BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 99-102 /2014]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

1. Bharatiya Global Infomedia Limited [PAN: AABCB8175B]
2. Shri Rakesh Bhatia [PAN: AHYPB7406Q]
3. Shri Sanjeev Kumar Mittal [PAN: AIVPM0122A]
4. Shri Rajeev Kumar Agarwal [PAN: AGGPA0436L]

In the matter of
IPO of BHARATIYA GLOBAL INFOMEDIA LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') upon noticing wide fluctuations in the price of the scrip of Bharatiya Global Infomedia Limited (hereinafter referred to as 'BGIL / Noticee No. 1') initiated a preliminary investigation. Noticee No. 1 had come out with an Initial Public Offering (hereinafter referred to as 'IPO') during the period of July 11, 2011 to July 14, 2011. The preliminary investigation, *inter alia,* revealed that the proceeds of the IPO of Noticee No. 1 were transferred to various entities with a likely purpose of siphoning off and/ or diversion of funds. It was *prima facie* revealed that BGIL had suppressed material facts in the offer document like utilization of IPO proceeds, payment for Inter Corporate Deposits (hereinafter referred to as 'ICD'), payment to vendors etc.

2. Based on the preliminary findings, an ad interim ex-parte order was passed by SEBI on December 28, 2011, *inter-alia,* debarring Noticee No. 1 i.e. the issuer company-BGIL from raising any further capital from the securities market,

and its directors Shri Rakesh Bhatia (hereinafter referred to as Noticee No. 2), Ms. Arti Bhatia, Shri Sanjeev Kumar Mittal (hereinafter referred to as Noticee No. 3), Mr. Anil Kapoor, Mr. Sanjay Kapoor, Mr. Harjeet Anand, Ms. Jaya Mishra and the Manager (Finance) Shri Rajeev Kumar Agarwal (hereinafter referred to as Noticee No. 4) from buying, selling or dealing in the securities market in any manner and prohibiting Almondz Global Securities Ltd (Almondz), its CEO and the Head of its Merchant Banking from taking up any new assignment or involvement in any new issue of capital including IPO, follow-on issue from the securities market, in any manner. Noticee No. 1 was also directed to bring back the amounts invested in ICDs and all amounts transferred / paid out of IPO proceeds to its directors or relatives of its directors or HUFs belonging to any of its directors or associate or subsidiaries or group companies and deposit the same in an escrow account together with all other IPO proceeds that were still lying unutilized with the company across all its bank / deposit accounts or in any investments including in mutual funds. These directions were confirmed vide SEBI orders dated September 21, 2012 and October 05, 2012.

3. Upon further investigation carried out for the trading on the first day of listing and scrutinisation of the Red Herring Prospectus (RHP)/Prospectus and the fund utilization, certain discrepancies / manipulations were observed which are stated as under:

a) wrong / inadequate disclosures with respect to utilization of IPO proceeds as stated in RHP & prospectus;
b) Non-disclosure of source of funds already deployed and to be repaid from the IPO proceeds;
c) Investments done in contradiction with RHP / Prospectus;
d) Non-disclosure of related party transaction;
e) Diversion of IPO proceeds to promoters and promoter related entities;
f) Funding certain clients out of the IPO proceeds who had in turn indulged in creation of false and misleading appearance of trading in the securities market by creating artificial volumes in the scrip of BGIL on the listing day by indulging in structured/synchronised/reversal and circular trades and giving exit to certain allottees and other entities;

g) wrong certification by audit committee

4. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violations of the provisions as mentioned under Section 12A (a), (b) and (c) of the Act read with Regulation 3(a),(b), (c),(d), 4(1), 4(2) (a), (d), (e), (f) and (k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 (hereinafter referred to as PFUTP Regulations) and Regulations 57(1), 60(4)(a), 60(7)(a) and Clauses 2(VII)(G), 2(VIII)(B)(5)(b) and (6), 2(IV)(H)(18), 2(VIII)(B)(5)(a) and 6((a) and 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57(2)(a)(ii) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ICDR Regulations) against the Noticee Nos. 1 to 4.

Appointment of Adjudicating Officer:

5. I have been appointed as the Adjudicating Officer, in place of previous Adjudicating Officer, vide order dated August 29, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HA and 15HB of the Act the alleged violation of the abovementioned provisions of PFUTP and ICDR Regulations by the Noticees.

Notice, Reply & Personal Hearing:

6. The Noticees were issued a common notice dated May 06, 2013 (hereinafter referred to as SCN) in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violations. The following allegations were leveled against the Noticees in the SCN:

(i) BGIL did not disclose the source of financing of funds already deployed (w.r.t. ICDs' of □7 crore before RHP date) and the relevant details viz., the means and source of financing, including details of bridge loan or other financial arrangement, which were later repaid from the proceeds of the issue in the RHP.

(ii) RHP did not contain true, fair and adequate disclosures so as to enable the applicants to take an informed investment decision such as.

(a) The actual vendors details were not disclosed.

(b) Payments made to the vendors were not disclosed.

(c) Disclosed wrong vendors' names in the RHP.

(d) Wrong disclosure of " *we have not yet placed orders for 81.48% of our plant and machinery, equipments, etc*"

(e) Non disclosure of ICD repayment of ₹7 crore from IPO proceeds

(f) Wrong disclosure made w.r.t. payment to Avance Technologies

(iii) Prospectus did not contain true, fair and adequate disclosures so as to enable the applicants to take an informed investment decision. The issuer company did not make prompt, true and fair disclosure of all material developments which took place between

- the date of the RHP and the date of allotment of securities,
- date of prospectus and date of allotment of securities through public notices in all the newspaper in which the company had issued pre-issue advertisement;

(a) Additional Rs. 8 Crore was raised through ICDs. In total, ICD amount of ₹15 crore was not disclosed.

(b) The actual vendors' details were not disclosed.

(c) Payments made to the vendors were not disclosed.

(d) Disclosed wrong vendors' names in the Prospectus.

(e) Non disclosures of purchase of office at Kolkata, agreements entered with Dhanmangal Developers Pvt. Ltd. and made payment of 2.5 crore

(f) Non disclosure of availing services and payments to Jupiter Infra energy from IPO proceeds

(g) Non disclosure of ICD repayment of ₹15 crore from IPO proceeds.

(h) Wrong disclosure made w.r.t. payment to Avance Technologies

(iv) Non disclosure of the related party transactions,

(v) Furnished wrong statements on the utilization of IPO proceeds along with the quarterly statements to the stock exchanges.

(vi) diversion of the IPO funds by BGIL

(vii) Wrong certification provided by the promoters, directors, independent directors and the Finance Manager on the RHP & Prospectus stating that all disclosures made in the offer document were true and correct,

(viii) The company had perpetrated a fraud on the investors as the RHP provided wrong, non disclosures and diverted the IPO proceeds,

(ix) The directors who were part of audit committee failed to exercise their role of giving their recommendations on funds utilization other than stated in the RHP and prospectus.

7. The SCN was sent to the Noticees by Registered Post Acknowledgment Due. The said SCN was delivered only to Noticee No. 2 and was returned undelivered with respect to other Noticees. However, as a common SCN was sent to the Noticees, the delivery to one was treated as delivery to all as the Noticee No. 2 is the Director of Noticee No. 1. Vide separate letters dated May 27, 2013 the Noticees acknowledged the receipt of the SCN and requested six weeks time to submit their replies in the matter. Again, vide letters dated July 08, 2013, another request of 45 days extension to file replies in the matter was made by all the Noticees.

8. However, as considerable time was already granted to the Noticees to file replies in the matter, an opportunity of personal hearing was granted to the Noticees on October 08, 2013. The hearing notices were even sent by e-mail to the company. The hard copies of the hearing notices were returned undelivered. In the meanwhile, vide identical letters dated September 25, 2013, the Noticees filed their replies in the matter. Vide e-mail dated October 04, 2013 the Noticees confirmed attendance for the scheduled hearing on October 08, 2013. However, vide another e-mail dated October 07, 2013 the Noticees requested for adjournment of the personal hearing and to grant another opportunity in the month of November, 2013. The said request was acceded to and accordingly, another opportunity of personal hearing was granted to the Noticees on November 11, 2013 vide notice dated October 29, 2013. The said hearing was not attended by the Noticees. Ultimately, vide notice dated January 09, 2014, a last and final opportunity of personal hearing was granted to the Noticees on January 30, 2014. The Authorized

Representatives attended the said hearing and made oral submissions and further requested two weeks time to file additional reply. Vide letter dated February 12, 2014, the Noticees filed additional submissions in the matter.

Consideration of Issues, Evidence and Findings:

9. I have carefully perused the charges against the Noticees as per the SCN, written submissions made by the Noticees and the materials as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticees have violated the provisions of Section Section 12A (a), (b) and (c) of the Act read with Regulation 3(a),(b), (c),(d), 4(1), 4(2) (a), (d), (e), (f) and (k) of the PFUTP Regulations and Regulations 57(1), 60(4)(a), 60(7)(a) and Clauses 2(VII)(G), 2(VIII)(B)(5)(b) and (6), 2(IV)(H)(18), 2(VIII)(B)(5)(a) and 6((a) and 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57(2)(a)(ii) of ICDR Regulations?

(b) Does the violations, if any, on the part of the Noticees attract any penalty under Sections 15HAand 15HB of the Act?

(c) If yes, what should be the quantum of penalty?

10. Before proceeding further, it will be appropriate to refer to the relevant provisions which read as under:-

Relevant provisions of the SEBI Act, 1992:

Section 12A. *No person shall directly or indirectly –*

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a 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 there under;*

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

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or*

proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;

Relevant provisions of PFUTP Regulations:

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.*

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:—*

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*
(b).....
(c).....
(d) *paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;*

(e) *any act or omission amounting to manipulation of the price of a security;*
(f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
(g)....
(h)....
(i)....
(j)....
(k) *an advertisement which is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*

Relevant provisions of ICDR Regulations:

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).....
(ii) *the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.*

Public communications, publicity materials, advertisements and research reports.
60 (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;*

60 (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;*

SCHEDULE VIII
PART A
[See regulations 14(3), 37(a), 44, 45(1)(f), 57(2)(a) and 57(2)(b)]

(2) *An issuer making a public issue of specified securities shall make the following disclosures in the offer document. However, an issuer making a fast track issue of specified securities may not make the disclosures specified in Part B of this Schedule in the offer document. Further, an issuer making a further public offer of specified securities may not make the disclosures specified in Part C of this Schedule, in the offer document, if it satisfies the conditions specified in para 2 of that Part:*

(VII) Particulars of the Issue:

(G) *Sources of Financing of Funds Already Deployed: The means and source of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue.*

(VIII) About the Issuer:

(B) Business Overview

(5) Purchase of property:

(a) As respects any property referred to in sub-clause (b):

(i) the names, address, descriptions and occupations of the vendors;

(ii) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the issuer is a sub purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(iii) the nature of the title or interest in such property acquired or to be acquired by the issuer;

(iv) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the issuer or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the issuer had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

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

(i) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the issuer's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(ii) as respects which the amount of the purchase money is not material.

• for the purpose of this clause, where a vendor is a firm, the members of the firm shall not be treated as separate vendors.

• if the issuer proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried.

(6) Land :

(a) The names of the entities from whom the land has been acquired/ proposed to be acquired alongwith the cost of acquisition, along with the relation, if any, of such entities to any promoter or director of the issuer.

(b) Details of whether the land acquired by the issuer is free from all encumbrances and has a clear title and whether it is registered in the name of the issuer.

(c) Details of whether the issuer has applied/ received all the approvals pertaining to land. If no such approvals are required to be taken by the issuer, then this fact may be indicated by way of an affirmative statement.

(d) The figures appearing under this section shall be consistent with the figures appearing under the section "Cost of the Project".

(IV) Risk Factors:

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

(1).....

(2).....

(3).....

(4).....

(18) *The relationship, if any, of the entities from whom the issuer has acquired the land or proposes to acquire land, with any of the promoters or directors of the issuer, along with the relevant details.*

(XVI) Other Information:

(B) Declaration:

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

11. I find the following from the investigation report and SCN dated May 06, 2013:

I. Wrong / Non Disclosures w.r.t. Utilization of IPO Proceeds

(A) Wrong statements / Mis-utilization of Fund utilization:

(i) The objects of the issue as mentioned in the RHP / Prospectus were as under:

S. N.	Description	□in lakh
1.	To set up its owned corporate office at Noida for □3.96 crore. BGIL has entered into MoU with M/s Gadeo Electronics to take over the said firm having immovable property at Noida for total consideration of □5.96 crore. Out of the said sum, BGIL had already allotted 2,00,000 shares at a price of □100 each as part consideration. The balance □3.96 crore was to be paid in cash through the IPO proceeds.	396.00
2.	To buy a 4000-5,000 sq ft branch office premises between Vile Parle (W) and Jogeshwari (W) in Mumbai	593.60
3.	To buy machineries i.e. computer hardware and software for the Digital Post Production Studio at Mumbai.	1365.46
4.	To expand the IT division at Mumbai and Noida.	839.21
5.	To expand the R&D centre.	656.73
6.	Repayment of bank borrowings	269.72
7.	Meeting long term working capital requirements	505.00
8.	General Corporate Purpose	650.00
9.	Issue expenses	277.36
	Total	5553.08

(ii) Upon investigation, it was observed that BGIL had informed the stock exchanges on November 14, 2011 alongside its quarterly financial statements that the IPO proceeds had been utilized as per the objects of the issue. However, the IPO proceeds had not been utilized as mentioned in the RHP/Prospectus. A comparison of the objects of the issue as stated in the RHP and utilization of the proceeds as observed from the relevant bank statement of BGIL till November 15, 2011 indicated that the utilization of IPO proceeds was substantially different from the objects of the issue , the identified vendors and the timelines prescribed in the RHP/Prospectus. The details are as under:

S. N.	**Category**	**To be utilized as per RHP/Prospectus □in crore**	**Utilized (as per company) □in crore**	**Utilized □in crore (investigation findings)**
1	Setting up its owned corporate office at Noida	3.960	0.410	0.410
2	Relocation of branch office at Mumbai	5.936	4.024	1.524
3	Up-gradation of Digital post production studio	13.655	9.389	0.000

4	Investment in IT division	8.392	3.910	0.400
5	Expansion of R&D Technology centre and advance made to Avance technologies (paid before IPO and recovered from IPO fund)	6.567	4.321	0.035
6	Repayment of bank borrowing	2.697	2.931	2.931
7	Working capital requirement	5.050	4.9106	2.396
8	General Corporate expenses	6.500	2.115	0.855
9	Meeting the issue expenses	2.774	2.690	2.690
Total		**55.53**	**34.70**	**11.241**

(iii) Thus, it was observed that out of ₹ 34.70 crores of fund utilization, as claimed by BGIL, ₹ 23.46 crores (34.70-11.241) i.e. 67.60% of the funds were not utilized for the categories as mentioned in the table above as mentioned in the RHP / Prospectus.

(B) Wrong disclosures w.r.t. vendor's details and non disclosures of new vendors & payment details:

(i) It was disclosed in the RHP dated June 28, 2011 & prospectus dated July 16, 2011 as to how the IPO proceeds were intended to be deployed and names of the suppliers/vendors. Further, the time schedule i.e. expected month of commencement / completion for the major items was also mentioned in RHP/Prospectus. As per the said disclosures, certain vendor names were mentioned as suppliers for up-gradation of digital post production studio and Investment in IT division. However, BGIL did not pay / place order to these vendors/suppliers. The investigation revealed that BGIL had placed orders and made payments before the RHP date, before the Prospectus date and before the date of allotment of securities date. The names of actual vendors, quotations date and payments date are as under:

S. No	Supplier Name	Quotation date	Payment date	*Buy order date*	*Invoice date*	*Amount □in lakh(as per invoice)*	*Total as per invoice □in lakhs*	*Amount paid □in lakh (as per bank account)*	*Total paid as per bank accoun t □in*	*Remarks*
1	Houston Technologies Ltd.	20-Jun-11	21-Jun-11	*20-Jun-11*	*07-Sep-11*	*175.94*	*430.07*	*191.4*	*439*	*Quotation as well as the payments date were before the RHP date*
2			23-Jun-11	20-Jun-11	16-Sep-11	221.77		178.6		
3			24-Jun-11	20-Jun-11	12-Sep-11	32.36		69		
4	Quantum Hi-Tech Merchandising Pvt. Ltd.	20-Jun-11	23-Jun-11	-	28-Sep-11	35.14	35.14	36	36	Quotation as well as the payments date were before the RHP date
5			28-Jun-11		12-Sep-11	134.87		130		
6					09-Sep-11	65.89				

7					14-Sep-11	44.62				
8	Vivid IT Solutions Pvt Ltd.	02-Jul-11	02-Jul-11	-	04-Jul-11	1.11	1.11	1.11	1.11	Quotation as well as the payments date were before the prospects date
9	Himalayan Times Pvt. Ltd.	28-Jun-11	02-Jul-11	-	16-Sep-11	57.94	144.29	60	140	Quotation date was on the RHP date and payments date were before the prospectus date
10			05-Jul-11		19-Sep-11	39.46		80		
11					21-Sep-11	46.89				
12	Millennium Automation & Systems Limited	21-Jun-10	06-Jul-11	02-Sep-11	02-Sep-11	17.13	233.82	50	200	Quotation date was on the RHP date and payments date were before the prospectus date
13			06-Jul-11	03-Sep-11	03-Sep-11	56.5		50		
14			08-Jul-11	06-Sep-11	06-Sep-11	160.19		100		
	Total					1089.81	1089.81	1066.11	1066.11	

(ii) It was observed from the table above that out of 14 instances, the date of quotations on 13 instances were on or prior to RHP date and in one instance (i.e. Vivid IT Solutions Pvt. Limited) the quotation date is prior to the prospectus date as well as the allotment of securities date. It was also observed that □6.05 crore was paid to the vendors on or before the RHP date and □4.61 crore was paid to the vendors before the prospectus date as well as the allotment of securities date. One of the vendor's quotations was dated June 21, 2010 i.e. about a year back but even then, it neither appeared in the RHP nor the Prospectus. The said observations indicate that BGIL had finalized the vendors and made payments too. However, it was alleged in the SCN that BGIL did not disclose the actual vendor's details and suppressed these details in RHP and the Prospectus.

(C) Non disclosure of purchase of office space at Kolkata and respective payments in prospectus:

(i) It was observed that BGIL in the statement submitted to the stock exchange on the utilization of IPO proceeds had indicated that it had spent □2.50 crore for the purchase of office. The agreements submitted by BGIL had revealed that the payments of □1 crore on July 02, 2011 and □1.5 crore on July 05, 2011 (which is within 3 days of the RHP date and before the date of securities allotment and prospectus date) were made to one Dhanmangal Developers Private Limited (Dhanmangal) as advance for the total consideration of □5 crore for the purchase of a office space at Kolkata. However, the said transaction was not disclosed in the Prospectus nor any public notice was

issued in this respect as mandated under the ICDR Regulations. The said regulation states as under:

Regulation 60 (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;*

(ii) Though, the company mentioned in the RHP/Prospectus about expanding into new geographies, it was also mentioned in the same paragraph of RHP / Prospectus that *"As on the date of this Prospectus, we have not entered into any commitment for any strategic initiatives."* Further, as per page 73 of RHP it was stated that "*Except as stated in section titled "Objects of the Issue" appearing on page no.29 of this Red Herring Prospectus, there is no property which our Company has purchased or acquired or propose to purchase or acquire which is to be paid wholly, or in part, from the net proceeds of the Issue or the purchase or acquisition of which has not been completed as on the date of filing of this RHP / Prospectus with SEBI."* In view of the said statements in the RHP/Prospectus it was alleged that the disclosure made was wrong and misleading since BGIL suppressed and failed to disclose these details.

(iii) Further, upon examination of the transaction between BGIL and Dhanmangal, the following was revealed:

- The agreement did not contain the construction/plot address/location of the relevant property.
- Dhanmangal Developers Private Limited, incorporated on Jan 08, 2010, with Rana Pratap Singh and Navin Kumar Sharma as directors and having its registered office at 255, Canal Street (VIP Road), Sribhumi, Kolkata, West Bengal. 700 048. Form 23AC submitted to MCA on Sep 02, 2011 revealed that the company did not have any fixed assets, capital work in

progress, investments, inventories or sundry debtors for both the financial years 2009-10 & 2010-11.

- The company had only cash & Bank balances of □3.43 lakh and loans & advances of □77.72 lakh.
- Dhanmangal submitted vide its letter dated July 27, 2012 that they are in the business of development of agriculture land levelling.
- Dhanmangal did not undertake any real estate projects during the year 2009-10, 2010-11 and 2011-12.
- Dhanmangal did not have any employees other than the directors.
- Dhanmangal did not have any project approval, etc from competent authority which contradicts the agreement entered between BGIL and Dhanmangal.

(iii) In view of the above, it was alleged that BGIL had deviated from the purposes of utilization of IPO proceeds as mentioned in the RHP / Prospectus.

(D) Non disclosure of availing services from Jupiter Infraenergy Limited

(i) It was observed that BGIL had entered into an agreement with one, Jupiter Infra energy Limited (JIL) on July 1, 2011 for various critical services for a consideration of □5 crore and accordingly, made payments of □251.50 lakh to JIL. Out of ₹ 251.50 lakh, it was noted that □30 lakh was paid before the prospectus date as well as the date of allotment of securities. However, the said payment and availing of services was neither disclosed in the prospectus nor any public notice was issued as required under the ICDR Regulations. The details of the payments made to JIL are as under:

Sl.No	Date Of Transaction	Amount in □
1.	29-06-2011	15,00,000
2.	04-07-2011	15,00,000
3.	01-08-2011	45,00,000
4.	04-08-2011	1,76,50,000
	Total	**2,51,50,000**

(ii) The bank account statement of JIL reveal that these funds have been transferred back to BGIL - □7.50 lakh and one another entity, Number one Finvest - □173.25 lakh (Group Company). In total □180.75 lakh was transferred back to BGIL & its group company. It was observed that these funds had

moved from JIL immediately to BGIL and its group company and □32.45 lakh cash was withdrawn by JIL. Hence, it was alleged that BGIL had diverted the funds from the IPO proceeds which were meant for other purposes and JIL acted as a conduit for the said diversion of IPO proceeds. The extract of the bank statement of JIL, including the date and time of deposit and the withdrawal, is as under:

Row #	Date of txn	Branch code	Brnch name	Particulars	Value date	Cheque no	Dr/cr	Amount
4	29/06/2011 1:28:48 pm	5081	Electronic pay and settlmnt offce	Bharatiya global infomedia ltd-180200194	29/06/2011		C	15,00,000
5	29/06/2011 3:33:13 pm	9044	Nehru place delhi	Casa cheq withdrawal	29/06/2011	115505	D	9,50,000
7	01/07/2011 2:44:56 pm	9044	Nehru place delhi	By tr cuckoo realtech lt 90441010014465	01/07/2011	112521	C	2,60,000
8	01/07/2011 2:48:10 pm	9044	Nehru place delhi	Casa cheq withdrawal	01/07/2011	115506	D	8,05,000
9	04/07/2011 1:47:03 pm	5081	Electronic pay and settlmnt offce	Bharatiya global infomedia ltd-185200185	04/07/2011		C	15,00,000
10	04/07/2011 3:05:13 pm	9044	Nehru place delhi	To tr bharatiya global i 90771010001070	04/07/2011	115507	D	7,50,000
11	05/07/2011 2:58:37 pm	9044	Nehru place delhi	Casa cheq withdrawal	05/07/2011	115508	D	7,50,000
12	01/08/2011 11:10:48 am	5081	Electronic pay and settlmnt	Bharatiya global infomedia ltd-213200056	01/08/2011		C	45,00,000
13	03/08/2011 3:16:11 pm	9044	Nehru place delhi	Jk metal feeders-synbh11215456710	03/08/2011	115509	D	45,00,000
14	04/08/2011 11:46:28 am	9044	Nehru place delhi	To clg (rej): j k metal	04/08/2011	452287	C	45,00,000
15	04/08/2011 11:46:28 am	9044	Nehru place delhi	To clg j k metal	04/08/2011	452287	D	45,00,000
16	04/08/2011 11:54:18 am	5081	Electronic pay and settlmnt	Bharatiya global infomedia limited-66392	04/08/2011		C	1,76,50,000
17	04/08/2011 12:04:47 pm	9044	Nehru place delhi	To tr number one finsec 90441010015230	04/08/2011	115511	D	23,25,000
18	04/08/2011 12:09:49 pm	9044	Nehru place delhi	To tr number one finvest 90441010013835	04/08/2011	115512	D	1,50,00,000

(iii) Upon further investigation, the following was observed with respect to the relationship of BGIL and JIL:

- JIL was originally incorporated as Jupiter Capital Services Private Limited (JCSL) in the year 1994 and Noticee no. 2 and Arti Bhatia (100 each, 200 out of 700 shares) were the shareholders of JCSL.
- During the year 2004, BGIL had become one of the major shareholders of JCSL (24%). Noticee No. 2 (Promoter of BGIL) was a director till 2005. Subsequently, JCSL's name changed to Jupiter Infraenergy Limited, during the year 2008.
- Noticee No. 4 (Manager-Finance & one of the key persons of BGIL), Kartik Share Traders (P) Ltd., (in which Noticee no. 4 is one of the directors) become major shareholders of JIL as on September 2009 & 2010. As on March 2012, JIL was holding more than 1.68% shares in BGIL i.e., 26,637 shares. JIL had nil income for the years 2007-08 & 2008-09.
- Narender Kumar Jena, Uma Shankar Behera and Latesh Kumar were the directors of JIL since 2005. Upon analysis of BGIL's employee list, employee's attendance details and salaries details paid for the month of Oct 2011, it is observed that one Mr. Narendra Jena and Uma Shanker Behera were working with BGIL as office boy & hardware maintenance and drawing the monthly salary of □8450 and □17550, respectively. The PAN details of Uma Shanker Behera (hardware maintenance of BGIL) (ALLPB8040K) and date of birth of Mr. Narendra Jena (PAN: AHJPJ2984Q & DOB: 12/05/1982) it was observed that they were also the director of JIL. It was also confirmed from the MCA website that Narendra Jena's(director JIL) address "601, Devika Tower, Nehru Place, New Delhi, 110019, Delhi, INDIA" is the same that of BGIL's address.
- The above analysis shows that the employees of BGIL are the directors of JIL and holding major shares. Uma Shankar Behera and Narendra Jena are also one of the shareholder of BGIL (holding 7000 shares and 1500 shares respectively). Narendar Jena is also the director of Cuckoo Realtech Limited which is one of the shareholders of Kriti communication private Limited and Number one finvest private limited (group company of BGIL).

(E) Wrong disclosure w.r.t. the percentage of purchase order placed for the equipments, etc.

(i) It was observed from page vii of the RHP/Prospectus that BGIL had stated that *"we have not yet placed orders for 81.48% of our plant and machinery, equipments, etc, for our proposed expansion as specified in the objects of issue."* which indicates that the company had placed orders only for 18.52% (100 (-) 81.48). However, upon investigating into the said issue, it was observed that BGIL had placed orders of □30.64 crore i.e. 55% as on the Prospectus date as well as the date of allotment of securities and for □16.03 crore i.e. 29%as on RHP date. The details are as under:

S. N.	Objects of the issue / IPO proceeds	Advance Paid □in crore on or before RHP date	Advance Paid □in crore on or before Prospectus date	Amount to be utilized □in Crore
68.	Purchase of office premises - Noida	2.00	-	3.96
69.	Purchase of office space at Kolkatta (not mentioned in RHP)	-	0.30*	5.00
70.	Up gradation of digital post production studio and investment in IT division	6.05	4.61	10.66
71.	Expansion of R & D centre	2.65	-	6.02
72.	Various critical services	-	2.51	5.00
Total		10.70	9.62	30.64

*additional 2.21 crore was paid on Aug 01 & 04, 2011

(ii) In view of the above, it was alleged that the disclosure made by BGIL that 'the orders were not yet placed for 81.48 %' was misleading and wrong.

12. Reply by Noticees:

The Noticees vide their separate but identical replies dated September 09, 2013 made the following submissions with respect to the allegation of wrong / non-disclosures with respect to utilization of IPO proceeds:

- In para no. 1 of page 35 of the prospectus, it is clearly stated that *"We are also negotiating with several suppliers and the actual supplier may vary from the one mentioned above."* Since, the terms offered by the final vendors were much better and cost effective from the vendors disclosed in the prospectus and that BGIL had disclosed that the actual vendors may be different from those mentioned in the prospectus, BGIL made advance payments to the new

vendors for taking advantage of competitive costing. The Noticees further submit that had the disclosures of these vendors been made in the prospectus, it would not have had any adverse impact on the informed investment decisions of any investor as the company had merely changed the vendors without change in the inter-se allocation of funds as well as the purchase of equipments and machinery.

- Further, on the same page of the prospectus, it was clearly mentioned that *"Our company plans to meet the above expenditure out of the proceeds of this issue. However, pending receipt of the issue proceeds we might be required to make certain initial payments/ deposits with the vendors / suppliers in order to avail the competitive rate quoted by them in their quotations."* Therefore, it is submitted that there was no wrong intention in hiding the details of the vendors. The change in the vendors was in overall interest of the company.
- The Noticees submitted that the payment made to Mr. Raj Kanwar and land transaction with Dhanmangal are not related inter-se. The payment of ₹ 1.40 crores was made to First Blue Home Finance Limited on behalf of Raj Kanwar towards purchase of office space in Mumbai and utilized under Heading "Setting up of office in Mumbai." It was no where stated that the payment of ₹ 1.41 crores was not made to Mr. Raj Kanwar and hence the said statements cannot be treated as contradictory.
- With respect to payments made to Dhanmangal, the Noticees submit that the said deal was entered into keeping in mind the objective of establishing PAN India presence for the company and get maximum advantage and business opportunities for the company and in turn for its shareholders. The same was ratified by its shareholders in Postal Ballot in March 2012. However, as the SEBI objected to the said deployment of funds, BGIL has called back the amounts and it is submitted by BGIL that a sum of ₹ 50 lakh has already been recovered. Further, BGIL submits that efforts to recover the balance amount are being made which will be recovered soon.
- Vide its additional submissions BGIL submitted that as per the IPO guidelines of SEBI which makes it mandatory for the issuer company to appoint the merchant Banker in order to carry out the obligations related to issue and to file offer documents with the Board through merchant banker, Almondz was

appointed as the merchant banker for the said issue. Further, an IPO requires a great deal of work, from filing the necessary paperwork with the regulatory bodies and writing a prospectus for potential investors to devise and implement a sales campaign for the sale of the initial shares under the guidance, direction, authority and supervision of merchant banker who is registered and recognized by SEBI. In this system and structure, it is the merchant banker who monitors and controls the information, documents to be submitted to SEBI because all correspondence and dealing has to be done by Merchant Banker with SEBI. Issuer does not have any contact or approach or dealing with SEBI in either way but through its merchant banker. This is the reason, even SEBI does reply on the due diligence report of the Merchant Banker to issue the green signal to the issuer for an IPO.

- During the process of IPO, the company did disclose all the material facts from time to time to the merchant banker and even cooperated in the due diligence and independent audit done by it. The Merchant Banker was very much aware about each and every development and change which may or might affect the informed decision of the investor. The Merchant Banker was the best judge to take decision regarding which disclosures are required to be made in the offer document or which were not.
- Vide letter dated March 15, 2014, BGIL has submitted that the actual utilization of the IPO proceeds as on December 31, 2011 stood at ₹ 43.88 crores. Further, the break-up of the IPO deployment till December 31, 2011 has also been attached.

13. <u>FINDINGS</u>:

(A) <u>Wrong statements / Mis-utilization of Fund utilization:</u>

- I find from the available records that as per objects of the issue mentioned in the RHP/prospectus, the IPO proceeds to the tune of ₹ 55.53 crores were to be deployed on the set objects. However, upon examining the bank statements of the company, I find that the utilization of IPO proceeds was substantially different from that of the objects of the issue. As on November 2011, the company had claimed that ₹ 34.70 was utilized towards the objects of issue but the actual

amounts utilized were only ₹ 11.241 which denotes that 67.60% of the funds were not utilized for the categories mentioned in the RHP/Prospectus.

- Now, as submitted by BGIL, as on December 12, 2011, the utilization of IPO proceeds towards the objects of issue stood at ₹ 43.88 crores, which even if taken to be a correct information, is again in deviation with what was mentioned in the RHP/Prospectus. I find that the said information is not supported with any documentary evidence like bank statements or ledger reports which show that the said monies have actually been deployed towards the objects of issue. In view of the same, I conclude that the company made wrong and misleading statements in the prospectus and mis-utilized the IPO proceeds.

(B) Wrong disclosures w.r.t. vendor's details and non disclosures of new vendors & payment details:

- Upon perusal of the material available on record I find that BGIL in its submissions has not denied the fact that it had placed the purchase orders with the entities/vendors other than the ones which were mentioned in the RHP/Prospectus. BGIL has also not denied the fact that the said new set of vendors details were not disclosed in the RHP/Prospectus nor any public notice was issued to that effect. Further, I find that BGIL in its submissions has stated that - merely changing the vendors name will not lead to any disclosure requiring notice or advertisement in the newspaper. However, in the present case I find that there was a wrong disclosure of vendors' details in the RHP/Prospectus and no change was made in the said list of vendors as the vendors were already shortlisted and accordingly, payments were also made to these vendors before the RHP/Prospectus/Date of allotment of securities. This fact is clearly explained in paras/table enlisting the vendor details above. Out of 14 instances, the date of quotations on 13 instances were on or prior to RHP date and further, it is noted that the date of quotations for all the 14 instances were prior to the prospectus date as well as the allotment of securities date. It is pertinent to mention that out of the said list, one of the vendor’s

quotations namely, Millennium Automation & Systems Limited was dated a year back (i.e. June 21, 2010) and still the same was not disclosed in the RHP and the Prospectus.

- It is noted that □6.05 crore was paid to the vendors on or before the RHP date and ₹10.66 crore payments were made before the prospectus as well as the before the date of allotment of securities. Further, I note that these vendors were paid from the ICD loan of □15 crore raised by BGIL which was also not disclosed in the RHP/Prospectus and no public notice was issued. Upon examining material available on record, I also note that repayment of these ICD loan so taken was ultimately repaid from the IPO proceeds.
- The said wrong disclosures is nothing but suppression of facts and therefore, I find that the company has knowingly made wrong disclosures vis-a-vis vendors details in the RHP/Prospectus. Further, I do not find merit in the submissions made by the Noticees that mere change in the vendors' name will not lead to any disclosure requiring notice or advertisement in the newspaper. In my view, the details of the vendors who were paid out of the IPO proceeds are important and material facts in nature and the investors should be aware of the utilization of the funds. Therefore, I find that the Noticees have made wrong disclosures with respect to the new vendor details and payments made in this regard.

(C) <u>Non disclosure of purchase of office space at Kolkata and respective payments in prospectus:</u>

- Upon perusal of the investigation report, SCN and the submissions of the Noticees, I note that BGIL has not denied the fact that it did purchase office space at Kolkatta and made payments to Dhanmangal which was not disclosed in the RHP/Prospectus and no public notice was issued in this respect. BGIL stated that "*Dhanmangal Developers who are coming up with a few new commercial projects. We have made an advance to acquire commercial space in their upcoming projects keeping in mind the future growth and expansion of the company in the important business regions of India i.e. Eastern & Southern Regions, thereby creating PAN-India presence*."

- However, it is mentioned in the RHP/Prospectus that *"As on the date of this Prospectus, we have not entered into any commitment for any strategic initiatives."* It is also mentioned in the page 73 of Prospectus that "*Except as stated in section titled "Objects of the Issue" appearing on page no. 29 of this Prospectus, there is no property which our Company has purchased or acquired or propose to purchase or acquire which is to be paid wholly, or in part, from the net proceeds of the Issue or the purchase or acquisition of which has not been completed as on the date of filing of this Prospectus with SEBI."*

- Hence, I note that BGIL did not make any disclosure on purchase of office space at Kolkata and about the respective payments made to that effect in RHP/Prospectus nor did it come out with any public notice. I also find that the advance payment to Dhanmangal was made within 3 days from the date of RHP and before the date of allotment of securities and prospectus date. The reply of BGIL that it had assumed Dhanmangal as development and construction of buildings company and that it was not aware about the Dhanmangal's activities is not convincing as no company will invest ₹5 crore without exercising any due-diligence.

