WTM/SM/IVD/ID9/6143/2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

S.No	Name of the Noticee	PAN
1.	J Kumar Infraprojects Ltd.	AAACJ9161C
2.	Mr. Jagdish Kumar Gupta	AACPG2753N
3.	Mr. Kamal Gupta	AAEPG9892N
4.	Mr. Nalin J Gupta	AAEPG9920B
5.	Ms. Kusum Gupta	AAEPG9952H
6.	Ms. Sonal Gupta	ADTPG0353J
7.	Ms. Shalini Gupta	AAAPR5978E
8.	J Kumar Software Systems Pvt. Ltd.	AABCJ8239J
9.	J Kumar Mines and Minerals Pvt. Ltd.	AACCJ1212A

In the matter of M/s. J Kumar Infraprojects Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND

1. M/s. J Kumar Infraprojects Ltd. (hereinafter referred to as **"Company" / "JKIL/Noticee no. 1"**) is engaged in the business of civil engineering construction contracts in Infrastructure sector. The scrip of JKIL is listed on BSE India Limited (hereinafter referred to as **"BSE"**) and National Stock Exchange of India Ltd (hereinafter referred to as **"NSE"**). Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation pertaining to issue of convertible warrants by JKIL for the period April 1, 2009 to March 31, 2010.

2. It was observed that the Board of Directors of JKIL in its Extraordinary General Meeting held on May 20, 2009 approved the issue of 40 lakh convertible warrants of Rs. 10 each at a conversion price of Rs. 60 on preferential basis to 22 entities. Out of the 22 entities, 8 were promoter entities of JKIL while the rest were non-promoter entities. The preferential allottees had to pay 25% of the consideration for the allotted warrants within 15 days from the date of allotment, *i.e.* May 20, 2009 and the balance amount (75%) had to be paid on exercising of the option to convert the warrants into equity shares. All the preferential allottees exercised their options for conversion of warrants to equity shares on August 19, 2009.

3. In this regard, investigation conducted by SEBI revealed that on August 11, 2009, JKIL had transferred Rs. 3.6 crores to one of the promoter entities viz:- J Kumar Software Systems Pvt. Ltd. (hereinafter referred to as **"JKSS/Noticee no. 8"**) which was also a preferential allottee and JKSS used this amount to pay its balance part of 75% of the consideration towards the shares allotted to it pursuant to exercise of the option for conversion of the warrants into shares (Rs. 3.6 Crores) to JKIL on August 12, 2009. Similarly, it was found that JKIL had transferred Rs. 7.2 Crores to another promoter entity which was also a preferential allottee of the convertible entities, viz:- J Kumar Mines and Minerals Pvt. Ltd. (hereinafter referred to as **"JKMM/Noticee no. 9"**) on August 11, 2009, out of which, JKMM used Rs. 3.6 crores to pay to JKIL towards its share of 75% of the share application money and further transferred the balance amount (Rs. 3.6 crores) to the six other individual promoter entities/preferential allottees, viz: - Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta **(Noticees no. 2 to 7)**

who in turn, used the said transferred amounts to pay their respective dues towards 75% of the share application money, by exercising their options to convert the warrants into shares, allotted to them. During the course of investigation, JKIL, JKMM and JKSS were asked to provide reasons for the aforesaid funds transfers between them. In response to the same, it was submitted that JKIL had taken advances from JKMM and JKSS and the funds transferred from JKIL to JKSS and JKMM were repayment of those advances. It was also stated that the advances were taken for business purposes and since the entities were largely under the same management, no formal agreements were entered into between them. However, JKIL could not give any other documentary proof to substantiate its claim about the receipt of advances and repayments thereof made by them to the other promoting entities. It was further revealed during the investigation that the Noticee no. 1 (JKIL) has reported different amounts of advances having received by it from its two promoter's entities, viz:- JKMM and JKSS in the financial year ending 2010.

4. On further analyzing the funds trail, it was observed that the amount received by JKSS from JKIL was the exact amount that was required by JKSS to pay for the remaining 75% of the value of preferential allotment at the time of exercising the option to convert the warrants into shares. It was also revealed that JKSS did not have enough balance in its bank account to pay for the said preferential allotment and the amount which was received from JKIL enabled JKSS to pay for the preferential allotment. An analysis of the bank statement of JKSS for the relevant period is given as under:

Table -1

Entity Name	**Opening Balance (Rs.) in the account (Date)**	**Date of Funds Received from JKIL**	**Amount (Rs.)**	**Date of amount transferred to JKIL (Rs.)**	**Closing Balance in the account (Rs.) (Date)**
JKSS	1,19,535 (Aug 11, 2009)	JKIL (Aug 11, 2009)	3,60,00,000	3,60,00,000 (Aug 12, 2009)	1,19,535 (Aug 12, 2009)

5. Similarly, the amount received by JKMM from JKIL was also the exact amount that was required by JKMM to pay for the balance 75% of the amount of preferential allotment at the time of exercise of option to convert the warrants into shares and by other six individual promoters preferential allottees. On examination of the bank account statements of the individual promoter preferential

allottees for the two months prior to the date of transfer of such funds by JKMM to their accounts, it was observed that except for the above noted fund transfers, there were no other transactions between JKMM and these individual preferential allottees. Further, it was observed that these preferential allottees did not have enough balance in their bank accounts to pay for the preferential allotment and only the funds transferred by JKIL enabled JKMM and the other six individual promoters preferential allottees to pay for their respective dues against the preferential allotments received by them. The particulars of the afore-stated funds transfers from JKIL to JKMM and from JKMM to six individual promoters are as under: -

