WTM/RKA/IVD/ID-10/35 /2013

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 in respect of Onelife Capital Advisors Ltd., Mr. T. K. P. Naig (Chairman) Mr. Pandoo P. Naig (Managing Director), Mr. D. C. Parikh(Director), Mr. A. P. Shukla (Director), T. S. Raghavan (Director) and Mr. T. Shridharani (Director-resigned).

In the matter of IPO of Onelife Capital Advisors Ltd.

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1. Onelife Capital Advisors Limited ('OCAL/the company'), a company incorporated under the Companies Act, 1956, came out with an Initial Public Offering ('IPO') of its shares to raise ₹36,85,00,000 through the issue of 33,50,000 equity shares of ₹10 with premium of ₹100 through 100% book building route. Atherstone Capital Markets Limited ('ACML') was the Book Running Lead Manager ('BRLM') with regard to the said IPO. The IPO opened for subscription on September 28, 2011 and closed on October 04, 2011 and was over-subscribed by 1.53 times though it was graded "1"(*CARE IPO rating of 1)* that suggests poor fundamentals. The shares of OCAL were listed on October 17, 2011 in the Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Limited ("NSE").

2. SEBI noticed that the IPO proceeds of OCAL were found to be transferred to certain entities. SEBI, therefore, undertook a preliminary examination into the said IPO. During the preliminary examination, it was *prima facie* observed that OCAL had made mis-statements in its Red Herring Prospectus ('RHP')/Prospectus , failed to disclose material developments and had utilized the IPO proceeds for the purposes other than the objects stated in the RHP/Prospectus. It was also observed that OCAL had transferred ₹15.54 crores (*42% of the IPO proceeds*) to an entity, namely; Fincare Financial and Consultancy Services Private Limited ('Fincare') and a sum of ₹12 crore (*32% of the IPO proceeds*) to another entity, namely; Precise Consulting & Engineering Private Limited ('Precise').

3. On the basis of the *prima facie* findings of the said examination, SEBI had passed an *ad-interim ex-parte order* dated December 28, 2011 (*'interim order'*) issued following directions against OCAL and its directors viz; Mr. T K P Naig (Chairman), Mr. Pandoo P. Naig (Managing Director), Mr. D. C. Parikh (director), Mr. A. P. Shukla (director), Mr. T. S. Raghavan (director) and Mr. T. Shirdharani (director):-

'14.3 Onelife Capital Advisors Ltd (OCAL-PAN No. AAACO9540L) is directed that it shall not issue any equity shares or any other instrument convertible into equity shares, in any manner, or shall not alter its capital structure in any manner, till further directions in this regard.

14.4 Onelife Capital Advisors Ltd (OCAL PAN No. AAACO9540L) is directed not to undertake any fresh business in its capacity as Merchant Banker, Portfolio Manager, Stock Broker and Trading Member till further directions in this regard.

14.5 Onelife Capital Advisors Ltd (OCAL PAN No. AAACO9540L) is further also directed not to buy, sell or deal in securities directly or indirectly, till further directions in this regard.

14.6 The directors of the OCAL viz, MR. T. K. P. NAIG (PAN No.ABIPN2653D), MR. PANDOO NAIG (PAN No.ACNPN2800J), MR. A. P. SHUKLA (PAN No. AECPS3296Q), MR. TUSHAR SHIRDHARANI (PAN No.AAIPS0065M), MR. DHANANJAY PARIKH (PAN No.ACTPP2402L), MR. T. S. RAGHAVAN (PAN No.AAFPR1521A) are hereby directed not to buy, sell or deal in securities directly or indirectly, till further directions in this regard.

14.7 OCAL is further directed to call back funds (IPO proceeds and short term loan taken from Prudential group) transferred to Fincare Financial and Consultancy Services Pvt Ltd (PAN No.AAACF6005D) and Precise Consulting & Engineering Pvt Ltd (PAN No.AAECP8434E). These amounts together with all of the IPO proceeds that are still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds,shall be deposited in an interest bearing escrow account with a scheduled commercial bank, till further orders. A confirmation on compliance of this direction shall be sent by the promoters of OCAL to the stock exchanges where it is listed, within 7 days from the date of this order.

14.8 Fincare Financial and Consultancy Services Pvt Ltd (PAN No.AAACF6005D) and Precise Consulting & Engineering Pvt Ltd (PAN No.AAECP8434E) are hereby directed not to buy, sell or deal in securities directly or indirectly, till further directions in this regard.

14.9 BRLM to the issue viz. Atherstone Capital Markets Ltd (ACML) (SEBI Registration No: INM 000011245), Shri Gurunath Mudlapur (Managing Director of ACML) and Shri Ranjan Agarawal (compliance officer of ACML) are hereby are prohibited from taking up any new assignment as Merchant Banker or involvement in any new issue of capital including IPO, follow-on issue etc. from the securities market in any manner whatsoever, from the date of this order till further directions.

14.10 The above order is without prejudice to any other action that may be initiated against the above entities for the said violations.

14.11 The stock exchanges are advised to enable squaring off, at the earliest, existing open positions in the Futures and Options Segment, if any, for the persons / entities mentioned above at paras. Further, the concerned stock exchanges should also ensure that said persons / entities do not take fresh positions or increase their open positions in any manner.

14.12 All stock exchanges and depositories are directed to ensure that all the above directions are strictly enforced within the powers available to them.

14.13 Further the entities/persons against whom this direction is issued may file their objections, if any, to this order within 21 days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing at the Securities and Exchange Board of India, SEBI Bhavan, G-Block, Plot No C-4-A, Bandra Kurla Complex, Bandra-East, Mumbai 400 051 on a date and at a time to be fixed on a specific request, to be received in this behalf from the entities/persons within 21 days from the date of this order.'

4. Instead of filing their objections as indicated in the *interim order* OCAL and its directors (except Mr. T. Shridharani) filed an appeal (Appeal no. 17 of 2012) before the Hon'ble Securities Appellate Tribunal ('SAT') challenging the *interim order*. Mr. T. Shridharani filed a separate appeal (Appeal no. 18 of 2012) before the Hon'ble SAT. Both the appeals were disposed of by the Hon'ble SAT vide its order dated January 20, 2012, wherein SEBI was directed to treat the said appeals as reply to the show cause notice (*interim order*). With respect to the contradictions pointed out by the entities in the appeal, more particularly with regard to paragraphs 14.4, 14.5 and 14.7 of the *interim order*, the Hon'ble SAT had directed SEBI to pass an order within a period of 15 days from the date of the SAT order. In compliance with the direction of the Hon'ble SAT, SEBI passed an order ('Clarificatory Order') dated February 15, 2012 as under:-

"(i) As regards the direction in para 14.5, it is clarified that OCAL shall deal in shares for the limited purpose of fulfilling their existing obligations of underwriting for minimum subscription as per requirement under SEBI (ICDR) Regulations, 2009 and do such other incidental acts in respect of those issue/s that were being dealt with by OCAL as on 28.12.2011.

(ii) The direction in para 14.7 in my earlier order shall continue without any modification for the aforesaid reasons. OCAL is granted a further period of 7 days."

5. Thereafter, OCAL and its directors (except Mr. Tushar Shridharani) preferred another appeal (Appeal no. 103 of 2012) against the Clarificatory Order read with the *interim order*. While disposing of the said appeal, the Hon'ble SAT vide its order dated June 25, 2012 observed that it was not appropriate for it to intervene in the matter as the matter is still under investigation involving a large number of parties. However, for the reasons stated therein, the Hon'ble SAT modified the directions contained in paragraph 14.7 of the *interim order* and exempted OCAL from calling back IPO proceeds to the extent paid to Fincare and Precise. SEBI was also directed to complete the investigation as expeditiously as possible and in any case before October 31, 2012. The relevant portion of the said order dated June 25, 2012 reads as under:-

"*However, by directing the appellant, at the stage of interim order, to call back funds transferred to Finecare Financial and Consultancy Services Pvt Ltd. and Precise Consulting & Engineering Pvt Ltd., what the Board is purporting to do is directing the appellant to undo something when the matter is still at the*

investigating stage. The case of the appellant is that the payments to these two companies have made in respect of the services rendered by them. While the Board may be fully justified in giving such a direction at the time of passing a final order if the appellant is found guilty, we do not find any justification in giving such a direction to the appellant at the stage of passing ex-parte ad-interim order. In paragraph 14.8 of the ex-parte ad-interim order dated December 28, 2011, the Board has also issued a direction to the above noted two companies not to buy, sell or deal in securities directly or indirectly till further direction in this regard. If the Board was really concerned about freezing the funds which have been paid by the appellant, the direction could have been issued to these two companies. The Board could have also considered issuing directions to these companies not to deal with the funds received from the appellant. In our considered view, the appellant cannot be asked, by way of an ex-parte ad-interim order, to call back the funds which have already been paid to the above noted two companies for the services rendered by them. In the facts and circumstances of the present case, we are inclined to modify the direction contained in paragraph 14.7 to the extent it directs the appellant to call back funds transferred to Finecare Financial and Consultancy Services Pvt Ltd and Precise Consulting & Engineering Pvt Ltd. and we hereby do so. Except for the said modification we are not inclined to intervene in the matter at this stage. However, keeping in view the fact that six months have already passed since passing of the ex-parte ad-interim order and the appellants have also furnished their reply, the Board is directed to complete the investigations as expeditiously as possible and, in any case, before October 31, 2012."

6. SEBI completed the investigation in the matter in terms of the aforesaid order dated June 20, 2012. In the mean time, OCAL and its directors filed another appeal (Appeal No. 4 of 2013) before the Hon'ble SAT. Vide an Order dated January 16, 2013 ('the Confirmatory Order') SEBI confirmed the directions issued in paragraphs 14.3, 14.4, 14.5, 14.6, 14.8 and 14.9 of the *interim order* read with Clarificatory Order dated February 15, 2012 against all the entities (including OCAL and its directors). While disposing of the said appeal, the Hon'ble SAT vide its order dated January 24, 2013 directed SEBI to issue show-cause notice to OCAL and its directors within 5 weeks and pass final order against the entities in 4 months from the date of the order of Hon'ble SAT i.e. January 24, 2013.

7. Based on the findings of the investigations and in compliance of the aforesaid direction by the Hon'ble SAT, a combined show cause notice (SCN) dated February 26, 2013 was issued to OCAL, Mr. T. K. P. Naig, Mr. Pandoo P. Naig, Mr. D. C. Parikh, Mr. A. P. Shukla, Mr. T. S. Raghavan and Mr. T. Shirdharani (hereinafter collectively referred to as 'the Noticees' and individually by their respective names). It was inter *alia* alleged in the SCN that the Noticees had:-
    (a) failed to disclose various material developments, which took place after registering the RHP with Registrar of companies(ROC), by way of public advertisements as required in regulation 60(4) of the SEBI(Issue of Capital and Disclosures Requirements) Regulations 2009 ('ICDR Regulations').Further, they had made various non-disclosures/mis-statements in the RHP/Prospectus;

(b) diverted IPO proceeds of IPO for the various purposes other than the stated objects of the IPO, forged finder fee[1] agreements *post facto* to justify these fund diversions. They, in collusion with *Precise* and *Fincare,* attempted to hide the siphoning of/diversion of the public money raised in the IPO. By doing all these, the Noticees have defrauded and misled the investors.

8. In view of the above, it was alleged in the SCN that Noticees have contravened the provisions of regulations 57 (1) and 57 (2) (a) r/w Clause 2 (VII) (G) and (XVI) (B) (2) of part A of schedule VIII and 60(4) (a) & 60 (7) (a) of the ICDR Regulations, section 63 (1) of the Companies Act, 1956, Clause 49 (iv) (D) of the Listing Agreement, section 12 A (a),(b),(c) of SEBI Act,1992 ('the Act') and regulations 3(a), (b),(c),(d), 4 (1), 4(2) (f) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations'). The SCN called upon the Noticees to show cause as to why appropriate directions as deemed fit and proper under sections 11(1), (4), 11A and 11B of the SEBI Act, 1992 should not be issued against them for the violations as alleged in the SCN. In the SCN, the Noticees were also advised to file their replies within 21 days from the date of the receipt thereof.

9. OCAL vide its letter dated March 19, 2013, Mr. T. K. P. Naig and Mr. Pandoo P. Naig vide their emails each dated March 20, 2013, Mr. D. C. Parikh vide his letter dated March 20, 2013 (received by SEBI on March 25, 2013), Mr. A. P. Shukla vide his letter dated March 20, 2013 (received by SEBI on March 21, 2013), Mr. T .S. Raghavan vide his letter dated March 21, 2013, and Mr. T Shridharani vide his letter dated March 20, 2013 sought inspection of the documents as mentioned/stated in those letters/emails. An opportunity of inspection of the documents as sought by the Noticees was granted to them on March 28, 2013. On the appointed dated, the Noticees/the authorised representative of the Noticees appeared and inspected all Annexures to the SCN and Annexures to the Investigation Report, replies of Precise and Fincare to the *interim order*, the submissions of Precise and Fincare to SEBI and the correspondences of SEBI entered into with Precise and Fincare.

10. Thereafter, OCAL, Mr. T. K. P. Naig and Mr. Pandoo P. Naig filed their combined reply to the SCN vide their letter dated April 22, 2013 (received by SEBI on April 23, 2013), Mr. D. C. Parikh, Mr. A. P. Shukla and Mr. T. S. Raghavan filed their separate reply to the SCN vide their emails each dated April 25, 2013. Mr. T. Shridharani filed his reply vide his letter dated April 26, 2013 (received by SEBI on April 29, 2013). An opportunity of personal hearing was granted to the Noticees on May 16, 2013. In the meantime, on May 13, 2013, the Noticees filed their respective applications proposing settlement of the proceedings against them through consent order. On May 16, 2013, Mr. Vinay Chauhan, advocate and Mr. A.P Shukla appeared and made submissions on behalf of Mr. D. C. Parikh, Mr. A. P. Shukla, Mr. T. S. Raghavan and Mr. T. Shridharani. Further, learned advocates Mr. Ravichandra S Hegde and Mr. Abishek Venkataraman appeared and sought

[1] *finder fee, according to OCAL, is a commission payable to the finder who brings IPO and other business mandates to it.*

adjournment on behalf of OCAL, Mr. Pandoo P. Naig and Mr. T.K.P. Naig on the ground that their counsel was not available on the day of the hearing. In view of these facts and circumstances, SEBI filed a Miscellaneous Application before the Hon'ble SAT seeking extension of time for disposal of the proceedings. On the said Miscellaneous Application, Hon'ble SAT, vide order dated June 04, 2013 directed SEBI to dispose of the consent proceedings within two months from the date of the order i.e. up to August 04, 2013. Hon'ble SAT granted further two weeks time from the date of the disposal of the consent application for passing appropriate final order in the present proceedings.

11. During the pendency of the consent applications of the Noticees, the present proceedings were continued and acceding to the request of OCAL, Mr. T.K.P. Naig and Mr. Pandoo P. Naig as aforesaid, another opportunity of personal hearing was granted to them on July 09, 2013 which was again adjourned to July 12, 2013 and further adjourned to July 24, 2013 on their requests. On July 24, 2013, Mr. Shyam Mehta, senior advocate, Mr. Joby Mathew, advocate, Mr. Hitesh Mutha and Mr. Pandoo P. Naig appeared and made submissions on behalf of these three Noticees. Further, seven days time for furnishing written/ supplementary submissions was granted to them on their request. SEBI received their written submissions on August 02, 2013 vide their letter dated July 31, 2013. The consent applications filed by the Noticees was rejected on August 01, 2013 and a final order in these proceedings had to be passed by August 16, 2013 as permitted by Hon'ble SAT vide its order dated June 04, 2013. In view of the voluminous replies filed in the matter, SEBI filed another Miscellaneous Application before Hon'ble SAT seeking extension of time for passing final order. Hon'ble SAT was pleased to grant further time of two weeks from August 16, 2013. Accordingly, I proceed to deal with the matter.

12. The submissions of the Noticees namely OCAL, Mr. Pandoo P. Naig and Mr. T. K. P. Naig are *inter alia* as follows:
    1) SEBI has no jurisdiction to enquire into or pass any directions in respect of alleged diversion or siphoning of funds. For such violation, if any, only the Central Government has the powers to enquire into the same, taking recourse to provisions of sections 235 and 237 of the Companies Act 1956. It may be noted that section 55A of Companies Act does not include sections 235 and 237 of the Companies Act 1956, the power remains with the Central Government. Further, even with regard to violation of provisions of Companies Act 1956 pertaining to alleged non-disclosure in the prospectus, the powers are with Central Government. Therefore, to the said extent the SCN is without jurisdiction and is bad in law.
    2) The restraint imposed on them ought not to be continued. The restraint is not necessary for aiding any further investigations, or for any want of protecting anything that would hamper any records or material that may be necessary for any proceedings against us. Though in the SCN allegations of various sections and regulations has been alleged, but it does not disclose the nature of punishment proposed to be imposed or the direction proposed to be passed, therefore the SCN is clearly in violation of principles of natural justice.