- Further, the agreement between BGIL and Dhanmangal clearly shows that they are into the business of development of agriculture land levelling. The said agreement did not contain the construction / plot address / location of the relevant property. Also, Dhanmangal did not undertake any real estate projects during the year 2009-10, 2010-11 and 2011-12. Further, the documents filed by Dhanmangal with MCA clearly show that the company had only cash & Bank balances of □3.43 lakh and loans & advances of □77.72 lakh.

- In view of the above, I find that the company by making payments to Dhanmangal to the tune of ₹ 2.5 crores has utilized the IPO proceeds for the purposes other than the ones mentioned in the RHP/Prospectus. Further, I also note that BGIL in its submissions has stated that it has called back the monies so paid to Dhanmangal and that the company has been able to recover a sum of ₹ 50 lakh only till date. The fact that the monies to the tune of ₹ 2.5 crores were deployed for more than two

years for purposes other than as disclosed in RHP/Prospectus and that only a sum of ₹ 50 lakhs has been recovered till date by the company out of the total sum deployed has to be viewed seriously.

(D) Non disclosure of availing services from Jupiter Infraenergy Limited

- I find that BGIL in its reply has not denied making payments to JIL and the fact that the said monies were returned to BGIL and its group companies immediately. Further, the Noticees have also not said anything on the allegation that the employees of JIL viz., Mr.Narendra Jena and Uma Shanker Behera were working with BGIL as office boy & hardware maintenance and drawing the monthly salary of □8,450 and □17,550, respectively. I find that out of ₹ 251.50 lakhs which were transferred to JIL, it had transferred back ₹ 180.75 lakhs to BGIL and its group company immediately. However, ₹ 32.45 lakhs still remained with JIL and the disclosures to that effect were not made in the RHP/Prospectus. As ₹ 30 lakh was paid to JIL before the prospectus date as well as the date of allotment of securities, I conclude that BGIL did not make the disclosures to this effect in the prospectus nor did it publish any public notice as required under the ICDR Regulations.

(E) Wrong disclosure w.r.t. the percentage of purchase order placed for the equipments, etc.

- BGIL in its submissions has completely transferred / shifted the responsibilities of making proper disclosures in the RHP/ Prospectus on the Merchant Banker and has stated that the documents and information relevant was provided to the Merchant Banker and therefore, the Merchant Banker has defaulted in making the disclosures in the RHP/Prospectus. The Noticees did admit that the percentage of purchase order placed for the equipments as disclosed in the RHP/Prospectus was different than the actual. Therefore, I am of the view that wrong disclosures were made by the Company in the RHP/Prospectus.

II. NON DISCLOSURE OF SOURCES OF FUNDS ALREADY DEPLOYED AND TO BE REPAID FROM THE IPO PROCEEDS

14. It was observed that BGIL has taken certain ICDs and made investments. During investigation, BGIL had made certain submissions with respect to the said ICDs taken and investments and the said submissions were categorized as the same had three different versions. The following are the three versions in which BGIL had made submissions:

(a) Version I: SEBI had sought details from BGIL regarding the utilization of IPO proceeds. Vide letter dated December 02, 2011, BGIL had informed SEBI that, it had taken □12.5 crore ICD's before the IPO which were repaid from the IPO proceeds.

(b) Version II: When complete details on each of the amounts debited from IPO proceeds was sought, BGIL had submitted a table which indicated that □5 crore ICDs were given and □ 26.62 crore was paid towards repayment of ICDs taken, thereby, modifying its previous response.

(c) Version III: Upon further queries raised with BGIL wherein it was asked to provide the copies of the ICD agreements and highlight the inflow of these ICDs in the bank accounts, BGIL had submitted another set of new information, indicating 'ICDs repaid' totalling □15 crore, ICDs given □12.5 crore, repayment of business loan of □2.77 crore and normal business transaction of □1.35 crore.

15. While scrutinizing these ICD details, it is observed that BGIL had taken ICD for a sum of □7 crore prior to RHP date and had not disclosed the same in the RHP. Similarly, another ICD of □8 crore was taken before the Prospectus date as well as the date of securities allotment and it was neither disclosed in the prospectus nor any public notice was issued. The RHP and the Prospectus contained the disclosure that "*our company has not raised any bridge loan against the proceeds of the present issue*". The details of the ICDs given are as mentioned in the table below:

Sl.No	Party Name	MoU / Letter	Received	Amount in	Period
1.	Krishna trade & Commerce Pvt. Ltd.	09.6.2011	21.6.2011	2.000	Before the RHP date
2.	Aachman Vanijya Pvt. Ltd.	10.6.2011	22.6.2011	2.000	

3.	Sajal Impex Pvt. Ltd.	21.6.2011	22.6.2011	0.475	
4.	Dinosour Tradelink Pvt. Ltd.	26.6.2011	27.6.2011	1.000	
5.	Divyadrishti Traders Pvt. Ltd.	26.6.2011	27.6.2011	0.525	
6.	Subhshree Hirise Pvt. Ltd.	26.6.2011	27.6.2011	1.000	
7.	Skylight Distributors Pvt. Ltd.	28.6.2011	29.6.2011	1.000	
8.	Times tradelink Pvt. Ltd.	18.6.2011	30.6.2011	1.000	Before the date of allotment of securities as well as before the prospectus date
9.	Makesworth Projects Developers Pvt.	01.7.2011	04.7.2011	1.000	
10.	Affluent Dealcom Pvt. Ltd.	04.7.2011	04.7.2011	1.000	
		05.7.2011	05.7.2011	0.500	
11.	Abhilasha Exports Pvt. Ltd.	05.7.2011	06.7.2011	1.000	
12.	ETL Infrastructure Finance Ltd.	05.7.2011	05.7.2011	1.500	
		07.7.2011	07.7.2011	1.000	

16. It was observed that no agreement was entered into while taking the above ICD and only the memorandums in the form of letters were available. Though these memorandums did mention the rate of interest applicable, BGIL did not pay any interest and repaid the principal value till November 15, 2011. Therefore, it can be said that the said ICDs were provided to BGIL at no cost for such a huge amount i.e. □15 crore for the period of a month.

17. From the above table, it is noted that ICDs for an amount of ₹ 15 crores were taken by BGIL which added to the total liabilities of the company by around 60%, as compared to the position on Mar 31, 2011 and resulted in approximately 100% jump on current liabilities. Further, upon examining the bank account statements of BGIL, it was observed that the ICD amount was used to pay the vendors whose identity was not disclosed (refer to para 11 (I) (B) above). These ICD's were repaid from the IPO proceeds. As per the Regulation 57(2) (a) read with Schedule VIII Part A Clause 2 (VII) (G) of the ICDR Regulations, BGIL has to disclose the said details in the RHP under the heading of "Sources of funds already deployed", the means and sources of financing including details of bridge loan or other financial arrangements, which may be repaid from the proceeds of the issue. However, it was alleged that no such disclosure was made by the company.

18. Reply of Noticees: The Noticees in their reply dated September 25, 2013 made the following submissions with respect to the allegation of non disclosure of sources of funds already deployed and to be repaid from the IPO proceeds:

- ICDs were given for an amount of ₹ 12 crores and ICDs were taken for an amount of ₹ 15 crores. The error in reporting the figures crept in due to pressure and time constraint. In anxiety to submit the reply to the regulator in time, clerical staff, inadvertently gave the information to your good office.
- The Board of Directors were well in power to borrow ICDs within the limit of paid up share capital and free reserves and the same was disclosed by the Company in its prospectus (at Page No. 90) under the heading "Details of borrowing powers" which stated that: As per the provisions of Section 292 of the Companies Act, 1956, the Board of Directors are authorized to borrow from time to time, any sum of moneys, on such terms and conditions and with or without security as the Board of Directors may think fit under the provisions of Section 292 of the Companies Act, 1956 i.e. within the limit of the paid-up share capital of the Company and its free reserves. As the amount of ICD received is ₹ 15 crore which is well within the limit of Share Capital plus Free reserves of the company i.e. ₹ 32.35 crore, as on the date of taking these ICD loans, the Board was not required to take any specific approval or sanction for the same.
- Further as regards the non availability of agreements, BGIL submitted that as the Company enjoyed such a reputation in the market the lenders were willing to advance loans to it without entering into any written agreements and therefore, it should not be taken as any contravention.
- The company filed its DRHP for approval on November 10, 2010. The Business plans scheduled in the DRHP was about to take off in the month of January 2011. However, the final observations were received from SEBI in the month of April 2011 and subsequently, the Prospectus was finalized in the month of July. Due to this delay, the Business Plans of the Management which were in pipeline got delayed for a period of six months. As BGIL required funds for implementation of these plans and also to take advantage of the competitive pricing offered to it by the vendors, the company was forced to borrow money and it all did in the

best interest of company and its shareholder and to save the business of the company in such a critical situation with bona fide intention.

19. **FINDING**: I find that BGIL had taken ICDs before the RHP date as well as the date of allotment of securities & prospectus date. The ICDs so taken accounted for ₹ 15 crores. Further, the ICDs for such a huge amount were taken by BGIL without entering into any agreements and only memorandums in the forms of letters are on record. The said ICDs of □15 crore should have been added to the total liabilities of the company. However, I note that the said disclosures were not made in the RHP/Prospectus. Further, upon perusal of the bank statements of BGIL, I find that the ICD amount so raised was used to pay the vendors whose identity was suppressed and not disclosed by BGIL in RHP/Prospectus as already mentioned in the earlier paragraphs and subsequently, these ICD's were repaid from the IPO proceeds. The said sequence of events clearly shows that BGIL has utilized the IPO proceeds for purpose other than the one mentioned in the RHP/Prospectus and there is a clear deviation from the same. The company entered into a financial arrangement by taking the said ICDs and therefore, the company cannot say that the same was not a necessary disclosure.

III. INVESTMENTS IN CONTRADICTION WITH RHP/PROSPECTUS DISCLOSURE

20. During investigation, BGIL had submitted that it had temporally invested □12.5 crore in ICD's. Out of these, □1.35 crore were transferred back to BGIL by Sanjukta Vanijya Private Limited after a month's period. It is observed that BGIL did not have any investment policy. Further, these investments were without the approval of the board of BGIL. The details of the ICD investments are mentioned in the table below:

S.No.	Particulars	Agreement date	Tran date	Amount in □in
1	Darshan tradelink pvt ltd.	20.07.2011	27-07-2011	4.00
2	Sanjukta vanijya pvt.ltd.	21.07.2011	27-07-2011	3.50
3	Nihita financial services pvt.	23.07.2011	28-07-2011	5.00

21. The company in its RHP and Prospectus had disclosed under the paragraph on Interim use of proceeds that*, "Our Company's management, in accordance with*

the policies established by the Board, will have flexibility in deploying the proceeds received from the Issue. Pending utilization of the proceeds out of the Issue for the purposes described above, we intend to temporarily invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with banks. Such investments would be in accordance with the investment policies approved by the Board from time to time". However, it is observed that BGIL had given loan to three entities whose reliability is not known which is evident that BGIL was unable to recover the entire fund from these entities. Also, it is to be noted that SEBI vide its ad-interim Ex-parte order dated Dec 28, 2011, *inter-alia,* had directed BGIL to comply with the following.

"The Company shall call back the ICDs of □12.5 crore invested by it with Nihita Financials Ltd., Sanjukta Vanijya Pvt. Ltd and Darshan Tradelink Pvt. Ltd..."

22. Reply of Noticees:

BGIL submitted that there is no formal investment policy adopted in the company. The decision of investment was taken on the basis of the recommendations of the Audit Committee and subsequently ratified by Board and the shareholders by way of Postal Ballot. Further BGIL has submitted that it had issued ICD recall letters to all the three parties i.e. Sanjukta Vanijya Private Ltd, Darshan Trade Link Private Ltd and Nihita Financial Services Private Ltd although at the time of entering into the agreements of ICDs these parties have agreed to repay the amount within 3 days as is evident from the ICD agreements entered into with these three parties. As on date, □6 Crores is pending recovery from Darshan Trade Link Private Ltd and from Nihita Financial Services Private as a result of protracted correspondence through Recall letters and legal notice, the Company has recovered ₹ 6.50 Crores from these parties and is making all efforts to recover the balance amount. Subsequent to initiation of investigation by SEBI and its interim order, BGIL found it difficult to raise working capital loans from Financial institutions on any terms and hence, it had no option but to utilize the funds recovered from the above stated parties towards meeting the working capital requirement of the Company in order to ensure smooth business operations adding to its goodwill, reputation and in overall interest of the shareholders of the Company at large.

23. Further, vide letter dated April 02, 2014 the Noticees have stated that the monies advanced to the said entities were nothing but interest bearing short term deposits. Upon receiving of objection from SEBI regarding the said advances, BGIL had started the process of recovering the monies and more than 83% of the amounts given to Sanjukta Vanijya P.Ltd and Darshan Tradelink P.Ltd has already been received by the Company. BGIL stated that as on date (i.e. April 02, 2014) only a sum of ₹ 1 crore was pending to be recovered from Darshan Tradelink P.Ltd.

24. **FINDING:** I note that SEBI had vide its ad-interim Ex-parte order dated Dec 28, 2011 *inter-alia* had directed BGIL to call back the ICDs of □12.5 crore invested by it with Nihita Financials Ltd., SanjuktaVanijyaPvt. Ltd and DarshanTradelinkPvt. Ltd. The ICD's given to Sanjukta Vanijiya Private Limited and Darshan Trade link Private Limited were supposed to be returned on Jan 26, 2012 and Nihita Financial Services Private Ltd was supposed to be returned on July 19, 2012. Also, I note that as per the agreement entered with these 3 entities, the ICDs can be called back at any time with a notice of 3 days. The fact that the entire invested amount has not been recovered from the entities till date clearly shows that the said funds have been diverted by the company and have ultimately reached the traders who had incurred the loss while trading in the scrip of BGIL. The company's statement that *"Our Company's management, in accordance with the policies established by the Board, will have flexibility in deploying the proceeds received from the Issue. Pending utilization of the proceeds out of the Issue for the purposes described above, we intend to temporarily invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with banks. Such investments would be in accordance with the investment policies approved by the Board from time to time"* is totally incorrect as the IPO proceeds were not invested the way they were claimed to be invested.

IV. NON DISCLOSURE OF RELATED PARTY TRANSACTIONS AND DIRECTORS RELATIVES DETAILS

25. It is alleged that the RHP/ Prospectus did not contain the details of the related party transactions entered with Gadeo Electronics (hereinafter referred as

"Gadeo"). It was observed that the partners of Gadeo, Richa Mittal and R K Mittal were related to one of the directors of BGIL i.e. Noticee No. 3 viz. Sanjeev Kumar Mittal. Gadeo is a partnership firm of which 95% is owned by Richa Mittal (wife of Rajeev Mittal who is the brother of Noticee No. 3, director BGIL) and 5% by Shri R. K. Mittal (father of Noticee No. 3). It was observed that one of the objects of the issue was purchasing the property from Gadeo for □5.96 crore. As per the RHP, □2 crore was already paid to Gadeo by issuing 2 lakh shares and remaining □3.96 crore to be paid from the IPO proceeds. Though the company had disclosed the transaction, but it is alleged that it did not disclose it as the related party transactions which is about 7.2% of the IPO proceeds. Further, during the investigation when SEBI had sought the list of all BGIL's director's relatives', it did not mention the name of Richa Mittal in the relatives list which contained 25 relatives (approx).

26. Reply by Noticees:

- The Noticees submitted that the fact that Mrs. Richa Mittal is related to Noticee No. 3 was disclosed to Almondz. The same is evident from the letter dated February 07, 2011, which was sent by Almondz to BGIL during due diligence exercise. Attention has been drawn to Point No. 5 of the Undertaking received from Almondz on mail for signing by the Management, where in the Merchant Bankers has written "M/s Gadeo Electronics, a partnership formed on September 1, 2001 between Mrs. Richa Mittal, Noticee no. 3 and Mr. R.K. Mittal. Noticee No. 3 took retirement w.e.f. March 31, 2008 and Mrs. Richa Mittal and Mr. R.K. Mittal entered into a fresh partnership deed on April 1, 2008". The fact that Mrs. Richa Mittal is a relative of Noticee No. 3 was also disclosed in the Form 24 AA for F.Y. 2010-11. The same was made available to the Merchant bankers during the process of due diligence. The non disclosure of her name in the list of relatives is a mistake on the part of the Merchant Bankers and cannot be attributed to the company. It is, therefore, submitted that the company had no intentions of hiding the material facts, which is very much evident from various documents submitted to Merchant Bankers.

27. FINDING:

- As per the Schedule I(A) read with Section 6 (C) of Companies Act 1956, father, brother and his wife are related to the other. The relevant provisions are re-produced below:

Section 6(c) in The Companies Act, 1956

(c) the one is related to the other in the manner indicated in Schedule IA.

Schedule IA - List of relatives

1. Father.
.
.
.
19. Brother (including step-brother).
20. Brother's wife.

- As per the Clause 2 (IV) (H) 18 and Clause 2(VIII)(B) 5(a)(iii) & (iv) and 6(a) of Part A of Schedule VIII of ICDR regulation also, the relationship details for the transactions entered by the company have to be disclosed.

- Further, I find that the RHP and Prospectus contained misleading statement that "*Mrs.Richa Mittal is wife of Mr.Rajeev Mittal and a resident of A-147-148, Sector 55, Noida, Uttar Pradesh, and not related to our Company, our Promoters / Directors or Promoter Group Companies.".* As per the provisions of companies act, the partners of Gadeo viz., Richa Mittal and R K Mittal fall under the categories of relatives and therefore, are related to BGIL's one of the director Sanjeev Kumar Mittal i.e. Noticee No. 3.

- Also, I note that SEBI had asked for the clarification on the said transaction during the clearance of RHP itself and BGIL had submitted vide its letter dated Feb 07, 2011 to Almondz that "Mrs. Richa Mittal is not related to the BGIL, its promoters / Directors or promoter group companies".

- As per the RHP and Prospectus, □2 crore was already paid to Gadeo by issuing 2 lakh shares and remaining □3.96 crore to be paid from the IPO proceeds. I find that though the company had disclosed the transaction, but it did not disclose it as the related party transaction which is about 7.2% of the IPO proceeds.

V. DIVERSION OF FUNDS TO PROMOTERS AND PROMOTER RELATED ENTITIES

28. Upon examining the bank statements of BGIL it was observed that payments were made to one of the promoters, Chairman and Managing director of BGIL-Noticee No. 2, Rakesh Bhatia-HUF, CMD's son Gaurav Bhatia, the group companies BGIL Films and Technologies Limited and Number one Finsec Private Limited. Cash withdrawal of 60.45 lakh was also observed from the said statement. The details are as under:

Name	Relationship	Amount (. in
Rakesh Bhatia	Promoter	44.06
Gaurav Bhatia	Son of Promoter	4.50
Rakesh Bhatia (HUF)	HUF of Promoter	10.50
BGIL Films and Technologies	Related entity of the	30.15
Number one Finsec Pvt. Ltd.	Related entity of the promoter	36.75
Total		125.96

29. During the investigation, BGIL had submitted that these payments were repayment of the loans received from these entities. Though the loan details were disclosed in the RHP/Prospectus, it was not disclosed that these loans would be repaid from the IPO Proceeds. Therefore, it is alleged that BGIL had diverted the part of IPO proceeds to promoters and promoters related entities.

30. Reply by Noticees: BGIL submitted that the legal dictionary meaning of consideration is " something of value given by both the parties to a contract that induces them to enter into agreements to perform mutual performances." As already submitted, the payments made to Noticee No. 2 was towards repayment of unsecured loans taken from him and standing in books of accounts since June 22, 2007. As the transaction is in the nature of repayment of dues & not for an agreement to perform any services or provide any goods, it does not fall under the definition of word "Consideration". Hence there is no non-disclosure or diversion of funds to the Promoter and Promoter group entities.

31. FINDING:

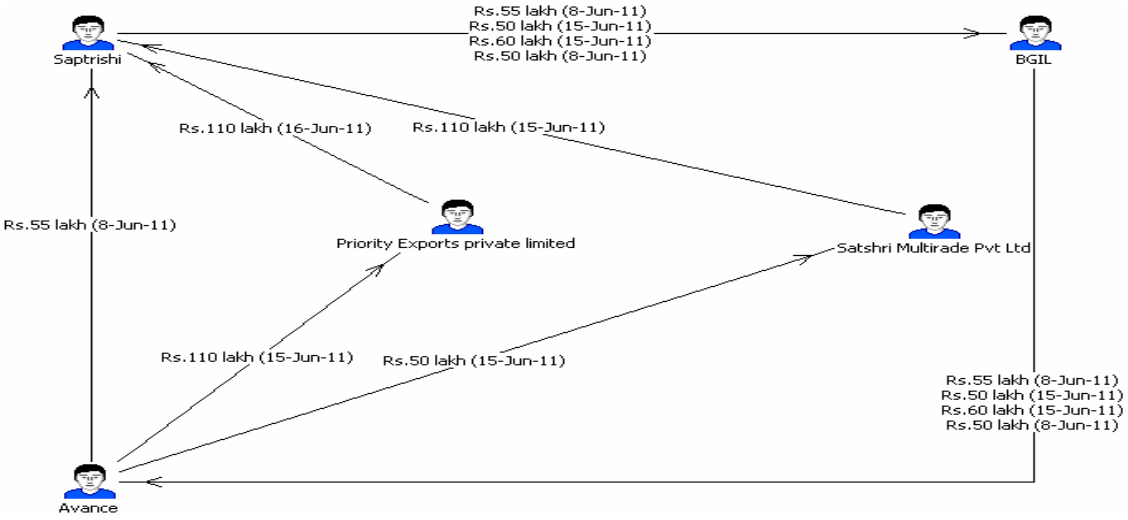
- I note that it was mentioned in the RHP/Prospectus that "*No part of the issue proceeds, will be paid by our company, as consideration to*

promoters, directors, promoter group entities and key managerial personnel". Further, BGIL's reply, during the investigation period, with respect to □2.60 lakh payments made to Gaurav Bhatia, terming as employee's advance and subsequently, recovering it from him with interest is an afterthought, post SEBI interim order pointing that the said amount is diversion of funds.

- BGIL stated that these payments were of repayment of the loan received from these entities. I find that though the loan details were disclosed in the RHP/Prospectus, it was not disclosed that the repayment of these loans will be done from the IPO Proceeds. Therefore, it is evident that BGIL had made wrong disclosure as well as diverted part of the IPO proceeds to promoters and promoters related entities.

VI. WRONG DISCLOSURE IN THE OBJECTS OF THE ISSUE

32. In the RHP/Prospectus it was mentioned that BGIL had made an advance payment of ₹2.65 crore to Avance Technologies Limited (Avance) prior to the IPO. In the fund utilization table, the entire cost i.e., □6.57 crore was shown as payable to Avance from IPO Proceeds and the advance amount of ₹ 2.65 crore was not deducted. The fund utilization for the amount of □2.65 crore was not mentioned in the objects of the issue. As mentioned in the submission of BGIL made during investigation on fund utilization statement that "Advance made to Avance Technologies" was not deducted reconfirms that BGIL did not disclose the fund utilization to the extent of □2.65 crore. Though the company claimed that □2.65 crore was paid to Avance to expedite the timely delivery of BMS, it is alleged that BGIL paid only □50 lakh and remaining □2.15 crore was returned back to BGIL through circuitous transfers of funds between Avance, BGIL and Saptrishi Suppliers Private Limited (Saptrishi). The following are the details:



33. It is observed from the above table that except ₹50 lakh received by BGIL on June 08, 2011, all other funds were circuitously transferred to create artificial financial obligation for ₹2.15 crore. The amount of ₹55 lakh received from Saptrishi by BGIL on June 8, 2011 was returned to Saptrishi on the same day through Avance. Similarly, ₹50 lakh and ₹60 lakh received on June 15, 2011 were also returned on June 16, 2011 to Saptrishi through Avance and Priority Exports. Another ₹50 lakh received from Saptrishi by BGIL on Jun 15, 2011 was returned on the same day to Saptrishi through Avance and Satshri Multitrade Private Ltd.

34. It was, therefore, alleged that BGIL's disclosure of ₹2.65 crore of advance payment made to Avance was false and misleading. An obligation of ₹2.15 crore had been created artificially to siphon off the said amount from the IPO proceeds.

35. Reply by Noticees: The Noticees submitted that BGIL, Avance and Saptrishi are independent legal entities and business arrangements between these parties are legitimate & legal. It is implausible & infact unreasonable to expect that every single time any Company has to deal with any commercial party, it would have to check the debtors/creditors of other commercial party. The advance to Avance was given under a valid agreement for purchase of technology, as disclosed in the prospectus on page no. 34 and hence, the circuitous routing of funds as alleged by SEBI has no grounds at all. As stated above, payment made to Avance was against its purchase of BMS (Building Management System).

Further, the payment from Saptrishi has come to BGIL against PO given by Saptrishi and the same is in no way connected to the payments made to Avance. Both the said transactions are purely business transactions and should not be interpreted as any transaction created artificially to siphon off the IPO proceeds. Further, it is submitted that the payment made to Avance and payment received from Saptrishi are in no way inter connected. The Company conducted business with both the vendors in good faith with bona fide intentions and it is only coincidence that Avance has made payment to Saptrishi immediately on receipt of advance amount from BGIL. BGIL in its normal course of business was not required to enquire from Avance about its creditors on the date of entering into service agreement with it. It is therefore, submitted by the Noticees that the above transactions be viewed as independent and not connected with each other in proper compliance of the business decision as bona fide business judgment.

36. <u>FINDING</u>:

- I note that advance paid to Avance was not deducted from the total payments as disclosed in the RHP/Prospectus which reconfirms that BGIL did not disclose the fund utilization to the extent of □2.65 crore. Though the company claimed that □2.65 crore was paid to Avance to expedite the timely delivery of BMS, the fact that BGIL paid only □50 lakh and remaining □2.15 crore was returned to BGIL through circuitous transfers of funds between Avance, BGIL and Saptrishi cannot be denied. The fund flow mentioned in the investigation report clearly demonstrates that except □50 lakh received by BGIL on June 08, 2011, all other funds were circuitously transferred to create artificial financial obligation for □2.15 crore. The amount of □55 lakh received from Saptrishi by BGIL on June 8, 2011 was returned to Saptrishi on the same day through Avance. Similarly, □50 lakh and □60 lakh received on June 15, 2011 were also returned on June 16, 2011 to Saptrishi through Avance and Priority Exports. Another □50 lakh received from Saptrishi by BGIL on Jun 15, 2011 was returned on the same day to Saptrishi through Avance and Satshri Multitrade Private Ltd. The manner in which the funds have been transferred on the same day demonstrates that they had prior understanding.

- In view of the above observations, I conclude that BGIL's disclosure of □2.65 crore towards advance payment made to Avance is false and misleading. Only an obligation of □2.15 crore was created artificially by the company to siphon off of the said amount from the IPO proceeds.

VIII. DIVERSION OF IPO PROCEEDS TO TRADERS

37. It was observed that a part of the IPO proceeds i.e., □10.53 crore, had reached two groups of entities viz., GRD group and Korp group, either directly or indirectly, through layers of bank transactions. The details of funding to these entities is as under:

a. GRD Group consisting of 5 entities viz., Marutinandan Infosolutions Private Limited (MIPL) , Jalan cement works Limited (Jalan), Orbit Financial Consultants Private Limited (Orbit), GRD securities private Limited (GRD) and Swift Tie Up Private Limited (Swift) had received □7.10 crore.

b. Korp Group consisting of 4 entities viz., Korp Securities Ltd (Korp), Wheelers Developers Private Limited (Wheelers), Divya Drishti Merchants Private Ltd (DDMPL) and Divya Drishti Traders Private Ltd (DDTPL) had received □3.43 crore

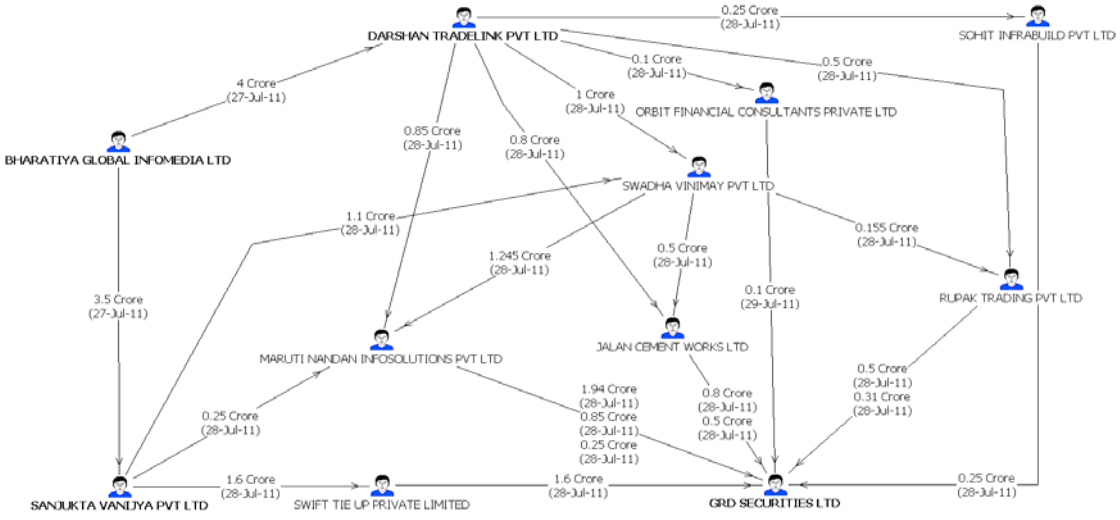
<u>GRD Group</u>:

38. BGIL had transferred □7.5 crore to two entities viz., Sanjukta Vanijya Private Ltd and Darshan tradelink Private Limited which have common directors viz., Goutam Basotia (DIN-627395) and Santosh Kumar Sahal (DIN-743441). Out of □7.5 crore, □7.10 crore had reached the stock broker GRD Securities Private Limited who had traded on behalf of Marutinandan Infosolutions Private Limited, Jalan cement works Limited, Orbit Financial Consultants Private Limited, GRD Securities Private Limited and Swift Tie Up Private Limited, to compensate the loss incurred by the above mentioned entities. The timing of the funds reaching these recipients was also noteworthy considering that the BGIL shares started trading from July 28, 2011(listed) and the pay-in of the funds for the first day trading was due on August 1, 2011 after the intervening weekend. These clients had incurred loss on the listing day while trading in the scrip of BGIL including the

exit given to the top allottees. The summary of trade and loss incurred details of GRD group on the listing day is given below:

CLIENT NAME / Exch	NSE					BSE					Total Buy TQ	Total Sell TQ	Total Loss in □	Amount Received
	BUY TQ	SELL TQ	BUY RATE	SELL RATE	LOSS in □	BUY TQ	SELL TQ	BUY RATE	SELL RATE in	LOSS in □				
MIPL	5,00,000	5,00,000	49.42	64.50	3,17,50,000	0	0	0	0	0	5,00,000	5,00,000	3,17,50,000	3.04
JALAN	4,00,000	4,00,000	40.64	64.55	2,54,20,211	0	0	0	0	0	4,00,000	4,00,000	2,54,20,211	1.30
ORBIT	1,78,202	1,78,202	31.01	69.66	1,22,35,186	2,06,039	2,06,039	68.97	42.57	54,39,71	3,84,241	3,84,241	1,76,74,899	0.10
GRD	1,18,469	1,05,869	66.22	66.38	77,57,884	4,300	4,300	72.48	72.81	1,399	1,22,769	1,10,169	77,56,485	1.06
SWIFT	0	0	0	0	0	5,00,500	5,00,500	64.30	44.49	99,11,767	5,00,500	5,00,500	99,11,767	1.60
Total	**11,96,671**	**11,84,071**			**7,71,63,281**	**7,10,839**	**7,10,839**			**1,53,52,879**	**19,07,510**	**18,94,910**	**9,25,16,160**	**7.10**

39. The funds movement chart of BGIL to GRD group is given below.



40. All these clients of GRD had relatively less income or nil income as per the Income tax return (ITR) and had incurred losses in crores while trading in the shares of BGIL which were compensated by BGIL. These entities are connected to each other. The connection among the group is given below:

SN	Name of the client	Connection & Annual Income details (Annexure 54)
1	JALAN	Jalans' directors Dilip Kumar Piplwa and Parmanand Drolia are also the dealers of GRD Securities Ltd. as per the Trade log. Directors of Jalan introduced MIPL and Orbit to GRD Securities. KYC of Jalan. As per ITR, Nil income was reported in the ITR for the assessment year 2010-11 and gross income of □2,47,356 was reported in ITR of 2011-12.
2	MIPL	Introduced by Dilip Kumar Piplwa who is one of the director of Jalan and dealer of GRD securities Ltd. Common telephone number (033-32929738) between Directors of MIPL and Orbit.. As per KYC, 5-10 lakh income group
3	SWIFT	Introduced by Parmanand Drolia who is one of the director of Jalan and dealer of GRD Securities Ltd.. As per ITR, Gross income of 1,88,443 for the year 2011-12 , □24,110 was reported as gross income as per ITR for the year 2010-11 and □17052 was reported as gross income as per ITR for the year 2009-10.
4	ORBIT	Introduced by Parmanand Drolia who is one of the director of Jalan and dealer of GRD Securities Ltd. Directors telephone number is 033-32929738 which is same as the directors of MIPL. As per ITR, reported nil income for the year 2010-11.
5	GRD	Pramod Kumar Drolia and Bimal Kumar Drolia were the directors of GRD Securities Ltd.

41. On NSE, GRD as a broker had bought 12,67,932 shares and sold 12,37,232 shares and was a net seller of 30,700 shares on the listing day. More than 90% of the trades were done for the above mentioned clients. The entire buy trades as well as sell trades of MIPL, Jalan and Orbit were placed by Pramod Kumar Drolia (User Id 15196) who is one of the directors of GRD. Similarly, on BSE, GRD as a broker had bought 9,02,315 and sold 7,22,815 shares and was a net buyer of 1,79,500 shares on the listing day. More than 98% of the sell trades were done for the above mentioned clients. The buy orders for Swift and Orbit were placed by Usha Drolia and Surendra Agarwal. Sell orders for Swift and Orbit were placed by Usha Drolia.

Korp Group:

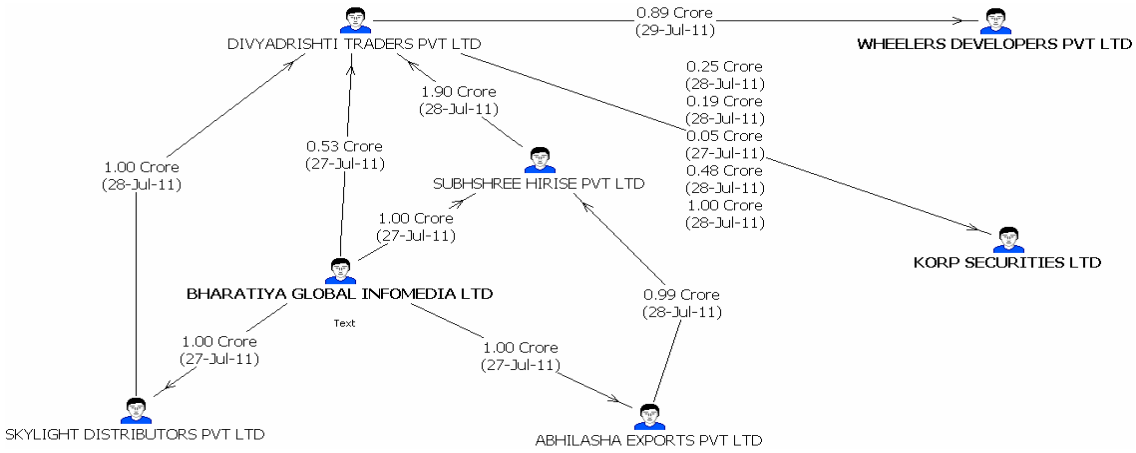
42. BGIL had transferred □1 crore each to Abhilasha Exports Pvt Ltd, Skylight Distributors Private Limited and Subhshree Hirise Pvt Limited. Out of □3 crore, 2.9 crore had reached to DDTPL. In addition to the above, BGIL had also transferred □0.53 crore directly to DDTPL. In total, □3.43 crore was received by DDTPL. Out of this amount, DDTPL had transferred □0.89 crore to Wheelers and □1.97 crore to Korp. All these clients are allegedly related to each other.

DDMPL, DDTPL, Wheelers and Korp are group companies. Rajesh Kumar Agarwal is the common director for DDMPL, DDTPL and Wheelers. Sushil Kumar Agarwal who is the director of Korp Securities Limited, is brother of Rajesh Kumar Agarwal. Anuj Agarwal who is son of Sushil Kumar Agarwal is also director of Korp. The following are the trade details and funds movement details:

Client Name / Exchange	BSE					NSE					Total		
	Buy TQ	Sell TQ	Buy Rate	Sell Rate	Loss in ₹	Buy TQ	Sell TQ	Buy Rate	Sell Rate	Loss in ₹	Total Buy TQ	Total Sell TQ	Total Loss
Korp	68,811	68,811	60.54	30.37	20,75,787	3,84,278	3,84,278	59.3	42.1	66,09,726	4,53,089	4,53,089	86,85,514
Wheelers	-	-		-	-	2,26,907	2,26,907	59.44	31.77	62,78,647	2,26,907	2,26,907	62,78,647
DDMPL	-	-		-	-	2,00,000	2,00,000	61.82	31.21	61,21,946	2,00,000	2,00,000	61,21,946
DDTPL*	40,000	40,000	65	33	13,07,359	52,500	52,500	60	32	14,61,977	92,500	92,500	27,69,336
Total	**1,08,811**	**1,08,811**			**33,83,146**	**8,63,685**	**8,63,685**			**2,04,72,296**	**9,72,496**	**9,72,496**	**2,38,55,443**

* Traded through JM Financial Services Private Ltd.

43. The funds movement chart of BGIL to Korp group is given below:

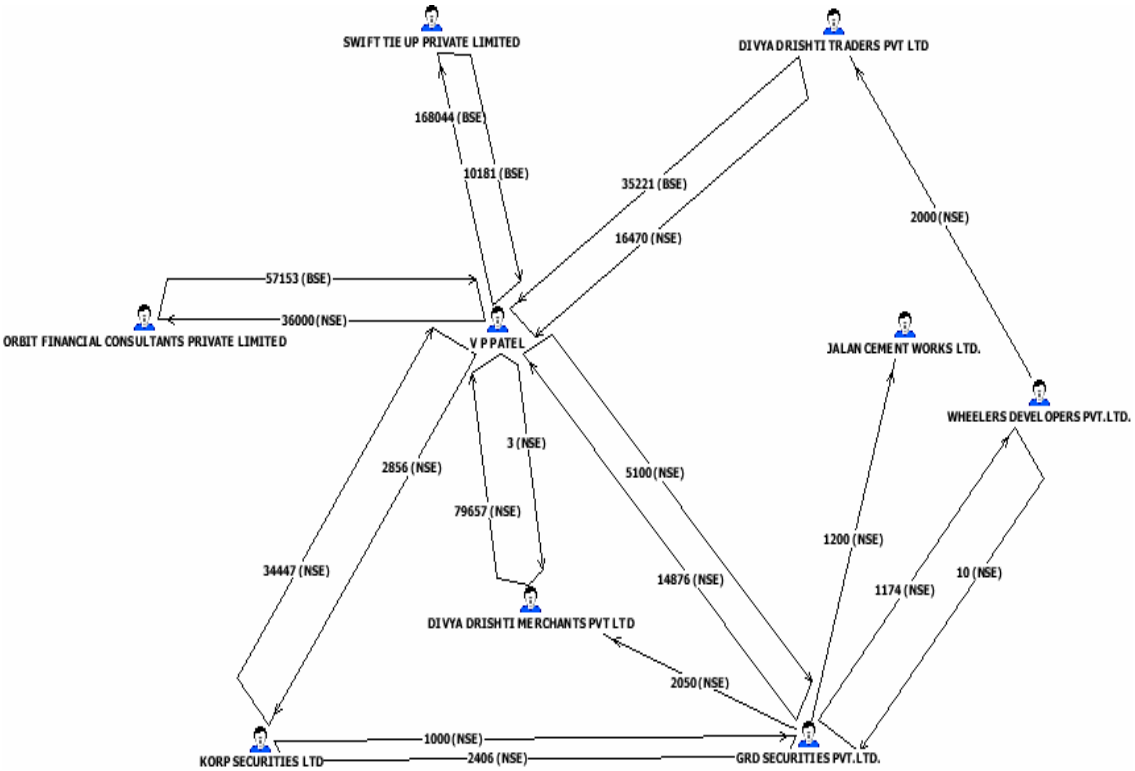


44. On NSE, Korp as a broker had bought 8,11,785 shares and sold the same quantity of the shares on the listing day. Only 4 clients have traded viz., Korp's own account (3,84,278 shares), Wheelers (2,26,907 shares), DDMPL (2,00,000 shares) and Anuj Agarwal (600 shares). Anuj Agarwal had executed the above

trades as a dealer of Korp. Other than the above, no other clients traded in the scrip through Korp on the listing day. Similarly, on BSE, Korp as a broker had bought 68,811 shares and sold the same quantity of the shares on the listing day. The entire buy and sell was executed in Korp's own account. No other clients had traded in the scrip on the listing day.

45. In total, the two groups viz., GRD group and Korp group had received □10.24 crore from BGIL from its IPO proceeds. It was alleged that these two group entities had indulged in a fraudulent or unfair trade practices in the scrip of BGIL by indulging in synchronized / structured trades with one entity viz. Shri V. P. Patel (VPP) and executed trades in the shares of BGIL without the intention of change of ownership of shares and thereby, created false or misleading appearance of trading of the scrip in the securities market.

46. It was observed that MIPL and VPP had executed synchronized trades for a quantity of 3,56,791 shares through two trades with a buy and sell order time difference of 4 seconds and 2 seconds, respectively. In addition, VPP had also executed two structure trades with DDMPL (79,657 shares) and Swift (1,68,044 shares). Further, VPP, GRD and Korp had traded among themselves at NSE for the quantity of 5,62,674 shares. Out of 5,62,674 shares, for 4,21,633 shares the buy and sell order time difference was less than or equal to 16 seconds. In total, it was alleged that VPP and two groups viz., GRD and Korp had traded among themselves for the quantity of 8,33,273 shares. Thus, the group entities had indulged in a fraudulent or unfair trade practices in the securities market. The entity wise details of shares traded among them are given below:



47. The details of the fraudulent trades entered into by the groups with themselves on the listing day on NSE is as under:

NSE		
BUYER_NAME	**SELLER_NAME**	**Total**
V P PATEL	MARUTINANDAN	356791
V P PATEL	ORBIT FINANCIAL	36000
V P PATEL	GRD SECURITIES PVT.LTD.	5100
V P PATEL	KORP SECURITIES LTD	2856
V P PATEL	DIVYA DRISHTI MERCHANTS	3
V P PATEL Total		**400750**
DIVYA DRISHTI MERCHANTS PVT	V P PATEL	79657
KORP SECURITIES LTD	V P PATEL	34447
KORP SECURITIES LTD	GRD SECURITIES PVT.LTD.	1000
KORP SECURITIES LTD Total		**35447**
GRD SECURITIES PVT.LTD.	V P PATEL	14876
GRD SECURITIES PVT.LTD.	KORP SECURITIES LTD	2406
GRD SECURITIES PVT.LTD.	DIVYA DRISHTI MERCHANTS	2050
GRD SECURITIES PVT.LTD.	GRD SECURITIES PVT.LTD.	1634
GRD SECURITIES PVT.LTD.	JALAN CEMENT WORKS LTD.	1200
GRD SECURITIES PVT.LTD.	WHEELERS DEVELOPERS PVT.LTD.	1174
GRD SECURITIES PVT.LTD. Total		**23340**
DIVYADRISHTI TRADERS P LTD Total	V P PATEL	16470

MARUTINANDAN INFOSOLUTIONS	**KORP SECURITIES LTD**	**5000**
WHEELERS DEVELOPERS PVT.LTD.	DIVYA DRISHTI TRADERS PVT	2000
WHEELERS DEVELOPERS PVT.LTD.	GRD SECURITIES PVT.LTD.	10
WHEELERS DEVELOPERS PVT.LTD.		**2010**
Grand Total		**562674**

48. The details of the fraudulent trades entered into by the groups with themselves on the listing day on BSE is as under:

BSE		
CLIENT_NAME	**CP_CLIENT_NAME**	**Total**
V P PATEL	SWIFT TIE UP	168044
ORBIT FINANCIAL CONSULTANTS	V P PATEL	57153
DIVYADRISHTI TRADERS P LTD	V P PATEL	35221
SWIFT TIE UP PRIVATE LIMITED	V P PATEL	10181
Grand Total		**270599**

49. The above table clearly shows that GRD group, Korp group and VPP had created volume of 8,33,273 shares (NSE:5,62,674 + BSE:2,70,599) on the exchanges on the listing day.

50. In addition to the above, it was further observed that these two groups and VPP had also provided exit to top four allottees through structured trades for the quantity of 5,85,541 shares i.e. 86% of the shares allotted to top four allottees. The following is the summary of top four allottees' trades in the shares of BGIL on the listing day.

PAN	Applicant name	Shares Applied	Shares Allotted	Shares exit given by the group on the listing day	Exit % w.r.t. allotted shares
AADPJ2136K	ANOOP JAIN	2,97,300	2,97,300	2,80,525	94.36
AAMPJ9586C	RITU JAIN	1,90,500	1,90,500	1,55,824	81.80
AOPPS6722L	NIMIT	1,40,625	1,40,625	99,167	70.52
AAAHA6321A	ANOOP JAIN-	50,025	50,025	50,025	100.00
Total		**6,78,450**	**6,78,450**	**5,85,541**	**86.31**

51. These two groups and VPP had also executed structured trades with Shikha Somani for 1,85,442 shares by which 38 allottees (1,60,332 shares) got exit by way of tendering their allotted shares for the pay-in obligations of Shikha Somani for these trades. Also, substantial quantities of shares were bought from Shree

Bahubali International private limited (2,57,324 shares) and PELF Securities Ltd. (72,493 shares) by GRD group, Korp Group and VPP who had in turn gave exit to their own clients (allottees) through structured trades. Shree Bahubali International private limited had given exit to 137 allottees for 1,96,322 shares and PELF Securities Ltd had given exit to 124 allottees for 2,02,812 shares through their structured trade with the allottees. In total, these two groups and VPP had allegedly executed structured trades for 11,00,800 shares to give exit to above mentioned allottees. The details of group-wise exit given to allottees is given below:

Exit given at NSE		
Exit given by(buyer)	**SELLER_NAME**	**Traded Qty**
V P PATEL	ANOOP MR VIMAL	194991
V P PATEL	SHIKHA SOMANI	90470
V P PATEL	NIMIT JAYENDRA	52887
V P PATEL	ANOOP JAIN HUF	50025
V P PATEL	PELF FINSTOCK LTD	1085
V P PATEL Total		389458
JALAN CEMENT WORKS LTD.	RITU JAIN	120000
JALAN CEMENT WORKS LTD.	ANOOP MR VIMAL	68876
JALAN CEMENT WORKS LTD.		188876
MARUTINANDAN INFOSOLUTIONS PRIVATE	PELF FINSTOCK LTD	71408
MARUTINANDAN INFOSOLUTIONS PRIVATE	SHIKHA SOMANI	50000
MARUTINANDAN INFOSOLUTIONS PRIVATE		121408
KORP SECURITIES LTD	RITU JAIN	35824
KORP SECURITIES LTD	SHIKHA SOMANI	20000
KORP SECURITIES LTD	ANOOP MR VIMAL	14799
KORP SECURITIES LTD	NIMIT JAYENDRA	9000
KORP SECURITIES LTD Total		79623
GRD SECURITIES PVT.LTD.	ANOOP MR VIMAL	1859
WHEELERS DEVELOPERS	SHIKHA SOMANI	24972
Grand Total		**806196**

Exit given at BSE		
Exit given by(buyer)	Seller Name	Traded Qty
V P PATEL	SHREE BAHUBALI	257324
V P PATEL	NIMIT JAYENDRA	37280
V P PATEL Total		**294604**
Exit given by Two brokers		
Exit given by(buyer)	Seller Name	Traded Qty
Shree Bahubali International Private	137 allottees	196322
PELF Securities Ltd.	124 allottees	202812
		399134

52. It is alleged that BGIL had a prior understanding with GRD group, Korp group & VPP and top 4 allottees and therefore, it had diverted □10.53 crore (GRD group - □7.10 crore and Korp group - □3.43 crore) from IPO proceeds to these group entities to compensate the loss incurred by them while trading in the shares of BGIL in a manipulative manner on the day of listing. The following is the summary of GRD & Korp groups' trade details and trading loss incurred in BGIL shares on the listing day.

S.N.	Client Name / Exchange	Buy TQ	Sell TQ	Loss	
1.	KORP SECURITIES LTD (Korp)	4,53,089	4,53,089	86,85,514	
2.	WHEELERS DEVELOPERS PRIVATE LTD (Wheelers)	2,26,907	2,26,907	62,78,647	
3.	DIVYA DRISHTI MERCHANTS PRIVATE LTD	2,00,000	2,00,000	61,21,946	
4.	DIVYA DRISHTI TRADERS PRIVATE LTD	92,500	92,500	27,69,336	
TOTAL		**9,72,496**	**9,72,496**	**2,38,55,443**	
5.	MARUTINANDAN INFOSOLUTIONS PRIVATE	5,00,000	5,00,000	3,17,50,000	
6.	JALAN CEMENT WORKS LTD. (Jalan)	4,00,000	4,00,000	2,54,20,211	
7.	ORBIT FINANCIAL CONSULTANTS PRIVATE	3,84,241	3,84,241	1,76,74,899	
8.	GRD SECURITIES PVT.LTD. (GRD)	1,22,769	1,10,169	77,56,485	
9.	SWIFT TIE UP PRIVATE LIMITED (Swift)	5,00,500	5,00,500	99,11,767	
Total		**19,07,510**	**18,94,910**	**9,25,16,160**	

53. In view of the above, it was alleged that BGIL had diverted the IPO proceeds to connected related entities who in turn traded in the scrip on the day of listing and manipulated the scrip by entering into fraudulent trades thereby creating artificial volumes in the scrip of BGIL.

54. Reply by Noticees: The Noticees vide their letter dated February 12, 2014 filed their additional submissions and stated that as the promoters, directors, key managerial personnel or their relatives were not dealt with, involved or benefitted from the trading in the shares of the company on the listing day, the charges of manipulative trades cannot stand. No material submissions have been made by the Noticees with respect to the funding to the connected entities and making good their losses while dealing in the scrip on the day of listing. Further, vide letter dated April 02, 2014 the Noticees have stated that the monies advanced to the said entities were nothing but interest bearing short term deposits. Upon receiving of objection from SEBI regarding the said advances, BGIL had started the process of recovering the monies and more than 83% of the amounts given to

Sanjukta Vanijya P.Ltd and Darshan Tradelink P.Ltd has already been received by the Company. BGIL stated that as on date (i.e. April 02, 2014) only a sum of ₹ 1 crore was pending to be recovered from Darshan Tradelink P.Ltd.

55. **FINDING:** I note from the above that the complete sequence of events and the transfer of funds from the IPO proceeds clearly shows that BGIL had a prior arrangement with GRD group, Korp group & VPP and top 4 allottees and had diverted □10.53 crore (GRD group - □7.10 crore and Korp group - □3.43 crore) from IPO proceeds only to compensate the loss incurred by these related/connected group entities while trading in a manipulative and fraudulent manner in the scrip of BGIL on listing day. I do not find merit in the submissions of the Noticees that the the monies advanced to the said entities were nothing but interest bearing short term deposits and 83% of the said amounts have been received by the Company in asmuchas the said submissions are not supported with any documentary evidence such as Bank statements, etc. showing inflow of monies in the accounts of the Company. Further, I find from the replies filed by the Noticees that they have not made any substantial submissions with respect to the said manipulative practices on the listing day of the IPO and therefore, I conclude that the funds were diverted from the IPO proceeds only to aid these entities in indulging into manipulative practices in the market.

IX. FAILURE BY AUDIT COMMITTEE

56. While scrutinizing the audit committee minutes of the meeting, it is observed that the committee had failed to notice the fund diversion as explained in the above paras and did not make any recommendations to the company. It was further observed that the Promoter and Director, Noticee No. 2 and the Executive director, Noticee No. 3 were also members of the audit committee. Noticee No. 4 was also one of the signatories of the certification.

57. It was alleged that the Executive director and Manager (Finance) had made wrong certification on the RHP and Prospectus by stating that *all the disclosures made in the offer document were true and correct*. Further, the Noticees had perpetrated a fraud on the investors as the RHP provided wrong disclosures and did not provide certain disclosures, diverted funds and supported the traders who

had given exit to certain allottees and created misleading appearance of trading in the securities market.

58. Clause 49 of listing agreement clearly mentioned the role of audit committee with respect to IPO funds utilization and it reads as under:

"5A. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter."

59. Reply by Noticees:

The Noticees have made the following submissions with respect to the role of its audit committee and procedures followed:

- The recommendation of the Audit Committee in its meeting dated July 16, 2011 was put up before the Board Meeting held on the even date wherein the Board of Directors empowered Noticee No. 2 to advance and receive ICDs. Further, on page 38 of the Prospectus having heading "Monitoring of utilization of funds" it states that:

  " The appointment of monitoring agency is not required in accordance with Clause 16 of ICDR Regulation, 2009. We have therefore not appointed any monitoring agency for the purpose of monitoring the utilization of issue proceeds. We will disclose the utilization of proceeds under a separate head in our company's balance sheet for the FY 2011-12 and FY 2012-13 clearly specifying the purpose for which such proceeds have been utilized."

  BGIL submits that it has in its balance sheet for the FY 2011-12 has provided details in relation to the fund utilization including the ICDs given and received. The same has been presented and ratified by the shareholders in Postal Ballot mandate in March 2012 and subsequently, in its AGM held in September 2012.

- Further, the company has ratified the recommendations of the Audit Committee, decision of the Board including the variation of terms and disclosures made in the prospectus regarding ICD loans, its payments

through IPO proceeds, related contracts, etc. by its shareholders through postal ballot. The same was held on March 16, 2012 where 99.93% of the shareholders voted in favor of the decision. Since, the recommendations of the Audit Committee have been ratified, the audit committee did not act ultra vires its role.

60. **FINDING**: I find that Noticee Nos. 2 to 4 formed part of the audit committee and have confirmed the disclosures made in the RHP/Prospectus being in the capacity of committee members. The said Noticees have signed the report wherein an undertaking has been taken that "*all the disclosures made in the offer document were true and correct".* In my view, it amounts to wrong certification. By approving and signing the said report, Noticee Nos. 2 to 4 have perpetrated a fraud on the investors as the RHP provided wrong disclosures and did not disclose certain material facts including diversion of IPO proceeds and thereby, supported in the overall manipulation.

61. SEBI vide its ad-interim Ex-parte order dated Dec 28, 2011 had directed BGIL to comply the following.

"The Company shall call back the ICDs of 12.5 crore invested by it with Nihita Financials Ltd., SanjuktaVanijyaPvt. Ltd and DarshanTradelinkPvt. Ltd and all amounts transferred / paid out of IPO proceeds to its directors or relatives of its directors or HUFs belonging to any of its directors or associate or subsidiaries or group companies. 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 BGIL to the stock exchanges where it is listed, within 7 days from the date of this order."

Subsequently, these directions were confirmed vide order dated Oct 05, 2012. However, it is alleged that the company has not complied with the said directions.

62. It is observed that BGIL vide its letter dated Jan 03, 2012 had informed SEBI that it had called back the invested amounts vide its letters dated Dec 29, 2011. Further, vide its letter dated March 17, 2012, BGIL also informed that it had

opened an escrow account and had deposited □47.37 lakh in the said account. However, no confirmation on the rest of the amount which was to be deposited in the said escrow account was made available by BGIL. The same status was reconfirmed by BGIL vide its e-mail dated Nov 07, 2012 to SEBI. . BGIL, vide its letter dated Nov 09, 2012, further submitted that *"During the quarter ended 30th September, 2012 the company has already received an amount of □4.45 crore, out of the total ICD's of □11.15 crore which has been utilized by the company in meeting the working capital requirements as per the mandate of shareholders obtained through postal ballot."*

63. It is observed that SEBI's interim order dated December 28, 2011 has not been complied in totality by BGIL as the ICDs invested by it with Nihita Financials Ltd., Sanjukta Vanijya Private Ltd, Darshan Tradelink Private Limited and all amounts transferred / paid out of IPO proceeds to its directors or relatives of its directors or HUFs belonging to any of its directors or associate or subsidiaries or group companies together with all of the IPO proceeds that were still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds, have not been deposited in the escrow account. Only □47.37 lakh has been deposited in the account.

64. The Noticees vide their reply dated September 25, 2013 stated that BGIL had issued recall letters to all the three parties i.e. Sanjukta Vanijya Private Ltd, Darshan Tradelink Private Limited and Nihita Financials Ltd. although at the time of entering into agreements of ICDs these parties have accepted to repay the amount within 3 days. As on date, ₹ 6 crores is pending recovery from Darshan Tradelink Private Limited and from Nihita Financials Ltd. as a result of protracted correspondence through recall letters and legal notice, the company has recovered ₹ 6.5 crores from these parties and is in the process of making all efforts to recover balance amounts. Further, it is stated that subsequent to the initiation of investigation by SEBI it was intimated that as BGIL is facing difficulty in raising working capital loans from financial institutions on any terms the company is utilizing the amount recovered from ICDs towards meeting the working capital requirement of the company in order to ensure smooth business

operations adding to its goodwill, reputation and in overall interest of shareholders of the company.

65. From the above facts I observe that the SEBI order has still not been complied with and the ICDs invested by BGIL with Nihita Financials Ltd., Sanjukta Vanijya Private Ltd, Darshan Tradelink Private Limited and all amounts transferred / paid out of IPO proceeds to its directors or relatives of its directors or HUFs belonging to any of its directors or associate or subsidiaries or group companies together with all of the IPO proceeds that were still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds, have not been deposited in the escrow account.

66. In view of the above, I conclude that the Noticees have violated the provisions of Section 12A (a), (b) and (c) of the Act read with Regulation 3(a),(b), (c),(d), 4(1), 4(2) (a), (d), (e), (f) and (k) of the PFUTP Regulations, thus, liable for monetary penalties as prescribed under Section 15HA of the Act and Regulation 57(1), 60(4)(a), 60(7)(a) and Clauses 2(VII)(G), 2(VIII)(B)(5)(b) and (6), 2(IV)(H)(18), 2(VIII)(B)(5)(a) and 6((a) and 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57(2)(a)(ii) of the ICDR Regulations, thus, liable for monetary penalty as prescribed under Section 15HB of the Act.

67. Section 15HA and 15HB of the Act read as follows:

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for*

which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

68. While imposing monetary penalty, it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

> ***15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default.*

69. I observe that, from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticees. However, I observe that the Company by making wrong and misleading disclosures and non-disclosure with respect to ICDs, purchase of property and payment towards the same to the tune of ₹ 2.5 crores, related party transactions, repayments through IPO proceeds to the tune of ₹ 15 crores, payments made to the vendors, etc., in the RHP/Prospectus has defrauded the investors at large and ultimately would have affected the investment decisions of the prospective investors at large. Further, the fact that the company had transferred monies from the IPO proceeds to the tune of ₹ 10.53 crores to the two groups viz. GRD Group and Korp Group(which was only towards compensating the loss incurred by these related/connected group entities while trading in a manipulative and fraudulent manner in the scrip of BGIL on listing day of the IPO) is nothing but a loss to the shareholders. Such practices employed by the Company and its directors are serious in nature, thus, attract and deserve considerable penalties.

ORDER

70. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section15 I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby impose monetary penalties as under:

Sr. No.	**Name of the Noticee**	**Penal provision (i.e. Section under SEBI Act)**	**Amount of Penalty (₹)**
1.	Bharatiya Global Infomedia Limited	15HA	5 Crores
		15HB	1 Crore
2.	Shri Rakesh Bhatia, Promoter Chairman and Managing Director, Audit Committee Member	15HA	4 Crores
		15HB	1 Crore
3.	Shri Sanjeev Kumar Mittal Executive Director, Audit Committee Member	15HA	3 Crores
		15HB	1 Crore
4.	Shri Rajeev Kumar Agarwal Manager (Finance)	15HA	25 lakhs
		15HB	25 lakhs
	TOTAL		15.50 Crores

Accordingly, a total penalty of ₹ 15,50,00,000/- (Rupees Fifteen Crores Fifty Lakhs Only) is imposed on all the Noticees. I am of the view that the said penalties are commensurate with the violations committed by the Noticees.

71. The Noticees shall pay the said amount of penalty by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt / service of this order. The demand draft shall

be forwarded to the General Manager, Investigation Department - 6, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

72. Copies of this order are being sent to all the Noticees and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: April 17, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**