Table -2

Entity Name	**Opening Balance (Rs.) (Date)**	**Funds Received from Entity (Date)**	**Amount (Rs.)**	**Amount transferred to JKIL (Rs.) (Date)**	**Closing Balance (Rs.) (Date)**
JKMM	88,674 (Aug 5, 2009)	JKIL (Aug 11, 2009)	7,20,00,000	3,60,00,000 (Aug 12,2009)	88,674 (Aug 12, 2009)
Jagdish Kumar Gupta	6,88,424.34 (Aug 11, 2009)	JKMM(Aug 11,2009)	90,00,000	90,00,000 (Aug 12, 2009)	6,64,514.34(Aug 12, 2009)
Kamal J Gupta	10,03,818.31 (Aug 11, 2009)	JKMM (Aug 11,2009)	45,00,000	45,00,000 (Aug 12, 2009)	8,53,195,31 (Aug 12, 2009)
Nalin J Gupta	7,04,462.65 (Aug 11, 2009)	JKMM(Aug 11,2009)	45,00,000	45,00,000 (Aug 12, 2009)	7,04,372.65 (Aug 12, 2009)
Kusum Gupta	5,94,410.89 (Aug 11, 2009)	JKMM(Aug 11,2009)	90,00,000	90,00,000 (Aug 12, 2009)	5,94,410.89 (Aug 12,2009)
Sonal Gupta	9,915.97 (Aug 11,2009)	JKMM(Aug 11, 2009)	45,00,000	45,00,000 {Aug 12, 2009)	9,915.97 (Aug 12,2009)
Shailini Gupta	25,436.35(Aug 11, 2009)	J KM M(Aug 11, 2009)	45,00,000	45,00,000 (Aug 12, 2009)	25,436,35 (Aug 12, 2009)

6. Thus, after taking into account the above-stated funds transferred by JKIL to its two corporate and six individual promoting entities, in effect, the actual payment received by JKIL from the promoter group entities towards preferential allotment made to them is found to be as follows:

Table -3

Group (No. of Entities)	25% **of share application**		75% **of share application**		Observations
	Payment received in bank a/c of JKIL (in Rs. Crore)	**Actual amount received by JKIL (in Rs. Crore)**	**Payment received in bank a/c of JKIL (in Rs. Crore)**	**Actual amount received by JKIL (in Rs. Crore)**	
Promoters (8)	3.6	3.6	10.8	0	Rs. 10.8 Crore was funded by JKIL to promoter preferential allottees
Total	3.6	3.6	10.8	0	

7. As can be observed from the table-3 above, JKIL had actually received only Rs. 3.6 Crore as receipts towards preferential allotment from promoter allottees as against the total amount of Rs. 14.4 Crore actually receivable by it and although the balance amount of Rs. 10.8 Crore was received in its accounts, the same was actually received out of the funds transferred to the said 8 promoting entities by JKIL itself. Based on the aforesaid findings of facts in the course of investigation, it has been alleged that JKIL has conceived a scheme to create an appearance of receipt of funds against preferential allotment of convertible warrants made by it and that JKIL along with its Directors/Promoters who were also themselves preferential allottees viz:- Mr. Jagdish Kumar Gupta, Mr. Kamal J Gupta, Mr. Nalin J Gupta and 5 other promoters/preferential allottees viz:- JKMM, JKSS, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta, had colluded in a fraudulent scheme of issuing warrants on a preferential basis without receipt of actual consideration from these promoter allottees. This was accomplished by making JKIL to provide funds to the promoter entities to enable them to subscribe to the preferential allotment which amounted to breach of provisions of Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act,

1992 (hereinafter referred to as **"SEBI Act"**) and regulations 3 (b), (c), (d), 4 (1) and 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**)

SHOW CAUSE NOTICE

8. Based on the aforesaid findings during the Investigation, a common Show Cause Notice dated April 24, 2017 (hereinafter referred to as **"SCN"**) was issued to the Noticees asking them to show cause as to why necessary directions under Sections 11(4) and 11(B) of the SEBI Act should not be issued against them for violation of the aforementioned provisions of SEBI Act and PFUTP Regulations. The SCN was duly delivered to the Noticees. Noticees, vide letters dated June 19, 2017 had requested for additional time to reply to the SCN. I note from the records that all the Noticees have submitted their respective written replies, each dated June 27, 2017. Subsequently, in conformity with the principle of nature justice, Noticees were provided with an opportunity of personal hearing on September 6, 2017. However, the Noticees vide letters dated August 23, 2017 requested for postponement of the scheduled hearing due to unavailability of their counsel. Accordingly, another opportunity of personal hearing was granted for the Noticees on May 8, 2019, in response to which an Authorized Representatives (AR) appeared on behalf of all the Noticees on the said date and presented his arguments primarily in line with the previously filed written submissions. The AR was further asked to provide audited accounts of JKIL, JKSS and JKMM along with relevant extracts of ledger accounts and copies of balance sheets and IT Returns etc. to substantiate their submissions. After the personal hearing, Noticees have submitted separately, further written submissions each dated June 6, 2019. I have carefully gone through the written replies dated June 27, 2017 and June 6, 2019 submitted by the Noticees and summarize their contentions/submissions hereunder, as follows:-

   a) That JKIL used to take temporary business advances from JKMM, a private limited group company and used to refund the said advances as and when demanded back by JKMM. Accordingly, during April 8, 2009 to August 11, 2009, JKMM had extended total amount of business advances worth of Rs. 14.86 Crores to JKIL out of which, JKMM demanded back a total sum of Rs. 9.65 Crores from JKIL during the above period. However, out of the total

transactions, SCN has taken into account the financial transactions only for 'limited period of time', *i.e.* SCN has considered the alleged funds transfer of only Rs. 7.2 Crores by JKIL to JKMM by considering only two transaction dates, *i.e.* August 11, 2009 and August 12, 2009. Thus, SCN has ignored the financial transactions that took place from time to time preceding the 'limited period of time' although the Noticees had furnished bank statements and other documents for the entire period.

b) That JKIL also used to take temporary business advance from JKSS, another private limited group company and has refunded the said advances as and when demanded back by JKSS. Accordingly, during the period, May 23, 2009 to August 11, 2009, JKSS had extended a total amount of business advances worth of Rs. 4.6 Crores to JKIL and out of the said amount has also demanded back Rs. 4.37 Crores. However, out of the total transactions, SCN has considered the alleged funding of only Rs. 3.6 Crores by JKIL to JKSS by considering the transactions only for two dates, *i.e.* August 11, 2009 and August 12, 2009 and has ignored the financial transactions that took place preceding them.