3) It is submitted that a complete inspection of all relevant documents, whether relied upon for purposes of leveling charges, or that would enable us to demonstrate our innocence, has not been provided to us. They submit that it is imperative to do so, in order to ensure that the principles of natural justice are duly complied with. They have not been provided with a copy of the investigation report which is crucial for them to be able to effectively respond to the SCN.

4) They also hereby request that considering the various statements of various persons form an integral part of the record, the Noticees wish to cross-examine each of the persons who are listed by them in their reply.

5) The entire foundation of the SCN is flawed inasmuch as it proceeds on an erroneous understanding of the order of the Hon'ble SAT dated January 20, 2012 where the Hon'ble SAT directed that the appeal of the Noticees filed against the *interim order*, to be treated as the Noticees' reply to the *interim order* (which was treated as a show cause notice) and pass an appropriate order. Instead, SEBI in a most unfair manner used the Noticees' appeal to improve its own case to justify its earlier actions.

6) SEBI did not consider the contentions made in the Appeal, which was to be treated as reply to the *ex parte* order for passing the *interim order*. They also submitted that SEBI passed a confirmatory order dated January 16, 2013 and confirmed the directions contained in the Ex-Parte Order December 28, 2011 without considering their submissions.

7) It is quite evident that the SCN, coming as it does, after the issuance of an order under section 11B of the Act, contains firm, definite and conclusive findings suggesting that SEBI has already made up its mind and already reached a definite conclusion on the alleged liability of the Noticees. In fact, it is apparent from a plain reading of the SCN that it is akin to an order passed by SEBI on the Noticees' submissions made in the appeal before SAT, in the guise of a SCN and may end up being a general lip service to the concept of a show cause notice. In this regard, the Noticees have relied on the observations of the Hon'ble Supreme Court in *Oryx Fisheries Private Ltd. vs. Union Of India* as follows:

"…….*It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony…….. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding…"*

8) Accordingly, the proceedings contemplated by the SCN are liable to be dropped on this ground alone. Further, by moving the application dated June 07, 2013 before the Hon'ble SAT urging it to take cognizance of the alleged production of false documents and to take appropriate action including making a complaint to the magistrate of First Class having

jurisdiction, SEBI has *inter alia* prejudged our entire case and the giving of opportunity of filing reply and opportunity of hearing has, in the circumstances, been rendered a mere façade and empty formality. It gives rise to a strong perception that outcome of the current proceedings has already been decided. Same is, apart from being in gross violation of principles of natural justice, also opposed to all cannons of fairness.

13. **Submissions with regard to charge of failure to make disclosures in RHP/Prospectus, mis-statements, etc.-**

(1) True and fair disclosures of all material facts were made in the DRHP/RHP/Prospectus. The disclosures allegedly not made were either not required to be made at all, and in any event, could reasonably be regarded as not being material, and of a nature warranting any special disclosure.

(2) It is denied that disclosure made regarding receipt of income tax demand notice by Mr. Pandoo P. Naig is in violation of regulation 57 of SEBI ICDR Regulations and misleading as alleged. The allegation that details of this income tax demand notice has not been disclosed, is incorrect inasmuch as adequate details relating to the income tax demand notice were provided in the RHP/Prospectus. Please see item 7 of the Risk Factor at page xvi and Page 126 and 127 under the head "OUTSTANDING LITIGATION, DEFAULTS AND MATERIAL DEVELOPMENTS" of the Prospectus in this regard. Admittedly, it has been clearly disclosed that Mr. Pandoo P. Naig has received an income tax demand notice. The section (i.e. sec 156 of income Tax Act 1956) under which demand has been made and the amount of demand (i.e. ₹ 17,57,64,665) have been explicitly spelled out. Further, it has also been disclosed that Mr. Pandoo P. Naig has filed an appeal before the Commissioner of Income Tax (Appeals), Mumbai against the said demand. Furthermore, it has been disclosed that the said appeal is currently under litigation. Furthermore, it has also been disclosed that the Company does not foresee this development to effect Company's business directly, but Company does, however, foresee the issue of promoters liquidity and availability getting affected for the time being. Despite such exhaustive disclosures, and based merely on non mentioning of period for which such demand was outstanding & value of transactions etc., to suggest that there was a non disclosure about the details of income tax demand notice and the disclosures being made in this regard are misleading and violative is totally unjustified and unwarranted. It is incomprehensible as to how in light of the fact that when full disclosures have been made and there is no allegation that the said disclosure is false or wrong, the allegation of same being misleading can be alleged. The allegations are farfetched and completely contrary to factual position on record.

(3) As regards the disclosure with regard to Board Resolution dated September 30, 2011, it is submitted that the resolution was obviously passed after the RHP was filed on September 21, 2011. In the RHP, the position existing on that date was disclosed. The disclosed purpose of utilization of IPO proceeds was *inter alia* towards development of Portfolio

Management Services (PMS) and other General Corporate Purposes (GCP). The resolution dated September 30, 2011 was in furtherance of the said objective.

(4) This resolution was not required to be disclosed in the Prospectus and therefore, no charge can be laid on this ground. The ICDR Regulations do not envisage disclosure of each and every decision and every single event that takes place after the RHP. The test to be applied is whether such an action, after listing would be required to be disclosed under the listing agreement. Even under the listing agreement, only material developments and decisions are required to be disclosed. An action that is routine and is in any case consistent with the offer documents would not have to be newly incorporated in the Prospectus merely because it took place after the RHP was filed. Therefore, the very invocation of regulation 60(4)(a) of the ICDR Regulations is wholly inappropriate since the provision is not even applicable. So long as the action taken is consistent with the earlier versions of the document and there is no deviation from the same, just because a resolution is formally passed, it would not be required to be disclosed. The Board Resolution of September 30, 2011 categorically falls within the ambit of such a development not necessitating disclosure. A plain reading of regulation 60(4)(a) of the ICDR Regulations, it would become clear that OACL was required only to make "*prompt, true and fair disclosure*" of "*all material developments relating to its business and securities.*" It is does not stand to reason that a decision consistent with the overall picture presented in the RHP could be regarded as being material in nature, necessitating disclosure and thereby requiring invocation of the aforesaid provision. In order to allege violation of Regulation 60(4)(a) it is not sufficient to allege that there was non-disclosure of "*material developments*". It has also to be alleged that the said material developments which have not been disclosed also had a *"material effect"* on the issuer. The second limb of the requirement of the said Regulation 60(4(a) is missing in this case. Therefore, the issue of violating the provisions of the said Regulation 60(4)(a) cannot and does not arise.

(5) The resolutions passed in the board meeting authorizing OCAL to obtain a loan in order to meet its payment obligations were routine developments in the ordinary course of the business of OCAL and not 'material'. Whilst, the IPO proceeds were used to repay the loan, it is submitted that the end-use of the funds was towards payments made to Fincare and Precise which fall within the objects of the IPO i.e. general corporate purposes and developing the PMS business. These objects were already disclosed in the Prospectus. (Please see Page 29 of the Prospectus in this regard). Therefore, it is respectfully submitted that the alleged non-disclosure of the resolution passed by the Board on September 30, 2011 can never amount to an alleged misstatement.

(6) The SCN misconstrues the statements made in the Prospectus by selectively relying on extracts from the Prospectus. The Prospectus *inter-alia* stated that OCAL has *"not entered into any definitive arrangements for establishing any office*". It is submitted that the same is an accurate statement of fact as OCAL had, at the relevant time, not identified premises or locations from where it would provide portfolio management services. The statement in the Prospectus that "*no definitive arrangements for establishing any office*" were entered into, meant that

OCAL had not identified or acquired any office space from where portfolio management services would be provided. It defies logic of a reasonable man to construe such a statement in the manner that the SCN has chosen to. Further, in any event, the arrangements entered into between OCAL and Fincare and Precise were towards rendering various services including identification of office premises. These are arrangements in the ordinary course of OCAL's business, routine, and in any case, being consistent with the contents of the RHP, not at all a material development. Accordingly, these arrangements were not required to be disclosed in the Prospectus.

(7) As regards the statement that no "*expenditure*" had been incurred towards the portfolio management services, it is reiterated that the amounts paid to Fincare and Precise towards development of portfolio management service were not necessarily in the nature of "*expenditure*" since they had been advances paid out consistent with the objects of the issue.

(8) Without prejudice to the detailed factual submissions, it should be noted that the payment of finder fee to Fincare and Precise was obviously covered by the object of "*General Corporate Purposes*", admittedly one of the stated objects of the IPO. The term "*General Corporate Purposes*" is broad and residuary object and can mean funds used in relation to the general business of the company. Further, repayment of loan is expressly stated as one of the objects of the IPO under the heading "*General Corporate Purposes*", in the RHP and the Prospectus. The term "*General Corporate Purpose"* would include all routine and operational purposes in running a company - these would range from servicing working capital to payment of operational charges and costs, and finder fees and the like. It is, therefore, reasonably inconceivable that one could regard such payment as being inconsistent with the objects and violative of the end use of proceeds.

(9) The reasoning that *"when money is transferred under whatever head to third parties it amounts to expenditure"* is totally flawed and incorrect. Mere transfer of funds between parties *ipso facto* cannot result in transfer being nothing but expenditure. The expenditure in fact would be incurred only as and when definitive agreements are entered into between us and the landlords for the respective office premises.

(10) Based on the "Drop dead" fees clause in the agreement, it cannot be concluded that transfer of funds was 'expenditure'. In this context, attention is invited to the said clause: *"In the event that Onelife decided not to go on for the above mentioned services/ activities at any stage, Precise will charge a flat drop dead fees of Rs 60 lakhs (Rupees Sixty Lakhs only) and refund the balance amount after deducting the amount already spent (including out of pocket expenses)."* From the aforesaid clause, it is clear that occasion for payment of drop dead fees will arise only, when they decide not to go on for the services/activities and not otherwise. Admittedly, when the RHP/Prospectus was filed they had not decided not to go ahead with the services/ activities of Precise. Therefore, based on this clause pertaining to drop dead fees it cannot be concluded that transfer was in the nature of expenditure. Further, the drop dead clause was only in the agreement pertaining to Precise and not Fincare.

(11) OCAL had also expressly disclosed in the DRHP that it proposed to use the IPO proceeds to acquire a corporate office from Masala Gruh Properties Private Limited ("Masala Gruh") located at New Marine Lines, Mumbai – 400 002. Thereafter, OCAL entered into a memorandum of understanding with Masala Gruh dated December 14, 2010 ("MoU"). The MoU inter-alia provided that a final sale agreement would be executed within six months. Although, the MoU was extended by a letter dated June 2, 2011, Masala Gruh by its letter dated October 27, 2011 informed OCAL that they decided not to sell the said premises. Accordingly, SEBI's conclusion that the MoU was terminated by OCAL and not Masala Gruh is incorrect. Fincare had also entered into a Memorandum Of Understanding with Masala Gruh on April 12, 2011 for purchase of property located at 1st Floor of Masala Gruh Properties Private Limited at New Marine Lines, Mumbai – 400 002. OCAL and Fincare entered into a preliminary memorandum of understanding dated November 1, 2011 to acquire the said property on ownership basis and paid a sum of ₹ 7 crores out of the IPO Proceeds to Fincare. It was owing to the Interim Order that OCAL was not in a position to enter into any agreements in respect of the premises shortlisted by it as provided to SEBI by its letter dated December 14, 2011.

(12) It is respectfully submitted that "Brand Building" was also one of the stated objects of the IPO. Therefore, the question of wrongful diversion of the IPO Proceeds is erroneous and is not supported by the evidence on record.

(13) None of the entries as set out in Annexure 8 of the SCN pertain to capital structure build up, save and except one entry wherein Mr. T.K.P. Naig has given an amount of ₹ 3,57,00,000 on November 15, 2010. It may be noted that Mr. T.K.P. Naig had subscribed to 44,00,000 shares by paying a total amount of ₹ 4,40,00,000. In so far as other entries are concerned it may be noted that fund transfers between group companies in the ordinary course are not abnormal or unusual. Prior to clearance of our offer document, SEBI had also raised queries with regard to capital structure and that point of time based on same facts, no queries were raised. Strangely, the very same build up of capital structure is now being looked at suspiciously.

(14) In order to ensure transparency full disclosures including the allegations in the *interim order* were made to the shareholders of the Noticees who ratified the utilization of the IPO proceeds at the fifth Annual General Meeting ('AGM') on September 24, 2012. The explanatory statement annexed to the notice convening the AGM not only explained the background in detail but expressly referred to *interim order* and the allegations contained therein. An independent observer also filed a report in respect of the ratification resolutions passed at the AGM. This fact has been informed to SEBI also vide letter dated October 9, 2012.

14. **Submissions with regard to alleged diversion of funds-**

(1) Fincare and Precise are independent legal entities and business arrangements between OCAL and Fincare and Precise are legitimate and legal. The disclosures in the offer documents adequately cover the dealings with Fincare and Precise, and it was not necessary

to state anything more in them in support of the eventual dealings with them. It is submitted that it would be wholly unsustainable to argue that dealings with these entities could not have taken place for want of disclosures in the offer documents. Please see Page 29 of the Prospectus (indeed there is disclosure of this all through in the earlier drafts too) dealing with objects of the issue. It was always envisaged that there would be expense of the nature incurred by way of dealings with Fincare and Precise, and it would not be tenable to level a charge of the offer documents not sustaining the ability to conduct these transactions.

(2) The allegation that Fincare, Precise and KPT are front entities of OCAL is denied and is not supported by any evidence on record. This is a completely bald allegation with nothing to support it. In fact, the material on record given to us so far does not even suggest that there was any affiliation between OCAL and these two companies.

(3) The intended investment in short term mutual fund units and bank balances were an enabling provision for how to deal with money lying unutilized. If funds are actually utilized, there is no cause for keeping them parked in short term avenues. Admittedly, a part of the IPO proceeds were provided to Fincare and Precise towards the objects of the issue. Therefore, the question of investing the proceeds on an interim basis does not arise.

(4) It is rather surprising that the statutory compliance of any counter-party to an issuer is being sought to be relied upon to press a charge. It is implausible and in fact, unreasonable to expect that every single time any listed company has to deal with any commercial counterparty, it would now have to check if the counterparty's compliances with the Registrar of Companies are up to date. This is an impossible expectation and quite unreasonable of SEBI to say that counterparty had not complied with its routine statutory filings and that fact could be used to level an allegation that they dealt with non-existent, fictitious of fake/front entities.

(5) There is no regulation governing what fees the merchant banker may charge and what type of incentivisation he may offer or not offer to a finder of a mandate. As the IPO of Paramount was completed successfully, Precise was constantly demanding OCAL to pay them the finder's fee. The decision to pay a finder fee to ensure that the work flow in the issue pipeline was secured is purely a commercial decision and no fault could be found with the timing or the quantum of its payment. As Fincare and Precise were insisting on payment of the finder's fee, OCAL perceived that there was a possibility that Fincare and Precise may divert potential business opportunities to OCAL's competitors and also persuade the six companies who had appointed OCAL as their merchant banker, to withdraw the mandates issued to OCAL. Fincare and Precise also informed OCAL that there were four other companies who were looking to raise funds by way of IPOs and were in the process of identifying merchant bankers. Fincare and Precise also informed OCAL that these companies would be persuaded by Fincare and Precise to appoint OCAL, if finder fees were paid to Precise and Fincare. Therefore, given that OCAL did not want to jeopardize its merchant banking business, it agreed to make payment of the finder's fee to Fincare and Precise, OCAL was compelled to obtain funds from non-banking financial institutions

namely – Mercury and Prudential. Loan agreements were therefore entered into with Mercury and Prudential for sanction of loans of ₹11.50 crores.

(6) The loans availed from Mercury and its associates are not "*bridge loans"* against the proceeds of the IPO and were in the nature of short term loans availed by OCAL in view of the urgent need of funds, as explained above. When a bridge loan is taken, the lender gets a lien on the issue proceeds by a charge over the bank account in which the IPO proceeds would be kept. If SEBI's interpretation were to be adopted, every company would have to come to a standstill right from the time of the DRHP to the IPO completion.

(7) It is submitted that the total mandate size of Paramount Print Packaging Limited ('Paramount') was ₹ 95 crores. Apart from the IPO mandate of ₹45.83 crores, OCAL had also signed a debt mandate with Paramount for providing debt arrangement syndication for approximately ₹ 50 crores. Given that the total amount was ₹ 95 crores, Precise was entitled to 40% of the fees due to OCAL as finder fee i.e. ₹ 3.4 crores. Therefore, the allegation that the fee was inflated and the invoices are forged (which is not supported by a shred of evidence) is entirely erroneous and not borne out by the evidence on record. The bill for the finder fee of ₹ 3.4 crores payable to Precise were raised only on September 26, 2011 and the financial statements in the RHP were up to March 31, 2011. Therefore, the question of disclosing any liability in the RHP did not arise.

(8) It is submitted that Paramount was referred to OCAL by Precise and also by the individuals named in the SCN. These individuals also referred only two mandates as compared to four mandates referred to OCAL by Precise. OCAL also did not expect any further business from these individuals. Accordingly, the fees paid to Precise were higher in view of the business generated by OCAL and the potential for further business opportunities.

(9) It is respectfully submitted that the fact that the name of the company printed in the agreement was Paramount Print Packaging Limited (its present name) and not Paramount Printing Press Private Limited which was its name in January, 2010 when the agreement was entered into between OCAL and Printing Press Private Limited was a typographical error and it is absurd to level such a serious charge of forgery merely because the name of the company was erroneously entered. Further, the fact that the agreement was also acted upon is not disputed as payments have been made pursuant to the agreement to Precise. It is submitted that if there had been any *mala fide* intent as alleged then the name in the Finder Fee Agreement would have been "Paramount Printpackaging Limited" and not "Paramount Printpackaging Private Limited" since the name of the company after July 27, 2010 was Paramount Printpackaging Limited.

(10) However, Paramount Printing Press Private Limited and Paramount Printpackaging Private Limited are one and the same company having the same registration number. Both the parties have acted on the Finder's fee agreement. Even the cheques were paid by the party much before the investigation started. At this stage the allegations that these are not correct and have no meaning. Further SEBI's own Show Cause notice in relation to this point mentioning that the Finder fees Agreement states the name of PPL as *"Paramount Print*

Packaging Ltd" is incorrect, since the fact is the Finder fees agreement states the name of PPL as "*Paramount Print Packaging Pvt Ltd*". Same demonstrates that typo errors and oversights can happen.

(11) They strongly deny the allegation that the finder's fee agreement with Precise was forged and the allegations are entirely in the realm of conjecture and surmise. It is submitted that OCAL has been procuring the stamp paper from its stamp vendor and the stamp paper provided to OCAL was represented to be genuine. In this regard the Noticees have relied upon some case laws. In *BPL Ltd. vs. SEBI,* the Hon'ble SAT has held that *allegations of fraud under the PFUTP Regulations are of a serious nature and cannot be based on surmises and conjectures*. Further, in *Videocon International vs. SEBI*, the Hon'ble SAT has also held that "*SEBI must adduce sufficient evidence as a result of which a reasonable person acting reasonable and objectively may arrive at a finding upholding the alleged charges under the PFUTP Regulations*." Similarly, in *Sterlite Industries (India) Ltd. vs. SEBI* the Hon'ble SAT has held that "*evidence based on probabilities and endeavors to prove the fact on the basis of preponderance of probabilities is not sufficient to establish such a serious offence of fraud under the PFUTP Regulations*."

(12) Since Stamp Vendor is the person who had issued the stamp paper to us , which is alleged to be forged , SEBI should have at least made enquiries with the Stamp Paper Vendor . It may be noted that SEBI has found out about the purported discrepancy in the stamp papers as early as March 22, 2012. However these allegations are coming for the first time in the Notice under reference .while SEBI was in possession of this fact from March 2012. It is strange that SEBI never mentioned the same or queried us on the same. Further, they understand that even Precise or Fincare have also not been queried on this aspect. Surprisingly , no queries were raised with the company Paramount & Trim Plastics so as to ascertain as to whether Precise had introduced them to us in the year 2010.

(13) Further , despite being aware of the purported discrepancy in the stamp papers since March 2012 (and in any case in October 2012 i.e. when the investigations in the matter were complete) , the said issue was never raised in the Confirmatory order. Further the said issue was never raised before the Hon'ble Tribunal during various appeals filed before it . This shows that SEBI has deliberately withheld and suppressed this fact so as to give us very little time to make our own investigation, to make the complaint before the investigating agencies so as to conclude the case expeditiously and show our *bona fides* in the matter. In fact, upon receipt of the SCN, OCAL has filed a criminal complaint in the Azad Maidan Police Station reporting the fact that it appears to have received stamp papers which may not be genuine. The matter is under investigation and it is therefore not appropriate for SEBI to proceed in this regard, pending completion of the investigation by the police.

(14) Here they may also point out that sole reliance has been placed on the purported letter dated March 22, 2012 sent by Additional Controller of Stamps, Mumbai. The particulars in said letter are also fraught and riddled with inconsistencies. For instance, in the letter there is no indication as to when the Stamp Papers have been printed at Nasik. It may be noted that date of printing of Stamp papers and date when "*Stamp Papers came from Nasik Printing press*"

are two different things. There is a complete mismatch of dates in various agreements and the dates reflected in the letter dated March 22, 2012 sent to SEBI by Additional Controller of Stamps, Mumbai, in so far as the date of supply of Stamp paper by office of Controller of Stamps to Thane Treasury and then to Stamp Vendor and the date as appearing in the stamp paper is concerned. The same is evident from the following Table :

Paper No	**of Stamp paper supplied by Treasury office to Stamp Vendor as per the record of office register**	**of issuance of Stamp paper to Vendor by Treasury office , as appearing on the stamp paper**
EV525623	21/09/2011	8/1/2010
EV525624	21/09/2011	8/1/2010
EE858391	3/5/2011	8/2/2010
EE858392	3/5/2011	8/2/2010
EE850564	3/5/2011	26/07/2011
EE850608	3/5/2011	26/07/2011
EF787982	3/5/2011	5/5/2011
EF730105	3/5/2011	5/5/2011
EF908455	3/5/2011	5/5/2011
EF908454	3/5/2011	5/5/2011
EF730103	3/5/2011	5/5/2011
EW671450	21/09/2011	29/09/2009
EV525505	21/09/2011	5/2/2009

(15) From the aforesaid table it is clear that there is time gap between the date when the Stamp Paper has been issued by the registry and the date as appearing on the Stamp Paper. In light of the aforesaid inconsistencies in the details in the letter , the credibility of the details in the said letter is hugely suspect and such letter cannot be relied upon for drawing the inference of forgery against us. Further, it may be noted that out of various stamp papers on which the agreements were executed by us , which have been submitted to SEBI and examined by SEBI, charge of alleged forgery is leveled on the basis of 4 stamp papers only (involving two agreements)

(16) The allegations relating to Precise and Fincare in the SCN, the visit of SEBI officials to Precise and the outcome of the said visit are not relevant to the Noticees response to the SCN. For instance, the fact that the leave and license agreement in respect of the premises where Fincare was carrying on business is forged is not relevant at all to the Noticees. Similarly, the SCN provides details on fund flow from the Prudential Group, Fincare and Precise. These are entirely irrelevant to the core allegations against the Noticees. The Noticees are not aware of the same nor can they be reasonably said to be aware of the manner in which such third parties utilized funds provided to them.

(17) They repeat and reiterate that Precise, Fincare and KPT are valuable business partners and have introduced to them mandates worth ₹ 883 crores. In the unlikely event that Precise, Fincare or KPT do not provide the requisite services, they will use all possible means under law to either enforce the agreements entered into with them or seek refund of the money. On the contrary, it is the Interim Order that has brought their business to a standstill and

they are unable to procure the relevant services or finalize premises owing to the restrictions imposed on us by virtue of the Ex-Parte Order.

(18) They have received fees of around ₹ 7.00 crores as a result of the mandates provided by Fincare and Precise which cannot be disputed. SEBI's allegations relating to the fees charged by them being higher than industry standard are contrived based on conjecture and surmise. As stated earlier, serious charges of fraud under the PFUTP Regulations cannot be based on conjecture and surmise. These allegations are therefore unsustainable and in any event, irrelevant.

(19) As regards the transactions between OGEIL and Fincare and the transfer of ₹ 4.33 crores to OGEIL, it is submitted that these transactions have no connection with the subject matter of SEBI's investigation and the SCN. In any event, these are not the concern of OCAL. OCAL, OGEIL and Fincare are separate and independent legal entities. OCAL has given money to Fincare for goods and services received or to-be received. OCAL has no control on financial dealings of Fincare. All the transactions had taken place much before the IPO i.e. in the month of June 2011 when even RHP was not cleared. This transaction has happened around six months prior to our IPO being opened. These transactions were not entered by OCAL but OGEIL, Fincare and SPPL.

(20) For the reasons stated in their reply, as the charge of mis-statement in RHP/Prospectus and/or diversion of the IPO proceeds have not been established, the question of holding the directors including the managing director of OCAL does not and cannot arise. It is submitted that the allegations in the *interim order* and Confirmatory Order are based on demonstrably erroneous findings which are factually incorrect and contrary to applicable law and which the SCN merely reiterates.

(21) In any event and strictly without prejudice to the above, they have already undergone a severe penalty for nearly a year and half pursuant to the restraint imposed by the *interim order* and continued by the Confirmatory Order. The restraints imposed on them from carrying out business as a stock broker, merchant banker and portfolio manager buying, selling and/or dealing in any securities in any manner continues till date. SEBI's investigations are also complete. Therefore, it is respectfully submitted that, even if the allegations in the SCN are accepted as true (which they are not), no further regulatory intervention in the present case is warranted.

(22) It is further submitted that if at all SEBI desires to consider whether regulatory intervention is still warranted, the matter can always be referred to adjudication and the adjudicating officer may conduct a detailed fact finding exercise without being influenced by the observations made by SEBI so far. There is no need for continuation of the directions of restrained contained in the *interim order*, and the same may be dropped. The continued suspension of our ability to operate our business is only hurting the public shareholders who have invested in the shares of OCAL, and in fact such an approach militates against the very purpose of orders under sections 11 and 11B of the SEBI Act - that of protection of the interests of investors in the securities market.

(23) Further, based on findings in investigation, SEBI had issued SCN *inter alia* alleging fabrication/forging with regard to Finder fee Agreements with Precise and Fincare and the invoices etc. In response, they have *inter alia* specifically denied the charge of alleged fabrication/forging of the said documents. Despite knowing full well the charges in the SCN (which inter alia include fabrication etc), SEBI vide its hearing letter dated May 7, 2013 informed us that we can opt for settlement proceedings in the matter. Thus, the letter for hearing, invited the proposal for settlement. Same clearly suggests that the alleged fabrication was never in contemplation of SEBI as a major issue.

(24) As on date their shares are quoting at around more than ₹ 200 and it has never gone below ₹ 124 they have pointed out that in the IPO issue price was ₹ 110. Thus, the investors who had invested in the IPO have not lost any money. Further as per the Shareholding details available, as on date out of the investors who had applied in the IPO , all of them have exited by selling their shares in the market save and except few investors . Thus almost 100% investors who had applied in the IPO have exited profitably. Further the remaining investors who have stuck around with OCAL continue to have opportunity to exit at significantly higher price than the issue price for almost two years now.

(25) They had disclosed in the RHP/Prospectus that for the purpose of our business we would be relying on third parties to conduct certain business activities (Refer Risk Factor 19-) . Further , we had also disclosed in the RHP/Prospectus, under Chapter pertaining to Business Overview, under the head Business Process that we would *"Source assignments through network and business developers"* and "Sourcing" would also include *"through referrals"* (Refer Pages 56 & 57 of Prospectus-). Since, the disclosure was already made in the RHP/Prospectus with regard to relying on third parties with regard to conducting business and sourcing business through network and business developers and referrals, at the relevant time it was felt that there was no need to individually spell out the names of the third parties viz Precise and Fincare by way of paper advertisement or in the Prospectus.

(26) The allegation made by SEBI with regards to the contents of their letter dated December 5, 2011 is factually incorrect. Nowhere in their letter it is stated that the loan funds have been used for "Development of Portfolio Management Services" as alleged. It clearly states that the loan funds have been used for the Purpose of "Advance towards setting up PMS facilities".

(27) Admittedly, it can be seen that the funds from GCP were neither used for a)any acquisition/investment or b) Definitive commitment for any strategic initiative. The GCP funds have been used for the repayment of short term loans which is very much permitted under the said objects and is not in the nature of acquisition/investment or Definitive commitment for any strategic initiative.

(28) Their reply dated December 5, 2011 was given in the format as required by SEBI through their letters dated 21 November 2011. The said letter of SEBI asked them to give background and explain the same as to how it relates to use as per the objects. They had provided details of all the funds from October 07, 2011 till October 08, 2011 to SEBI to

give the perspective of all their transactions with entities related to the IPO of OCAL. Thus the column of objects was inserted to give an idea of the objectivity of the transfer of funds to these entities. In so far as payment of ₹ 3 crores as finder fees is concerned it may be noted that the said expenditure was not falling under either "Purchase of Corporate office, Development of PMS or Brand Building". Therefore, the same did not warrant any disclosure. It may be noted that payment of finder fees was made under peculiar circumstances as aforesaid under the residuary head of GCP.

(29) With regard to transactions as set out in Annexure 9 of the SCN, it is submitted that normal transactions have been given the flavour of being suspicious transactions. It may be noted that the amount of ₹ 3 crores which was given by them to Mintstreet Estates Pvt Ltd on December 1, 2009 was towards Office Deposit. Disclosure regarding the same is also appearing in the Prospectus at Page 113. The amount of ₹ 1 crore, which was received by Mr. Pandoo P. Naig from Mintstreet Estates Pvt Ltd on December 1, 2009, was, as confirmed by Mr. Pandoo P. Naig, in fact repayment of loan by Mintstreet Estates Pvt Ltd to Mr. Pandoo P. Naig. Further, it is nobody's case that we did not have any balance in our account as on November 30, 2009. In fact as on that date they had a balance of more than ₹ 5 crore in their account. Therefore, there is nothing unusual in the transactions as set out in Annexure 9 of the SCN as insinuated.

(30) They are not aware of the Income Tax Returns filed by Precise, but as per their information both Precise and its directors are having good financials and the same is also borne out by their balance sheets. As on March 31, 2011 the total income of Precise is ₹3, 09,79,844 and as on March 31, 2010 the same was ₹2,94,38,650. Further, as on March 31, 2011 Precise is having a reserves and surplus of ₹1,57,56,067 and as on March 31,.2010 the same was ₹1,37,89,916. Similarly, as on March 31, 2011 the combined net worth of the directors of Precise was around 2 crores. Further , the main director of Precise , i.e. Mr. Daxesh Patel has been in business for more than 15 years and has be active in the engineering and consultancy business and is well networked in the business circles.

(31) Based on alleged non updation of details by Precise, with regard to filings of documents under Companies Act, 1956 and its name appearing in defaulters list, no adverse inferences can be drawn against them. In any event admittedly as on December 15, 2011, as per SEBI's own case, Precise had filed all the requisite documents and it was not figuring in the defaulters list as on date of *interim order*. As per the print out from MCA website, Precise was active as on May 12, 2011. Therefore, the issue of Precise being in the defaulters list prior to December 15, 2011 cannot and does not arise.

(32) Most of the mandates referred by Fincare have been cross verified by SEBI from the companies themselves and there is no charge of any wrong doing alleged as far as those mandates are concerned. However surprisingly in the case of companies referred by Precise, SEBI has chosen to cross verify all companies except ' Paramount Print Packaging Ltd' and 'Trim Plastics Ltd' based on which the serious charges are alleged. It may be noted that had SEBI enquired from ' Paramount Print Packaging Ltd' and ' Trim Plastics Ltd', they would

have also corroborated our version that Precise had introduced both 'Paramount Print Packaging Ltd' and 'Trim Plastics Ltd' in the year 2010 itself. It is pertinent to note that even the total fees paid through the IPO proceeds for these alleged 2 mandates is nil . Without prejudice , even if for the sake of argument it is assumed that the loan taken by the OCAL from the NBFCs and their further use to pay Precise for these two mandates are considered still it is evident that only funds have been paid to Precise for only one mandate of Paramount and that too only ₹ 3 cr. There have been no payments made to Precise for the mandate of Trim Plastics Ltd. Hence it would be totally unfair to allege , based on one such document (stamp paper) that all the transactions entered by OCAL and Precise are created post facto or wrong.

(33) Further the forgery so alleged is in any case not a fraud under FUTP as charged by SEBI since it does not involve any dealing in securities as contemplated under FUTP Regulations.

(34) In order to establish their innocence in the whole matter they had specifically sought the cross- examination*, inter alia*, of Stamp Vendor and the Officer of Additional Controller of Stamps Office, which has not been acceded to by SEBI, in gross violation of principles of natural justice. It may be noted that the charges of forgery and creation of *post facto* documents as alleged, which are quasi -criminal in nature, are serious charges with severe civil and criminal consequences and it is well settled that the same cannot be leveled without concrete, adequate, unambiguous and credible evidence, which is abysmally lacking in the matter under reference.

(35) Merely because three companies introduced by Precise and Fincare have common directors and are related entities as alleged, no adverse inference can be drawn. There is no embargo on related companies not coming out with IPOs. Further, it is also not the case that all the companies introduced by Precise and Fincare are related companies. Admittedly, there are companies which have been introduced by them and are not related.

(36) It may also be noted that it is nobody's case that the funds lent by them have come back to OCAL or its promoters/ directors in any manner or have been used to manipulate the scrip of the Company in the markets.

(37) Renaissance Corporation Limited is in the business of PET bottle recycling. It has a world class manufacturing capacity in Gujarat spread across 55 acres of land. It is one of the largest PET recycling plants in India. Further, from the mere perusal of the statement of the Company as recorded by SEBI (which was not provided to us and we had to obtain the copy of the statement from the company) that the employees of the company sit in the factory. Also from the statement of Shri. Vishal Dokwal, The Manager- Commercial, it can be clearly seen that there are 27 employees and 37 workers. SEBI has itself recorded the statement of one of the employees but has wrongly alleged that there is not even a single employee. As per its balance sheet it has a Gross Block of 234 crore, Capital and Reserves of 88.2 crore and a sales turnover of ₹44 crore. The company is further funded by a consortium of Banks/NBFC's including J. M. Financials , Punjab National Bank, Indian Bank ,etc. to the tune of ₹200 crore. Calling such a company unfit for IPO is totally unjustified and

unwarranted , since there have been much smaller companies having come out with much larger issues in the past.

(38) Strategic Marketing Services Pvt Ltd. is in the business of Managing corporate loyalty programmes of large corporate. It is part of a MRP group. SMSPL is having marquee clients like Accor Services, Aegon Religare, Airtel, Anglo French, Apple, Areva, Axis Bank, Beta Healthcare, Cadila Healthcare, Carlsberg, Dancake, Deutsche bank, Epson India Pvt Ltd, Fame India, Icici Bank etc. Which can be seen on www.groupmrp.com/clients.asp. SEBI has concluded their assessment about this company based upon the statement of the lowest possible officer of the company without even bothering to talk to the promoters and Directors of the company who could give a better perspective. The company has shown a consistent 30 percent growth in the sales for the last few years. The company was on the verge of getting a large order from the UB group and a private airline to manage their corporate loyalty program. The caps, bags, coffee mugs are part of the loyalty programs that they undertakes on a turnkey basis on behalf of large multinational clients and not some small time gifting company as alleged. OCAL took up this mandate because it saw this as a high margin, scalable outsourcing business with significant entry barriers. SEBI has not provided the statements taken and documents submitted by these companies.

(39) Baba Shyam Vyapar Pvt Ltd. is in the business of pelletisation of Iron Ore. The proposed project was a green field project of 1.2 million tones pelletisation plant to be executed in stages having a capital outlay of ₹ 400 crore to be part funded by equity and the rest through Debt. The company is promoted by Industry veterans Viz. Mr. Gobind Prasad Sharma who is the Ex- General Manager of Vikram Ispat Limited which was part of the Aditya Birla Group and now taken over by the Welspun Group. The Other Director of the company is a very well known industry veteran Mr. Vivek Jalan who is a large iron ore trader and associated with the Uttam Galva Steel Ltd, which now part of the Accelor Mittal group. The companies had acquired around 88 acres of land through its promoters in Maharastra and were in the advanced stages of negotiating the bank loan for the same. It is learnt that the company has also submitted a proposal for Prospecting Mining Lease in the state of Karnataka for which it has got approvals till the Collectors stage. Since the mandate had come to OCAL only on October 13, 2011 and SEBI started its investigation including visiting the client, OCAL has not being able to get further details required for the Due diligence. Thus, the said companies whose mandates OCAL had obtained, were sound companies having good business and were genuinely in need of raising funds for the purposes of their business . It is therefore denied that the mandate letters were not genuine and created for the purpose to show liability of payment of finder fees as alleged.

(40) It is denied that agreements entered into with Fincare were post facto as alleged .OCAL had entered into the agreements with Fincare based upon their representation about their address and such particulars. At the relevant time there was nothing for it to suspect that Fincare has given wrong address as alleged. It is exceedingly unreasonable to expect it to check the Leave and Licensee agreements of each party before entering into business dealing

or agreements with them. Further, OCAL is not alleged to be a party of any kind to the agreement between them and their landlord. In any event, Fincare has not resiled from performing its obligations in terms of agreements entered into with us. Therefore, even if Fincare's wrong address has been captured in the agreements executed with them, nothing turns on it in so far as they are concerned.

(41) The allegations made in the para 13 (ix) of the SCN are incorrect. The minutes of board meeting of September, 30 2011 clearly state that the finder fees with respect to the mandates already procured by Precise and Fincare are already due and that they have informed the company that they will not procure further business unless finder fees is paid. This was in addition to the urgent need to finalize the office premises. We had transferred ₹ 2.5 crore on October 13, 2011 to Fincare as Finder Fees due to them as per their bills dated 6/4/2011 and 30/5/2011. The said bills have already been given to SEBI. Further, the finder fees due to them have been pending since Apriil 6, 2011 and May 30, 2011.

(42) Commercial dealings with Fincare, in the ordinary course of business, cannot be given the complexion of acting hand -in glove. Further, it is nobody's case that the alleged diamonds were purchased by Fincare at the behest of OCAL or on its behalf . Furthermore, nothing has been brought on record to demonstrate even remotely that either the diamonds or the monies have come back to them.

(43) The reliance placed on Annexure 26 to SCN to allege that MOU between OCAL and Fincare nowhere mentions that Fincare will enter into MOU with owners of offices identified for PMS is misplaced. There is nothing in Annexure 26, which states so. In fact, Annexure 26 only refers to MOU between OCAL and Fincare. There is no reference to any MOU entered into between Fincare with the owners of offices as alleged. Same shows complete non application of mind.

(44) The charges made in para 13(x) of the SCN with respect to Fincare need to be first made to Fincare and their reply needs to be made available to the Noticees before they can make a effective submissions since these charges flow to the Noticeees through Fincare. This is the very basic requirement of the principles of natural justice.

(45) If SEBI wanted to know whether any agreement was there between OGEIL and Fincare the same should have been asked to them directly. Without bothering to ask the said parties, based on our non submission of the agreement in the Noticee's reply which was not asked by SEBI in the first place, no adverse inference can be drawn against them.

(46) Further, they do not know any entity mentioned in the para (xx) of the SCN. They had not dealt with those entities in any manner and nor the Noticees are concerned with them.

(47) The payments to KPT were made *bona fide* in the furtherance of the objectis of the issue as disclosed in the prospectus. It is denied that OCAL had made payments to KPT in a hurry to avoid repayment in the event IPO proceeds are called back as alleged. Since SEBI had passed *ex parte* order, MOU which was made and was pending execution was not signed. Same was also stated in reply dated March 22, 2012. The address of KPT and transfer of

funds by OCAL to KPT for branding exercise are a matter of record. The Noticees are not aware of the alleged subsequent transfer of funds by KPT.

(48) They are not aware whether SEBI officials visited the office of KPT and the same is of no concern to them. It is surprising to note that reliance placed by SEBI on the purported statements made by some neighbors (whose names/ particulars have not been disclosed) of Mr. Ashok Kumar Patel at Vadodara for drawing adverse inferences, which is legally untenable. It is denied that they colluded with KPT for diverting the IPO proceeds as alleged. They are not aware of the subsequent utilization of amounts by KPT, i.e. investment in gold etc, and we had no control over the same.

(49) It is denied that IPO proceeds were siphoned off through KPT as alleged. Admittedly, it is SEBI's own case that the amount which OCAL had transferred to KPT has been utilized by the director of KPT for buying gold. If that be so, issue of siphoning off cannot and does not arise. It is not the case that KPT has transferred back the amount to promoters/ directors. If the amounts have not found way back into their bank account, the allegation of siphoning off cannot survive.

(50) The Hon'ble SAT had granted the relief with respect to calling back the funds from Fincare and Precise. Under such circumstances, the decision to call back funds could have multiple implications including giving a signal that they accept SEBI's allegations. If the monies had been called back from these entities, then the mandates referred by such companies and OCAL's other business arrangements would have been permanently damaged causing irreparable loss to the company, its image and its shareholders & such other unforeseen circumstances. It may also be appreciated that when SEBI itself has brought the business operations of the OCAL to a grinding halt by passing directions against it *inter alia* directing it not to undertake any fresh business as a Merchant Banker, Portfolio Manager, Stock Broker and Trading Member, there was no point in going ahead with the plans for which the funds were transferred and further complicate the situation.

(51) Further, the offer document also discloses that OCAL will outsource work as and when necessary. Also such transactions are permitted by law and are not illegal. Whether such activities should be undertaken by OCAL or otherwise is its corporate decision which should best be left to it and SEBI cannot, based on its own understanding, dictate the same. It is denied that payments are way beyond accepted industry norms. There are no industry norms referred by SEBI while leveling the allegation.

(52) The allegations in the para 16(iii) of the SCN are totally misplaced. Based on Annexure 8 and 9 to the SCN, it has been alleged that Precise and Fincare were having multiple transactions with OCAL involving crores of rupees. But in Annexure 8 and 9 of the SCN there is not even a single entry pertaining to Precise and Fincare.

(53) It is nobody's case that OCAL had not acted within the four corners of the terms of the agreements entered into. It may be appreciated that business, by its very nature is competitive and dynamic, as also mentioned in the offer documents. One has to be proactive in the interest of business, if the business situation demands. One has to take

aggressive steps to get market share. It is pertinent to note that there are about 155 Merchant Bankers duly registered with SEBI. On the other hand, on an average only approximately 50 companies come out with IPOs every year. Therefore, there is keen competition among Merchant Bankers to get appointed as Merchant Bankers for such IPOs. Consequently, in order to corner the business and get IPO mandates if OCAL had resorted to making advance payments clause , without jeopardizing the interests of the Company and by acting within the four corners of the agreements, , same should not be held against it.

(54) Neither of the parties to the agreement has contended that the same was not an error. Further, SEBI has checked with one of the companies where such a mistake has happened, viz. M/s Renaissance Corporation Ltd and it is learnt that the company has confirmed that it had been introduced by Precise.

(55) The allegation that OCAL charged 17% of the issue size as fees is factually incorrect. In this context it is pointed out that, the total fees of mandates referred by Fincare are ₹ 33.1 crore for an issue size of ₹676 Crore which works out to 4.88%. Similarly, the total fees of mandates referred by Precise are ₹15.7 Crore for an issue size of ₹ 207 Cr which works out to 12.73%. Further, SEBI itself has confirmed with companies on the terms at which OCAL had entered into mandates with them. The IPO of PPPL clearly shows that issue expenses that they paid to OCAL, which all proves that it is charging such fees and its clients are willing to pay for the services. Further it may be noted that, after deducting the finder fees the amount received by OCAL is much less. In any event, if OCAL was charging high fees, same is in the interest of the shareholders.

(56) Their letter to SEBI dated 14 December 2011 does not mention that all the IPO proceeds are utilized as per the objects of the IPO. Thus, the allegations in the para 17(h) of the SCN are misplaced and factually incorrect. it is baseless and unfair to allege just because Precise and Fincare are old acquaintances, Mr. Pandoo P. Naig should have been able to spell out details of the Due Diligence immediately carried out by him as a Managing director of OCAL.

(57) The finder fee paid to Precise for the IPO of Paramount was through the loan received from the NBFCs before the receipt of the IPO funds and not from the IPO funds as alleged. Further, nowhere is it mentioned that the finder fee has to be paid out of the funds that OCAL received from the Paramount. The decision of when to pay, how much to pay, whether to pay are all commercial decisions of OCAL and are outside SEBIs purview. It is denied that Precise was not the actual finder of PPPL. The same could have been easily checked by SEBI from PPPL.

(58) It is denied that OCAL had given any list containing inflated quotations as alleged. Further, the Noticees are not aware of the websites mentioned by ACML for calculating the rates , therefore they are incapacitated to give an effective reply to the allegation . At the relevant time neither ACML nor SEBI had objected to the said quotes. Further the allegations in the para are bald and sweeping. For instance, it has not been spelled out as to what is the extent

of variation , what is the time period for which the rates have been checked , what are the websites SEBI has relied upon for calculating the rates etc.

(59) The Noticees have already unjustifiably suffered immensely and disproportionately as a result of the restraints/directions issued by SEBI for a period of almost 17 months now and the restraints/directions continue as on date.

(60) Despite regulatory restraints, OCAL has been able to keep afloat and alive because of the various measures taken by it and its management exhibiting its commitment for the benefit and progress of the company and its shareholders.

(61) The promoters of OCAL have in order to keep the Company afloat and to take care of shareholders interest, have asked and successfully pursued promoter group companies where they had earlier invested to maximize returns on their investment and have thereby received bonus shares. By such efforts, they have been able to get management control and ownership of privately held promoter group companies, Goodyield Farming Ltd and Goodyield Fertilizers & Pesticides Pvt Ltd. This has happened at zero cost to the OCAL and has given it the Ownership of a profitable agriculture business having substantial profits and assets at no additional costs at the expense and sacrifice of the Promoter Group. This has also resulted in the share price not having gone down below the issue price ever in spite of the SEBI order resulting in no shareholder of OCAL ever losing money because of their subscription in IPO.

(62) By way of Bonus Goodyield Farming Ltd a company which is in the business of Agriculture and allied activities and Goodyield Fertilizers & Pesticides Pvt Ltd which is also in the same business which had a combined total turnover for last three years of ₹ 120 crore, total profit of ₹15.16 crore and accumulated reserves and surplus of ₹ 11.60 crore, ₹ 13.20 crore and ₹ 16.67 crore for F/Y 2010-11, F/Y 2011-12 and F/Y 2012-13, respectively became step down subsidiaries of OCAL.

(63) Shareholders of the OCAL have already, at the AGM held on September 24, 2012, ratified the decisions taken by the Board of the company in its meeting held on September 30, 2011 and the utilization of IPO proceeds. In order to ensure transparency fill disclosures including the allegations in the *interim order* wsere made to the shareholders of the Noticees who ratified the utilisation of the IPO proceeds in the said AGM. An independent observer also filed a report in respect of the ratification resolutions passed at the AGM.

(64) Trading in the scrip of the OCAL has not been restrained. The investors have continued to repose faith in the Company and same is also borne out by the regular trading in the scrip. Significantly, even as of date the price of the scrip of the company is in the range of ₹200 per share and has at no point of time in the past fall below the issue price .Thus, no investor has lost any money by investing in the OCAL. Further, there are no investor complaints against them.

(65) It is reiterated that no purpose would be served by continuing the debarment and restraint directions against OCAL as the same will continue to jeopardize the interests of

shareholders and investors. OCAL has utilized the funds raised for its benefit and shareholders. The shares are listed and traded and the shares have already changed hands so many times, third party rights of the shares of OCAL have been created and no investor/ shareholder has complained or is aggrieved. Therefore, any punitive direction in the case would not be in the interest of the shareholders/ investors in the Company.

(66) In the above facts and circumstances, it is prayed that Noticees be discharged and the SCN be set aside.

15. The submissions of 4 of the Noticees namely Mr. D. C. Parikh, Mr. A. P. Shukla, Mr. T. S. Raghavan and Mr. T. Shirdharani are *inter alia* as follows:
    a. At the outset they submit that as non-executive directors of OCAL, they were not in charge of day to day business of OCAL at the relevant time when the events which are subject of the SCN occurred. Therefore, they submit that they could not have been made a party to this proceedings against OCAL and its directors.
    b. The SCN has failed to make out a case against them apart from surmise and conjecture.
    c. It is well settled that in order to charge non-executive directors and independent directors for alleged contraventions by the company, it would be necessary to pinpoint the specific role by the individual director in connection with the alleged contravention in question. The SCN is woefully lacking in this respect and the proceedings against them ought to be dropped on this ground alone.
    d. OCAL has informed them that they would be defending the matter before SEBI appropriately and have dealt with all the allegations contained against them in the SCN. Accordingly, they are adopting the submissions of OCAL strictly without prejudice to their rights under law.
    e. They reserve their right to file such additional replies and submissions as and when deemed appropriate, after obtaining all the information and explanation from OCAL in relation to the allegations contained in the SCN.

16. I have carefully considered the SCN, the replies/submissions of the Noticees and the relevant material available on record. Before dealing with the merit of the case, I deem it necessary to deal with the technical objections raised by the Noticees. I note that the Noticees have raised certain contentions with respect to compliance of principles of natural justice in the proceedings.

17. The first contention of the Noticees in this regard is that SEBI has no jurisdiction to enquire into or pass any directions in respect of the violations alleged in the SCN and only the Central Government has the powers to enquire into the same. In this regard, I note that in terms of section 55A of the SEBI Act the matters relating to disclosure in the RHP/Prospectus are to be administered by SEBI. Further, section 11A of the SEBI Act specifically says that without prejudice to the provisions of the Companies Act, SEBI may by regulations specify *inter alia* the matters relating to issue of capital and the manner in which those matters shall be disclosed by the companies. The ICDR Regulations are made by SEBI under section 30 of the SEBI Act to carry

out the purpose of the SEBI Act, particularly section 11A thereof. The issue with regard to jurisdiction of SEBI in this regard has been settled by Hon'ble Supreme Court in the matter of *[Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [2013(1) SCC 1]*. I, therefore, find that SEBI has jurisdiction to issue the SCN and inquire into the alleged violations with regard to disclosures in the prospectus. I note that though the powers under sections 235 and 237 of the Companies Act 1956, remains with the Central Government, the power to inquire into the alleged fraudulent and unfair trade practices in the securities market lies with SEBI under section 11(2)(e) read with section 12A of the SEBI Act. I, therefore, do not agree that the SCN is without jurisdiction and is bad in law.

18. The other technical contention of the Noticees is that the SCN does not disclose the nature of punishment proposed to be imposed or the direction proposed to be passed. In this regard, I note that the SCN is issued to the Noticees under sections 11(1), (4), 11A and 11B of the Act. The SCN has further called upon the Noticees to show cause as to why appropriate directions as deemed fit and proper under sections 11(1), (4), 11A and 11B of the SEBI Act, 1992 should not be issued against them for the violations as alleged in the SCN. It is well settled position that the powers of the Board to take measures under section 11(1) and issue directions under section 11B of the SEBI Act are unfettered. The only condition for exercise of the power under section 11(1) under section 11B is that those sections can be invoked by the Board *inter alia* in the interests of the investors and the securities market. Sections 11(4) and 11A provides for specific directions that can be used by the Board in pursuit of the said objective and purpose. The power under section 11(1) and 11B is wide enough to encompass any other measures or direction that may be deemed necessary in the interests of the investors and the securities market. I, therefore, do not find any infirmity in the SCN as alleged by the Noticees.

19. The other contention of the Noticees is that complete inspection of the relevant documents relied upon in the SCN has not been provided to them. I note that several documents had been provided to the Noticees as Annexures to the SCN. In addition, the copies of the statement of Mr. Pandoo P. Naig and the statements (not used against the Noticees in the proceedings) made by other persons on behalf of Fincare and Precise were also provided to them on demand. Further, on March 28, 2013, the Noticees had inspected all Annexures to the SCN and Annexures to the Investigation Report, replies of Precise and Fincare in response to the *interim order* and other submissions of Precise and Fincare to SEBI and the correspondences between them and SEBI. I, therefore, do not find merits in the contentions of the Noticee in this regard.

20. The Noticees have further contended that they have not been provided with a copy of the Investigation Report. In this regard, I note that the Investigation Report is not evidence relied upon in the SCN. The findings of the Investigation Report have been narrated in the SCN which is a self contained document containing all the allegations and charges against the Noticees. In this regard, I note that in the case of M/s. Haryana Financial Corporation *vs.* Kailashchand Ahuja [2008(9)SCC31] Hon'ble Supreme Court had observed that -"*the theory of reasonable opportunity and*

principle of natural justice have been evolved to uphold the rule of law and to assist the individual to indicate his just rights. Whether, in fact, prejudice has been caused to an employee or not on account of denial to him of the report has to be considered on the facts and circumstances of each case. Even in cases where procedural requirements have been complied with, action cannot be ipso facto illegal or void, unless it is shown that non-observance has prejudicially affected the delinquent."

21. In my view, no prejudice would be caused to the Noticees, if the entire Investigation Report is not provided to them. I note that the SCN clearly mentions the provisions of law alleged to have been violated by Noticees and the basis of charges against them. Further, with regard to opportunity to cross-examine the certain entities as demanded by the Noticee, I note that the SCN does not rely upon the statements of any persons whose cross- examination is necessary in these proceedings. More particularly, SEBI is not relying upon any statement of any stamp vendor. Therefore, the question of providing opportunity to cross-examine the stamp vendor does not arise. I, therefore, do not find any violation of principles of natural justice in this case as contended by the Noticees.

22. The Noticees have also contended that they have not been provided with an opportunity to cross-examine the persons whose statements are relied upon in the SCN. In this case, since the statement of no third party other than the Noticees has been relied upon, the question of cross- examination of persons as sought by the Noticees does not arise. As regards the contentions of the Noticees with regard to opportunity to cross -examine the Officer of Additional Controller of Stamps Office, I note that as the said officer has not been called as witness and has only produced the information available on records of the Additional Controller of Stamps Office, the cross- examination of the Officer is not necessary.

23. The next contention of the Noticees is that the SCN proceeds on an erroneous understanding of the order dated January 20, 2012 passed by Hon'ble SAT wherein it had directed SEBI to pass an appropriate order considering Memorandum of Appeal of the Noticees against the *interim order* as their replies. According to the Noticees their replies have been used to improve and justify earlier actions. I note that the *interim order* read with the Clarificatory Order has culminated in the confirmatory order that was passed after considering their replies i.e. their memorandum of appeal. In my view, the contention of the Noticees in this regard is not tenable. Similarly, I note that the SCN also, at many places, relies upon the *interim order* and replies of the Noticees in response thereto. Legally, an *interim order* is based on *prima facie* case and not on the basis of final findings. Such *interim order,* as in this case, is also in the nature of a show cause notice and final view is taken on the SCN that is issued after completion of the investigation. In this case, the confirmatory order has been passed after completion of the investigation and the *interim order* read with Clarificatory Order has merged into the same. Further, since the SCN has been issued after completion of investigation and passing of the confirmatory order, it is not necessary to rely upon the *interim order.*

24. The Noticees have further contented that the SCN is akin to an order passed by SEBI on the Noticees' submissions made in their appeal before Hon'ble SAT. In this regard, there is no denying

the fact that a show cause notice should contain the allegations/charges and call upon the Noticees to submit their defence. In this case, I note that the SCN at few places though suggests conclusiveness, at many places, it uses the words such as 'it is alleged that', 'prima facie', etc.' Further, it has invited response/defence of the Noticees to the allegations and charges therein and has indicated that the appropriate directions may be issued on receipt of the replies of the Noticees. Thus, in my view, the SCN has not concluded the matter as contended by the Noticees. I, therefore, do not find any flaw in the SCN on this count also as alleged.

25. Having dealt with the preliminary objections of the Noticees, I now proceed to deal with the merit of the case. The regulations alleged to have been violated by the Noticees are reproduced hereunder:

ICDR Regulations, 2009

"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.*

(2) Without prejudice to the generality of sub-regulation (1):

(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."

Schedule III Part A Clause 2(IV)

"*(H) The disclosures of Risk factors shall include, where applicable, the following:*

'(24) A summary of the outstanding litigations, disputes, non-payment of statutory dues, overdues to banks or financial institutions, defaults against banks or financial institutions, contingent liabilities not provided for, the details of proceedings initiated for economic offences or civil offences (including the past cases, if found guilty), ……..., pertaining to the issuer, promoter and wholetime directors of the issuer and group companies, along with the nature of the litigation, quantum of funds involved, ……..'

'(31)All disputed or contested tax demands and other government claims, along with the disclosures of amount, period for which such demands or claims are outstanding, financial implications and the status of the case."

Public communications, publicity materials, advertisements and research reports.

60. *(1)*…….

(2)……

(3)…….

(4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:

(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;

(b)……

(5)……

(6)……

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(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;

Companies Act, 1956

63 Criminal liability for mis-statements in prospectus

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [fifty] thousand rupees], or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

Clause 49 (iv) (D) of the Listing agreement

(D) Proceeds from public issues, rights issues, preferential issues etc.

When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company.

Furthermore, where the company has appointed a monitoring agency to monitor Committee the monitoring report of such agency, upon receipt, without any delay. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

SEBI Act, 1992

12A. *No person shall directly or indirectly—*

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

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

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

SEBI (PFUTP) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

……

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

……

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

26. It is admitted position that the RHP of OCAL was registered with ROC on September 21, 2011. The prospectus was submitted to SEBI on October 10, 2011 and the allotment of shares pursuant to the IPO was completed on October 12, 2011.

Allegation regarding non-disclosure/misstatements/ insufficient disclosure in its RHP/ Prospectus:

27. The first set of allegations against the Noticees as alleged in the SCN is with regard to several misstatements/ insufficient disclosure in its RHP/ Prospectus. One of such allegations is that the internal risk factor no. 7 in the prospectus of OCAL merely mentions about the receipt of Income Tax demand notice of about ₹ 17.58 core against Mr. Pandoo P. Naig and no further details about

the Income Tax demand notice is given so as to give the full picture of said Income Tax demand notice, such as the period for which such demand was outstanding, value of transactions etc. was not mentioned in the said risk factor. Thus, OCAL has violated regulation 57 read with Schedule VIII Part A clause 2(IV) (H)(24) and clause 2(IV)(H)(31) of the ICDR Regulations.

28. I note that in terms of regulation 57 of the ICDR Regulations the RHP/Prospectus should contain all *'material'* disclosures which are true and adequate so as to enable the applicants to take an informed investment decision. Without prejudice to the same, the RHP/Prospectus should *inter alia* contain the disclosures specified in Schedule VIII of the ICDR Regulations. As per clause 2(IV)(H)(24) of Part A of Schedule VIII, the RHP/Prospectus should contain as risk factors a summary of the outstanding litigations, disputes, non-payment of statutory dues, etc., pertaining to issuer, its promoters and whole time directors along with the nature of litigations, quantum of funds. As per clause 2(IV)(H)(31) of Part A of Schedule VIII, the risk factors should also include all disputed or contested tax demands and other government claims along with the disclosure of demands, period for which such demands or claims are outstanding, financial implications and status of the case.

29. In this case, in item 7 of the Risk Factor at *page xvi* of the prospectus, it has been disclosed that :-
"Mr. Pandoo P. Naig one of our promoters has been served a notice of demand under section 156 of Income Tax Act, 1961 by the Indian Income Tax Department on December 28, 2010. This demand amounts to Rs. 175764665. Subsequently he has filed an appeal to the Commissioner of Income Tax (Appeals), Mumbai against the above demand amount and is currently under litigation. For further details of this case please refer to the section title "outstanding litigation and material development.
We do not foresee this development to affect the company business directly, but do however foresee issues of promoter liquidity and availability of time being affected."

Further, at Page 126 and 127 of the prospectus under the head *"OUTSTANDING LITIGATION, DEFAULTS AND MATERIAL DEVELOPMENTS"* following have been disclosed:

"Mr. Pandoo P. Naig one of our promoters was served a notice of demand under section 156 of Income Tax Act, 1961 by the Indian Income Tax Department on December 28, 2010. This demand amounts to Rs. 175764665. Subsequently he has filed an appeal to the Commissioner of Income Tax (Appeals), Mumbai against the above amount of demand and is currently under litigation."

30. From the above disclosures, I note that while all the disclosures with regard to the above demand notice as required in the above provisions of the ICDR Regulations were made in the prospectus, the disclosure with regard to period for which the income tax demand was outstanding was not made as required in clause 2(IV) (H) (31) of Part A of Schedule VIII. I note that regulation 57 contemplates disclosure of all '*material'* information in the offer documents. Similarly, with regard to disclosure of 'Risk Factors' in the offer documents, clause 1(IV)(C) of Part A of Schedule VIII of the ICDR Regulations stipulates that the Risk Factors should be determined on the basis of their

materiality. The words *"material"* and *"materiality'* have not been defined in the ICDR Regulations. However, as understood in the market parlance and also defined in Explanation to regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, *"material" means anything which is likely to impact an investors' investment decision.* In my view, the test to determine whether a fact is 'material' depends upon facts and circumstances of each case. In this case, all requisite substantial disclosures (except the period for which the Income Tax demand was outstanding) have been made and the lapse with regard to non- disclosure of period for income tax demand is technical and venial and does not warrant enforcement action against the Noticees on this count.

31. Another allegation against the Noticees with regard to disclosures is that OCAL failed to disclose in its prospectus the material developments with respect to its board resolution dated September 30, 2011. I note from the minutes of board meeting of OCAL held on September 30,2011, that during the period when the IPO was open for subscription, in the said board meeting of OCAL, following facts and circumstances were noted as back ground for passing the said resolution:
    (i) As disclosed in the Prospectus/RHP the IPO proceeds would be utilised *inter alia* towards the development of PMS business and other general corporate purposes. OCAL proposed to develop PMS business across India, through effective distribution channels. As per estimates OCAL would require 16,000 square feet of built up area for setting up of branches on lease basis for rendering its PMS business across India.
    (ii) OCAL has appointed Fincare and Precise to procure PMS mandate and identify suitable office premises to set up PMS branches across India and develop PMS business. As per their terms of appointment, OCAL was required to pay finder fees and advances for deposits/ out of pocket expenses, etc. for identifying suitable locations and rent/ license fees for the various premises so identified. Fincare and Precise had informed OCAL that they had already identified locations for offices for its PMS business and these locations were confirmed by management of OCAL to be ideal and best suited for the PMS businesses. However, the concerned parties are to be paid advances/deposits immediately and they are not ready to wait till IPO is over. Fincare and Precise had also requested OCAL to provide them additional short term fund, from time to time, required for their business. Finder fee in respect of some of the mandates already procured by them were also due and they had informed OCAL that unless the finder fee was paid they may not be able to ensure that the mandates would remain in favour of OCAL.
    (iii) In case immediate payment was not made, the locations would not be available to the OCAL and it may loose mandates procured by Fincare and Precise. The required funds were estimated to the extent of ₹ 12 crores. As IPO proceeds were to be available in third week of October 2011 and in view of the urgency of requirement of funds, OCAL contacted Mercury Fund Management Co Ltd. a Non Banking Finance Company and its associates who agreed to provide it the said amount in tranches as may be required.

32. In the above back ground, the board of OCAL passed necessary resolution on September 30, 2011 approving to borrow short term loans not exceeding ₹12 crores from Mercury and its associates for the purpose of immediate fund requirements to fund the development and setting of PMS business of the OCAL and other general corporate purposes including finder fee. By a resolution passed by the board of OCAL in the said meeting , Mr. Pandoo P. Naig, managing director of OCAL was authorized to negotiate and finalise the loan agreements, sign and execute any deeds, documents, etc. The board of OCAL also passed necessary resolution to make payments to Fincare and Precise towards setting up of branches of PMS Division, finder fees and meeting their short term funds requirements for an amount not exceeding , at any one time, ₹15 crores to Precise and ₹20 crores to Fincare. Mr. Pandoo P. Naig, Managing Director was authorized by the board to make payments to Fincare and Precise for setting up of branches of PMS division, finder fees and meeting their short term fund requirements.

33. The SCN has alleged that the OCAL failed to disclose above material developments that took place after registering the RHP with RoC and thus violated regulation 60(4)(a) of the ICDR Regulations.

34. I note that there is no dispute that above developments took place after filing of RHP and thus the question is not that the above developments should have been disclosed in the RHP. There is also no dispute that the above developments were not disclosed in the prospectus. Matter in issue here is whether the above developments were 'material' and thus were required to be disclosed in the final prospectus. The thrust of the argument of Noticees, in this regard, is that the resolution was in ordinary course of business and in furtherance of the objects for which the IPO proceeds could be utilized. Further, ICDR Regulations and Listing Agreements do not require disclosure of each and every decision and every single event. They require disclosure of only 'material developments'. In this case, the above developments were not 'material' but routine and were consistent with the objects of the IPO. Further, in order to invoke regulation 60(4)(a) it should also have been established that the said material developments had a '*material effect*' on the issuer. This ingredient is missing in this case. Therefore, allegations of invocation of regulation 60(4)(a) of ICDR Regulations are misplaced.

35. From the RHP/prospectus with regard to IPO of OCAL, it is noted that the disclosed objects for utilization of IPO proceeds include development of 'PMS business and other 'general corporate purposes' and this disclosure is not in question. I note that genuineness of the resolution dated September 30, 2011 is also not in question here, though there is charge in the SCN with regard to fraudulent diversion of IPO proceeds which is dealt with in later part of this order. While the PMS business is specific, the '*other general corporate purposes*' are general. I note that the RHP/ prospectus had disclosed '*other general corporate purposes*' as wide objectives for the business and operations of OCAL. From the minutes of the board meeting dated September 30, 2011, I note that resolutions dated September 30, 2011 were in furtherance of and related to the objects for which IPO proceeds were to be utilized. However, in my view, even if the developments are in furtherance of and relate to the objects disclosed in the RHP they need to be disclosed in terms of regulation 60(4) (a) of the

ICDR Regulations if they are *'material'* and fall in the scope of that regulation. On careful examination of this regulation 60(4) (a), I note that in terms of this regulation an issuer making an IPO, as in this case, is obligated to '*make prompt, true and fair disclosure of all material developments*' which '*may have material effect on the issuer'* and that take place between date of registering the RHP with ROC and the date of allotment of shares in the IPO. The disclosure in this regulation has to be promptly made by issuing a public notices in all news papers in which pre-issue advertisement was made.

36. I note that in the ICDR Regulations and also in the listing agreement the disclosure of the facts which are in the knowledge of the issuer depends upon their materiality. As discussed hereinabove, the test to determine whether a fact is *'material'* or not is subjective and depends upon facts and circumstances of each case. Thus, in the facts and circumstances of this case it needs to be examined whether the above developments were *'material'* and whether they had *'material effect on the issuer'*. It should be kept in mind that subscription in book-built issues, as in this case, happen in response to RHP itself. In this case, the above developments admittedly took place after filing of RHP and when IPO was open for subscription by applicants they were likely to impact the investment decisions of the applicants in the IPO as the liability incurred under the above said short term loans had to be paid out of the IPO proceeds. Thus, it can be safely inferred that those developments were '*material*'. The second limb for application of regulation 60(4)(a) is whether these material developments could have '*material effect'* on the OCAL in the facts and circumstances of this case. In this case, had the issue not been subscribed depending upon investment response of the investors the loan liability had to be discharged by the OCAL out of the IPO proceeds. Thus, these developments also had potential to materially affect OCAL in the facts and circumstances of this case. Thus, in my view, OCAL should have issued the required public notice promptly under regulation 60(4) (a) of the ICDR Regulations which it did not do.

37. It is admitted position that pursuant to above resolution dated September 30, 2011, OCAL had availed short-term loan of ₹11.5 crores from the Mercury and its associates (Prudential Group) as on October 13, 2011. Out of the said amount of ₹11.5 crores, OCAL had received a ₹2 crores on October 07, 2011 and ₹3 crores on October 08, 2011 which it transferred to Precise on the date of receipt of the funds. The said ₹5 crores was paid to Precise (₹2 crore for development of PMS business i.e. one of the objects of the IPO and ₹3 crore as finder fee for the IPO mandate of Paramount i.e. towards general corporate purposes, another object of the issue) before registering the prospectus on October 10, 2011. It was observed during investigations that the prospectus of OCAL under the head "funds deployed" mentioned that:"*We have not incurred any expenditure for the above mentioned objects as of date"***.** Further, at page 30 of the prospectus, under the head "Development of Portfolio Management Services" it was disclosed that: *"Presently, no expenditure has been incurred by us towards this objective"*. In view of the same, it has been alleged in the SCN that OCAL failed to disclose this material development as required in regulation 60(4) (a) of the ICDR Regulations. One of the basis of the allegation as per SCN is that when money is transferred, under whatever head, to

third parties, it amounts to 'expenditure'. Further, the agreements entered by OCAL with Fincare and Precise contain clause for payment of a 'drop dead' fee. The payment of 'drop dead' fee as contemplated in the agreements is 'expenditure' by its very nature, as the same is irrecoverable.

38. According to the Noticees, transfer of funds to Fincare and Precise should not be considered as 'expenditure' as no definitive arrangements for any office for PMS business has been made and they are holding the money on behalf of the OCAL as advance. Since Precise had already brought the mandate of Paramount Printpackaging Ltd. (Paramount) to OCAL, there was an obligation on it pay the agreed finder fee to Precise. So, the OCAL paid to Precise to settle its existing obligation towards Precise. Repayment/prepayment of loans is mentioned in RHP/Prospectus under the object (GCP). Funds designated as GCP have been used to repay short-term loans and not finder fees. Further, based on the "Drop dead" fees clause in the agreement, it cannot be concluded that transfer of funds was 'expenditure'. In this context, they have referred to the said clause which says that: *"In the event that Onelife decided not to go on for the above mentioned services/ activities at any stage, Precise will charge a flat drop dead fees of Rs 60 lakhs (Rupees Sixty Lakhs only) and refund the balance amount after deducting the amount already spent (including out of pocket expenses)."* Thus, the occasion for payment of 'drop dead' fees will arise only, when OCAL decides not to go on for the services/activities and not otherwise. Admittedly, when the RHP/Prospectus was filed OCAL had not decided not to go ahead with the services/ activities of Precise. Therefore, based on this clause pertaining to drop dead fees it cannot be concluded that transfer was in the nature of expenditure. Further, the drop dead clause was only in the agreement pertaining to Precise and not Fincare. Hence, there is no change from the disclosures made in the RHP.

39. I have carefully considered the above contentions. It is important to note that the subscriptions in the IPO were invited on the basis of the RHP and when RHP was filed the above facts and circumstances did not exist. When the issue was open for subscription the above developments took place. Such situation is governed by regulation 60(4) (a) of the ICDR Regulations as discussed above and if such developments fulfil the twin tests of that regulation, the obligation to issue requisite public notice is triggered. I do not agree that the payments made for the purposes of the disclosed objects such as GCP cannot be expenditures or cannot be covered under the scope of regulation 60(4)(a). In my view, general corporate purposes provide the framework for ongoing decisions and activities of the business. They may entail expenditure, loans, advances, etc. The question that remains is whether the above developments i.e. borrowing from Prudential Group and payment to Precise were 'material' that may have a *'material effect'* on OCAL so as to necessitate requisite public notice under regulation 60(4). I note that under regulation 60(4) (a) there is no exception from the obligation to issue public notice for the material developments taking place in furtherance of the disclosed objects including GCP. I note that the RHP/Prospectus had prominently disclosed that issue proceeds would be utilised for the purposes disclosed therein.

40. However, during the period when the issue was open the above arrangements of interim financing from Prudential Group and payments to Precise were made. These developments could influence

the investment decision of the applicants as they were applying on the basis of the statement that the IPO proceeds will be utilised for the stated objects as disclosed in the RHP. The interim liability incurred was to be discharged out of the IPO proceeds and had the issue not subscribed, the said liability had to be discharged by OCAL out of its working capital which, admittedly, was only to the extent of ₹ 51 lakh during the relevant time. Thus, these developments had potential to materially affect OCAL. In view of the above, I find that the above developments were within the scope of regulation 60(4) (a) of the ICDR Regulations and OCAL did not comply with the requirements specified therein and OCAL failed to issue public advertisement as required therein.

41. In my view, every money paid to a third party is not 'expenditure'. There could be payment/repayment of loans/ advances and other payments which are not expenditure. Further, the drop dead fee clause in the agreement of Precise does not suggest payments in the nature of expenditure as, in terms of the said clause, the money paid to Precise was refundable in the event OCAL does not avail its services. Such drop deal fee could be in the nature of expenditure. However, in this case, no drop dead fee was charged by Precise in terms of the agreement between it and OCAL. I further note that the finder fee paid by OCAL to Precise was definitely an 'expenditure' and this was required to be suitably disclosed in the final prospectus which OCAL failed to do. In this regard, I find that there was misstatement in the final prospectus that OCAL has not incurred any expenditure for the stated objects till the filing of prospectus.

42. Another allegation connected with above allegation is that though, admittedly, pursuant to the board meeting dated September 30, 2011 board of directors of OCAL had decided to avail loan against IPO proceeds and ₹ 5 crore was received by OCAL by October 08, 2011 i.e. before the date of prospectus, at item 17 at page 28 of the prospectus it was disclosed that: "Our *Company has not raised any bridge loans against the Issue Proceeds."* According to the Noticees the loans availed from Prudential Group were not "*bridge loans"* but were in the nature of short term loans availed by OCAL in view of the urgent need of funds, as explained above. They have contended that when a bridge loan is taken, the lender gets a lien on the issue proceeds by a charge over the bank account in which the IPO proceeds would be kept. According to them, if SEBI's interpretation were to be adopted, every company would have to come to a standstill right from the time of the DRHP to the IPO completion. In my view, in commercial and business parlance, a bridge loan is an interim loan until permanent or the next stage of loan/advance can be obtained. In this case, the loan obtained by OCAL was admittedly a short term loan. In the facts and circumstances alleged in the SCN, it was in the nature of an interim financing pending receipt of IPO proceeds. In my view, even if is assumed the said interim financing was not strictly a bridge loan, the question remains as to whether the developments with regard to such financing arrangements were required to be disclosed in the final prospectus or not. I have already dealt with this issue in above paragraphs and do not wish to further burden this order with the same. I, further, find that the disclosures about such material facts will be in the interests of investors and will not hamper the business operations of the issuer. I, therefore, do not agree with contentions of the Noticees that disclosures of such

material developments regarding interim financing or bridge loans, whatever it may be, would bring a company to a stand- still.

43. The other allegation in the SCN regarding misleading disclosures is that in the prospectus under the objects of issue, under head *"Purchase of corporate office"* it was mentioned that the OCAL had entered in a MOU with M/s Masala Gruh Properties Private Limited to purchase new office premises in Mumbai and it expected to receive possession of this premise in Fiscal year 2012. However, it was observed that as per the terms of the said MOU, in any event whatsoever, if the MOU was not followed by 'a definitive agreement' signed beyond June 13, 2011 the MOU was to be construed as fully cancelled. Hence as on date of filing of the RHP i.e. September 21, 2011 and date of prospectus i.e. October 10, 2011, the said MOU was not valid. The MoU was extended by way of a letter dated June 02, 2011. In this background, it has been alleged that neither RHP nor the prospectus mentioned that validity of above mentioned MOU was over and it was extended through a letter. According to OCAL, the SCN has misconstrued the statements made in the prospectus by selectively relying on extracts from it. It has submitted that the prospectus *inter-alia* stated at page 30 that OCAL has *"not entered into any definitive arrangements for establishing any office*". OCAL had not identified premises or locations from where it would provide portfolio management services. According to it, these disclosures are adequate and the RHP/prospectus disclosed accurate statement of fact that, at the relevant time. In the context of the SCN, the nature of a MoU needs to be examined. From legal point of view as well as in commercial parlance, a MOU is used to depict and embody the understanding of the parties, in- principle, without creating any right or obligation of binding nature. In essence, MOU is a simple and pure gentlemen's agreement which does not create any right or duty of binding nature. As held by Hon'ble Supreme Court in *CIVIL APPEAL NO. 4273 OF 2010- in Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* vide judgement dated May 7 2010 that technically; a MoU is not legally binding. Nevertheless, when a MoU forms backdrop of a plan or action, the plan or action has to be to be interpreted in the light of the MoU. It is also well settled principle that the true effect of a document depends on words used in it. In this case, I note that in terms of the MoU between OCAL and M/s Masala Gruh Properties Private Limited the parties thereto had to enter into a 'definitive arrangement' upto June 13, 2011. There is no dispute that by a letter dated June 02, 2011 the said MoU was extended. Legally, such understanding/ arrangements to extend the MoU can be made by exchange of correspondence also. In view of the same, I find that the mutual understanding between OCAL and M/s Masala Gruh Properties Private Limited as contemplated in the MoU was in existence and valid as on the date of filing of RHP and registration of the prospectus. Therefore, in my view, the disclosure about the existence of the said MoU was accurate. I, further note that the disclosure that the OCAL had "*not entered into any definitive arrangements for establishing any office*" was in line with the understanding contemplated in the MoU. I, therefore, do not find any fault in the disclosures made in the RHP and prospectus of OCAL in this regard as alleged.

44. The prospectus under the heading "Capital Structure" in section III of the prospectus mentions that, in year 2010, promoters introduced as paid-up capital in the company which was used for '*setting up the business viz. long term working capital expenses'* and a part of the same amounting to ₹ 9.445 crores was advanced to promoter entities. The Noticees have contended that none of the entries as set out in Annexure 8 of the SCN pertain to capital structure build up, save and except one entry wherein Mr. T.K.P. Naig has given an amount of ₹3,57,00,000 on November 15, 2010. It may be noted that Mr. T.K.P. Naig had subscribed to 44,00,000 shares by paying a total amount of ₹ 4,40,00,000. In so far as other entries are concerned it may be noted that fund transfers between group companies in the ordinary course are not abnormal or unusual. Prior to clearance of the draft offer document, SEBI had also raised queries with regard to capital structure and that point of time based on same facts, no queries were raised. Strangely, the very same build up of capital structure is now being looked at suspiciously. I note that total paid up capital, brought in by promoters by way of further allotment in 2010, was approx. ₹10 crore, out of which only ₹ 51 lakhs was retained by OCAL and substantial portion was transferred to promoter related entities as against the claim in the prospectus that this capital (Approx. ₹10 crore) was brought in by promoters for long term working capital of business.

45. I further note that as per the IPO proceeds utilization schedule at page no. 33 of the prospectus, the IPO proceeds were to be utilized by OCAL by the end of financial year 2014 in a phase-wise manner. Pending utilization of net proceeds, the funds with OCAL were to be invested in interest bearing liquid instruments. However, it is observed that almost all the IPO proceeds have been utilized by OCAL within two months of receipt of IPO proceeds as dealt with in later part of this order. From the description at page 32 of the prospectus, pertaining to the utilization of fund designated as GCP, I note that the funds under GCP were supposed to be used for strategic initiatives or unforeseen circumstances and also that as on October 10, 2011 i.e. date of prospectus, it was not decided how IPO proceeds designated as GCP were going to be utilized. However, in the meeting of OCAL dated September 30, 2011, it was decided to avail of short-term borrowing against the IPO proceeds to pay finder fees to Fincare and Precise. The said loan raised for finder fee payment was decided to be repaid with the IPO proceeds designated as GCP.

46. In my view, the above violations by OCAL of not issuing requisite public notice in terms of regulation 60(4)(a) of the ICDR Regulations cannot be said to be the violations of regulation 60(7)(a) of the ICDR Regulations as the requirements thereof apply with regard to advertisements and research report issued or caused to be issued in the context of the issue of securities. In the facts and circumstances of this case, the said regulation does not apply.

Allegation regarding Diversion OF IPO funds:

47. I note from the RHP/prospectus of OCAL that it has disclosed to utilise the IPO proceeds *inter alia* as under :

"Utilization of the Net Proceeds

The details of the utilization of net proceeds are per the table set forth below:

Sr. No.	Particulars	Amount (₹in millions)
1	Purchase of Corporate Office	70.00
2	Development of Portfolio Management Services	115.78
3	Brand Building	77.00
4	General Corporate Purposes	89.76
5	Issue Expenses	15.96
	Total	**368.50**

Means of finance

The above cost is proposed to be financed as under:

Sr. No.	Means of finance	Amount (₹n millions)
1	Proceeds of initial public offering	**368.50**
	Total	368.50

48. Further, the following were the objects of the issue as per the RHP/Prospectus-
    (i) Purchase of Corporate Office
    (ii) Development of Portfolio Management Service
    (iii) Brand building
    (iv) General corporate purpose.

49. It is undisputed fact that the IPO proceeds (₹ 36.85 crore) on October 14, 2011. It is alleged that most of the IPO proceeds were further transferred within a short span of time shown in the following Table:

Date of transfer	Transferred to	Amt (₹ crores)
14/10/11-21/10/11	Prudential Group	11.50
14/10/11 and01/11/11	Fincare	13.05
14/10/11-21/10/11	Precise	3.00
12/12/11-19/12/11	KPT Infotech Pvt. Ltd	7.70
	Total	**35.25**

50. With regard to above, OCAL has submitted that it had taken a loan of ₹11.50 crore from Prudential group for making advance payment to Precise (₹ 9 crore) and Fincare (₹ 2.50 crore) for "development of PMS business", one of the objects of the IPO and payment of finder fees. This loan was repaid out of IPO proceeds. Actual utilization of IPO proceeds was as per the following Table:

Transferee	Amt (₹ Cr)	Reasons cited by company
Fincare	8.54	For development of PMS business and payment of finder fee.
	7.00	Purchase of Corporate Office
Precise	12.00	Advance for setting up of PMS business and payment of finder fee
KPT Infotech (KPT)	7.70	Brand building
Total	**35.25**	

51. According to the OCAL, out of ₹ 35.25 crores mentioned above, ₹ 9.05 crores was paid as 'finder fee', ₹ 11.5 crores towards setting up offices for development of PMS, ₹ 7 crores for purchase of corporate office through Fincare and ₹ 7.7 crores for brand building.

52. It has been alleged that Fincare and Precise both were not financially sound and most of the money received by them was from OCAL and its related entities.

Fund transfer to Precise

53. The Precise was employed by OCAL to identify and set-up offices for its Portfolio Management Services. Precise had received total ₹12 crore from OCAL (₹ 9 crore towards" development of PMS" and ₹ 3 crore towards finder fee). It has been alleged that ₹ 2 crore transferred by OCAL to Precise on October 07, 2011 was further transferred to other entities the next day i.e. on October 08, 2011. It has been alleged that the entire monies received (₹12 crore) from OCAL were not transferred by Precise for the purposes claimed by OCAL but for an altogether different purpose.

54. OCAL has submitted that Precise had referred several IPO mandates to OCAL and has extensive working relations with a lot of small and medium enterprises which is a key focus area of OCAL. OCAL had submitted two agreements entered into between Fincare and OCAL (dated October 05, 2011) and Precise and OCAL (dated October 01, 2011) with regard to the appointment of Fincare and Precise for its PMS business. Precise had referred several IPO mandates to OCAL and has extensive working relations with a lot of small and medium enterprises which is a key focus area of OCAL. Precise had provided 4 IPO mandates totaling to issue size of ₹ 207 crore and the mandates would fetch a fee of ₹ 15.7 crore to OCAL. In terms of the agreement between it and Precise, OCAL was liable to pay a finder fee equal to 40% of its earning from the said mandates to Precise. OCAL has submitted that Fincare, was also appointed by OCAL for its IPO objective viz. "Development of Portfolio Management Services" and it was employed to identify and set-up offices for Portfolio Management Services for OCAL.

55. It has been *inter alia* observed during the investigation that :-

- As per Income Tax Returns for F. Y 2009-2010 and 2010-2011 of Precise the Gross Total Income of Precise was 'Nil'. From MCA website it was noted that Precise had filed its annual return for F. Y. 2008-09 on December 15, 2011 and for F. Y. 2009-10 and 2010-11 on December 14, 2011 and its name was mentioned in the defaulter list on MCA website.
- The office premises at *'E-2, Sainath Wadi, Nari Seva Sadan Road, Ghatkopar (W)'* from where it claimed to be operating since 2009, was a make-shift office. It did not have sufficient employees. It has claimed that it had provided services to a number of companies, for a variety of projects. However, absence of employees and meager stationery does not correspond with such claim.
- The "Leave and License Agreement" with regard to the above office premises executed on a non-judicial stamp paper of Rs 100 was dated December 01, 2009. However, on the basis of confirmation from the Additional Controller of Stamps, Mumbai, it was found that the said stamp paper was issued by General Stamp Office, Mumbai to Thane treasury only in September 21, 2011 (i.e. approx 2 year after the purported date of agreement). Thus, it has been observed that the leave and license agreement was created *post-facto* by over stamping false date on the said stamp paper.
- The finder fee agreement executed between OCAL and Precise, with respect to IPO of Paramount Printpackaging Ltd (hereinafter PPPL), dated January 20, 2010, was also *post facto* created as the non-judicial stamp paper of ₹ 100 used for the said finder fee agreement was issued by General Stamps Office, Mumbai only in the year 2011. Further, in the said finder fee agreement the name of the issuer was mentioned as 'Paramount Printpackaging Ltd' whereas its name was Paramount Printing Press Private Limited as on January 20, 2010 and was changed only later on June 2, 2010 to its present name. Similarly the finder fee agreement dated February 20, 2010 executed between OCAL and Precise with respect to IPO mandate of Trim Plastics Pvt. Ltd. on non-judicial stamp papers of ₹ 100 was also created *post facto* as the said stamp paper, on which the agreement was made, was issued from General Stamps Office, Mumbai in May 2011. Similarly, the finder fee agreement dated February 20, 2010 executed between OCAL and Precise with respect to IPO mandate of Trim Plastics Pvt. Ltd. on non-judicial stamp papers of ₹ 100 was also created *post facto* as the said stamp paper, on which the agreement was made, was issued from General Stamps Office, Mumbai in May 2011.
- All the finder fee agreements submitted by OCAL mention the present address of Precise even if those are claimed to be executed much before September 21, 2011. Hence, most of the finder fee agreements mentioning Precise as finder are forged and *post facto* created.
- Precise has raised invoice for payment of finder fee of ₹3.4 crores for the above mentioned mandate of PPPL. The said invoice bears signature of Mr. Pandoo P. Naig and a payment of ₹3 crores was also claimed to have been made against the said forged invoice.

Fund Transfer to Fincare

56. According to OCAL, Fincare had also referred several IPO mandates to it and it has expertise and connections in networking with Merchant Banking Organization, Stock Broking Companies, Portfolio Management Companies, Corporates, High networth Individuals, and Government bodies and strong liaison capabilities. However, similar facts and circumstances, as in case of Precise, were found during investigation with regard to Fincare. Some of those facts are as following-

- The income-tax returns of Fincare for the last 2 years were filed on December 22, 2011. As per ITR for F. Y 2009-2010 and 2010-2011 of Fincare, submitted by it to SEBI, the Gross Total Income of Fincare is shown Nil. From MCA filings it was also observed that Fincare filed its annual return for F. Y. 2008-09, F. Y. 2009-10 and 2010-11 on December 15, 2011. When investigation was taken up in the matter, Fincare was shown as a dormant company on MCA website.
- The office premises at '*Premises No 1, Rammanohar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084'* from where it claimed to be operating since 2009, was a make-shift office and hardly resembled a regular office which had been operating since February 2009. From the KYC documents obtained from the Bank it was observed that Fincare had a different address. Similar to Precise, Fincare too claimed to have used the old address to open the bank account in Indian Bank in June 2011.
- The "Leave and License Agreement" for the above premises of Fincare was executed on a non-judicial stamp paper of ₹100. The date of execution mentioned of the said agreement is February 19, 2009. On confirming with Additional Controller of Stamps, Mumbai, it was found that the said stamp paper was issued by General Stamp Office, Mumbai to treasury only in September 2011 (i.e. approx 2 year after the purported date of agreement). Further, most of the finder fee agreements between OCAL and Fincare, are dated before September 2011 however all of them mention the present address of Fincare where it was not existing. Thus, those finder fee agreements were also created post-facto to justify payments to Fincare by OCAL. Hence, Fincare had made false claim that it had been operating from the said office since 2009.
- OCAL submitted that Fincare had provided 6 IPO mandates totaling to issue size of ₹ 676 crore. As per OCAL, the mandates would fetch a fee of ₹ 33.1 crores to OCAL.

57. OCAL claimed to have made payment of ₹ 7 crores to Fincare on November 1, 2011 for making arrangement for "purchase of premises for corporate office" from Masala Gruh Properties Pvt Ltd (Masala Gruh). It is observed that OCAL had paid to Fincare ₹ 7 crore i.e. entire amount in advance. Immediately after receipt of above mentioned ₹ 7 crores from OCAL, Fincare transferred ₹ 4.33 crores to Onelife Gas Energy and Infrastructure Ltd. (OGEIL), a promoter entity of OCAL. OGEIL and OCAL have common promoter-directors. OCAL had submitted to Hon'ble SAT and SEBI that the said transfer was done by Fincare to repay the loan taken by Fincare from OGEIL on June 02, 2011. Bank account of Fincare was opened in Indian Bank, King Circle branch on June

02, 2011 only. On the same day, there was a receipt of ₹ 51.61 crores. and further transfer of ₹ 50.60 crores in/ from the account of Fincare which was claimed as receipt of loan amount of ₹51.61 crores from OGEIL by Fincare and further advancement of loan of ₹ 50.60 crores to Spark Pesticides Pvt Ltd (SPPL) by Fincare. A loan agreement with regard to the claimed loan from OGEIL to Fincare, bearing signature of MD of OCAL, Mr. Pandoo P. Naig and Mr. Mayank Bhatt, Director of Fincare was provided to SEBI. Investigation further revealed that there was no actual loan involved.

58. It is alleged that in the SCN that OCAL paid the complete amount in advance on November 01, 2011 whereas *interim order* was passed close to 2 months after that hence the said reason was not acceptable. There was no insistence by OCAL on Fincare for either purchase of property from Masala Gruh or for return of funds received for corporate office premises. On the contrary, OCAL approved of the work being carried out by Fincare and appreciated Fincare in its letter dated December 15, 2011 to SEBI.

59. Transactions of bank account of Fincare, OGEIL and SPPL on June 02, 2011 was carefully perused and following pattern of circular transactions was observed:

Date of Transaction	**Serial Number of Rotation**	**Receiver / Remitter**	**OGEIL**	**Fincare**	**SPPL**
02-06-2011		**Opening balance (in ₹)**	**44897.9**	**0**	**353247.25**
			₹ crores)	₹ crores)	₹ crores)
02-06-2011	**1**	**SPPL**	**9.4**		
02-06-2011		**Fincare**			**9.4**
02-06-2011		**OGEIL**		**9.4**	
02-06-2011	**2**	**SPPL**	**9.4**		
02-06-2011		**Fincare**			**9.4**
02-06-2011		**OGEIL**		**9.4**	
02-06-2011	**3**	**SPPL**	**9.4**		

Date of Transaction	Serial Number of Rotation	Receiver / Remitter	OGEIL	Fincare	SPPL
02-06-2011		**Fincare**			**9.4**
02-06-2011		**OGEIL**		**9.4**	
02-06-2011	**4**	**SPPL**	**9.4**		
02-06-2011		**Fincare**			**9.4**
02-06-2011		**OGEIL**		**9.4**	
02-06-2011	**5**	**SPPL**	**9.4**		
02-06-2011		**Fincare**			**9.4**
02-06-2011		**OGEIL**		**9.4**	
02-06-2011	**6**	**SPPL**	**9.4**		
02-06-2011		**Fincare**			**3.6**
02-06-2011		**OGEIL**		**3.61**	
02-06-2011	**7**	**SPPL**	**3.6**		
02-06-2011		**Fincare**			
02-06-2011		**OGEIL**		**1**	
		Closing Balance (in Rs)	**83944897**	**10100000**	**353247.25**

60. On June 02, 2011, SPPL transferred ₹9.4 crores first to OGEIL which OGEIL transferred to Fincare and Fincare returned it back to SPPL. The same funds were rotated 5 times on that day. It was observed that after these 5 rotations, the opening balance of none of the three was affected. After that SPPL again transferred ₹ 9.4 cr. to OGEIL however OGEIL transferred only Rs 3.61 cr.

to Fincare which transferred ₹ 3.6 crore to SPPL. Hence after this sixth rotation OGEIL received ₹5.79 crore, Fincare received ₹1 lakh and SPPL lost (account balance reduced by) ₹ 5.8 crore. After that, SPPL transferred ₹3.6 crore to OGEIL and then OGEIL transferred ₹1 crore to Fincare. After this no transactions were observed in the three accounts on June 02, 2011. Hence at the end SPPL transferred effectively ₹8.39 crore to OGEIL and ₹1.01 crore to Fincare. The same change can be observed from the difference in the opening and closing account balances of these three entities.

Fund Transfer to KPT

61. It is alleged in the SCN that OCAL transferred ₹ 7.7 crore to KPT Infotech Pvt. Ltd. (KPT) for "brand building". OCAL had submitted that though the fund was transferred to KPT but the MOU with KPT could not be entered due to SEBI order. It was observed that the fund was transferred to KPT from December 12, 2011 to December 19, 2011 whereas the said SEBI order was passed on December 28, 2011. OCAL might have identified the company i.e. KPT for 'brand building' prior to transferring the funds on December 12, 2011 therefore it had sufficient time to enter into MOU with KPT. It is alleged that OCAL was in the knowledge of the investigation being carried out in its IPO and transferred the funds in a hurry to avoid repayment in the event IPO proceeds are called back. The Article of Association (AoA) of KPT does not have the any provision of carrying out business for "brand building"/ advertisement for which the money was given to KPT. It was noted that KPT is located in Vadodara however its account is in Indian bank in same branch where OCAL, its other promoter entities, Fincare and Precise have their accounts.

62. From the bank statement of KPT it was observed that the entire money was transferred by KPT to Mr. Ashokkumar Fulabhai Patel one of the Directors of KPT. From the bank statement of Mr. Ashokkumar Fulabhai Patel, it was observed that out of ₹ 7.7 crores received from OCAL, an amount of ₹ 7.2 crores was transferred to M/s Chenaji Narsingji. Accordingly the details of this transaction was called for from M/s Chenaji Narsingji and found that the funds were used for purchase of gold in the name of Mr. Ashok Fulabhai Patel.

63. In view of the above, it is alleged that like Precise and Fincare, OCAL colluded with KPT too for diverting the IPO proceeds as evident from sequence of events such as claimed objective not being present in AoA of KPT, transfer of fund without entering into MOU, purchase of gold by the director of KPT out of IPO money, non-compliance of SEBI summons by KPT etc. It is further alleged that *interim order* dated December 28, 2011 only directed OCAL not to undertake any fresh business. It did not prohibit OCAL from carrying out the IPO objectives. Much before passing of the *interim order*, significant funds were transferred by OCAL to Precise, Fincare and KPT, as mentioned in earlier paragraphs. It is alleged that OCAL did not make any efforts to pursue with its claimed business for completion of IPO objective even after making full payment, in advance, to them. Instead OCAL has taken recourse of the SEBI *interim order* for not entering into agreement with KPT, not opening of PMS office, not purchasing corporate office etc. At the same time

OCAL submitted that money transferred to Precise and Fincare could not be called back from them to be deposited in escrow account as per direction of SEBI order. If OCAL could not call back proceeds, it should have made sure that the same were properly utilized by them and progress towards IPO objectives was made as is expected from a genuine entity in normal course. OCAL conveniently ignored that and submitted that since SEBI has passed *interim order*, Precise and Fincare have been requested to stop work.

64. The SCN alleged that OCAL diverted IPO proceeds through Fincare, Precise and KPT and was active with fraudulent motive with very beginning. The estimated requirement for IPO objective viz. "Development of Portfolio Management Services" was ₹ 11.5 crores arrived at by factoring in multiple times inflated property rental rates, a company with genuine intention would use genuine estimates rather than inflated ones to give impression of huge fund requirement. OCAL entered into false finder fee arrangements with Fincare and Precise to divert the IPO proceeds designated as General Corporate Purposes. All the three entities appointed have dubious credentials. In RHP/ Prospectus, OCAL furnished a plan to utilize the IPO fund in three years however it transferred almost all the IPO fund within a matter of just about two months however no progress towards objective was made. OCAL claimed to pay 40% of its income from handling the issue as finder fee to Precise and Fincare, way beyond accepted industry norms. OCAL claimed to pay a flat 20% as commission for identifying offices for its PMS business to Fincare and Precise, an activity which could have been undertaken by OCAL itself. All the agreements, claimed to be entered by OCAL with Precise and Fincare contain a clause of full advance payment.

65. Invariably all three entities i.e. Fincare, Precise and KPT were transferred about ₹ 35 crores out of IPO proceeds of₹ 36.85 crores in advance without any work progress. Fincare and Precise were claimed to be appointed as commission agent however they were transferred whole fund in advance rather that only commission amount. A portion of IPO proceeds was proved to be diverted to promoter entity. Precise and Fincare claimed to have bought diamonds out of fund received from OCAL from the entities whose bank KYC documents indicate them to be cloth merchant, general store etc. but a diamond merchant. All the above circumstances indicate that OCAL was operating with intent to defraud the investors.

66. The SCN also alleged that there were several contradictions and inconsistencies observed in the submissions made by OCAL as detailed in the SCN. The SCN also alleged that Pandoo P. Naig, MD of OCAL played a more active role as Fincare and Precise were his old acquaintances, in the board meeting dated September 30, 2011, he was authorized to take loan and also to make payments to Fincare and Precise, all forged/ post-facto created documents bear his signature. The SCN highlighted multiple instances which could usually be expected create reasonable doubts in the minds of non-executive/ independent directors.

67. I have considered the allegations in the SCN and the replies of the OCAL. OCAL has contended Fincare and Precise are independent legal entities and business arrangements between OCAL and

Fincare and Precise are legitimate and legal. Further, they are not front entities of OCAL and the allegation in that regard is not supported by any evidence. Precise and Fincare, though claimed to be separate entities, had striking similarities with regard to their status, capabilities mode and manner of dealings with OCAL, the bank accounts of Fincare and Precise and KPT being in the same bank and the same branch where OCAL, its promoters and other group entities have accounts, bank accounts being opened around same time i.e. Indian bank – King Circle branch, etc. as detailed in the SCN and such similarities and pattern of dealings cannot be mere coincidence. Looking at the dealings of OCAL with these entities, extra liberal attitude of OCAL with them and their complicity with OCAL in entire dealing, etc., I find that these entities were acting hand in glove with OCAL and were used by OCAL for the purpose of diversion of its IPO proceeds.

68. Another argument of the OCAL is that it has paid funds to tune of ₹ 9.04 crore (₹ 3 crore to Precise and ₹ 6.04 crore to Fincare) to the said entities as finder fees for the business brought to OCAL by them. In the facts and circumstances of the case brought out in the SCN, I note that Precise and Fincare did not have the competence, expertise or infrastructure to conduct business as stated by OCAL. I, therefore, find that the claim of OCAL is unfounded. In this regard, I further note that there are multiple circumstances such as the information filed by them with MCA, the income tax returns and annual returns, the facts observed by investigation during on-site visit, bank statements of Fincare and Precise showing insignificant transactions prior to their dealings with OCAL, lack of employees with Fincare and Precise etc in addition to back-dating of leave and license agreements of Fincare and Precise, are sufficient to establish that Fincare and Precise are not credible business partner as projected by OCAL.

69. According to OCAL Precise, Fincare and KPT are valuable business partners and have introduced them mandates for ₹ 883 crore. If they do not provide the requisite services the OCAL will use all possible means under law to either enforce the agreements with them or seek refund of the monies paid to them. I note that the contention as regards business referrals of ₹ 883 crore by Precise, Fincare and KPT is only presumptive and Precise, Fincare and KPT have only introduced the prospective clients. Further, introducing such mandates is not reflective of the financial standing of Precise, Fincare and KPT.

70. Further, the OCAL has contended that as on 31.3.2011 the total income of Precise is 3, 09,79,844/ and as on 31.3.10 the same is 2,94,38,650/. Further, as on 31.3.2011 Precise is having a reserves and surplus of 1,57,56,067/- and as on 31.3.2010 the same is 1,37,89,916/. Similarly, as on 31.3.11 the combined net worth of the directors of Precise was around ₹2 crores. Further , the main director of Precise , i.e. Mr. Daxesh Patel has been in business for more than 15 years and has be active in the engineering and consultancy business and is well networked in the business circles. I note from the income tax returns for the years 2009-10 and 2010-11 and auditor's report of Precise that its income is ₹ 3, 09,79,844 and ₹ 2,94,38,650 is not correct as total income include closing stock (Current asset). It is also to be noted that during Financial Year 2009-10, Precise made a purchases of goods

worth ₹ 1,56,29,815 and NIL sales. The purchased goods were valued (Closing Stock) at ₹ 2,90,04,765 as on March 31, 2010. Precise made no purchases or sales during Financial Year 2011-12 and the goods which were purchased in 2009-10 were valued at ₹ 3,07,54,789. It can be observed that due to the above valuation, the company reported a notional profit of ₹ 1,51,24,974 (₹ 17,50,024 in 2009-10 and ₹ 1,33,74,950 in 2010-11). These profits are not due to operations of Precise but are only notional profits which cannot be actually realized in cash and thus cannot be utilized by the company to meet any payments. In addition to the above, it is also to be noted that in the Income Tax Returns filed by the precise in 2009-10 and 2010-11, company itself reported that ₹ 17,50,024 and ₹ 1,33,74,950- respectively as notional profits. It can also be seen that Precise has never executed a sale of the items shown as current assets. In absence of any sale transaction by Precise, mere revaluation of the items shown as current assets cannot be treated as income. In my view, the net worth of the directors of a company is immaterial while considering whether the company is financially sound or not. In my view, the reasons brought out in the SCN are sufficient to highlight the case of collusion of OCAL with Precise and Fincare in the alleged plan.

71. I further note that the mandate of IPO of PPPL, OCAL claimed to pay 40% of its income from handling the issue, as finder fee to Precise as against a fixed fee of ₹ 60 lakhs payable to other finders for the same issue which is even less that 4% of expected earnings of OCAL from the issue. OCAL claimed to pay 40% of its earnings for all the issues claimed to be referred by Precise and Fincare. Similarly OCAL claimed to pay a flat 20% as commission for identifying offices an activity which could have been undertaken by OCAL itself. Such unreasonably high finder fee and commission payments coupled with the absence of adequate infrastructure, financial capability and expertise with the payees for rendering such services suggests motive of diversion of significant amount of IPO proceeds to these entities. In my view there is no merit in the contentions of OCAL because Precise and Fincare do not have a proven business track record, expertise in the small and medium enterprises which is the key focus area of operations of OCAL as claimed by it.

72. OCAL has further contended that the fund was utilized for the stated objects as disclosed in the prospectus i.e. General Corporate Purposes, PMS development, brand building, etc. In my view, general corporate purposes provide the framework for ongoing decisions and activities of the business corporate purposes. They cannot be meant for any or every purposes that are not within scope of business or operations of a company and that are not in its interests or in the investors of its shareholders. In the facts and circumstances brought out in the SCN I find that none of the payments made by OCAL were ever intended for those purposes. Further, OCAL has failed to establish its claim on the basis of any credible evidence. I therefore, do not find any reason to differ with the observations brought out in the SCN with regard to the diversion of IPO proceeds by OCAL for purposes other than those disclosed in the prospectus.

73. According to OCAL it stopped the work and did not enter into MOU with KPT due to pending proceedings .Further, Fincare and Precise were stopped from carrying out assignments due to

inquiries being carried out by SEBI. Such statements in my view are evasive because even after becoming fully aware of the SEBI inquiries it transferred IPO proceeds to KPT. OCAL has further stated that Fincare and Precise had provided two fully functional PMS offices and were to deliver two more such offices. OCAL has failed to establish its claim by any evidence and I do not find any reason to differ with the allegations in the SCN in this regard.

74. In my view, applying simple logic, it can be deduced that the date of sale of stamp paper by Local Stamp Vendor (LSV) cannot be a date prior to the date of supply of stamp paper by the General Stamp Office (GSO) to LSV.

75. Further, if the date mentioned on the stamp paper is earlier than the date of supply by GSO, then manipulation is certain. OCAL has claimed in its reply that six of the stamp papers mentioned in the information received from GSO have similar discrepancy. However, it could not produce any evidence to substantiate its claim as all such stamp papers were used by itself and Precise and Fincare who are alleged to be hand in glove with OCAL. I note that OCAL has filed an FIR against LSV with regard to alleged forgery of those stamp papers. However, for the purpose of this case, the issue needs to be examined on the basis of preponderance of probability. In this matter, I note that the probability is that any one or all of the persons who were in possession of these stamp papers at the relevant time could have been back dated them. They could be the LSV, purchasers or the users of these stamp papers. I am of the view that the back dating of stamp papers as in this case can be done in a circumstance where the parties want to enter an agreement on a back date. Even if it is assumed that the LSV had done such backdating of the stamp paper, there is no reason to believe that he has any incentive to do such back dating and he will do without connivance of others. I note that a finder fee agreement was entered between OCAL and Precise in January, 2010 for mandate of M/s Paramount Printpackaging Ltd. (old name Paramount Printing Press Private Ltd.). I note that on June 2, 2010 the name of Paramount Printing Press Pvt. Ltd. was changed to Paramount Printpackaging Ltd. OCAL has submitted that this was a typographical error and such serious charge cannot be leveled against it for such mistake. I am to view that such error is not possible as there was no chance that OCAL could have known the name for this company which was to be used in future. Similarly, the finder fee agreement with Precise for the IPO mandate of Trim Plastics Ltd., submitted by OCAL was also *post-facto* created and back dated with ulterior motive. It is apparently inconceivable how, in past, multiple non-judicial stamp papers can be provided to OCAL bearing series numbers which will be issued more than one year in future. In the facts and circumstances of this case, I find that the agreements impugned in the SCN were back-dated and were prepared *post-facto* to justify the fund transfers.

76. On November 1, 2011, Fincare received ₹ 7 crore from OCAL purportedly for purchase of office property for OCAL. Fincare on the same day transferred ₹4.33 crore to OGEIL. OCAL has contended that OGEIL, Fincare and OCAL are separate legal entities and hence transactions of Fincare with OGEIL does not concern OCAL. Further, Fincare has paid the money to OGEIL

against loan taken from OGEIL in June, 2011. Admittedly, OCAL and OGEIL have common directors and hence they are connected entities. The argument that OCAL and OGEIL are separate legal entities is of no help. The facts and circumstances particularly that Fincare was acting hand in glove with OCAL, Fincare did not have any business expertise, infrastructure, etc., OCAL and OGEIL are connected, substantial portions of funds (₹4.33 crore out of ₹7 crore) paid by OCAL to Fincare being transferred on the same day to OGEIL, clearly suggest that OCAL deliberately transferred ₹7 crore not for the objects of the IPO but for diversion of IPO proceeds. Further, no credible evidence has been provided regarding the loan advanced by OGEIL to Fincare. The circular transfer of funds as discussed above had been shown in SCN but OCAL has not provided any cogent explanation for the same. The explanation regarding why Fincare could not acquire the property even after two months from receiving the funds is also unfounded. I, therefore, find that the transfer of funds from OCAL to Fincare and Fincare to OGEIL was part of the scheme to divert the IPO proceeds.

77. The bank statement of OCAL, Fincare and Precise show that Precise and Fincare were also having dealings with the promoter/ group companies of OCAL even prior to their appointment by it. Funds were being transferred in and out of their accounts to the bank accounts of the promoter/ group companies of OCAL. There were multiple transactions between Precise and Fincare and the promoter/ group companies of OCAL involving crores of rupees and the funds were being rotated multiple times from one account to another on the same day or a couple of days. This indicates that OCAL was using Precise and Fincare to transfer money among the promoter/ group companies even prior to their appointment as vendors.

78. I further note that Precise and Fincare were appointed by OCAL as commission agent, however, they were paid in advance the entire project cost whereas at most they could have asked for their commission. Precise and Fincare were claimed to be offering variety of services to OCAL and for everything they asked OCAL to make advance payments. I note that IPO proceeds which were said to be utilized in phase-wise manner up to FY 2014 in the RHP was used in a matter of month and that too despite any progress towards any IPO object.

79. It is noted that KPT did not have the expertise or competency in the business of 'Brand Building' as brought out in the SCN. Admittedly, OCAL had paid ₹ 7.7 crore to KPT which was subsequently used to purchase gold in the name of director of KPT. OCAL has contended that it was not siphoning off as the money has not come back to the promoters of OCAL and has been used to purchase gold. OCAL was aware that KPT was not competent in the business of brand building. However, OCAL has made entire payment of ₹ 7.7 crore to KPT without entering into any formal arrangement. In my view, for the reasons stated in the SCN, this transfer of fund was also not for the stated objects of the IPO of OCAL.

80. The aforesaid facts indicate that the acts and omissions of OCAL and its managing director were 'fraudulent' as defined in regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) which reads as under:-

> ***Definition of 'fraud" – Regulation 2(1) (c).***
>
> *(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
>
> *(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
>
> *(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
>
> *(3) an active concealment of a fact by a person having knowledge or belief of the fact;*
>
> *(4) a promise made without any intention of performing it;*
>
> *(5) a representation made in a reckless and careless manner whether it be true or false;*
>
> *(6) any such act or omission as any other law specifically declares to be fraudulent;*
>
> *(7) deceptive behaviour by a person depriving another of informed consent or full participation;*
>
> *(8) a false statement made without reasonable ground for believing it to be true;*
>
> *(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*
>
> *And "fraudulent" shall be construed accordingly;*
> ……..*"*

81. In light of the aforesaid findings, I find that the above diversion of funds under a fraudulent device is squarely covered under the prohibition contained in regulation 3(a)(b)(c) and (d) and regulation 4(1),4(2) (f) and 4(2(k) of the PFUTP Regulations read with section 12A of the SEBI Act. In my view, in the facts and circumstances of this case, it is necessary to issue appropriate directions in this matter, in order to protect investors' interest and to safeguard the integrity of the securities market.

Liability of OCAL:

82. A company being a legal person having separate and independent existence than its shareholders acts through its board of directors who individually and collectively hold the position of trust and have fiduciary duties towards the company, the shareholders and others. However, while alleging such vicarious liabilities on the directors, the company should also be proceeded with for its defaults *(U.P. Pollution Control Board vs. Modi Distillary AIR 1998 SC 1128).*

Liability of the managing director

83. I note that Mr. Pandoo P. Naig is the managing director of OCAL. In this case, the SCN has alleged that the contraventions by OCAL were done with active involvement of its managing director Mr. Pandoo P. Naig and his three aides Fincare, Precise and KPT. I note that, in case of Managing Director, courts have usually held that he is, *prima facie*, deemed to be in charge and responsible for the conduct of business and management of the company and therefore liable for defaults.{*Garda Chemical Pvt LTD V. R Parthasarthy, Asst. Collector Central Excise [1984] 2 ECC 384*

[Bom]}. In this case, Mr. Pandoo P. Naig was in charge or control of the day to day affairs of the OCAL hence, he is responsible for all acts and omissions of OCAL. Further, he had been authorised to do all acts pursuant to the resolution dated September 30, 2011 and the violations as found in this case occurred with his knowledge and involvement. Therefore, he cannot escape liability for the acts and omissions as found in this case.

84. I note that the the directions issued vide *interim order* (except the one contained in para 14.7 thereof) read with the Clarificatory order are continued till date. Accordingly, the OCAL has been restrained till date from -

> (a) issuing any equity shares or other instrument convertible into shares in any manner and not to alter its capital structure in any manner;
> (b) undertaking any fresh business in its capacity as merchant banker, portfolio manager, stock broker and trading member ;
> (c) from buying, selling or dealing in securities directly or indirectly, except for dealing in shares for the limited purpose of fulfilling their existing obligations of underwriting for minimum subscription as per requirement under ICDR Regulations and do such other incidental acts in respect of those issue/s that were being dealt by it as on December 28, 2011.

85. Further, in view of the confirmatory order, the directions issued vide para. 14.6 *interim order* read with the Clarificatory order are continued against Mr. Pandoo P. Naig and he has been debarred from buying, selling or dealing in securities, directly or indirectly, till date.

Liability of directors other than managing directors

86. The allegations against other directors(non-executive/independent directors) other than managing director is that they have grossly failed in their duties and responsibilities towards the investors as they have failed to exercise independent judgment with reasonable care, diligence and skill as expected from them in their capacity as independent/non-executive directors. Several facts have been narrated in the SCN as basis of this allegation. It has been noted that Mr. T. Shridharani had resigned from the Board of the OCAL on December 29, 2011 and other directors still continue on its Board.

87. The independent directors are also part of the board of directors and hold such positions to impart corporate governance in the company. Their obligations towards contents of prospectus can be traced from the declaration given by them at the end of the prospectus wherein, as per Schedule II of the Companies Act, they declare that all the relevant provisions of the Companies Act and the guidelines issued by Government of India and SEBI have been complied with. There is no dispute that in this case all the directors of OCAL including its non-executive/independent directors had authorised the issuance of the prospectus which declared that all the requirements of ICDR Regulations have been complied with. In this case, OCAL has failed to comply with the

requirements of regulation 60(4)(a) when it did not issue the requisite public notice and has also failed to make various disclosures in the prospectus as found hereinabove. However, I find that the non-executive/independent directors in this case authorised the issuance of prospectus and they also approved the resolution dated September 30, 2011. For the purposes of the application of section 11, 11A and 11B of the SEBI Act, there is no distinction amongst the directors. However, as settled by courts a director may claim defense that the alleged violations did not occur with his knowledge, connivance or willful involvement. In this case, I note that there is no allegation that the default / violations as found in this case happened with connivance of non-executive / independent directors with OCAL and its managing director and they have been charged for failures in their duties and responsibilities of exercise of independent judgment with reasonable care, diligence and skill. I note that the Karnataka High Court in the case of *Nucor Wires Vs HMT [1998] 30 ClA, 319, [KAR*] has held that there must be specific allegation against a director and vague submissions are liable to be set aside. In the facts and circumstances of the case, I find that these non-executive / independent directors should have exercised due diligence, care and skill which they have failed to do as alleged in the SCN. I note that these directors have also been debarred vide the *interim order* dated December 28, 2011 from buying, selling or dealing in securities and the said debarment continues till date and they have been thus debarred for 20 months.

88. I further note vide order dated June 25, 2012, while disposing of the appeal of the Noticees against the *interim order* read with the clarificatory order, Hon'ble SAT had observed that if the Board was really concerned about freezing the funds which had been paid by the OCAL the direction could have been issued to Precise and Fincare who were also directed, by the same *interim order* not to buy, sell or deal in securities, directly or indirectly, till further directions. Hon'ble SAT further observed that the Board could have also considered issuing directions to these companies not to deal with the funds received from the OCAL.I note that the proceedings against these two companies i.e. Precise and Fincare are pending to date. I further note that the shares of OCAL are listed and traded and third party rights have been created in those shares.

89. Considering the above, I , in exercise of the powers conferred upon me by virtue of section 19 read with sections 11, 11A and 11B of SEBI Act, 1992 hereby issue the following directions:

    (a) Onelife Capital Advisors Ltd (PAN No. AAACO9540L) and its Managing Director Mr. Pandoo P. Naig (PAN No. ACNPN2800J) shall, jointly and severally, bring ₹35.25 crores i.e. the diverted IPO proceeds into the company from Fincare, Precise and KPT within six months from the date of this order;

    (b) The Board of Directors of OCAL shall ensure compliance of above direction and submit a monthly progress report in the above regard to SEBI. Further the Board of Directors shall also furnish to SEBI a Compliance Report duly certified by a SEBI registered Merchant Banker within two weeks of compliance of the above direction;

(c) Onelife Capital Advisors Ltd (PAN No. AAACO9540L) and its managing director Mr. Pandoo P. Naig (PAN No. ACNPN2800J) shall be remain restrained and prohibited from accessing the securities market and also prohibited from buying, selling and otherwise dealing in securities market, directly or indirectly, in whatsoever manner, for a period of 3 years from the date of the *interim order*;

(d) Other non-executive/independent directors of OCAL namely Mr. T. K. P. Naig (PAN No. ABIPN2653D), Mr. D. C. Parikh (PAN No. ACTPP2402L), Mr. A. P. Shukla (PAN No. AECPS3296Q), Mr. T. S. Raghavan (PAN No. AAFPR1521A) and Mr. T. Shirdharani (PAN No. AAIPS0065M) shall not take up any assignments as directors in any company for a period of one year from the date of this order.

90. The show cause notice dated February 26, 2013 is accordingly disposed of. A copy of the order shall be served on NSE and BSE where the shares of the Onelife Capital Advisors Ltd are listed for necessary compliance.

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

DATE : August 30th , 2013
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA