as it may, the crux of the reply submitted by the Noticee No. 4 is summarized as under:
  - a. He was appointed as independent director of the NCL in the year 2007-08 and has resigned in the year 2015. Being independent director he has not participated in day to day affairs of the Company and that he has also not signed nor entered in to any commercial agreements with the Euram Bank.
  - b. He has mentioned his ignorance from any GDR issued by the Company and further submitted that he had not gone through any commercial agreement or GDR issued by NCL. In respect of his signature, he has stated that the same might have been taken fraudulently or done ignorantly.
  - c. He has further mentioned that he was neither aware nor informed about the Vintage taking loan from Euram Bank for subscribing the GDR issue of NCL nor about the pledge agreement executed by NCL in favor of Euram Bank. He was also not aware about any agreement (pledge agreement dated May 07, 2010) signed by the Noticee No. 2.
  - d. In respect of attending the Board meeting wherein resolution dated March 16, 2010 was passed, the Noticee has admitted that he had attended the said board meeting as normal course in the capacity of independent director.
  - e. The Noticee has further pleaded his ignorance about the contents of corporate announcement

made by the NCL and also from those what is alleged to have been suppressed therein. The Noticee has requested to discharge from the proceedings.

## CONSIDERATION OF ISSUES AND FINDINGS:

8. I have perused the SCN dated June 26, 2018 including the documents annexed therewith, the reply filed by the Noticee No. 4 and other materials available on record. The question now arises as to whether the Noticees, by their acts and omission, have violated the provision of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCN dated June 26, 2018 and referred to in para 3 above.
9. Before proceeding further, the relevant provisions which are alleged to have been violated in the SCN dated June 26, 2018, by the Noticees, are reproduced as below:

### ***SEBI Act, 1992***

#### ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control***

##### ***Section 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 recognised 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;*
- (d) .....*

### ***PFUTP Regulations, 2003***

#### ***Regulation 3. Prohibition of certain dealings in securities***

*“No person shall directly or indirectly*

- (a) buy, sell or otherwise deal in the securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

**Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices**

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
  - (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
  - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors*
  - (r) Planting false or misleading news which may induce sale or purchase of securities.*

10. I note that the NCL (Noticee No. 1) has not filed any reply to the SCN dated June 26, 2018 nor availed the opportunity of personal hearing afforded on December 17, 2018. NCL (Noticee No.1) was listed on BSE and, by virtue of being a listed company, it was required to make all the material disclosures that would have had an impact on the price of scrip including important corporate announcements to the stock exchanges to enable the investors to take an informed decision. I note that the NCL (Noticee No. 1) had made several corporate announcements in the year 2010 (**Annexure 2 to SCN**) and from the same it is noted that the Board of NCL in its meeting held on January 09, 2010 had decided for raising of additional fund by issuing GDRs to the extent of 20 million USD, which was subsequently increased to USD 34 million in the Board meeting held on

January 15, 2010. In the same meeting held on January 15, 2010, NCL also approved the increase of investment limit upto Rs. 200 Cr. in wholly owned subsidiary company in UAE. From the Offering Circular (Listing prospectus) of NCL it is noted that the object of GDR issue was mentioned as, “....the net proceeds after deduction of fees and expenses associated with this Offering of USD 0.89 Million, are anticipated to be about USD 21.51 Million. The proceeds of the offering will be used to explore and expand new markets in Middle East & North Africa by investing in a proposed 100% owned subsidiary to be set up in UAE. At last, on May 20, 2010 (**Annexure 2 to SCN**), the NCL made corporate announcement with regard to completion of GDR issue stating that, “The Board of Directors of the Company at its meeting held on May 20, 2010, successfully concluded placement of 5,000,000 Global Depository Receipts at US\$ 4.48 per Global Depository Receipt (Representing 25,000,000 Equity Shares of Rs. 10/- each. The GDRs will be listed on the Luxembourg Stock Exchange).”

11. During the investigation, it was noted that the Board of NCL had passed a resolution on March 16, 2010 (**Annexure 4 to SCN**) for opening an account with the Euram Bank for the purpose of receiving of subscription money in respect of proposed GDR issue and authorized Mr. Ratanlal Mardia (Noticee No. 2), Managing Director, to sign and execute any application, agreement, escrow agreement, document etc. which may be required by the Euram Bank. A copy of certified copy of NCL’s Board resolution dated March 16, 2010 was annexed with the SCN dated June 26, 2018 (**Annexure 4 to SCN**) and provided to the Noticees. On perusal of the copy of said Board resolution of NCL, it is noted that Euram Bank was authorized to use the funds deposited in that bank account as security in connection with the loans, if any. The relevant terms of the Board resolution dated March 16, 2010 are reproduced as under:

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

*“RESOLVED FURTHER THAT Mr. Ratanlal Mardia, Managing Director of the Company, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.”*

*“RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required.”*

12. The account statements of the NCL (account no. 580019) (**Annexure 8 and 9 to SCN**), which was opened with the Euram Bank, reveals that the subscription amount in respect of its GDR issue was received from only one entity i.e. Vintage. The investigation further noted that Vintage (subscriber of GDR issue) had obtained loan, from the Euram Bank for the purpose of subscribing/ taking down the GDR issue of NCL, by executing loan agreement dated May 07, 2010. A copy of the said loan agreement dated May 07, 2010, executed between the Vintage and Euram Bank, was also annexed along with the SCN dated June 26, 2018 as **Annexure 3**. On perusal of the said loan agreement, I note that the same specifically mentions under the head '*nature and purpose of facility*' that the loan is being provided for funding Vintage enabling it to subscribe/ take down the GDR issue of NCL. Further, in respect of security for the loan amount, in para 6 of the loan agreement under the head '*security*', it refers to the pledge of certain securities held in the borrower's account no. 540012 and also the pledging of the account no. 580019 (which pertains to NCL's) held with the Euram Bank and also stated that the same forms an integral part of the loan agreement. The relevant extracts of the said loan agreement dated May 07, 2010 is reproduced as below:

*"Nature and purpose of facility-*

*To provide funding enabling Vintage FZE to take down GDR issue of 5,000,000 Luxembourg public offering and may only be transferred to Euram account nr. 580019, Nissan Copper Limited."*

**6.Security**

*6.1 "....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 a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- Pledge of the account no. 580019 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."*

13. It was also noted during the investigation that the NCL had entered into a pledge agreement on the same date i.e. May 07, 2010 with the Euram Bank. A copy of the said pledge agreement dated May 07, 2010 was annexed with the SCN dated June 26, 2018 (**Annexure 6**) and was provided to the



Noticees. On perusal of the pledge agreement (**Annexure 6 to SCN**), I note that the very opening paragraph of the agreement, under head '*preamble*', refers to the loan granted by the Euram Bank to Vintgae for an amount USD 22.40 million and states that the pledger has received a copy of said loan agreement and agrees to the terms and conditions mentioned therein. Further, as per paragraph 2.1.1. of the pledge agreement (**Annexure 6 to SCN**), NCL pledged its rights, title and interest in the securities deposited from time to time and the balance funds upto the amount of USD 22.40 million existing from time to time on the securities account no. 580019. It is noted that the account no. 580019 was pertaining to NCL which was opened with the Euram Bank for the purpose of receiving of GDR proceeds. Further, in respect of realization of the pledge, it is mentioned in para 6.1 of the pledge agreement that in case of failure by the borrower in making payment on due amount, the pledger granted express consent that the bank (Euram Bank) was entitled to apply the funds in the pledged account to settle the obligation. The relevant extracts of the pledge agreement is reproduced as below:

1. Preamble

*"By loan agreement K070510-002 (hereinafter referred to as the "Loan Agreement") dated 07 May 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 22,400,000.-. The Pledgor has received a copy of the Loan Agreement No. K070510-002 and acknowledges and agrees to its terms and conditions."*

2. Pledge

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

2.1.1 *all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of USD 25,400,000 existing from time to time at present or hereafter on the securities account(s) no. 580019 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

*2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580019 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.*

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

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

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

.....