c) That in order to have a true and complete picture of these financial transactions, it would be in order to consider the financial transactions of the whole period, *i.e.* from the actual date of first transaction upto dates of alleged transactions. Noticees have submitted the audited annual accounts and relevant extracts of bank statements of JKIL from their first transactions upto the dates of allegations and the corresponding debit entries can be verified from the bank statements of JKMM and JKSS. From the said documents, it is evident that at no point of time, JKIL had extended any fund to JKMM or JKSS during the said period and therefore, the allegations in the SCN that JKIL funded Rs. 7.20 Crores to JKMM and six other promoters who were also preferential allottees and also funded Rs. 3.6 Crores to JKSS for enabling them to pay for their respective preferential allotments, are factually incorrect.

d) That with regards to the allegation in the SCN that JKIL provided different figures of advances received from JKSS and JKMM for the financial year ending 2010, JKIL submitted

that details furnished by JKIL vide letter dated January 21, 2016 were in response to para 1(b) of SEBI summons dated January 15, 2016 while details submitted by JKIL vide letter dated March 8, 2016 were in response to para 1(c) of SEBI summons dated February 10, 2016. Considering that the information sought by SEBI vide the aforesaid two summons was different and for different reference dates, information supplied by JKIL also differed as per the requirements of summons. Hence, the allegation in the SCN on that count is incorrect.

e) JKMM and JKSS have stated that they are unlisted private limited companies and used to give business advances to JKIL on a regular basis which have been subsequently repaid by JKIL. Accordingly, the allegation that JKIL funded them for making payments for the preferential allotment is incorrect. JKMM and JKSS enclosed copies of their audited annual accounts, bank account statements, ledger accounts etc. in support of their submissions. JKMM and JKSS used to give business advances to JKIL, and also used to ask for payback of those advances as and when need arose. In the instant case, JKMM demanded repayment of Rs. 7.20 Crores from JKIL in order to invest in the convertible warrants issued by JKIL as well as to make payments for the purchase of flats in Vile Parle to other individual Promoters. There are many transactions of advances for business purposes and repayments thereof between them and JKIL and transactions executed on August 11, 2009 and August 12, 2009 were only few of such transactions. Such transactions amongst companies having same management are common and are done to save interest payment and other costs incurred when similar funding is taken from outside entities like banks, etc, especially when, surplus is available within the group itself. Therefore, no illegality can be attributed with respect to these fund transfers.

f) That with regard to the transactions between JKMM and other six promoter allottees (Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta), the same were in the nature of part payment of consideration for the purchase of flats from them. They have enclosed the Memorandum of Understanding (MOU) entered into between them as well as copies of balance sheet in support of their

submissions. JKMM further stated that the funds transferred by JKMM to them were funds belonging to JKMM and not funds belonging to JKIL as alleged.

g) That it is difficult to understand how taking loan from a company to invest in the preferential allotment of convertible warrants can be detrimental to other investors of Securities Market, especially when they are still holding the securities allotted to them through preferential allotment and have not sold it in the Securities Market. JKMM, JKIL and JKSS are largely under same management with several common directors. Hence, no formal agreement was entered into between them for advancing of money. However, the transactions have been executed through bank channels and Noticees have not acted in violation of law.

h) Noticees have relied on various judgements passed by Hon'ble Supreme viz:-*Union of India Chaturbhai M. Patel, AIR 1976 SC 712* and SAT orders, *viz:- Parsoli Corporation v. SEBI (Appeal no. 146/2011, dated August 12, 2011) and Sterlite Industries v. SEBI (Appeal no. 20/2001 dated October 22, 2001)* to support their contentions that serious allegations of provisions of PFUTP Regulations cannot be alleged on mere surmises and that SCN is based on low preponderance of probabilities.

CONSIDERATION OF ISSUES:

9. Based on the above, I find the only issue that requires consideration in the matter is as to **Whether JKIL provided funds to other Noticees to enable them to pay for the preferential allotment of convertible warrants so that the acts of Noticees can be held to be in breach of provisions of Section 12A (a), (b) and (c) of SEBI Act and regulations 3 (b), (c), (d), 4 (1) and 4 (2) (a) of PFUTP Regulations.**

10. Before proceeding to examine the aforesaid question on the basis of the facts of the matter, it would be proper to refer to the relevant provisions of the SEBI Act and PFUTP Regulations which have been allegedly breached by the Noticees and the same read as under: -

SEBI Act

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(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;

11. After carefully analyzing the contents of the SCN, I find that the crux of the allegations levelled in the SCN against the Noticees is that JKIL, a listed Company has in a fraudulent manner funded directly and/or indirectly, its group companies/promoters in order to enable them to make payment towards the preferential allotment of convertible warrants as allotted by JKIL to them, thereby has acted in collusion with its promoter entities in a manner to self-finance its own preferential issue of convertible warrants. Under the circumstances JKIL and its promoting entities are liable for acting in a fraudulent manner in violation of the relevant provisions of PFUTP Regulations and SEBI Act.

12. As discussed earlier, the investigation conducted by SEBI revealed that JKIL had issued convertible warrants to 22 entities. Out of the said 22 allottees, 8 allottees belonged to the promoter's entities of JKIL. In terms of the allotment of warrants, 25 % of the application money was to be paid on the date of allotment of warrants and balance 75 % was required to be paid at the time of allotment of shares pursuant to exercising the option for conversion of the warrants into equity shares. Undisputedly, the initial 25% application money was paid by all the allottees including the Noticees no. 2 to 9. However, the balance of 75 % payment towards the convertible warrants have allegedly been funded by the issuer Company i. e JKIL itself. The alleged funding was supported by the funds trail and transfer of funds as observed from the Bank accounts of JKIL, Noticee no. 8 and 9 which also revealed further transfer of the said funds so received by Noticee no. 9 (JKMM) from JKIL to other Promoter Noticees i.e Noticees nos. 2 to 7. The funds so transferred by JKIL were ultimately utilized by Noticee nos. 2 to 9 to make payment for the convertible warrants as allotted to them. It has been noticed that JKIL had transferred Rs. 7.20 Crores to JKMM on August 11, 2009, out of which, JKMM used Rs. 3.60 Crores to make payment against the preferential allotment of shares made to it by JKIL. Further, it was noticed that JKMM has transferred the balance amount (Rs. 3.60 Crores) to the six other individual promoter entities/preferential allottees, viz- Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta (Noticees no. 2 to 7) who in turn, used the said transferred amount to pay for their respective balance considerations amount against the preferential allotment of convertible warrants made to them by JKIL. Details of the aforesaid fund transfers between the Company (JKIL) and JKMM and between JKMM and other promoters (allottees) are demonstrated in the chart below:

Chart-1

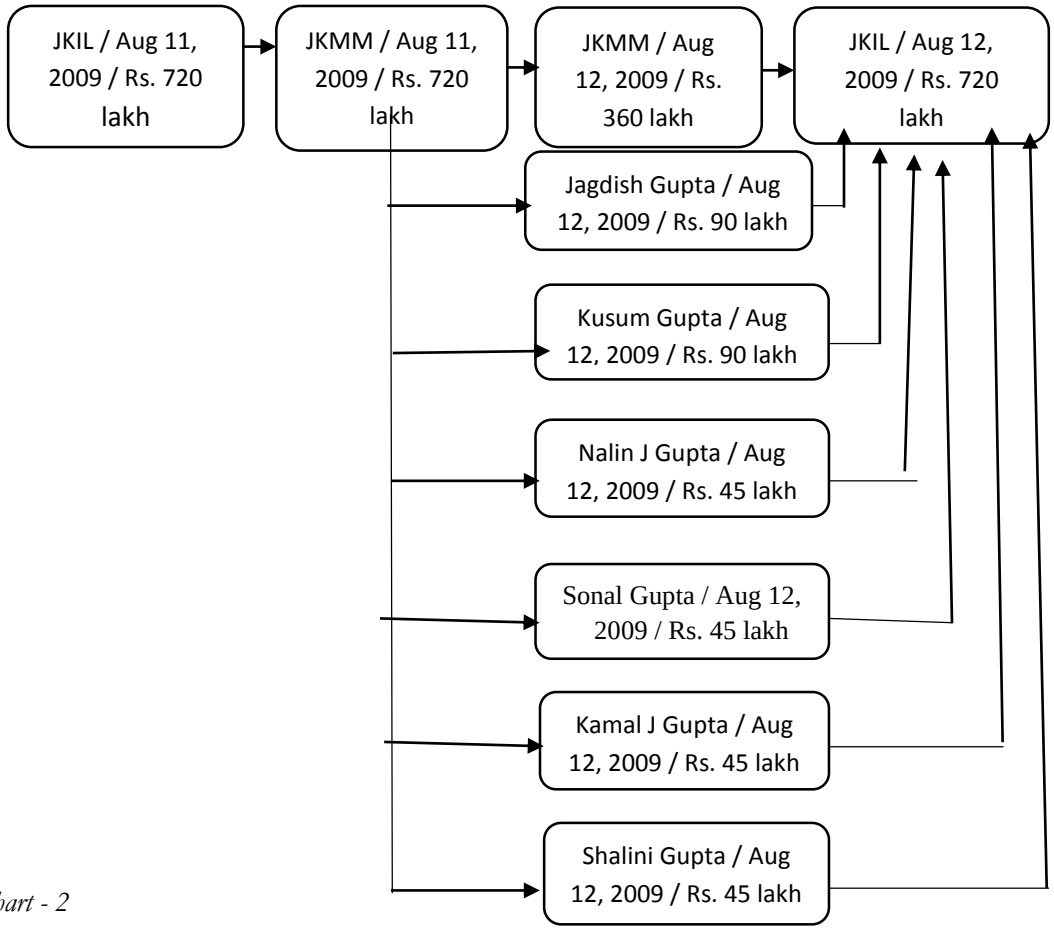
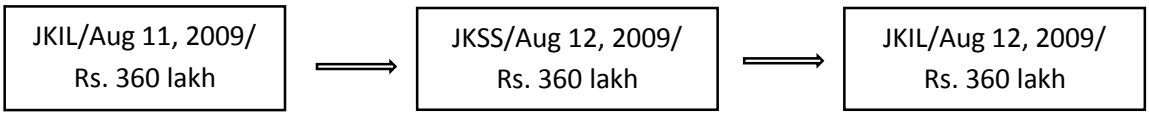


Chart - 2



13. As seen in the preceding pages of this Order, in response to the afore-stated allegations, the submissions advanced by the Noticees are that JKIL (a listed company) used to obtain business advances from JKMM and JKSS (both unlisted private group companies) on a regular basis as and when needed and the said amounts used to be refunded by JKIL as and when demanded by JKMM and JKSS. Noticees have also submitted documents in support of the explanations so advanced by them.

14. It has been submitted that during April 8, 2009 to August 11, 2009, JKMM had extended a business advance worth of Rs. 14.86 Crores to JKIL from time to time out of which, JKMM had also

demanded back Rs. 9.65 Crores from JKIL during the above period. Noticees have contended that out of the total transactions, SCN has selectively considered the financial transactions only for a 'limited period of time'. For example, the SCN has selectively picked up the alleged funds transfers of Rs. 7.2 Crores by JKIL to JKMM by considering the transactions that took place on August 11, 2009 and August 12, 2009 and has ignored the other transactions between them on the other dates. In this regard, JKIL has submitted a table showing a series of funds movement between JKIL and JKMM during the relevant period as presented below:

Table -4

Date of Funds Transfer	**Business advance paid by JKMM to JKIL in Rs. (Amount refunded by JKIL to JKMM in Rs)**	**Cross reference to documents**	**Cumulative Business Advance paid by JKMM to JKIL in Rs.**
31.03.2009	**NIL**	Balance Sheet of JKIL as at 31.03.2009 **Annexure 1**	0
08.04.2009	1,50,00,000	Bank account statement of JK1L- **Annexure 2**	1,50,00,000
15.04.2009	2,20,00,000	Bank account statement of JKIL- **Annexure 3**	3,70,00,000
17.04.2009	2,45,00,000	Bank account statement of JKIL- **Annexure 4**	6,15,00,000
27.04.2009	1,00,00,000	Bank account statement of JKIL- **Annexure 5**	7,15,00,000
28.04.2009	50,00,000	Bank account statement of JKIL- **Annexure 6**	7,65,00,000
04.05.2009	65,00,000	Bank account statement of JKIL- **Annexure 7**	8,30,00,000
05.05.2009	55,00,000	Bank account statement of JKIL- **Annexure 8**	8,85,00,000
08.05.2009	1,00,00,000	Bank account statement of JKIL- **Annexure 9**	9,85,00,000

