

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee. No.	Name of the Noticee	PAN
1.	Texmo Pipes and Products Ltd.	AACCT9780D
2.	Mr. Sanjay Agrawal, Chairman & Managing Director	ADAPA0132C
3.	Mr. Vijay Prasad Pappu, Director	ASRPP0392H

(hereinafter collectively referred to as 'the Noticees')

In the matter of GDR Issue of Texmo Pipes and Products Ltd.

1. SEBI vide its Order dated February 28, 2023 had *inter alia* passed the following directions against the Noticees:

“183.1. Texmo Pipes and Products Limited Ltd. (Noticee no. 1) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.

183.2. Texmo Pipes and Products Ltd. is also hereby directed to continue to pursue measures to bring back the outstanding amount of USD 3.49 million, the GDR proceeds into its bank account in India within a period of one year. Directors of Texmo to ensure the compliance of this direction by Noticee No. 1 and Noticee No. 1 shall furnish a Certificate from a Chartered Accountant of ICAI along with necessary documentary evidences, certifying the compliance of this direction to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai –400051.

184. The Noticees, as listed in the table below, shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever:

Noticee No.	Name of the Noticee	Period of Debarment
2	<i>Sanjay Agrwal</i>	<i>3 years</i>
3	<i>Vijay Prasad Pappu</i>	<i>3 years</i>
4.	<i>Shanti Lal Badera</i>	<i>1 year</i>
5.	<i>Rishabh Kumar Jain</i>	<i>1 year</i>
6.	<i>Arun Panchariya</i>	<i>10 years</i>
7.	<i>Vintage FZE</i>	<i>8 years</i>
8.	<i>Mukesh Chauradiya</i>	<i>8 years</i>
9.	<i>Pan Asia Advisors Ltd.</i>	<i>5 years</i>
10.	<i>India Focus Cardinal Fund</i>	<i>5 years</i>
11.	<i>Highblue Sky Emerging Market Fund</i>	<i>5 years</i>
12.	<i>Sparrow Asia Diversified Opportunities Fund</i>	<i>5 years</i>
13.	<i>Leman Diversified Fund</i>	<i>5 years</i>
14.	<i>Cardinal Capital Partners</i>	<i>2 years</i>

15.	<i>European American Investment Bank AG</i>	2 years
16.	<i>Golden Cliff</i>	2 years

185. The Noticees, as listed in the table below, shall be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for the respective periods as provided hereunder:

Noticee No.	Name of the Noticee	Period (in years)
6.	<i>Arun Panchariya</i>	10
8.	<i>Mukesh Chauradiya</i>	3

186. Mr. Arun Panchariya (Noticee No. 6), Vintage FZE (Noticee No. 7), India Focus Cardinal Fund (Noticee No.10), Highblue Sky Emerging Market Fund (Noticee No. 11), Sparrow Asia Diversified Opportunities Fund (Noticee No. 12) and Leman Diversified Fund (Noticee No. 13) are further directed to disgorge illegal gains of a total gain of Rs. 14,82,12,803, made by way of sale of equity shares of Texmo along with interest of 12% per annum from July 15, 2014 till the payment of disgorgement amount, within a period of 45 days from the date of this order. As already stated, the liability of Nos. 6, 7, 10, 11,12 and 13 to disgorge the said amount shall be joint and several. In the event, Noticee Nos. 6, 7, 10,11,12 and 13 fail to comply with the said direction, SEBI shall be free to recover the said amount from the Noticees under Section 28A of SEBI Act, 1992 and the said Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, whichever is later.

187. The amount, as directed to be disgorged in para above, shall be remitted by Noticees no. 6, 7, 10, 11, 12 and 13 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. An intimation regarding the payment of said

disgorgement amount directed to be paid herein, shall be sent to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.

2. The above order of SEBI was passed in view of the following final conclusions in the said order: -

- a) Texmo Pipes and Products Ltd. (hereinafter referred to as ‘TPPL/ Texmo/ Noticee no. 1’) in connivance with Vintage FZE (‘Vintage’) earlier known as Alta Vista International FZE devised a fraudulent scheme whereby Vintage received Global Depository Receipts (‘GDR’) without paying any consideration for the GDRs, at the cost of the shareholders / investors of Texmo.
- b) Besides Texmo, Sanjay Agrawal (Noticee No. 2), Vijay Prasad Pappu (Noticee No. 3), Shri Shanti Lal Badera (Noticee No. 4) are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company as its directors, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. They have misled the Indian investors by concealing the information of entering into Pledge and loan Agreement to facilitate and finance the issue of GDRs of company at the cost of shareholders and then cancelling all of the GDRs of Texmo before its GDR termination program and thereby fraudulently issuing shares underlying the GDRs and then selling those converted shares in Indian market by AP connected entities for an approximate amount of Rs. 15 crores. Further, no information was provided to Stock Exchanges and in annual reports of company about pledge and loan agreement. Moreover, Texmo made false announcement that its GDRs were genuinely subscribed, thus, causing a fraud on the innocent investors. The magnitude of fraud is enormous to the extent of the amount of issue of GDR i.e. USD 9.99 million. Further, there is nothing on record to show that loan amount to the tune of USD 3.49 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) which was paid by Texmo at the expense of shareholders of company has been paid back to the company.
- c) Vintage, Noticee No.7, was part of the fraudulent scheme as a consequence of which, it received the GDRs without payment of consideration. Arun Panchariya, Noticee No. 6, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, Noticee No. 8, a key manager in Vintage was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by European American Investment Bank

AG (hereinafter referred to as, 'EURAM Bank') to extend credit facility to Vintage to subscribe to the GDR issue of Texmo. Further, Pan Asia Advisors Ltd., Noticee No. 9, the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, Noticee No. 10; Highblue Sky Emerging Market Fund, Noticee No. 11; Sparrow Asia Diversified Opportunities Fund, Noticee No. 12 and Lemman Diversified Fund. The above entities were subaccounts of Cardinal Capital Partners, Noticee No. 14; EURAM Bank, Noticee No. 15; and Golden Cliff, Noticee No. 16. These entities were all related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same, I have found that Noticee Nos. 10 to 13 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

- d) Arun Panchariya was the principal architect in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Texmo and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through IFCF, HBS, Sparrow and Lemman with the intention of making illegal gains. In this regard, I note that the same modus operandi of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market.
- e) In the matter of *Pan Asia Advisors Limited and Another vs. SEBI (Appeal No. 126 of 2013)*, the Hon'ble SAT, while dismissing the appeal filed by the appellants therein (against the SEBI Order *inter alia* prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had *inter alia* observed: "... *apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been*

subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by Arun Panchariya. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted. ...”

f) Further, in the matter of *Jindal Cotex Limited and Ors vs. SEBI (Date of Decision: February 5, 2020 Appeal No. 376 of 2019)*, the Hon’ble SAT had observed: *“This Tribunal had passed a number of orders relating to manipulations and fraudulent behaviour from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include PAN Asia Advisors Limited and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR Issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.”* It is seen that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also participated in such schemes.

g) As a consequence of the collective action of Noticee Nos. 6, 7, 10, 11, 12 and 13, a total gain of Rs. 14,82,12,803 was made by Noticee Nos. 10, 11, 12 and 13, and as such, the said Noticees are jointly and severally liable to disgorge the above amount.

3. The Noticees filed an Appeal (Appeal Nos. 922 of 2023 and 102 of 2024) against the aforesaid SEBI Order before the Hon’ble Securities Appellate Tribunal (“SAT”) wherein the Hon’ble SAT, vide its Order dated October 24, 2024, passed after hearing the parties, set aside the above order dated February 28, 2023 and remitted the matter back to SEBI in terms of the following:

“After hearing the matter substantially, it was pointed out that the appellant has some more documents to substantiate its contention that the proceeds of GDR issue have been remitted. Admittedly, those documents have not been placed before SEBI for consideration during the adjudication. Learned advocate on both sides submit that the matter may be remitted to the SEBI to consider the additional documents, which the appellant proposes to produce. Their submissions are placed on record.

2. In view of the above, the impugned order is set aside. The matter is remitted to the file of SEBI to consider the additional documents which the appellant may produce before the SEBI and pass fresh order in accordance with law.

3. In so far as appeal No. 102 of 2024 is concerned, the same has been filed by the directors of Texmo Pipes & Products Ltd. The order passed in the appeal No. 922 of 2023 will have bearing on the appellant in Appeal No. 102 of 2024. Therefore, the impugned order in Appeal No. 102 of 2024 is also set aside and remitted to the SEBI for passing a fresh order in accordance with law. The appellant may produce the documents within a period of four weeks from today. All interlocutory applications are disposed of.

4. No costs.”

4. Vide email dated December 06, 2024 the Authorised Representative (‘AR’) on behalf of all the three Noticees submitted their common submission dated December 05, 2024 to place on record certain additional documents in terms of the Hon’ble SAT Order dated October 24, 2024 and sought an opportunity of personal hearing.
5. While the above representation of the Noticees was pending, SEBI filed a review application bearing no. 36 of 2024 before the Hon’ble SAT seeking clarification as it was understood that the appellants therein (and Noticees herein) were concerned with only two directions, namely, steps taken to bring back the money and period of debarment. However, in paragraph 2 and 3 of the order dated October 24, 2024 Hon’ble SAT had set aside the entire Order dated February 28, 2023.
6. In the meantime, there was a change in the quasi-judicial authority in SEBI pursuant to an internal transfer and then the matter was brought before me for my consideration. The

matter was kept on hold pending decision on the above review application filed by SEBI as the matter was *sub judice* at that stage.

7. Subsequently, after considering the submissions of the parties, Hon'ble SAT vide its Order dated December 17, 2024 modified its earlier Order dated October 24, 2024 as under:

“a. paragraph No. 2 will be read as ‘in view of the above, directions at paragraph No. 183(1) and 183(2) of the impugned order in Appeal No. 922 of 2023 is set aside. The matter is remitted to the file of the SEBI to consider the additional documents which the appellant may produce before the SEBI and pass fresh directions in accordance with law.’

b. Paragraph No. 3 will be read as under:

“Therefore, the impugned direction in paragraph no. 183(2) and 184 in appeal No. 102 of 2024 is set aside and remitted to the SEBI for passing fresh directions in accordance with law. The appellant may produce the documents within a period of four weeks from today.”

8. Accordingly, the matter was taken for fresh consideration within the scope as laid down in above order of Hon'ble SAT and an opportunity of personal hearing was given to the Noticees on January 15, 2025 wherein the Mr. Sumit Garg, Advocate and Mr. Harshit Singha (ARs) appeared on behalf of the Noticees appeared before me and made submissions explaining the documents furnished by them.

8.1. Following documents have been furnished by these Noticees:

- i. Copy of the statement of account September 2012 of Standard Chartered Bank Account of Tapti Pipes & Products Limited FZE (“Tapti”).
- ii. Copy of the Inward Payment Customer Advice dated September 27, 2012 issued by Standard Chartered Bank, Abu Dhabi Branch for bank account of Tapti.
- iii. Copy of the Certificate dated December 30, 2023 issued by a Practising Chartered Accountant.
- iv. Copy of Certificate dated November 29, 2024 issued by the Statutory Auditor of TPPL.
- v. Copy of “Exhibit –H” of Appeal No. 608 of 2022 filed against SEBI Order dated June 28, 2022 by TPPL.
- vi. Annual Reports of TPPL for the financial years 2010-11, 2012-13 and 2023-24.

- vii. Copy of Detailed Project Profile dated August 28, 2024 obtained by TPPL from Reserve Bank of India ('RBI')
- viii. Copy of bank statement of TPPL opened with Euram Bank
- ix. Copy of Cash Flow Statement from Annual Report for FY 2012-13 of TPPL.
- x. Copy of the 'USE OF PROCEEDS' from the GDR Offering document.

8.2 The submissions of the Noticees herein are *inter alia* as under:

- (a) That the directions contained in para 183.1, 183.2 and 184 of the SEBI order dated February 28, 2023 have been set aside by Hon'ble SAT. Therefore, all these directions should be reconsidered afresh in view of additional documents submitted by them.
- (b) That as per offer document (point 2 out of 7 items) in respect of GDR issuance in during April 2011 by TPPL disclosed that the proceeds of GDR will be utilised for "*The establishment of overseas subsidiaries to explore and cater to the needs of the international market.*"
- (c) That Tapti was incorporated on March 13, 2011 as a wholly owned subsidiary of TPPL and it continues to be so.
- (d) That the amount of USD 3.49 million was not meant to be brought to TPPL's account in India but was to be utilized for the purpose of establishment of overseas subsidiaries as per the offer document of GDR issue of TPPL.
- (e) That the amount of USD 3.49 million which SEBI *vide* its Order dated February 28, 2023 held to not have been received by TPPL is incorrect for following reasons:
 - i. That when the Euram Bank forfeited the said amount of USD 3.49 million from the bank account of TPPL on September 04, 2012, the said amount of USD 3.49 million was paid by Vintage on September 27, 2012 to Tapti, the wholly owned subsidiary of TPPL to compensate for the amount forfeited by Euram Bank. This was so done because the bank account of TPPL was closed as there was no balance left in it after forfeiture of USD 3.49 million by Euram Bank from the bank account of TPPL.
 - ii. The Detailed Project Profile dated August 28, 2024 obtained by TPPL from Reserve Bank of India ('RBI') reflects that TPPL had on September 27, 2012 invested USD 3.49 million into Tapti and that the investment was made through passing of an accounting entry in the books of accounts of TPPL and Tapti by way of an adjustment against the amount of USD 3.49 million remitted by Vintage to Tapti on September 27, 2012.
 - iii. The receipt of USD 3.49 million by Tapti from Vintage was reflected in the audited books of accounts of TPPL as loan given by TPPL to Tapti equivalent

to an amount of INR 1840.94 lacs which at the foreign exchange rate of the relevant time came up to USD 3.49 million and the same is also supported by the DPP.

- (f) That on the very same facts and allegations, prior to the SEBI Order dated February 28, 2023, SEBI passed an Order dated May 28, 2022, imposing monetary penalties on TPPL and its directors. Against the said Order, TPPL and Mr. Vijay Prasad Pappu preferred and Appeal (Appeal Nos, 607-608 of 2022) wherein Hon'ble SAT vide its Order dated September 30, 2022, upheld the findings of SEBI but reduced the penalty imposed by SEBI.
 - (g) That the Noticee's case is better than most other similar GDR cases, *inter alia* since the Noticee has in fact received the entire GDR proceeds and used the same for the purpose for which the same had been raised as recorded in the Hon'ble SAT Order dated September 30, 2022.
 - (h) That TPPL currently has more than 45000 public shareholders and also has more than 1,000 employees who should not be made to suffer on account of debarment of the Noticees.
 - (i) That the Noticees have already undergone debarment period of around 2 years since the passing of SEBI Order dated February 28, 2023 and prayed for reconsideration of the debarment period to the period already undergone as debarment by the Noticees.
 - (j) The AR placed on record and relied upon the following documents during the hearing to *inter alia*, demonstrate that the Hon'ble SAT has been reducing the quantum of punishment whether penalty or Disgorgement in various GDR cases as well as the SAT Order passed against SEBI Order dated July 28, 2022 passed in respect of GDR issue of TPPL:
 - (i) SAT Order dated July 19, 2022 in Appeal No. 281 of 2022.
 - (ii) SAT Order dated February 21, 2023 in Appeal No. 554 of 2021.
 - (iii) SAT Order dated September 13, 2023 in Appeal No. 348 of 2022
 - (iv) Brief Notice of arguments filed by Noticee No. 1 in Appeal No. 922 of 2023 before the Hon'ble SAT.
9. I have carefully considered the representation dated December 06, 2024 of the three Noticees herein and the submissions made by them during the personal hearing and additional written submissions dated January 21, 2025 filed thereafter. The three Noticees herein are the Noticees No 1, Noticee No.2 and Noticee No.3 in the order dated February 28, 2023. Only these three Noticees had challenged the said Order of SEBI and above directions of Hon'ble SAT came to be passed in their Appeal. I further note that in terms

of Order dated December 17, 2024 Hon'ble SAT the directions contained in para 183.1, 183.2 and 184 of the SEBI order dated February 28, 2023 have been set aside and remitted to SEBI for passing fresh directions in accordance with law after considering the additional documents which these three Noticees may produce before the SEBI.

10. It is also noted that while directions contained in para 183.1 of the order dated February 28, 2023 is exclusively against Texmo Pipes and Products Limited (Noticee No. 1 in the order dated February 28, 2023 and in this order as well), the direction contained in para 183.2 of the order dated February 28, 2023 is against Texmo Pipes and Products Limited Ltd. and also against its directors viz; , Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu and Mr. Shanti Lal Badera who were Noticee No. 2, Noticee No. 3 and Noticee No. 4, respectively in the order dated February 28, 2023. However, the direction contained in para 184 of the order dated February 28, 2023 was not only against these 3 directors of Texmo Pipes and Products Limited Ltd. but also against the host of 13 other entities including Mr. ShantiLal Badera who are neither party to the appeal before Hon'ble SAT nor are they party in this order.
11. Since the direction contained in para 184 of the order dated February 28, 2023 has been set aside in its entirety a peculiar situation has arisen as to how to deal with directions against the above 13 entities who have been found to have perpetrated grave fraud and have been debarred for their acts as found in the order dated February 28, 2023. It is pertinent to mention that in its review petition filed before Hon'ble SAT, SEBI had prayed for modification in order dated October 24, 2024 of Hon'ble SAT for setting aside this direction *qua* the appellants i.e. TPPL and its two directors viz; Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu. In this regard, I deem it appropriate to apply the doctrine of *sub silentio* that the above order of Hon'ble SAT applies only *qua* TPPL and its two directors viz; Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu. This is a case where decision has been given to allow limited scope of reconsideration of direction in para 183.1, 183.2 and 184 of the SEBI order dated February 23, 2023 *qua* the appellants i.e. TPPL. and its abovesaid two directors without going into merits of the case and without appreciating any role and responsibility of any of the entities covered in the order dated February 28, 2023. Thus, the order dated December 17, 2024 is in silence without consideration of any argument on merit from all or any of the Noticees in the order dated February 28, 2023. **Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn.** explains the concept of *sub silentio* at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. The order dated December 17, 2024 of Hon'ble SAT is also an order with consent of the parties to the extent of consideration of the additional documents, which the TPPL and its two directors viz; Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu proposed to produce. Such consent on the part of SEBI is limited to this extent and not with regard to the role and responsibilities of other Noticees in the order dated February 28, 2023 and directions therein *qua* them. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Therefore, I am of the view that the said order as against all other Noticees in the order dated February 28, 2023 remains in force *qua* other 13 Noticees in the said order.

13. It is noted that though the Noticees have claimed that documents furnished by them was not considered while passing of the order dated February 28, 2023, it is noted that the documents now furnished as listed hereinabove were not produced in the proceedings that led to SEBI Order dated February 28, 2023. I note that in Paragraph no 179 of the Order dated February 28, 2023 it has been observed that *"there is nothing on record to show that loan amount to the tune of USD 3.49 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) which was paid by Texmo at the expense of shareholders of company has been paid back to the company."* It is claim of the Noticees that they had filed the document annexed as "Exhibit – H" of Appeal No. 608 of 2022 filed by TPPL against the order of SEBI dated June 28, 2022 and have contended that the same was ignored by SEBI while passing the Order dated February 28, 2023. I do not find merit in this contention of the Noticees as they had filed those documents in the appeal filed by them before Hon'ble SAT against the order dated June 28, 2022 passed by the Adjudicating Officer of SEBI.

14. I further note that the aforesaid order dated December 17, 2024 read with order dated October 24, 2024 passed in this matter by Hon'ble SAT does not disturb the findings in

the order dated February 28, 2023 of SEBI and the findings on facts, except that are germane to directions that are set aside, remain the same and, hence I do not deem it appropriate to re-examine entire case afresh. I, therefore, proceed to deal with representation dated December 05, 2024 of the Noticees in the above scope and perspectives. Thus, the challenge has been confined at the following issues: -

- a) Whether the outstanding amount of USD 3.49 million out of the GDR proceeds have actually been refunded by Vintage and invested in Tapti for utilisation of said proceeds of GDR for one of the purposes of the GDR issue i.e. *“establishment of overseas subsidiaries to explore and cater to the needs of the international market.”* And, therefore, direction in para directed 183.2 of the order dated February 28, 2023 cannot sustain; and
- b) Whether the debarment direction against TPPL in para 183.1 and those against its directors viz; Sanjay Agarwal and Vijay Prasad Pappu as contained in para 184 of the order dated February 28, 2023 are disproportionate and excessive and should be reconsidered in light of precedents in similar matters.

15. With regard to the first issue it is noted from the ‘USE OF PROCEEDS’ section of the GDR Offering Circular of TPPL as relied upon by the Noticees that the amounts of GDR proceeds were to be utilized for the following seven activities:

- (a) The modernization of machinery, equipment and technology and expansion of existing product range;
- (b) The establishment of overseas subsidiaries to explore and cater to the needs of the international market;
- (c) The repayment of debts;
- (d) The investment in, amalgamation with and takeover of other entities;
- (e) Trading activities of a non-recurring nature; and
- (f) As working capital for the existing and the future expansion / Diversification projects of the Company.
- (g) Setting up of power project for electricity generation through biogas up to 3 MW.

16. While the evidence produced by the Noticees cannot be brushed aside in a casual manner, the submissions must be corroborated with cogent evidences. The onus of proof is not static. The initial burden lies on the Noticees to establish the identity and the credit worthiness of the claim. I must make a mention that learned counsel for the Noticees made a valiant effort to bring forth evidences to show that Tapti was and even today is a subsidiary of TPPL. The Noticees have also contended that the entire GDR proceeds were

received by TPPL and the proceeds were used for the purpose for which the same had been raised and this fact has also been recorded by Hon'ble SAT in Para 19 its Order dated September 30, 2022. Admittedly, TPPL had established Tapti on March 13, 2011, i.e. before the GDR issue on April 11, 2011 and had transferred the USD 6.50 million out of GDR proceeds received from Vintage to Tapti in ten instalments during the period August 04, 2011 to March 02, 2012. However, Vintage has transferred, USD 34,98,579 million (USD 3.49 Million approx.) to Tapti on September 27, 2012. Admittedly, TPPL never utilised the GDR proceeds for any other disclosed purposes.

17. It is pertinent to mention that in the adjudication proceedings in this matter, on the same charges and allegations, when Adjudicating Officer passed order dated June 28, 2022, the TPPL filed appeal the Appeal No. 608 of 2022 against the said order claiming same relief that it has received back entire GDR proceeds of USD 9.99 million from Vintage. It made such claim based on the documents annexed as "Exhibit – H" of Appeal No. 608 of 2022. In this appeal, Hon'ble SAT vide its order dated September 30, 2022 upheld the findings of the Adjudicating officer as under:

"16. Having heard the learned counsel for the parties we find that this modus operandi in the instant appeals is the same and has been dealt with by this Tribunal in a large number of matters relating to the GDR issue wherein the Tribunal has held that non-disclosure of the loan agreement and the pledge agreement was totally fraudulent and violative of the Listing Agreement. This Tribunal also held that the Company and its MDs were aware of the execution of the pledge agreement as well as loan agreement and it was no longer open to them to deny the existence of the said agreements. This Tribunal also held that the Company and its Directors misled SEBI into believing that there were more subscribers to the issue and not one subscriber.

17. We also held that Company and its MDs were aware of the pledge agreement, non-disclosure of the pledge agreement and loan agreement invited penalty. Further, the corporate announcement did not disclose the fact that the subsisting pledge agreement facilitated the subscribers to subscribe to the GDR issue. The corporate announcement was misleading and presented a distorted version to the investors and created a false version inducing the investors to deal in securities. The aforesaid findings have been given in a large number of matters decided by this Tribunal especially in Appeal no. 381 of 2019, Sibly Industries Ltd. vs SEBI and other companion appeals decided on July 14, 2022, Appeal no. 438 of 2020, Aksh Optifibre Ltd. vs SEBI and other

companion appeals decided on June 27, 2022 and Appeal no. 28 of 2022, Praveen Kumar Hastimal Shah vs SEBI and other companion appeals decided on July 6, 2022.

18. Consequently, in the light of the aforesaid decisions the findings against the appellants in the instant appeals does not require any interference nor we require to give elaborate reasons. The findings of the AO are upheld.”

18. In para 19 of the Order dated September 30, 2022:

“19. There is no doubt that the proceeds of the GDR issue was eventually received by the Company though belatedly less USD 34,98,579 million which was adjusted by Euram Bank against the loan default committed by Vintage. Evidence has come that the same was utilized as per Listing prospectus. Thus, there has been no diversion of funds and there is no wrongful dealings in securities other than the fact that a portion of amount was deducted by the EURAM Bank for default committed by Vintage. The AO has himself given a finding that no disproportionate gain is attributed to the appellants. No finding has been given by the AO that any loss was caused to the shareholders or investors.”

19. It is worth mentioning that in the above para of its order dated September 30, 2022, Hon’ble SAT clearly held that USD 3.49 million have not been received by the TPPL. In my view other findings in the said order as referred to above have bearing on this finding. It has been brought before me that SEBI has filed appeal against the said order dated September 30, 2022 of Hon’ble SAT *inter alia* on the grounds that

- (a) Hon’ble SAT has erred in making observations in the said Order that the GDR proceeds were utilized for the disclosed purposes.
- (b) Hon’ble SAT did not take into consideration that the GDR issue of TPPL was subscribed by Vintage by obtaining loan from EURAM Bank and the loan amount was secured by pledging the GDR proceeds by TPPL with EURAM Bank and, as such, TPPL facilitated subscription of its own GDR issue and, further, the GDR proceeds were no freely available in the hands of TPPL until and unless repayment of the loan was made by Vintage.
- (c) Hon’ble SAT failed to consider the fact that as and when Vintage repaid the loan amount, equal amount of money was transferred from TPPL’s EURAM Bank account to TPPL’s UAE based subsidiary’s bank account.

(d) Hon'ble SAT failed to take into consideration that despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premediated arrangement with the entity, the crucial material facts surrounding the Loan and Pledge Agreements and also about the single subscriber were knowingly concealed from the investors.

The said appeal is pending and, thus, the fact finding in this regard is still *sub judice* before the Hon'ble Supreme Court. It is also worth mentioning that while the appeal was filed and pending before the Hon'ble Supreme Court, the order dated February 28, 2023 came to be passed again giving finding on fact that: - *“As per the offer document for GDR of Texmo, one of the objects was to utilize the funds for payment for current acquisition and investment and loan to subsidiary. However, no records have been submitted/ produced by the Company to prove the utilization of funds in terms of the aforesaid objects of the issue”* I further note that, it is established position as per order dated September 30, 2022 of Hon'ble SAT itself that said USD 3.49 million have not been received by TPPL as claimed by the Noticees.

20. As directed by Hon'ble SAT, I have examined the documents relied upon by the Noticees in respect of the impugned USD 3.49 million. It is shown that USD 3.49 million were transferred from Vintage on September 27, 2012 to Tapti (Bank account Number 01207715601 with Standard Chartered Bank Abu Dhabi Branch). This fund flow is supported by the inward Payment Customer Advice dated September 27, 2012 issued by Standard Chartered Bank, Abu Dhabi Branch for bank account of Tapti, copy of the statement of account for September 2012 for the said account of Tapti with Standard Chartered Bank and the Detailed Project Profile dated August 28, 2024 obtained by TPPL from RBI. The certificate dated December 30, 2023 issued by a Practising Chartered Accountant and the certificate dated November 29, 2024 issued by the Statutory Auditor of TPPL also state receipt of said USD 3.49 million (approximately) by Tapti. It is also noted that the same amount (INR 1840.94 lacs which at the foreign exchange rate of the relevant time came up to USD 3.49 million) is also reflected in the audited books of accounts of TPPL during the relevant period as book entry loan. However, I am afraid, I cannot permit this to lead to conclusion that TPPL has received this money from Vintage when actually this amount was confiscated by the EURAM bank on account of failure of Vintage to pay the loan taken by it from the bank. Consequent to which Vintage was obligated to pay back the said amount to TPPL.

21. It is also claimed, on the basis Annual Report of TPPL for Financial year 2012-2013, that this fund was taken in the books of TPPL in the nature of loan and advances to the subsidiaries by way of book entry. Generally, a book entry in a company's records regarding a loan amount can create a presumption of existence of the loan but it cannot be considered conclusive proof of the loan on its own and it needs to be further corroborated by evidence to establish the existence of the loan and its legality, particularly when it is questioned in the context of a fraudulent transaction. There is no evidence to corroborate this book entry in books of TPPL as loan to Tapti. Further, no details have been furnished to show any loan agreement, rate of interest, repayment mode, tenure of loan, offering of security and also there is no circumstantial evidence either to corroborate all these assertions. In fact, admittedly, the said GDR proceeds are still lying with Tapti. When specific question was asked as to how Tapti has used the said monies if it was to be utilised by it for its establishment to explore and cater to the needs of the international market? Nothing conclusive came forward from the Noticees by way of any evidence in the regard.
22. It is established fact that vide the Circular Resolution dated October 28, 2010, TPPL approved the opening of account with EURAM Bank along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. Subsequently, a Pledge Agreement was also entered into between TPPL and EURAM Bank pledging the GDR proceeds in the account opened, as authorized in the Circular Resolution dated October 28, 2010, as security for loan taken by Vintage in order to subscribe to the GDRs of TPPL. The Circular Resolution or Pledge Agreement was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding subscription of GDRs. Moreover, the default of loan by Vintage and consequent adjustment of USD 3.49 million from the GDR proceeds by EURAM Bank in accordance with the Pledge Agreement was also not disclosed to the investors by TPPL. Vide its judgment and order dated September 21, 2021 passed in *Civil Appeal No. 380 of 2020 – SEBI Vs. Adi Cooper* and other connected civil appeals, the Hon'ble Supreme Court has observed that such resolution facilitated the transaction with Vintage and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the TPPL or the investors of the securities market through BSE.
23. In the facts and circumstances of this case, it is quite irrational and patently wrong that TPPL would take loan of money by pledging its money with EURAM Bank if it had intended to use the GDR proceeds for the disclosed purposes. If it had money to offer as security for loan then in the first place, there was no need to take any loan by it. This fact

clearly points to the fact that the Circular Resolution was passed by TPPL not to facilitate its own loans but to facilitate the loan taken by Vintage by entering into the Pledge Agreement dated March 01, 2011 signed by Mr. Sanjay Agrawal. No material is placed on record to show that Tapti ever attempted exploring and catering to the needs of the international market as disclosed in its GDR Offering Circular. Like other such GDR cases, in this case also, the transfer of funds from TPPL's EURAM Bank account was dependent on the repayment of the loan by Vintage and the amount deposited in the account was not at the disposal of the TPPL, as the same was kept as collateral for the loans availed by Vintage even prior to issuance of GDRs. Therefore, SEBI has found that this was an artificial arrangement for the issuance and subscription of the GDR issue of TPPL was not for the benefit of the shareholders of TPPL and it did not take any step to safeguard the interest of the its shareholders. In this regard, the Hon'ble SAT in ***Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)*** observed as under:

“9..... The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR.....”

24. In my view, this non- disclosure had the potential to ‘induce’ or to mislead the investors to remain invested or to invest or to divest in the securities of the TPPL. I note that the evidence available on record show higher degree of probability, of bringing out of inducement or misleading investors to deal or abstain from dealing in the securities of the TPPL and consequential fraud committed. Therefore, the evidence available on record and inferences drawn from such evidence show higher degree of probabilities that TPPL and its directors perpetrated a fraudulent scheme for its GDR issue in which the GDRs of TPPL were subscribed by only one entity i.e. Vintage by obtaining a loan through a dollar term loan facility through a loan agreement from the EURAM Bank, for which TPPL provided security by pledging its Bank account held with EURAM Bank wherein proceeds of GDR issue of TPPL were to be deposited. When Vintage defaulted on payment of the loan for an amount of USD 3.49 million to EURAM Bank. The said amount was adjusted by EURAM Bank against loan account of Vintage on March 02, 2012 in accordance with the Pledge Agreement and that TPPL caused the investors in the securities market in India to

believe that the full consideration for GDRs had been received by it which was not true and thereby, induced the investors in India to deal in securities, and committed fraud on the investors in India.

25. When seen in light of other findings and those as quoted above from order dated September 30, 2022 it is clear that the parking of GDR proceeds with Tapti is part of the entire *modus operandi* in this case. Thus, it is established that the said USD 3.49 million are still lying with Tapti and the book entry in the Annual report of TPPL is not suggesting genuine loan transaction but a make believe arrangement as a part of entire fraudulent device designed and orchestrated in this case. Considering above findings, I am of the view that the said USD 3.49 million belonging to TPPL are remaining parked with Tapti in the garb of a loan without any use by Tapti for the proposes disclosed in the GDR Offering Circular of TPPL. The said USD 3.49 million have to be received by the TPPL in same way like other monies have been received by it from Vintage and cannot be allowed to be parked with Tapti for indefinite period and for exterior purposes to the detriment of interests of its investors in India.
26. Now with regard to the issue relating to proportionality of directions restraining TPPL and Sanjay Agarwal and Vijay Prasad Pappu in terms of para 183.1 and 184 of the order dated February 28, 2023, it is gainsaying that consistent approach would always be guided by gravity and impact of a particular case rather than adopting a tick box approach. While the deviations from a pattern or a mode adopted in the past without any reasonable cause or principle can be labelled as arbitrary in nature, a deviation from the decision taken earlier would be permissible if it is rational and is based on reasonable differentiation. As held by Hon'ble Supreme Court in the matter of *SEBI v. Sunil Krishna Khaitan (Decided on 11-7-2022)* that consistency is a matter of occupational effectiveness, giving rise to substantive legitimate expectation then departure should not be made irrationally or on perverse grounds by the SEBI.
27. I am also conscious of the fact that the principles of proportionality and manifest arbitrariness are *sine qua non* for such proceedings as the present one. The Noticees have vehemently contested the restraint order inflicted upon them in the above paras of the order dated February 28, 2023 relying upon few GDR cases and have stated that different directions have been issued in similar cases. The directions issued by SEBI in few such cases as relied upon by the Noticees are as under:

Debarment Order						
Sr. No.	Name of the GDR issuer company	Period of GDR issue	Total Amount raised by GDR issue (USD) million	Subscriber	Period of Debarment	Date of Order
1.	Morepan Laboratories Ltd.	March-03	15.25 million	Solsec and Severon	1 year of debarment	24 th September, 2019
2.	Vikas Metal & Power Ltd.	April-11	11.99	Vintage FZE	3 years of debarment	29 th September, 2019
3.	Aqua Logistics Ltd.	Feb-11	62.38	Vintage FZE	3 years of debarment	22 nd July, 2021
4.	Zenith Birla (India) Ltd.	May-10	22.99	Vintage FZE	3 years of debarment	30 th March, 2021
5.	Aksh Opti-Fibre Ltd.	Sept 10	25	Vintage FZE	5 years of debarment	26 th June, 2019
6.	Sybyl Industries Ltd.	9 th June, 2008	6.99 million	Vintage FZE	5 years of debarment	16 th January, 2018

28. The Noticees have further contended that Hon'ble SAT has also reduced the restraint period in similar few following cases: -

Name of Issuer/ Amount involved	SAT Appeal No. and Date of Order	Amount of GDR issue	Debarment Period by SEBI	Reduction by Hon'ble SAT
Winsome Yarns	Appeal No. 281 of 2022, July 19, 2022	13.24 Million USD	Company- 3 Years Managing Director – 2 Years	Reduced to 1 Year each for the Company and the Managing Director.
Zenith Steel Pipes and	Appeal No. 554 of 2021,	22.99 million USD	Company- 3 Years	Company- reduced to the debarment already undergone.

Industries Limited	February 21, 2023		Chairman and Managing Director – 1 Year	Chairman and Managing Director directions imposed by SEBI upheld by SAT
Winsome Textile Industries Ltd.	Appeal No. 348 of 2022, September 13, 2023	9.99 million USD	Company- 3 Years Chairman and Managing Director – 2 Years	Reduced to 1 Year each for the Company and the Chairman and Managing Director.

29. The Noticees have also contended that their case is better than most other similar GDR cases. As seen from the above table the magnitude of contravention in this case is close to the case of Winsome Textile Industries Ltd. wherein Hon'ble SAT has modified the restraint period as described above and it is informed that SEBI has accepted this order of Hon'ble SAT and has not challenged. I also note that the Adjudicating Officer of SEBI vide Order dated June 28, 2022 imposed a penalty of Rs. 10.25 Crores on TPPL, Rs. 20 Lakhs on Mr. Sanjay Agrawal and Rs. 20 Lakhs on Mr. Vijay Prasad Pappu. In the appeal against the said Order dated June 28, 2022, Hon'ble SAT upheld the penalty levied against Mr. Sanjay Agrawal, however, it reduced the penalties imposed upon TPPL and Mr. Vijay Prasad Pappu to Rs. 25 Lakhs and Rs. 10 Lakh, respectively. SEBI has preferred an appeal against the said Order of Hon'ble SAT before the Hon'ble Supreme Court.

30. Considering the above facts and circumstances and applying the principles of consistency, arbitrariness and proportionality, I am of the view that the debarment undergone by TPPL, Mr. Sanjay Agrawal and Mr. Vijay Prasad Pappu till date and the monetary penalties imposed upon them subject to the outcome of above appeal filed by SEBI would be commensurate with the contraventions committed by them in the order dated February 28, 2023. However, this order shall not be construed to give any relief to any other party restrained by the order dated February 28, 2023. Further, as already held above, the outstanding amount of USD 3.49 million parked with Tapti shall forthwith be called back and credited in the account of TPPL. I order accordingly.

31. In view of the above and in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, I, hereby, direct that:

- (a) Texmo Pipes and Products Limited Ltd is hereby directed to call back the book entry loan from the accounts of Tapti i.e. outstanding amount of GDR proceeds and credit the same in its bank account in India within a period of three months under supervision of its Audit Committee.
- (b) The directors of Texmo Pipes and Products Limited Ltd viz; Mr. Sanjay Agrawal and Mr. Vijay Prasad Pappu shall ensure the compliance of the above direction by it and shall furnish a Certificate from a Chartered Accountant recognized by ICAI along with necessary documentary evidences, certifying the compliance of the above direction to “*The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051*”.

32. This order shall come into force with immediate effect.

33. A copy of this order shall be served upon the Noticees, recognised Stock Exchanges and the Depositories for necessary action.

Date: February 20, 2025

Place: Mumbai

**SANTOSH SHUKLA
CHIEF GENERAL MANAGER AND
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA**