BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 24.06.2016
Date of Decision : 30.08.2016

Misc. Application No. 343 of 2015
And
Appeal No. 144 of 2014

P. G. Electroplast Ltd.
P-4/2, 4/3, 4/4, 4/5, 4/6,
Site B UPSIDC Industrial Area,
Surajpur, Greater Noida,
Uttar Pradesh – 201 306. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

With
Appeal No. 147 of 2014

Shri Pramod Gupta
P-4/2, 4/3, 4/4, 4/5, 4/6,
Site B UPSIDC Industrial Area,
Surajpur, Greater Noida,
Uttar Pradesh – 201 306. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

With
Appeal No. 159 of 2014

Shri Vishal Gupta ….. Appellant
P-4/2, 4/3, 4/4, 4/5, 4/6,
Site B UPSIDC Industrial Area,
Surajpur, Greater Noida,
Uttar Pradesh – 201 306.

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),

Mumbai - 400 051. …… Respondent

With
Appeal No. 183 of 2014

Shri Vikas Gupta
P-4/2, 4/3, 4/4, 4/5, 4/6,
Site B UPSIDC Industrial Area,
Surajpur, Greater Noida,
Uttar Pradesh – 201 306 ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

With
Appeal No. 184 of 2014

Shri Anurag Gupta
P-4/2, 4/3, 4/4, 4/5, 4/6,
Site B UPSIDC Industrial Area,
Surajpur, Greater Noida,
Uttar Pradesh – 201 306 ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Shyam Mehta, Senior Advocate with Ms. Rishika Harish, Mr. Amit Dey, Advocates i/b Mindspright Legal for the Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Saurabh Bachhawat, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh

1. The present Appeals have been filed challenging order dated March 11, 2014 (“Impugned Order”) passed by the Respondent - SEBI against PG

Electroplast Limited ("Appellant") and its directors in exercise of SEBI's powers as conferred by sections 11(1), 11(4), 11(A) and 11(B) of the SEBI Act, 1992 ("SEBI Act" for short) read with Regulation 11(1) of the Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market Regulations, 2003 ("PFUTP Regulations" for short), prohibiting the latter from raising any capital from the securities market and further dealing in the securities market in any manner for a period of ten years. The Appellant was also directed by the Impugned Order dated March 11, 2014 to recall all the moneys, which were not recovered by the Appellant till March 11, 2014 and submit report to the Respondent. In fact, the Appellant had already been directed to recover an amount of ₹ 32 crore from certain entities and deposit it in an escrow account by ad-interim ex-parte order dated December 28, 2011.

2. The Appellant, which is a company incorporated under the Companies Act, 1956, in the process of floating an IPO filed its Red Herring Prospectus dated **August 17, 2011** and Prospectus dated **September 14, 2011** and came out with an IPO of 57,45,000 equity shares of ₹ 10/- each for cash at a price of ₹ 210/- per equity share. The IPO opened and closed on **September 7, 2011** and **September 12, 2011** respectively. The Appellant's shares were listed on BSE and NSE on **September 26, 2011**. SEBI noticed fluctuations in the price of the Appellant's scrip following the day of listing and, therefore, launched an investigation into the IPO. Interim Order dated **December 28, 2011** was passed since SEBI came to a *prima facie* conclusion that manipulative devices had been used to create an artificial volume in the Appellant's scrip in contravention of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a)-(d), 4(1), 4(2)(a), (d)-(f) and (k) of the PFUTP

Regulations and Regulations 57(1), 60(4)(a) and 60(7)(a); Clauses 2(VII)(G), 2(VIII)(B)(5)(b) and (6); and Clause 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57(2)(a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations" for short). The Interim Order prohibited the Appellant from raising further capital from the securities market; the Promoter/Directors of the Appellant were prohibited from dealing in the securities market in any manner; the Appellant was directed to recall ICDs deposited with Raw Gold Securities ("Raw Gold"), Wattkins Commerce Private Limited (Wattkins) and Saptrishi Suppliers Pvt. Ltd. ("Saptrishi") and place them in an Escrow Account; and deposit the IPO Proceeds remaining with the Appellant in the said Escrow Account. After completing its investigation SEBI confirmed the Interim Order on **October 31, 2012** ("Confirmatory Order").

3. Subsequently, a Show Cause Notice dated **January 16, 2013** ("SCN") was issued to the Appellant alleging non-disclosure of certain information viz., amounts raised through Inter-Corporate Deposits ("ICDs"), Board Resolution dated August 17, 2011, purchase orders for plant and machinery, names of certain suppliers, Agreements and Memorandum of Understanding entered into by the Appellant for the purchase of land; diversion of IPO Proceeds through repayment of ICDs and through investment in ICDs by the Appellant; diversion of funds through purchase orders; contradictory disclosures regarding amount of term-loan availed and failure to comply with directions contained in the Interim Order. An opportunity of personal hearing was granted to the Appellants on **July 11, 2013** and after conducting its enquiries SEBI passed the Impugned Order dated **March 11, 2014** barring the Appellants from the Securities Market for a period of ten years.

4. We have heard both the learned Senior Counsel, Shri Shyam Mehta and Shri Shiraz Rustomjee, for the parties at length and have perused the pleadings and documents brought on record.

5. The charges levelled against the Appellants, clubbed into two heads for the sake of convenience, are as under:

1) Non-disclosure of certain material information in the offer documents; and
2) Diversion of IPO Proceeds and other funds to entities which purchased the Appellant's shares to ensure full subscription to the IPO of the Appellants.

6. The case of the Respondent as set out in the SCN is that several material facts have been allegedly intentionally suppressed in the offer documents pertaining to the IPO with respect to the utilization of the IPO Proceeds, agreements for purchase of land and raw material. Information has not been disclosed regarding ICDs, placement of purchase orders and with respect to utilization of the IPO Proceeds for general corporate purposes. It is alleged that the fact of taking and providing ICDs was not disclosed in the offer document, along with the non-disclosure of agreements executed with Nimbus and Supreme for the purchase of raw materials, and agreements for the purchase of land. It is also an allegation levelled in the SCN that Board Resolution dated **August 17, 2011** in which the decision regarding ICDs was taken was not disclosed in the RHP.

7. Further, a principal part of the IPO Proceeds has been allegedly diverted by the Appellant for transactions related to the securities market, giving and taking of ICDs, dubious land deals and unnecessary purchase of raw material. It is alleged that ₹ 36 crore were diverted by the Appellant to

connected entities and a sum of ₹ 2.2 crore were diverted to allottees for their application in the IPO of the Appellant. Ostensibly vide advance payments made for the purchase of plastic granules, an amount of ₹ 7.25 crore were diverted through Nimbus and Supreme. ₹ 40 lakh out of this ₹ 7.25 crore were diverted to Sunlight for its application in the Appellant's IPO. It is duly noted that agreements with Nimbus and Supreme stand cancelled today and that Nimbus has refunded the money, and some amount has also been recovered from Supreme. The Appellant has initiated proceedings against Supreme for the recovery of the remainder of the advance payment.

8. Several entities have acted in conjunction to abet the Appellant in its alleged scheme of routing money through various entities acting as intermediary channels to create a layered structure for supposedly hoodwinking the market regulator. This was done to defraud the investors partaking in the securities market by creating an artificial market and upsetting the market equilibrium which resulted in an allegedly unwarranted increase in the price of the Appellant's scrip which closed at ₹ 415.3 on the day of listing of the Appellant's shares. It is, therefore, the case of the Respondent that the trading by connected entities in the Appellant's scrip has created a misleading volume in the Appellant's shares leading to a sharp rise in the price of the scrip. The SCN has alleged that the Appellants are guilty under the PFUTP Regulations for indulging in fraudulent practices and also under the ICDR Regulations for inadequate disclosures and misleading statements.

9. In their reply to the SCN, the Appellants submit that the Appellant company was incorporated in the year 2003 as part of PG Group when a plastic injection moulding unit was set up which led to the PG Group

becoming a renowned player in the electronic market. The primary raw materials used by the company are sourced from various providers to meet requirements, quality as well as quantity, as and when they arise on the basis of rates offered by different suppliers. The accumulated outstanding liabilities were draining the profits of the Appellant and, therefore, it was paramount that the debt be paid off and simultaneously the equity of the Appellant company be increased. The Appellant wished to enhance the company's business activities but realized that the contractors / suppliers would not begin work or supply raw material without advance payments. This led to the Appellant having to avail of finance through ICDs obtained from NBFCs and other companies in the interregnum. The Appellant states in its Reply to the SCN that SEBI has failed to take account of the fact that the Lead Manager to the Issue advices the company regarding disclosures and also prepares the RHP and Prospectus. Moreover, the RHP itself is considered by SEBI before the Prospectus is filed and, therefore, the allegation that adequate disclosures have not been made by the Appellant is erroneous.

10. The Appellant also submitted that SEBI in the SCN had failed to establish that the Appellant itself was connected to the entities which had purchased the Appellant's shares in the IPO or that the Appellant was in the know regarding the use of the funds supplied by it to its raw material providers and through ICDs and land deals. SEBI has failed to prove that any benefit accrued to the Appellant or its promoters from the alleged diversion of funds. None of the IPO Proceeds were used by the Appellant to invest in the securities market.

11. It is further submitted by the learned Senior Counsel for the Appellant that the Appellant's IPO was **underwritten** in its entirety by the

Book Running Lead Manager who undertook to ensure complete subscription of the IPO in question if the subscription had fallen below the required minimum benchmark of 90% of the total issue size as per the ICDR Regulations, 2009. Therefore, there was no reason for the Appellant to divert funds from the ICDs borrowed by it prior to the opening of the IPO to various entities for subscription to the IPO as sought to be proved by the Respondent.

12. The Appellant has stated further in the Reply to the SCN that SEBI has indiscriminately sought to attribute impure motives to the most basic activities intrinsic to the business of the Appellant company such as purchase of raw material and purchase of land for expansion of its business. There is not a shred of evidence to link the Appellant with any of the entities which dealt in its scrip and or the existence of a scheme allegedly concocted by the Appellant to create a misleading impression of demand in its scrip. Too many of the allegations contained in the SCN are based on conjectures and surmises which have failed to find their mark in any case. The non-disclosure regarding the Board Resolution dated August 17, 2011 in the RHP is said to have been unavoidable since the RHP itself was being approved in the Board Meeting held on August 17, 2011. Non-disclosure of certain agreements with respect to purchase of raw material and land deals was unintentional and not meant to hide these facts but because these agreements were all in the nature of day to day to business activities of the Appellant and did not carry any particular risk, they were not thought to be material and hence not considered necessary in terms of disclosure requirements.

13. With respect to the ICDs it is submitted that the Appellant's disclosure under the head of "interim use of proceeds" in the RHP as well

as the Prospectus, permits the company to give loans to other entities in the form of ICDs in keeping with the investment policies of the Appellant as decided by the Board. It has been reiterated time and again that the ICDs have been recalled by the Appellant and legal proceedings have been initiated to recover the same. The agreements with Nimbus and Supreme were entered into for purposes of the expansion of business of the Appellant, as well as the discount offered by them for the supply of raw materials. In any event, these agreements were cancelled by Nimbus and Supreme in light of the Interim Order dated December 28, 2011 passed by the Respondent tainting the reputation and goodwill of the Appellant company. It is vociferously denied that money paid to entities in pursuance of purchase orders and land deals was in any way meant to aid the subscription to the IPO of the Appellant.

14. Having summarized the incidents that have led up to the passing of the Impugned Order dated March 11, 2014 for the sake of clarity, we shall now deal with the submissions of the parties in greater detail and give our findings thereon.

15. At the outset learned Senior Counsel for the Appellant, Mr. Shyam Mehta, submits that all allegations and charges as made out in the SCN and Impugned Order have been exaggerated in pursuit of the Appellant company. With respect to the charge of diversion of IPO proceeds to Jainex Securities Private Limited (hereinafter referred to as "Jainex") and Pranneta through repayment of ICDs, the Appellant submits that no link has been established between the Appellant and the aforementioned entities. In fact, no such allegation has been levelled by the Respondent in the first place. The Appellant had no knowledge of the fact that the funds used by it to repay Jainex and Pranneta would be ultimately used to purchase the

Appellant's shares in the ensuing IPO. Further, there is no allegation levelled to the effect that the entities which ultimately bought the Appellant's shares were acting hand in glove with Jainex and Pranneta. It is also pointed out that the impugned transactions between Pranneta and Jainex on one hand and the Appellant on the other, and Pranneta and Jainex on one hand and the entities which bought the Appellants' shares on the other, have not been analysed by the Respondent either in the SCN or the Impugned Order.

16. It is contended by the Appellant that without the examination of these transactions the Respondent cannot logically conclude that the Appellant adopted any means to conceal the true nature of the transactions which allegedly were a mere smokescreen for diversion of funds to ensure complete subscription of the Appellant's IPO. The Appellant was merely repaying a loan to Pranneta and Jainex, nothing else. The Appellant took seven ICDs in all, four of which were repaid before receiving the IPO proceeds. It is argued that the fact that these entities were repaid after the Appellant received the IPO Proceeds alone cannot vitiate the transactions between the Appellant and these entities are per se illegal. This, by itself, cannot lead to the assumption that these dealings were not regular transactions conducted in the ordinary course of the Appellant's business. Jainex and Pranneta are both Non-Banking Financial Corporations registered with RBI and, by the very nature of the business they conduct, accept and extend funds from and to other entities.

17. In respect of the allegation of non-disclosure of funds raised by the Appellant through ICDs, it is submitted by the learned counsel for the Appellant that on a perusal of Clauses (2)(VII)(G) and (2)(VII)(F)(i) of Part A of Schedule VII of the ICDR Regulations, it is borne out that disclosures

in pursuance thereof would be required only in case the ICDs had been raised earlier than two months from the date of the offer document being registered with the ROC. As far as Regulation 57(1) of the ICDR Regulations is concerned, it is also submitted that the said Regulation only covers those transactions which enable applicants to make an informed investment decision.

18. In response to SEBI's allegation regarding the diversion of IPO Proceeds through investment in ICDs, it is reiterated by the Appellant that there is no connection between the entities which purchased the Appellant's shares and the Appellant itself. There is no allegation in the SCN, nor is there a finding to the effect in the Impugned Order that the Appellant had any knowledge that the money invested by the Appellant with Saptrishi, Raw Gold and Wattkins would be used to purchase its shares in the IPO. The Appellant has, in any event, recovered the ICD amounts deposited with the three entities. The three entities in question are NBFCs registered with RBI and there is nothing untoward in them accepting and extending funds from and to other entities.

19. The reason for entering into ICD agreements dated September 20, 2011 with Saptrishi, Raw Gold and Wattkins as explicated by the Appellant is as follows. One of the objects of the IPO, as disclosed in the offer documents, was to repay the loan facilities availed of by the Appellant from Standard Chartered Bank. Since their repayment fell due in December 2011 and the Appellant had already received the IPO proceeds in September-October 2011, the Appellant decided to invest the IPO proceeds which remained with it in the hopes of obtaining a higher interest rate with respect to the same. This business decision of the Appellant resulted in the execution of ICD agreements for a period of seven months at an interest

rate of 14% p.a. along with an addendum that the Appellant reserved the right of recalling the amounts invested with seven days' written notice. Regarding the MJ Commodities' ASBA application for 2,10,000 shares, the Appellant submits that since ICDs were deposited with Raw Gold on September 22, 2011, the finding that the Appellant's funds transferred to Raw Gold were used to fund MJ Commodities' application for allotment does not stand the test of reason since the said application was made earlier on September 12, 2011.

20. With respect to the non-disclosure of Board Resolution dated August 17, 2011, the Appellant submits that the RHP dated August 17, 2011 was approved in the meeting held on August 17, 2011 itself and, therefore, the RHP could not possibly have disclosed the Board Resolution. The disclosure in the Prospectus is sufficient to meet the requirements of the ICDR Regulations and covers the decision to invest in the ICDs of other companies. The Prospectus need not specifically disclose the date of the Board Resolution which spells out the use of the IPO proceeds. The decision to invest in Saptarshi's ICDs was a commercially viable decision in the Appellant's opinion being in the nature of "high quality interest bearing liquid instrument" as disclosed in the Offer Documents. It is further submitted that the entire principal amounts deposited with Saptrishi, Raw Gold and Wattkins have since been recovered. The said amounts were, therefore, not routed out of the reach of the Appellant's shareholders in any manner.

21. It is submitted by the Appellant with respect to the allegation of siphoning off and diversion of money through purchase orders placed for supply of plastic granules and plant and machinery that no connection has either been found nor alleged between the Appellants and the entities

through which the money is said to have been routed, viz., Modi Alloys, Agarwal Steel, Nimbus and Supreme. It is, thus, submitted by the Appellant that it could not have reasonably contemplated that the money used to purchase plastic granules would be used to buy the Appellant's own shares. It is pointed out by the Appellant that the Respondent has not analysed the underlying transactions and particularly failed to appreciate that the purchase of plant and machinery was a duly disclosed object in the Appellant's Prospectus. It is wrong to allege that the Appellant made payments a year in advance of the supply of machinery since the supply in fact began 4-5 months after the payments were made as is evidenced by delivery challans and other receipts adduced before this Tribunal.

22. With respect to allegations of the Respondent that agreements entered into with Nimbus and Supreme appeared to be untrue, the Appellant submits that agreements executed with both entities were provided to SEBI on **November 21, 2011** and, therefore, the Respondent's allegation in this respect does not hold good. However, due to the Respondent's forbidding the two entities, namely, Nimbus and Supreme, from accessing the securities market vide the Interim Order, these agreements had to be cancelled before the supply of plastic granules could commence since the two companies no longer wished to be associated with the Appellant. The Appellant never attempted to create an artificial volume in the scrip of the Appellant through these transactions. In this context, it is further submitted that the Appellant's intention to place purchase orders on Modi Alloys and Aggarwal Steel was clearly disclosed in the RHP. However, the Prospectus was not updated by the Merchant Banker to the Issue to reflect that purchase orders had in fact been placed after the filing

of the RHP although the Appellant had duly brought this development to the notice of the Merchant Banker.

23. Regarding the alleged non-disclosure of names of certain companies in the list of suppliers provided by the Appellant, it is submitted that the names of the manufacturers of materials are disclosed in the offer documents in the form of a list of principal sources of raw materials, the list being incusive rather than exhaustive. First, Nimbus and Supreme are not manufacturers of raw materials but trading companies, and second, agreements executed with the two entities were not material contracts in nature but agreements in the ordinary course of business. Therefore, their names were not required to be mentioned in the offer documents.

24. Finally, dealing with SEBI's allegation of diversion of IPO Proceeds through payment of consideration for land deals, the Appellant submits that there is no connection established between the Appellant and Safeco and Realnet with whom agreements have been executed for the purchase of land with the exception of the land deals themselves. In fact, this allegation does not hold any water particularly in light of the fact that all the amounts paid by the Appellant to the aforementioned entities were refunded to the Appellant even before the passing of the ex-parte ad-interim order dated December 28, 2011. The transfer of funds by Saptrishi to other entities, which ultimately purchased the Appellant's shares, is of no concern to the Appellant since the manner in which Saptrishi utilized the funds, once the Appellant made payments, was beyond the Appellant's control as well as concern. It is the Appellant's submission that the land purchased from Saptrishi has not been independently valued by the Respondent, nor has the cost of construction of the factory to be constructed on the said land been verified and hence it is not open to the Respondent to question agreements

entered into by the Appellant in the ordinary course of business when the said agreements are clearly within the four corners of law. Even in respect of land deals, SEBI has been unable to conduct an analysis of the underlying transactions which would reveal that the transactions were conducted for bonafide purposes and without any ulterior motive on the part of the Appellant whatsoever.

25. The Appellant submits that the Respondent's written submissions travel beyond the scope of the SCN and the Impugned Order with a view to improve the Respondent's case. None of the money paid to Eastern, Safeco and Realnet was utilized for the purchase of the Appellant's shares and that transactions executed by the Appellant are genuine. For instance, the payment made to Aggarwal Steel in lieu of plant and machinery was, as alleged by SEBI, apparently routed to Wonder Vincom, Pranneta, Pushpanjali and Rakesh Industries. However, none of the money was utilized by these entities to purchase shares of the Appellant. It, therefore, emerges that there is no pattern suggesting that the Appellant had any unethical understanding with entities to create an artificial volume. It is denied that there was any pre-meditated plan to ensure subscription to the Appellant's shares. Pertinently, the Appellant submits without prejudice to any of its other submissions, that a ban of ten years is highly disproportionate to the alleged misconduct of the Appellant. It is urged that a balance be maintained between the punishment imposed upon an alleged defaulter and the interests of the investors.

26. Per contra, the Respondent submits that statements and disclosures were made by the Appellant in the RHP and Prospectus in contravention of Clause 2(VII)(G) of Part A of the ICDR Regulations which mandates the disclosure of bridge loans and other financial arrangements which may be

financed through the IPO Proceeds. A statement was made in the offer documents to the effect that no bridge loan had been raised against the IPO Proceeds even when various ICD agreements were executed by the Appellant. A large proportion of the IPO funds being used for ICDs was material information which ought to have been disclosed to the public particularly when Clause 2(VII)(G) requires the disclosure of bridge loans which would include ICDs.

27. By way of a chart regarding the flow of the fund, it is contended by the Respondent that funds were diverted through repayment of ICDs to Jainex Securities Pvt. Ltd. ("Jainex") and Prraneta Industries Ltd. ("Prraneta") to entities which eventually bought shares of the Appellant on the first day of listing. An amount of ₹ 9.47 crore was allegedly diverted to ETL Infrastructure Finance Ltd. ("ETL") through Jainex using a circuitous methodology. ETL finally paid ₹ 1.5 crore to its broker for purchase of the Appellant's shares on the first day of listing. Similarly, after receiving funds from the Appellant, Prraneta sent the money to Saptrishi who then passed it on to several entities which then purchased the Appellant's shares. As far as the Appellant's assertion that ICDs were raised to meet urgent needs for funds, the Respondent submits that the Appellant cannot be allowed to state that it was in need of money when it seemed to have enough to temporarily invest the same around the same point in time. In relation to the invoices furnished by the Appellant to substantiate the Appellant's claim that it did in fact use the ICDs to purchase plant and machinery, the Respondent submits that the invoices do not help prove the Appellant's case. It is further submitted, on behalf of the Respondent, that in view of the vast scope of the instant matter, SEBI did not consider it feasible to conduct a detailed inquiry into each of the Appellant's

transactions before proceeding against the latter particularly when the facts on record establish a strong case against the Appellant.

28. The Respondent submits that Board Resolution dated August 17, 2011 to invest in ICDs of other companies was not disclosed in the RHP and Prospectus. The Appellant executed identical ICD Agreements, each dated September 20, 2011 with three entities, viz., Saptrishi for an amount of ₹ 15 crore, Raw Gold for an amount of ₹ 7 crore, Wattkins for an amount of ₹ Rs. 10 crore, aggregating to a total of ₹ 32 crore. There is allegedly no reference to such an investment in ICDs anywhere in the offer documents. The failure to make the required disclosures is contended to be in breach of Regulations 57(1), 57(2)(a), 60(4)(a), 60(7)(a) and Clause 2(VII)(G) of Part A of Schedule VIII of the ICDR Regulations. Further, money from these ICDs was then diverted to Saptrishi, Wattkins and Raw Gold to other entities which eventually bought the Appellant's shares. The end entities which eventually purchased the Appellant's shares after receiving money from the Appellant through Saptrishi were Jaimini Trading Pvt. Ltd., Saptrishi Multitrade Private Ltd., Frank Mercantile Pvt. Ltd. and Cellworth Mercantile Private Limited, all of which bought the Appellant's shares. Similarly, money to the tune of ₹ 5 crore was diverted by the Appellant through Raw Gold to Padamprabhu Project Pvt. Ltd. and MJ Commodities, both of which bought the Appellant's shares. Further, a total amount of ₹ 9.5 crores out of the ₹ 10 crore received by Wattkins was transferred to other entities which then purchased the Appellant's shares. Thus, the case of the Respondent, in this context, is that the Appellant was responsible for these subsequent transactions by those entities which had also invested in the IPO in question despite the Appellant having no connection with them.

29. The Respondent submits that the disclosure stating that no purchase orders had been placed for plant and machinery is entirely incorrect since, as per the record, several purchase orders were placed by the Appellant with entities such as Modi Alloys, Aggarwal Steels etc., aggregating to an amount of ₹ 52.23 crore solely towards machinery and equipment. The placement of such huge quantities of orders should have been disclosed in the offer documents, in fact even the names of suppliers were left undisclosed. Furthermore, both Modi Alloys and Aggarwal Steels diverted the money received on the alleged pretext of purchase orders to entities which bought the Appellant's shares. With respect to the Appellant's submission that it has adduced invoices pertaining to the purchase of plant and machinery from the aforementioned entities, the Respondent states that all the equipment was not delivered by February 2012 but delivery continued upto June 2012, inspite of the fact that the Appellant made an advance of ₹ 28.3 crore to the two companies during the months of August-September 2011. The Respondent submits that the Appellant failed to disclose the names of Nimbus Industries Ltd. and Supreme Communications Ltd. in the list of suppliers for plastic granules even though two agreements dated August 31, 2011 each were executed with these two entities for purchase of plastic granules amounting to ₹ 3.5 crore and ₹ 5 crore respectively. By failing to disclose this information, the Appellant violated the ICDR Regulations which mandate disclosure of material information. It is also submitted that the distinction between a manufacturer as a supplier of raw material and a trader as a supplier of raw material does not emanate from any law.

30. Moreover, payments purportedly made in the name of purchasing plastic granules were diverted through Nimbus and Supreme to entities

which then allegedly further transferred moneys to other companies which ultimately purchased the Appellant's shares. In response to the Appellant's submissions that transactions with Nimbus and Supreme were genuine transactions, the Respondent states that the agreements did not specify the quality or quantity of the granules to be supplied. The Appellant also failed to disclose agreements and MOUs entered into by PGEL with certain entities for purchase of land, thereby violating Part A of Schedule VIII of the ICDR Regulations. The Appellant entered into four such agreements, viz., agreement dated September 21, 2011 with Saptrishi for consideration amounting to ₹ 18 crores, out of which ₹ 13.5 crore was paid in advance; agreement dated August 27, 2011 with Safeco Projects Pvt. Ltd. for a consideration of ₹ 25 crore, out of which ₹ 15 crore was paid as an advance; agreement dated September 2, 2011 with Realnet Infraprojects Pvt. Ltd. for a consideration of ₹ 12-15 crore, out of which ₹ 2 crore was paid in advance; and finally agreement dated August 26, 2011 with Eastern Resorts Pvt. Ltd. for consideration amounting to ₹ 25 crore of which ₹ 10.30 crore was paid in advance by the Appellant. It is submitted by the Respondent that none of the aforementioned detail was disclosed in the RHP or Prospectus despite the fact that funds to the tune of ₹ 80 crore were involved in the said deals. The Appellant stated in the offer documents that the money allocated for general corporate purposes, which in any event was ₹ 21.4 crore as opposed to ₹ 80 crore, would be used only after the purpose of conducting the IPO was fulfilled.

31. The Respondent submits that the Appellant is, thus, guilty of diversion of the IPO proceeds through payments made as consideration for land deals. Even after payments of more than ₹ 30 crore in this respect, the agreements with Safeco, Realnet and Eastern Resorts were cancelled.

Money paid to Saptrishi was diverted to various entities to facilitate subscription to the Appellant's IPO. Realnet received money from ChinInfo which has traded in the Appellant's scrip when the IPO was launched, and eventually the agreement with Realnet was cancelled since Realnet was unable to acquire any land. With respect to Safeco, it is submitted that although the money has been refunded to the Appellant, the last payment in this regard was made in 2013-14 even when the Cancellation Deed was dated March 20, 2012. The Appellant was entitled to recover ₹ 62.60 lakh from Safeco, however, only ₹ 25 lakh had been paid to the Appellant as on December 27, 2015. It is further submitted that the Appellant failed to prevent misrepresentation with respect to the amount of term loan availed by it and made contrary disclosures regarding the same in the RHP. The Appellant failed to abide by the Interim Order to the extent that the Appellant failed to recall the ₹ 32 crore given in respect of ICDs to Saptrishi, Raw Gold and Wattkins and as on the date of the Impugned Order ₹ 4.84 crore had been deposited in the Escrow Account created as per the Respondent's instructions. Although, by the time the appeal came up for hearing before this Tribunal the Appellant had already recovered the amounts as directed by SEBI by the Impugned Order dated March 11, 2014 except an amount of ₹ 3.77 crore.

32. We have heard the learned senior counsel for both parties at length and perused the Appeal and all documents annexed therewith, along with the Written Submissions of both the parties. Before delving into the submissions of both parties, it is imperative that we look at the Regulations which are alleged to have been violated by the Appellant :-

"***Section 12A(a), (b) and (c) of SEBI Act, 1992***

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

12A. No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

……."

Regulations 3(a) – (d), 4(1), 4(2)(a), (d)-(f) and (k) of Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003

"Prohibition of certain dealings in securities

3. No person shall directly or indirectly

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder."

"4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) and (c) ……

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

(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;

(g) to (j) ……

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

……"

Manner of disclosures in the offer document

"57.(1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision."

……

Public communications, publicity materials, advertisements and research reports

"60(4)(a). in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;

60(7)(a). it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;"

……..

"2(VII)(G). *Sources of Financing of Funds Already Deployed : The means and source of financing, including details of*

bridge loan or other financial arrangement, which may be rapid from the proceeds of the issue."

"2(VIII)(B)(5)(b). *The property to which sub-clause (a) applies is a property purchased or acquired by the issuer or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the offer document or the purchase or acquisition of which has not been completed at the date of issue of the offer document, other than property:*

(i) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the issuer's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
(ii) as respects which the amount of the purchase money is not material.
- *for the purpose of this clause, where a vendor is a firm, the members of the firm shall not be treated a separate vendors.*
- *if the issuer proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried.*

……

"2(VIII)(B)(6) *Land :*
(a) The names of the entities from whom the land has been acquired / proposed to be acquired alongwith the costs of acquisition, along with the relation, if any, of such entities to any promoter or director of the issuer.
(b) Details of whether the land acquired by the issuer is free from the encumbrances and has a clear title and whether it is registered in the name of the issuer.
(c)Details of whether the issuer has applied / received all the approvals pertaining to land. If no such approvals are required to be taken by the issuer, then this fact may be indicated by way of affirmative statement.
(d) The figures appearing under this section shall be consistent with the figures appearing under the section "Cost of the Project".

……

"2(XVI)(B)(2). *The signatories shall further certify that all disclosures made in the offer document are true and correct."*
……

Manner of disclosures in the offer document.

"57.(2)(a) *the red-herring prospectus, shelf prospectus and prospectus shall contain:*
(i) the disclosures specified in Schedule II of the Companies Act, 1956; and
(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof;"

33. On a perusal of the PFUTP Regulations, we note that Regulations 3(a)-(d) speak of prohibition of certain types of dealings in securities which are fraudulent in nature and which attempt to use unscrupulous and manipulative devices in connection with the sale of securities. Market players are also prohibited from acting in any manner which would operate as a fraud upon any person dealing in securities. Regulation 4(1) prohibits the indulgence in fraudulent or unfair trade practices. Regulation 4(2)(a) prohibits transactions which result in a misleading appearance with regard to the trading in any scrip. Regulations 4(2)(d)-(e) prohibit any action executed with the intention of causing fluctuations in the price of the scrip. Regulation 4(2)(f) prohibits the publishing of any false information by any person dealing in securities. Regulation 4(2)(k) prohibits the publishing of an advertisement which is misleading in any manner or distorts the information it presents to prospective investors.

34. We now move on to those provisions in the ICDR Regulations which are alleged to have been violated by the Appellant. Regulation 57 deals with the manner of disclosures in the offer document and lays down that the offer document shall contain all material disclosures which are true and adequate so as to enable investors to take an educated and well-informed investment decision regarding the viability of the stock of a particular company. Regulations 60(4)(a) states that any material development taking place between the date of filing of the RHP or Prospectus with the ROC and the date of allotment of securities must be published in newspapers and made available for public consumption. Regulation 60(7)(a) of the ICDR Regulations states that any advertisement or report published by an issuer company must be true, fair and not meant to distort any information or mislead prospective investors.

35. Clause 2(VII)(G) of Part A of Schedule VIII mandates disclosure of any bridge loan financing availed of by the issuer company in the offer document; Clause 2(VIII)(B)(5)(b) and (6) require disclosure of the purchase of property and any land deals executed by the issuer company; and Clause 2(XVI)(B)(2) provides that all information in the offer document shall be true and accurate and be certified by the Board of Directors as being so.

36. Turning to the fact situation of the present case, we note that five broad issues have been succinctly enunciated in the course of the hearing before us and we shall now deal with those individually to identify the extent of the Appellant's misconduct, if any.

37. The first allegation levelled against the Appellant deals with the failure to disclose items which amounted to material information and ought to have been disclosed in the offer documents.

38. The first instance of non-disclosure relates to ICDs taken by the Appellant in the nature of bridge loans. A bridge loan in financial parlance is nothing but a short-term loan availed of by companies to meet their immediate fiscal requirements, this is precisely what an inter-corporate deposit represents. Clause 2(VII)(G) of Part A mandates the disclosure of bridge loans or any other financial arrangement which the concerned company intends to repay out of the proceeds of the issue. As per the facts of the case, the Appellant executed ICD agreements with seven entities, namely Jainex, Prraneta, Agarwal Holdings Ltd., JRI Industries and Infrastructure Ltd., Vineet Capital Services Pvt. Ltd., Jay Polychem (India) Pvt. Ltd., and Urmi Computers Pvt. Ltd. It is pertinent to note that all these seven agreements, vide which the Appellant received an aggregate of

around ₹ 52 crore, were executed after the filing of the RHP, but before the filing of the Prospectus i.e., between August 17, 2011 and August 31, 2011. A perusal of the Impugned Order dated March 11, 2014 clearly points out that the Appellant could not have disclosed this information in the Draft RHP, which was filed on September 23, 2010 or even in the RHP which was filed, after incorporating SEBI's suggestions and on being approved by the Company's Board of Directors on August 17, 2011. This Board Resolution was communicated by the Appellant to its Merchant Banker on August 17, 2011 itself whose duty it was to incorporate this factum of bridge loan in the Prospectus. The Merchant Banker seems to have a great hurry to file the RHP on the same date due to which the bridge loan aspect did not find a mention either in the RHP or the Prospectus.

39. Be that as it may. This is an important information and should have been incorporated in the offer documents so as to enable the prospective investors to appreciate the company's financial background in a better manner before investing in the forthcoming IPO. Moreover, intention or the lack thereof behind the non-disclosure does not matter much, particularly in light of the mandatory language of Clause 2(VII)(G) to the effect that any loan in the nature of a bridge loan must be disclosed in the offer document. We, therefore, hold that the ICD agreements should have been disclosed in the Prospectus at the least, even if they could not practically be disclosed in the DRHP or RHP by the Appellant. The charge against the Appellant to the extent of non-disclosure of bridge loan, thus, stands proved.

40. The second allegation of non-disclosure in the RHP and Prospectus relates to the non-disclosure of the Company's Board Resolution dated August 17, 2011 to invest the IPO Proceeds in ICDs of other companies. In

pursuance thereof, three ICD agreements were entered into between the Appellant and the concerned parties for amounts of ₹ 15 crore, ₹ 7 crore and ₹ 10 crore. Although by disclosing in the Prospectus that the Appellant intends to invest the IPO Proceeds in interest bearing liquid instruments, the Appellant satisfied the disclosure requirements as per the ICDR Regulations, the Appellant did not in categorical terms disclose that it wished to invest the IPO Proceeds in ICDs. We note that even though the Prospectus did state that the Appellant would be investing the IPO proceeds in high-quality interest bearing liquid instruments, the expression 'ICD' is absent from the disclosure. The Appellant should, therefore, have fairly disclosed the abovesaid relevant information, if not material, regarding ICDs in the RHP and Prospectus filed with the Respondent.

41. But the contention of the Respondent that Appellant failed to disclose the placement of purchase orders for plant and machinery is not sustainable in view of the fact that it is evident from the records that the RHP and Prospectus do contain the names of these very suppliers whose quotations had already been disclosed and the machinery was purchased from these suppliers in fact.

42. The Respondent has submitted before us that the list of suppliers of plastic granules to the Appellant, as disclosed in the offer documents, omits the names of Nimbus and Supreme and that this amounts to non-disclosure of material information. From the facts it is borne out that the Appellant entered into two separate agreements with both entities on August 31, 2011. The value of the agreement executed with Nimbus was ₹ 3.5 crore and that of the agreement executed with Supreme was ₹ 5 crore. The reasons put forth by the Appellant regarding this omission are that firstly, the list was not exhaustive and secondly, the list disclosed names of manufacturers of

raw materials and since Nimbus and Supreme were traders and not manufacturers, the list did not include their names. Thus, the purpose underlying the principle of disclosure had been achieved by disclosing the same names in the offer documents in one context or the other. It is, therefore, wrong to hold the Appellant guilty of simple non-disclosure in this regard. At the most it would be an inadvertent omission.

43. Finally, the Appellant has been held guilty by the Respondent for allegedly not disclosing agreements and MOUs entered into for the purchase of land. Agreements for the purchase of land were executed with Saptrishi, Safeco, Realnet and Eastern Resorts, aggregating to an amount of ₹ 80 crore between the date of filing of the RHP and the date of filing the Prospectus. Out of the ₹ 80 crore (approximate value), around ₹ 37 crore was paid in advance to the aforementioned entities in pursuance of the said land deals, however, the details regarding the same were not mentioned at the appropriate place in the Prospectus. The Appellant, however, stated that it had "not entered into any commitment for any strategic initiatives…" which as per the Respondent is a misstatement. The Appellant's defense that the aforesaid agreements did not need to be disclosed since they fell under the "General Corporate Purpose" head cannot be accepted because the money allocated towards general corporate purposes was only ₹ 21.4 crore as opposed to the ₹ 80 crore which was sought to be spent on the land purchase agreements. In this regard, therefore, the Impugned Order does not carry any legal infirmity.

44. We now come to the second issue as crystallized hereinabove viz., first, the diversion of IPO Proceeds through the repayment of ICDs and second, through investment in ICDs of other companies by the Appellant. From the records it is borne out that the Appellant spent an amount of

₹ 44.40 crore towards the repayment of ICDs it had taken from Jainex and Prraneta on September 22, 2011, i.e., immediately after the closing of the IPO. This amount was eventually returned to the Appellant. Similarly, the Appellant is also alleged to have diverted proceeds through investment in ICDs of other companies. It is a matter of fact that out of the ₹ 33 crore transferred to Saptrishi, a sum of ₹ 15 crore was transferred to entities such as Jaimini and Cellworth. Jaimini used ₹ 1.5 crore to buy shares of the Appellant in the IPO, and routed around ₹ 3.5 crore to Saptrishi and Frank. Further, it becomes clear from a perusal of the documents produced before us that the IPO Proceeds were used to pay entities which either bought the Appellant's shares themselves or transferred the money further along to other entities which then dealt in the Appellant's scrip. The Appellant also transferred ₹ 7 crore to Raw Gold which paid ₹ 5 crore to MJ Commodities and Padamprabhu both of which bought the Appellant's shares. ₹ 9.5 crore was also paid by the Appellant through Wattkins to Eden Financial Services and Adcon. Eden paid some money to Pushpanjali who, in turn, transferred it to Cellworth and Jaimini, both of which traded in the Appellant's scrip on the date of listing. Further, Adcon transferred money to its broker in order to buy the Appellant's shares. In this context, it is noted that the ICDs were placed by the Appellant and taken around the same time. Therefore, it is indeed hard to accept the Appellant's submission that it was in need of funds for running its day to day business and hence the finding in the impugned order in this regard cannot be upset.

45. The third allegation levelled against the Appellant is regarding diversion of funds through purchase orders. It is the Respondent's case that the Appellant's dealings with Modi Alloys and Aggarwal Steels were meant to divert money to entities which could eventually buy the

Appellant's shares. From the facts it is borne out that a sum of ₹ 19.65 crore was received by Modi Alloys from the Appellant and out of this around ₹ 12 crore was given to Wonder Vincom which, in turn, paid the money to Chin Info, Safford and Nihal, which seem to have bought the Appellant's shares. Similarly, almost ₹ 4 crore was given by Aggarwal Steels to other entities, after having received ₹ 5 crore from the Appellant.

46. Copies of invoices, delivery challans and receipts regarding Municipal Taxes etc. have been brought on record by the Appellant to establish the genuineness of its transactions with Aggarwal Steels as well as Modi Alloys. It is not the case of the Respondent that these documents have been fabricated by the Appellant. In fact there is no evidence on record which may create doubt as to the genuineness of these documents in question. Further, the Respondent's argument that Appellant made advances of almost ₹ 30 crore to Modi Alloys and Aggarwal Steels in August - September 2011 and only received delivery of all equipment by June 2012, does not hold a lot of significance since this was an understanding arrived at by the Appellant on the one hand and Modi Alloys and Aggarwal Steels on the other, purely on the basis of their business requirements and other commercial considerations. The Appellant cannot be, thus, held to be guilty of this part of the charge as well.

47. Next, the Respondent submits that an amount of ₹ 7.25 crore was transferred by the Appellant to Nimbus and SCL on the pretext of plastic granules. Nimbus and SCL, in turn, transferred money to entities such as Sunlight, Scanpoint, Pearl, Fantasy and Cosmos which either bought the Appellant's shares themselves or went on to further transfer the money to other entities which finally purchased the Appellant's shares. However, it is a matter of fact that the agreements executed with Nimbus and Supreme

were finally cancelled on the insistence of Nimbus and Supreme when the Interim Order was passed against the Appellant on December 28, 2011. We note that since these agreements stand cancelled their veracity need not be delved into. However, we do note from the records that an amount of ₹ 3.77 crore which was transferred to Supreme was not transferred from the IPO Proceeds but from the Appellant's own funds. The Appellant submits that it has initiated winding up proceedings against Supreme since it has been unable to get a refund of the said amount. This is the only amount that has yet to be recovered by the Appellant and the process for the same is stated to be currently underway.

48. Further, it is a matter of fact that there is no connection between the Appellant itself and any of the entities to which money was paid by Modi, Aggarwal, Nimbus or Supreme. The respondent has not taken note of the fact, in this regards, that the IPO was fully underwritten by the Lead Merchant Banker as per law by way of a separate contract, and hence, there was no need for the Appellant to have indulged in such a scheme of diverting the funds. Thus, the Respondent's plea that money was diverted through purchase orders seems a bit far-fetched and we, therefore, hold that the Appellant was merely engaging in its usual commercial activities while transacting business with Modi, Aggarwal, Nimbus and Supreme who would have bought shares in the IPO in question. No cogent and convincing evidence is brought on record by the respondent that those entities had any relationship in the form commonality of directors, control, address etc. There is nothing to draw the inference that the Appellant motivated or pressurized, in any manner, to purchase its shares in the IPO in question.

49. The fourth allegation pertains to diversion of IPO Proceeds through agreements executed for the purchase of land with Saptrishi, Safeco, Realnet and Eastern Resorts. The Appellant has stated that the disparity in price between the consideration paid by Saptrishi for the land and the price that the Appellant paid to Saptrishi was owing to several factors such as conversion of the land from agricultural to non-agricultural, the developmental cost of the land and the cost to build a factory thereon. The Appellant has produced certain documents on record which corroborate the Appellant's submissions. The authenticity of these documents is not disputed and a few particularly relevant ones are mentioned hereinbelow :

a) Letter dated August 5, 2011 from Realnet to the Appellant stating that they are awaiting a positive response.

b) Letter dated August 30, 2011 from Realnet to the Appellant stating that they would require an advance payment of Rs. 3 crore.

c) MoU dated September 2, 2011 executed between Realnet and the Appellant.

d) Letter dated November 26, 2011 from the Appellant to Realnet stating that the Appellant wished to be updated on the agreement executed between the two parties as per which Realnet had undertaken the task of procuring land for industrial use by the Appellant, and that the time-period of the agreement was soon coming to an end.

e) Letter dated December 1, 2011 from Realnet to the Appellant stating that they have failed to provide land and will return the money to the Appellant at 14% interest p.a.

f) MoU dated August 26, 2011 executed between Eastern and the Appellant.

g) Cancellation of MoU executed between Eastern and the Appellant on October 11, 2011.

h) MoU executed between August 27, 2011 between the Appellant and Safeco.

i) Letter dated December 22, 2011 from the Appellant to Safeco asking for an update on the status regarding the procurement of land for the Appellant since the time-period prescribed in the agreement for this purpose was drawing to a close and that funds would need to be arranged for the same according to the update provided.

j) Letter dated December 25, 2012 from Safeco to the Appellant stating that Safeco had been debarred from the securities market owing to allegations of siphoning off funds received from the Appellant and are, therefore, refunding the advance payment made to them by the Appellant.

k) Cancellation deed dated March 20, 2012 executed between the Appellant and Safeco.

50. An analysis of the abovesaid documents reveals that the Appellant's dealings with Saptrishi, as far as the agreement for the purchase of land is concerned, are genuine and not illegal or fabricated. It is argued by Shri Rustomjee, learned senior counsel for the Respondent, that the Appellant entered into an MOU with Realnet which did not mention the total amount to be paid for the land and that even though Realnet conducted its business primarily in Mumbai and it was vested with the responsibility of locating land for the Appellant in Noida. These arguments of the Respondent are without any basis since there is nothing in law or on fact to lead to any inference that because Realnet was conducting its business in Mumbai it

would be unable to procure land in Greater Noida. Moreover, the agreement now stands cancelled and the advance of ₹ 2 crore had since been returned even before the passing of the Impugned Order in question. Similarly, the MOU executed with Safeco has been cancelled and the entire amount of ₹ 15 crore has been refunded to the Appellant. In such a situation, the submissions of the Respondent appear to be based on material which is completely inadequate, particularly when the charge pertaining to PFUTP is sought to be established against the Appellant. There has to be sufficient material to bring home such a severe charge against the Appellant. The charge relating to violation of PFUTP Regulations is a serious charge and hence a higher degree of proof is required to sustain it. In the instant case, such a charge has not been established against the Appellant by adducing cogent reasoning and convincing evidence. Furthermore, in this context, it is pertinent to note that the Appellant undoubtedly advanced various amounts to various entities for different purposes viz for purchasing raw materials, land, machinery, ICD advance etc. These transactions, qua the Appellant cannot, by themselves, be treated as link to the series of transactions which might have led to the purchase of the Appellant's share in the IPO.

51. The Respondent's final allegation is that of failure to prevent misrepresentation in respect of the amount of the term loan availed of by the Appellant from Standard Chartered Bank apparently by first mentioning in the RHP and Prospectus that an amount of almost ₹ 37 crore was sanctioned by the bank and then on the following page stating that the amount so sanctioned by the bank was "Nil". This is clearly an inadvertent error on the part of the Appellant and we do not expect SEBI to transform insignificant issues into claims that do not deserve a second look. We,

therefore, hold that it was not the Appellant's endeavour to misrepresent the amount of term loan sanctioned by the Standard Chartered Bank.

52. The abovesaid discussion particularly in paragraphs No. 40, 45 and 50 all clearly establishes that the punishment of ten years' debarment to enter the capital market imposed on the Appellant, is highly disproportionate and calls for modification to meet the ends of justice in the case in hand.

53. To sum up, the Appellant has partially failed to ensure proper disclosure of material information which was required for the investors in order to enable them to take an informed decision to invest or not to invest in the IPO in question. However, there are certain facts which remain undisputed. One, that there is no connivance or connection for that matter which has been established between the Appellant itself and entities further down in the line of transfer which eventually purchased the Appellant's shares and dealt in its scrip once it was listed on the stock exchange. There is no commonality of directors, or registered addresses or any other incidents which can lead to such an inference that the Appellant was involved in the transfer of funds to certain such entities which, *inter-alia*, bought the Appellant's share in the IPO. Further, invoices and other documents have been produced by the Appellant for the purchase of raw materials and equipments required to run the business, and their validity is not in question. It is pertinently noted that most of the money which the Respondent alleges to have been transferred has been returned to the Appellant. The Respondent has fairly submitted that the Auditor appointed by SEBI itself has in its report dated January 25, 2016 noted that an amount of ₹ 80 crore has been successfully recalled by the Appellant and the Respondent has scrutinized the utilization thereof. It is also a fact

that the Appellant has already recalled moneys recoverable owing to ICDs, cancelled contracts pertaining to land purchase, except an amount of ₹ 3.77 crore as explicated hereinabove with respect to which the Appellant has initiated the winding up of the company called Supreme. It shows the respect for and earnest desire of the Appellant to abide by SEBI's regulatory directions.

54. Further, it remains undisputed that ICDs which were given out of the IPO Proceeds to the tune of ₹ 32 crore given as ICDs to Saptrishi, Raw Gold and Wattkins. Today, however, this amount of ₹ 32 crore has been received by the Appellant, albeit with certain amount of delay. It is also to be noted that minutes of the annual general meeting held on September 12, 2012, attached as **Exhibit F2** of the Appeal clarify that unequivocal permission was granted to the Board of the Appellant, as per Section 61 of the Companies Act, 1956, to alter the utilization of the IPO Proceeds and to use the proceeds as the directors deemed fit. Therefore, looking into the totality of the facts and circumstances of the case in hand, the Respondent should not have imposed the punishments of debarment from the market for a long period of one decade. Given that, some of the Respondent's allegations levelled in the Impugned Order, and particularly dealt with in this order in paragraphs no. 40, 45, and 50 cannot be sustained in law or on fact as elucidated, this Tribunal is of the opinion that in order to meet the ends of justice the period of debarment from the securities market of ten years imposed upon the Appellant should be reduced to seven years as the Appellant has already suffered by remaining out of the market for a period of more than four and half years by now. Ordered accordingly. As far as the money lying in the escrow account is concerned, the Appellant shall be at liberty to use for the objects of the IPO as per law.

55. The impugned Order is, therefore, modified to the specified extent and the appeal is disposed of with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

30.08.2016
Prepared & Compared by
PTM