15.05.2009	80,00,000	Bank account statement of JKIL- **Annexure 10**	10,65,00,000
18.05.2009	50,00,000	Bank account statement of JKIL- **Annexure 11**	11,15,00,000
21.05.2009	46,00,000	Bank account statement of JK1L- **Annexure 12**	11,61,00,000
28.05,2009	-80,00,000	Bank account statement of JKIL- **Annexure 13**	10,81,00,000
29.05.2009	-45,00,000	Bank account statement of JKIL- **Annexure 14**	10,36,00,000
30.05.2009	-1,20,00,000	Bank account statement of JKIL- **Annexure 15**	9,16,00,000
04.06.2009	1,00,00,000	Bank account statement of JKIL- **Annexure 16**	10,16,00,000
13.06.2009	75,00,000	Bank account statement of JKIL- **Annexure 17**	10,91,00,000
15.06.2009	1,00,00,000	Bank account statement of JKIL- **Annexure 18**	11,91,00,000
07.07.2009	50,00,000	Bank account statement of JKIL- **Annexure 19**	12,41,00,000
11.08.2009	**-7,20,00,000**	Bank account statement of JKIL- **Annexure 20**	**5,21,00,000**

15. As can be noted from the above table, during the period from April 8, 2009 to August 11, 2009, there are several instances of financial transactions between JKIL and JKMM. JKMM has transferred a total amount of funds of Rs. 11.61 Crores to JKIL during the period from April 8, 2009 to May 21, 2009 on various dates out of which JKIL has also repaid a total amount of Rs 2.45 Crores to JKMM during May 28-30, 2009. Subsequently, JKMM has further advanced a sum of Rs. 3.25 Crores in tranches to JKIL during June 4, 2009 to July 7, 2009 while JKIL has repaid a sum of Rs. 7.20 Crores to JKMM on August 11, 2009. The above table shows that there have been numerous financial transactions between JKIL and JKMM from April 8, 2009 to August 11, 2009. I note that

amounts of different denominations have been transferred by JKMM to JKIL and vice versa and there are series of such transactions between JKIL and JKMM during the relevant period. I have also seen the copies of bank statements of JKIL and JKMM enclosed by the Noticees to their written replies and find credence in the submissions advanced by the Noticees for the reason that the amounts so claimed to have been advanced as mentioned above are corroborated by entries in the bank statement of JKIL.

16. I note that from the SCN and the chart-1 at pre pages, that the funds transfer of Rs. 7.20 Crores from JKIL to JKMM on August 11, 2009 and the subsequent repayment of the amount by JKMM to JKIL on August 12, 2019 has been taken as the basis for alleging that JKIL has funded its promoter entity, JKMM so as to enable payment of Rs. 7.20 Crores (Rs. 3.6 Crores paid by JKMM and Rs. 3.6 Crores paid by the other six individual Promoter preferential allottees) against its obligations to pay for the application money towards the preferential allotment made to it. However, after considering the series of funds transfers that have happened quite frequently between JKIL and JKMM during the period of April to August, 2009 as depicted in the table-4 above, and after having seen that most of those fund transfers have originated from JKMM to JKIL and not vice versa, one gets a clear impression that the funds transfers between JKMM and JKIL have happened in due course of their day-to-day business transactions. Therefore, by cherry-picking a few instances of funds transfers that took place for meeting payment obligation of JKMM towards its preferential allotment to suggest that JKMM met its payment obligations out of funds received from JKIL may not be appropriate. Therefore, I am of the view that the allegations in the SCN that JKIL funded JKMM would not survive for the reason as noted above and for the fact that there were frequent transfer of funds from JKMM to JKIL and at any point of time, it was JKIL which was owing money to JKMM (and not the vice versa), hence, the transfer of Rs 7.20 Crore from JKIL to JKMM on August 11, 2009 appears to be a transfer that was made as a matter of normal repayment of funds already advanced by JKMM to it than for any other fraudulent objective as alleged in the SCN. The submission of JKMM is that during April 8, 2009 to August 11, 2009, it had extended business advances aggregating to Rs. 14.86 Crores to JKIL out of which JKMM had demanded back Rs. 9.65 Crores from JKIL during the said period to cater to its business needs which still left a credit balance of Rs. 5.21 Crores in favour of JKMM in the books of JKIL appears to be a plausible explanation.

In view of the above, as there is no dispute with respect to the funds transferred by JKMM to JKIL on numerous dates during the period of April to August 2009, merely on the basis of receiving of funds of Rs 7.20 Crore by JKMM from JKIL on one of such dates would not be enough to conclude that the payment of 75% of the balance subscription money towards preferential allotment was funded by JKIL, even though the same money was utilized by JKMM to pay for its balance subscription amount. The fact that there existed a standing commercial arrangement between JKMM and JKIL for give and take of funds in due course of their business operations as exemplified by the transactions listed out in table-4 cannot be lost sight of, just because of the fact that a couple of such transactions were made with respect to payment of balance considerations of preferential allotment received by JKMM.

17. The allegations in the SCN state that the amount received by JKMM from JKIL was the exact amount that was required to pay for the preferential allotment and that JKMM did not have enough balance in its bank account to pay for the preferential allotment and the fund transfer from JKIL on August 11, 2009 enabled JKMM to pay for the preferential allotment. However, one has to consider the submissions of JKMM that it used to give business advances to JKIL and used to demand repayment from JKIL as and when it needed funds, and the fact now remains beyond doubt that the transfer of Rs 7.20 Crore on August 11, 2009 from JKIL was also pursuant to the demand it raised in JKIL in August 2009 so as to pay the balance consideration amount towards the convertible warrants issued by JKIL. I find merit in the submissions of Noticees that the funds received by JKMM from JKIL on August 11, 2009 was primarily its own money already advanced to JKIL and mere receiving back its own money and utilizing the same for payment of balance consideration towards Preferential allotment would not be sufficient to colour the transaction as nothing but funding JKMM to pay for the convertible securities. Considering that JKMM had earlier advanced substantial amounts to JKIL on various dates, it would be natural for JKMM to seek repayment of the amount from JKIL to fulfil its financial obligations hence no irregularity or mischief should be attributed to such repayment made by JKIL to JKMM. Thus, in the absence of any other corroborative evidence, the mere incident of receiving the funds from JKIL and paying the said amount to JKIL on the very next day would not be sufficient to label the transaction as a fraudulent act or to hold that the JKIL has funded JKMM to pay for the convertible warrants issued by it.

18. It is also alleged that no agreements have been produced by the Noticees to substantiate the financial arrangement between JKIL and JKMM to which, Noticees have contended that since the entities were largely under the same management, no formal agreements were entered into between them. In this regard, on a perusal of the annual reports submitted by JKIL for the years 2009-10, it is noted that JKSS and JKMM have been disclosed as group companies and Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta and Mr. Nalin J Gupta as its KMPs while Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta have been disclosed as relatives of KMPs. Further, Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta and Mr. Nalin J Gupta are common directors between JKIL, JKMM and JKSS. Considering the close intertwined relationship between the Noticees and the fact that the entries in the bank account statements of JKIL and JKMM are duly supporting the above funds transfers between JKIL and JKMM, even in the absence of any formal agreements between JKIL and JKMM, from the very nature of such transactions it can be very well deciphered that these transactions were in the nature of business advances/repayments. In my view, the Noticees have a strong case in their favour, especially when no evidence to the contrary is available on record. In any case, after witnessing a series of fund transfers between JKMM and JKIL (much prior to August 11, 2009 when JKIL has been alleged to have funded Rs. 7.20 Crores to JKMM) duly substantiated by entries in the bank account statements of JKIL and JKMM and verified by corresponding entries in the ledger statements of both JKIL and JKMM, I do not find any infirmities in such transactions, hence, the allegation in the SCN that JKIL has funded its own preferential allotment is not maintainable on facts and not sustainable under law.

19. Similarly, with regards to the allegation in the SCN that JKIL had transferred Rs. 3.60 Crores to JKSS on August 11, 2009 and JKSS used this amount to pay for its balance obligation of paying the remaining 75% of the share application money (Rs. 3.60 Crores) to JKIL on August 12, 2009, the Noticees have contended that during the period, May 23 2009 to August 11, 2009, JKSS had extended a total amount of business advances worth of Rs. 4.60 Crores to JKIL out of which it had also demanded back Rs. 4.37 Crores during the said period. However, out of these total transactions, SCN has taken into account the financial transactions only for 'limited period of time', *i.e.* SCN has considered the alleged funding of Rs. 3.6 Crores by JKIL to JKSS by picking up fund transfers on two specific dates, i.e. August 11, 2009 and August 12, 2009 and has ignored the financial transactions that preceded the said 'limited period of time'. JKIL has submitted a table showing the

funds movement that had taken place between JKIL and JKSS during the relevant period as indicated below:

Table -5

Date of Funds Transfer	**Business advance paid by JKSS to JKIL In Rs. (Amount refunded by JKIL to JKSS in Rs)**	**Cross reference to documents**	**Cumulative Business Advance paid by JKSS to JKIL in Rs.**
31.03.2009	Nil	Balance Sheet of JKIL. as at 31.03.2009 **Annexure 1**	0
23.05.2009	2,00,00,000	Bank account statement of JKIL- **Annexure 23**	2,00,00,000
27.05.2009	-51,00,000	Bank account statement of JKIL- **Annexure 24**	1,49,00,000
11.06.2009	46,00,000	Bank account statement of JKFL- **Annexure 25**	1,95,00,000
12.06.2009	-10,00,000	Bank account statement of JKIL- **Annexure 26**	1,85,00,000
13.06.2009	-2,00,000	Bank account statement of JKIL- **Annexure 27**	1,83,00,000
20.06.2009	5,00,000	Bank account statement of JKIL- **Annexure 28**	1,88,00,000
09.07.2009	50,00,000	Bank account statement of JKIL- **Annexure 29**	2,38,00,000
11.07.2009	10,00,000	Bank account statement of JKIL- **Annexure 30**	2,48,00,000
13.07.2009	90,00,000	Bank account statement of JKIL- **Annexure 31**	3,38,00,000
14.07.2009	22,00,000	Bank account statement of JK!L- **Annexure 32**	3,60,00,000

25.07.2009	-14,00,000	Bank account statement of JKiL- **Annexure 33**	3,46,00,000
27.07.2009	5,00,000	Bank account statement of JKIL- **Annexure 34**	3,51,00,000
05.08.2009	32,00,000	Bank account statement of JKIL- **Annexure 35**	3,83,00,000
11.08.2009	**-3,60,00,000**	Bank account statement of JKIL- **Annexure 36**	23,00,000

20. I note from the above table-5 that during the period from May 23, 2009 to August 11, 2009, there were several instances of fund transfers between JKIL and JKSS. I note that JKSS has transferred amounts of different denomination to JKIL on different dates, viz:- Rs. 2.00 Crores on May 23, 2009; Rs. 46,00,000 on June 11, 2009 and Rs. 50,00,000 on July 9, 2009 and JKIL has repaid some of those amounts viz:- Rs. 51,00,000 on May 27, 2009; Rs. 14,00,000 on July 25, 2009 and Rs. 3.60 Crores on August 11, 2009 to JKSS. Considering the aforesaid intermittent funds transfers between JKIL and JKSS, supported by corresponding entries in the bank account statements of JKIL and JKSS (enclosed by JKIL/JKSS with their written replies), I find that there have been regular financial transactions between JKIL (a listed company) and JKSS (group company/unlisted company) on different occasions. Not only there were frequent fund transfers between JKSS and JKIL much prior to August 2009, even as on August 11, 2009 after remitting Rs. 3.60 Crore to JKSS, there was an outstanding balance of Rs. 23,00,000 in the accounts of JKIL to the credit of JKSS. In view of the above, I am constrained to find merit in the submissions advanced by the Noticees that transfer of Rs. 3.60 Crore from JKIL to JKSS on August 11, 2009 was part of repayment of advances earlier received by JKIL from JKSS, and not vice versa. Considering that during the period from May to August, 2009, JKSS had transferred amounts worth of Rs. 4.60 Crores to JKIL and out of the said amount, Rs. 4.37 Crores has been transferred from JKIL to JKSS still leaving a credit balance, it cannot be held that the transfer of Rs. 3.60 Crores from JKIL to JKSS as an abnormal transaction or was done only to help JKSS to fulfill its balance payment obligation towards the preferential allotment made to it.

21. I also note that Noticees have submitted a certificate from Chartered Accountants, confirming the advances given by JKSS/JKMM to JKIL during the period, April to August, 2009 to substantiate their submissions that the JKSS and JKMM used to lend to JKIL in their normal course of business and have received back their funds from JKIL on those given dates (against the advances so made by them earlier) in due course of their business transactions with each other. Hence such funds transfers received by them from JKIL should not be read as transfer of funds for facilitating or funding the Noticees for payment of balance considerations towards the allotment of convertible warrants. It is also noted that Noticee nos. 8 & 9 have submitted the copy of their ledger statements along with written reply, which contain the entries of the respective amounts as claimed to have been transferred by them to JKIL as advances. Considering the fact that financial transactions between JKIL and JKMM & JKSS have taken place so frequently on several occasions during the April to August, 2009, as per records made available before me in my view, solely based on specific instances of transfer of funds from JKIL to JKSS & JKMM, which have been successfully demonstrated by Noticees as repayment of money already advanced by these two Promoter entities to JKIL, the financial transactions of Rs. 7.20 Crore between JKIL and JKMM on August 11, 2009 and Rs. 3.60 Crores between JKIL and JKSS on August 11, 2009 cannot be viewed isolatedly to establish the charge against JKIL for self-financing the payment of balance allotment consideration payable by Noticee nos. 8 & 9.

22. I have also perused the copies of annual reports of JKIL for the FY 2008-09 from which, it can be observed that JKIL has disclosed the related party transactions undertaken by it during the year. It is noticed that in the FY 2008-09, JKIL had taken loan of Rs. 2.43 Crores from its related entities including JKSS & JKMM and has also repaid the said loans to the extent of Rs. 2.43 Crores during the year. Similarly, as per the annual report of JKIL for the FY 2009-10, JKIL has disclosed that it had taken advances of Rs. 20.08 Crores from its related parties (comprising JKSS, JKMM and another group company viz:- J Kumar Developers Pvt Ltd.) and also has given advances of Rs. 50.85 Crores to them. Even in the subsequent FY 2010-11, I note that JKIL has disclosed having advanced Rs. 25.20 Crores to its group companies and has further mentioned an amount of Rs. 59.76 Crores against capital work in progress and Rs. 1.80 Crores against contract revenue, pertaining to its group companies. The above reported related party transactions give a clear impression that

lending and borrowing in the form of business advances have been a part and parcel of business activities between JKIL and its group companies which continued from year to year. JKIL and its group companies seem to be engaged in regular business transactions with each other, therefore, it will be not appropriate to single out one financial transaction between them to conclude that such transaction was undertaken by JKIL to fund its group entities, especially when such practice of giving and taking of advances on a regular basis has not been disputed in the investigation. In view of my detailed findings recorded in the paragraphs above and the preponderance of probabilities that weigh in favour of the Noticees, I am constrained to find that the charge against JKIL for allegedly funding its promoter entities JKSS and JKMM for payment of purchase consideration towards the preferential allotment of warrants (made by JKIL to JKSS/JKMM) is not established.

23. On the issue of discrepancies in reporting of business advances received by JKIL from JKMM & JKSS, as has been pointed out in the SCN, I find that JKIL has explained that the figures of advances received & repayments made thereon, as reported by them during investigation proceeding in response to summons issued to them, were keeping in view the specific requisitions made in those two summons issued to them on January 15, 2016 and February 10, 2016. Further, I note that discrepancies in figures submitted by JKIL during investigations proceedings, if any, is not in itself a charge in the instant proceedings warranting any adjudication by me. Therefore, notwithstanding the aforesaid explanation offered by the Noticees, I have to deal with the entire gamut of transactions involving fund transfers that have taken place between JKIL and its two promoting entities (JKSS & JKMM) during the year for the purpose of adjudication on the issue as to whether JKIL had indeed self-financed its own preferential issues by using its two promoting entities as conduits as alleged. This issue has been discussed at length in preceding paragraphs based on which, I have already held above that the charge of self-financing of Preferential issue against JKIL is not sustainable.

24. Moving on to the fund transfers from JKMM to other six individual promoter allottees (Mr. Jagdish Kumar Gupta, Mr. Kamal Gupta, Mr. Nalin J Gupta, Ms. Kusum Gupta, Ms. Sonal Gupta and Ms. Shalini Gupta), it has been contended that the same were in the nature of part payment of consideration against the purchase of flats from them. Noticees have submitted a Memorandum of

Understanding (hereinafter referred to as "MOU") dated February 2, 2009 executed between them. I have perused the contents of the MOU executed between the Noticees, Mr. Nalin Gupta, Ms. Kusum Gupta and JKMM. As per the said MOU which was executed for the sale of a flat in Vile Parle (belonging to Mr. Nalin Gupta and Ms. Kusum Gupta) for a consideration worth of Rs. 7.75 Crores, JKMM (as a purchaser) was required to pay a sum of Rs. 3.25 Crores to Ms. Kusum Gupta, Rs. 3.00 Crores to Mr. Nalin Gupta and Rs. 1.50 Crores to Ms. Shalini Gupta (wife of Mr. Nalin Gupta) as consideration. The MOU further provided that if the purchaser does not pay the entire consideration before December 31, 2011 to the vendors, then the vendors shall return the amounts earlier paid by purchaser within a period of 5 years without any interest. It has been submitted that JKMM had paid to Mr. Nalin Gupta Rs. 6,00,000 on February 5, 2009 and Rs. 45,00,000 on August 11, 2009 and that Mr. Nalin Gupta sought Rs. 45,00,000 from JKMM as part of the consideration towards purchase of the flat in order to be able to pay for the preferential allotment. As JKMM was unable to pay the entire consideration before 2011, the amount advanced to Mr. Nalin Gupta was to be returned within next five years without interest in terms of the MOU. I have perused the bank statements and ledger of JKMM as well bank account statement of Mr. Nalin Gupta, showing the money advanced by JKMM to Mr. Nalin Gupta in 2009 as well return of the amount (Rs. 51,00,000) by Mr. Nalin Gupta to JKMM on October 11, 2012 and November 7, 2012.

25. Similarly, Mr. Kamal Gupta has also submitted copy of a similar MOU dated February 2, 2009 which was entered into between JKMM and Mr. Kamal Gupta and Mr. Jagdishkumar Gupta, for the sale of another flat in Vile Parle for a consideration worth of Rs. 5.50 Crores for which, JKMM (purchaser) was required to pay a sum of Rs. 2.00 Crores to Mr. Kamal Gupta, Rs. 2.00 Crores to Mr. Jagdishkumar Gupta and Rs. 1.50 Crores to Ms. Sonal Gupta (wife of Mr. Kamal Gupta) as consideration. The MOU further provided that if the purchaser does not pay the entire consideration before September 30, 2009 to the vendors, then the vendors shall return the amounts paid by purchaser within a period of 5 years without any interest. I have perused the MOU and bank statements/ ledger statements provided by the Noticees and find merit in the submissions made by them that since JKMM owed money to the Noticees and JKIL owed money to JKMM, there was nothing illegal in JKMM taking its money back from JKIL to pay to these individual Promoters and also these transactions have proved beneficial to all, *i.e.* resulted in reduction of debt in the books of

JKIL, helping JKMM to perform its contractual transactions as per the MOU for purchase of flats and also to make investment of these funds in preferential allotment, which ultimately was beneficial to JKIL as well as to the other Noticees. I note that JKMM paid a total amount worth of Rs. 51,00,000 to Mr. Kamal Gupta on February 5, 2009 and August 11, 2009 and Mr. Kamal Gupta has returned the said amount to JKMM on June 14, 2010 and October 11, 2012. Similar entries are observed in the bank account statements of the other four promoter allottees also to support the money transfers between JKMM and them.

26. Notwithstanding the aforesaid facts and without prejudice to the above observations, even if it is assumed that the amounts transferred by JKMM to the Individual Promoters was not towards purchase of flats but for helping them to pay for the consideration of their preferential allotments as alleged in the SCN, I have already observed that in view of the transfer of funds by JKMM to JKIL on numerous occasions through banking channel as business advances in due course of their business activities, the receipt of payment of Rs 7.20 Crore on August 11, 2009 from JKIL by JKMM cannot be held as transfer by JKIL for the purpose of funding JKMM to pay the balance of consideration towards the issue of convertible warrants. Since, the first leg of transfer itself has not been found to be illegal or fraudulent transfer for facilitating/funding JKMM to enable its payment of balance considerations as alleged in the SCN, it would be logical and proper to hold that the onward transfer of funds from JKMM to other six individual entities would also not amount to funding by JKIL to the above noted six promoter's entities to enable them to pay for the balance allotment consideration towards the subscription to convertible warrants. Therefore, in my view, no illicit motive can be attributed to the fund transfers by JKMM to the six individual Promoters, and the same should not be linked to JKIL's fund transfer to JKMM.

27. On the face of the afore discussed factual details and evidences which make it clear that JKMM and JKSS were having a running business accounts with JKIL and were providing advances to JKIL intermittently and also were receiving back their funds whenever needed by them, and when there was no prohibition on either of the parties on transferring to or receiving back funds from each other, nothing adverse can be inferred even if one or two of such fund transfers have taken place in connection with payment of balance consideration towards the preferential issue of convertible

warrants. The specific instances of funds transfers which have been taken exception and referred to in SCN as an act of financing by JKIL for its own preferential issue through convertible warrants through JKMM & JKSS, are found to be part of a series of funds transfers that have taken place between JKMM/JKSS and JKIL in course of their inter se business dealings over long periods of time, hence have to be viewed in the larger context of their business operations**.** The fact that the entity to which the money was advanced by JKMM & JKSS from time to time, happened to be the same entity which has issued convertible warrants to which JKSS & JKMM were also subscribers and that they have demanded part of their money so advanced to JKIL for utilization of the same for payment of balance considerations would not vitiate the allotment of convertible warrants to these entities solely on the ground that the money transferred to them was utilized for payment of balance consideration towards convertible warrants. It is not a case of a one-sided or one-time fund transfers from JKIL to JKSS & JKMM through certain specific transactions so as to constitute financing by JKIL for its own preferential allotment. The transactions in question are rather part of a series of transactions between JKIL and its Promoter entities throughout the year in due course of their regular business operations.

28. I also note that JKIL, JKMM and JKSS are closely related companies operating under the same management. Mr. Nalin Gupta, Mr. Kamal Gupta and Mr. Jagdishkumar Gupta are the common directors in JKMM as well as in JKIL. Such transactions between promoters/directors for the business needs of the company are usual, especially when such funds movement is supported by bank transactions in due course of business. In any case, the main issue in the present case is whether JKIL, a listed company has funded its own preferential allotment, on which, no adverse inference can be drawn neither qua the fund transfer between JKIL and JKMM/ JKSS, nor against the fund transfer between JKMM and other six promoter allottees, given the strong evidence emanating from the factual details and the ongoing business transactions between the entities throughout the year. I also take note of the submissions made by the Noticees that they have held on to the shares so obtained by them pursuant to exercise of option on the preferential allotment of convertible warrants despite price rise in the shares. Under the circumstances, in the facts of the matters and based on the evidences available on record, no violation of provisions of PFUTP Regulations can sustain for the alleged acts of Noticees. Further, considering the aforesaid submissions made on behalf of the

six individual promoter allottees, supported by evidences produced by them along with their written replies in form of MOU and bank statements I also do not find that the charge of JKIL indirectly funding them through JKMM for the purpose of making payment to JKIL against the preferential allotment of shares made to them, stands established.

29. Thus, in view of my detailed discussions in the previous paragraphs I find that the materials available on record are not sufficient to hold that the financial transactions between JKIL and the other Noticees can be conclusively held to be JKIL funding for the subscription to its own preferential allotment of shares through its Promoters/Promoter entities. Accordingly, the charges levelled against the Noticees in the SCN do not stand established.

DIRECTION:

30. Based on the findings recorded above contained paragraphs I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11 and 11B(1) of the SEBI Act, dispose of the present proceedings against the Noticees without any direction.

31. The Order shall come into force with the immediate effect.

32. A copy of this order shall be forwarded to the Noticees, all the recognized Stock Exchange, depositories and registrar and transfer agents.

-Sd-

S.K. MOHANTY

DATE: DECEMBER 17 , 2019 **WHOLE TIME MEMBER**

PLACE: MUMBAI **SECURITIES AND EXCHANGE BOARD OF INDIA**