6. *Realisation of the Pledge:*

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

14. I note from the above that Vintage had availed loan from Euram Bank solely for the purpose of subscribing/ taking down the GDR issue of the NCL that too with the support of the pledge agreement dated May 07, 2010 executed by NCL with the Euram Bank pledging the GDR proceeds with the only purpose to provide security to the loan availed by the Vintage for subscribing its GDR issue. The loan agreement and pledge agreement both are dated May 07, 2010 and were executed simultaneously making cross reference to each other.
15. The above arrangement facilitated the subscription of GDR issue by only one entity (i.e.) Vintage by taking loan from the Euram Bank and that loan was further secured by NCL by pledging the GDR proceeds. In other words, had this mechanism was not adopted, the GDR issue of NCL would not have been subscribed. I, therefore, find that NCL had facilitated subscription of its own GDR issue by entering into an arrangement where subscriber (Vintage) obtained loan from the Euram bank for subscribing the GDR issue of NCL and NCL pledged the GDR proceeds with Euram Bank

for securing the loan taken by Vintage from the Euram Bank.

16. The above finding is further supported by the fact that, as and when the said loan amount was repaid by the Vintage to Euram Bank, almost on the same date or after a day or two exactly the same or similar amount was being transferred from the NCL's bank account with Euram Bank to the Indian bank account of NCL or to its UAE's subsidiary bank account. On perusal of bank account of NCL with Euram Bank (customer no. 580019) (**Annexure 8 and 9 to SCN**) and Vintage's bank account (customer no. 540012) (**Annexure 7 to SCN**) reveals the details of repayment of loan by Vintage to Euram Bank and then transfer of same or similar amount from NCL's Euram Bank account to its Indian bank account or its UAE's subsidiary bank account, which are tabulated as under:

<b>Date of repayment of loan by Vintage</b>	<b>Amount repaid by Vintage (USD) (A)</b>	<b>Date of transfer by NCL (B)</b>	<b>Amount transferred from NCL's EURAM Bank a/c to NCL's Indian bank account/ UAE subsidiary's bank a/c with BANK OF BARODA(USD)</b>
22.09.2010	502,700.00	23.09.2010	500,000.00
28.09.2010	750,000.00	28.09.2010	750,000.00
12.10.2010	500,000.00	12.10.2010	500,000.00
02.11.2010	2,500,000.00	02.11.2010	2,500,000.00
22.11.2010	2,000,000.00	22.11.2010	2,000,000.00
24.11.2010	1,000,000.00	24.11.2010	1,000,000.00
29.11.2010	1,500,000.00	29.11.2010	1,500,000.00
15.12.2010	1,500,000.00	15.12.2010	1,500,000.00
17.12.1010	2,000,000.00	17.12.2010	2,000,000.00
22.12.2010	3,000,000.00	22.12.2010	3,000,000.00
29.12.2010	2,000,000.00	29.12.2010	2,000,000.00
23.03.2011	400,000.00	23.03.2011	400,000.00
31.03.2011	4,500,000.00	01.04.2011	4,500,000.00

03.05.2011	247,300.00	04.05.2011	385,531.89
<b>Total</b>	<b>2,400,000.00</b>		<b>22,535,531.89</b>

17. I note from the above table that each transfer from NCL's bank account with Euram Bank, either its own account or to its UAE's based subsidiary account, was in sync with the date and amount of loan being repaid by Vintage to Euram Bank. I, therefore, note that the amount being transferred from the NCL's bank account was fully dependent upon the repayment of loan being made by the Vintage to Euram Bank. These records further strengthen the above findings that the loan taken by Vintage was secured by NCL by pledging the GDR proceeds with the Euram bank and, therefore, the GDR proceeds was not available at the disposal of NCL until Vintage completely repaid the loan taken from Euram Bank. It is also noted from the above table that Vintage repaid the loan amount to Euram Bank during September 22, 2010 to May 03, 2011 and, simultaneously, NCL transferred USD 0.50 million to its Indian bank account and USD 22.04 to its UAE subsidiary's account.
18. Investigation further noted that the disclosure made by NCL in its corporate announcement dated May 20, 2010 did not mention about execution of any pledge agreement dated May 07, 2010 by NCL securing the loan availed by the Vintage for subscribing of its GDR issue. Instead, NCL in its corporate announcement dated May 20, 2010 (**Annexure 2 to SCN**), with regard to completion of GDR issue stated that, *"The Board of Directors of the Company at its meeting held on May 20, 2010, successfully concluded placement of 5,000,000 Global Depository Receipts at US\$ 4.48 per Global Depository Receipt (Representing 25,000,000 Equity Shares of Rs. 10/- each. The GDRs will be listed on the Luxembourg Stock Exchange)."* This announcement neither mentioned nor indicated that the GDRs were allotted to, or subscribed by, a single entity and rather it tends to give a message that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. NCL has acquired a good reputation in terms of investment potential and, therefore, foreign investors have successfully subscribed the GDR issue when in effect there was only one subscriber i.e. Vintage which had subscribed to the GDR issue of NCL by obtaining loan from the Euram Bank and that loan was further secured by the NCL itself by pledging the GDR proceeds.

19. As discussed above, false and misleading corporate announcements were made by the NCL and it also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated May 07, 2010 by NCL in favor of Euram Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) execution of loan agreement dated May 07, 2010 by Vintage for obtaining loan from the Euram bank for subscribing the GDR issue of NCL and (iii) Vintage was the only subscriber of 5 million GDR issued by NCL. I find that all these three events were price sensitive information and could have impacted the scrip price of NCL. I find that the corporate announcements made by NCL on May 20, 2010 (**Annexure 2 to SCN**) stating that the GDR issues were successfully placed, might have created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the NCL itself had facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of NCL and NCL secured that loan by pledging the GDR proceeds with the Euram bank.
20. The aforementioned act of NCL 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 Securities Appellate Tribunal ("SAT") dated October 25, 2016 in *Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)* wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

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

21. Similarly, in the matter of *Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC 1*, the Hon'ble Supreme Court has observed as under:

*"if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or*

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

22. In view of the above, I note that the scheme of arrangement of NCL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue of NCL by obtaining loan from Euram Bank and the same was again secured by the NCL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by NCL on May 20, 2010 (**Annexure 2 to SCN**) stating that its GDR issue was successfully placed, 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, the Noticee No. 1 had 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.
23. I, further, note that, on behalf of NCL, the said pledge agreement dated May 07, 2010 was signed by Mr. Ratanlala Mardia (Noticee No. 2). In this respect, as per Board resolution dated March 16, 2010 (**Annexure 4 to SCN**), the Board of NCL had approved and passed a resolution for opening of a bank account with Euram Bank for the purpose of receiving the proceeds of GDR and also authorized the Euram bank to use the funds as security in connection with the loans if any as well as to enter into any Escrow Agreement or similar arrangements. The said Board resolution (**Annexure 4 to SCN**) also authorized Mr. Ratanlal Mardia (Noticee No. 2), Managing Director of the Company, to sign, execute, any application, agreement, escrow agreement and other paper(s) from time to time, as may be required by the Euram Bank. A certified copy of the Board resolution dated March 16, 2010 (**Annexure 4 to SCN**), is available on record and a copy of the same was also annexed with the SCN dated June 26, 2018. No other document like minutes of the Board meeting etc. are provided by the NCL. It is noted from the Annual Report of the Company filed for the year 2009-10 (**Annexure 5 to SCN**) mentions that total nineteen meetings of the Board of NCL were held during that financial year and Mr. Atul Mardia (Noticee No. 3) and Mr. Praveen Kumar Shah (Noticee No. 4) had attended all the Board meetings held in that financial year. It is, therefore, derived that, in all probability, at least these two Noticees (No. 3 and 4) had attended the Board meeting dated March 16, 2010 (**Annexure 4 to SCN**) wherein NCL approved, *inter alia*, opening of bank account with Euram Bank for receiving GDR proceeds, Mr. Ratanlal Mardia (Noticee No.

2) to sign and execute all agreement required by Euram Bank and also authorized the Euram Bank to use its funds as security in connection with the loans.

24. In this respect, as mentioned in para 6 and 7 above, no other Noticee, except Noticee No. 4, has filed any reply or appeared for availing the opportunity for hearing. The Noticee No. 4 has admitted to have attended the said Board meeting dated March 16, 2010 wherein Euram Bank was authorized to use the fund of NCL as security in connection with loan. The Noticee has further submitted that, being an independent director, he was not involved in day to day affairs of the Company and pleaded his ignorance about the issuance of GDR by NCL. He has further submitted that his signature might have been obtained fraudulently or done ignorantly. In this respect, I note that in the annual report of NCL for the F.Y. 2009-10, the name of Noticee No. 4 has been referred to as independent director and it is also noted that he had attended all the nineteen Board meetings held in the F.Y. 2009-10.
25. In respect of the contention of the Noticee No. 4 that he was an independent director, I note that Board of directors plays a key role in balancing the interests of managements and shareholders and the independent directors are expected to, *inter alia*, ensure fairness and transparency in dealing of the Company. I, further, note that the provisions of Companies Act, 1956 do not draw any distinction between director and independent director, in respect of liability for the fraud committed by the Company, provided the same has been done with their knowledge and consent, whether express or implied. There are a number of judicial pronouncements on the liability of directors including *K.K Ahuja vs. V.K Vora (2009) 10 SCC 48*; *National Small Industries ... vs. Harmeet Singh Paintal (2010) 3 SCC 330* and *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr (2005) 8 SCC 89* generally upholding the position that the liability of any director in a company is restricted to actions of omission or commission committed by the company which had taken place with the knowledge and consent, whether explicit or implied, of such director. In light of this, the role and conduct of the director is need to be examined as to whether it had the knowledge and consent for the aforesaid fraudulent arrangement in facilitating the GDR issue of NCL. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer, SEBI (Civil Appeals No. 4112-4113 of 2013)* has observed a *sunder*:

*“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and*

*diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

26. I note that the Noticee No. 4 has admitted that he was appointed as independent director of the NCL during the year 2007-08 and resigned in the year 2015. He has also admitted that he had attended the Board meeting of NCL dated March 16, 2010 as normal course in the capacity of independent director. However, the Noticee No. 4 has contended that his signature might have been obtained fraudulently or done ignorantly. However, in this respect, the Noticee has not provided any document or material indicating that he has taken any action against the Company (NCL) or its officials for the alleged fraud of obtaining his signature on the records. It is upon this Noticee to take appropriate steps for getting declared that his signature was obtained fraudulently by the Company. I note that the SCN dated June 26, 2018 was served upon the Noticee No. 4 on June 29, 2018 itself and no steps have been taken even after the receipt of SCN by the Noticee No. 4. I, further, note that this Noticee has also stated that the signature might have been done by him ignorantly. As such, he is not clear whether it was fraudulently obtained by the Company (NCL) or whether he had done ignorantly. In the absence of any material on record of taking any action against alleged fraud by the Company in obtaining his signature on the records, the Noticee No. 4 is not entitled for any relief based on his unsubstantiated contention that his signature was obtained fraudulently or done by him ignorantly.
27. Based on various corporate announcements made by the NCL (**Annexure 2 to SCN**), it is noted that the proposal of GDR issue to be made by the NCL was discussed in its various Board meetings like dated January 09, 2010 wherein the proposal of making GDR issue for raising additional fund to the extent of USD 20 million was approved, then in Board meeting dated January 15, 2010 when the amount proposed to be raised was increased from USD 20 million to USD 34 million, March 16, 2010 when it was decided to open the bank account with Euram Bank and the Euram Bank was authorized to use the GDR proceeds as security in connection with loan. As such, given the fact that the Noticee No. 4 (and also the Noticee No. 3) had attended all the nineteen Board meeting held in that F.Y. 2009-10, the submission of the Noticee No. 4 that he was not aware about the issuance of GDR by the Company, is not tenable. Similarly, the Noticee No. 3 also cannot deny having



knowledge of the same (despite he has not filed any reply nor appeared for attending the hearing). I, further, note that Noticee No. 4 has not brought any material on record to indicate that he had raised objection to the proposals and approvals made in the Board of NCL's meeting held on March 16, 2010. Thus, the Noticee No. 4 cannot avoid the liability after having participated in the said meeting wherein aforesaid approvals were made and subsequently acted upon by the Company.

28. On perusal of the copy of Pledge Agreement dated May 07, 2010 (**Annexure 6 to the SCN**), it is noted that Mr. Ratanlal Mardia (Noticee No. 2) has signed the same for and on behalf of the NCL and the seal of NCL is also affixed thereon. As per Section 48 (2) of the Companies Act, 1956, use of such common seal conclusively binds the Company. Vide this pledge agreement, Euram Bank was authorized to use the funds of NCL as security in connection with loan obtained by Vintage (subscriber of GDR issue of NCL) from the Euram Bank. As such, the Noticee No. 2 was not only part of the fraudulent arrangement of NCL but also played an active role in executing the pledge agreement dated May 07, 2010 which actually facilitated the subscription of GDR issue of NCL.
29. In view of the above, I find that the Noticee No. 3 and 4 had participated in the Board meeting of NCL on March 16, 2010 wherein approvals were made to, *among other*, authorizing the Euram bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by the Company (Noticee No. 1) in which the Noticee No. 2 has signed and executed the pledge agreement dated May 07, 2010 on behalf of the Company (Noticee No.1). Thus, the the Noticees No. 2, 3 and 4 were part of the fraudulent scheme and arrangement of NCL (Noticee No.1) in facilitating the subscription of its own GDR wherein subscriber (Vintage) obtained loan from Euram Bank for the purpose of subscribing the GDR issue of NCL and, NCL pledge the GDR proceeds with the Euram Bank securing the loan taken by Vintage. The Noticee No. 1 also gave a false and misleading corporate announcement that its GDR issue was successfully placed whereas the same was subscribed by only one entity i.e. Vintage by obtaining loan from the Euram Bank which was again secured by the NCL (Noticee No.1) by pledging the GDR proceeds. Thus, the directors of NCL (Noticee No. 1) i.e. Noticee Nos. 2, 3 and 4 have 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, 2003

**DIRECTIONS :**

30. In view of the above, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the SEBI Act, 1992, hereby restrain M/s Nissan Copper Ltd. (Noticee No.1), Mr. Ratanlal Mardia (Noticee No. 2), Mr. Atul Mardia (Noticee No. 3) and Mr. Praveen Kumar Shah (Noticee No. 4) from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, either directly or indirectly, for a period of **five years** from the date of this order. It is, further, clarified that the existing holding of securities of the Noticees, including the units of mutual funds, shall remain frozen during the period of restraint.
31. This Order shall come into force with immediate effect.
32. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

**Place: Mumbai**

**Date: February 08, 2019**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**