WTM/MPB/EFD-1-DRA-4/110 /2020

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Regulation 28 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In the matter of Midvalley Entertainment Limited

In re: Merchant Banker Regulations, ICDR Regulations and PFUTP regulations

In respect of:

Name of the Entity	**Registration No./ PAN**
Aryaman Financial Services Limited	**INM000011344**

1. Aryaman Financial Services Limited ("**AFSL**") is registered with Securities and Exchange Board of India ("**SEBI**") as Category-I Merchant Banker having registration number INM000011344. Its registered address is at 102, Ganga Chambers, 6A/1, W.E.A., Karol Bagh, New Delhi-110005.

SEBI's Examination:

2. SEBI had conducted an investigation into the affairs of AFSL-the Merchant Banker to the Initial Public Offer (IPO) of Midvalley Entertainment Limited ('**MEL**') and observed the following:
   i. AFSL failed to carry out independent verification on the statement submitted by MEL in the Red Herring Prospectus (hereinafter referred to as RHP) with respect to the directorship of one of its Independent Director, Mr. C Vasan;
   ii. AFSL provided wrong due-diligence certificates to SEBI with respect to the disclosures made in the RHP being true, fair and adequate to enable the investors to

make a well informed investment decision;

iii. AFSL was connected to certain entities which acted as conduits to the siphoning of funds from the IPO proceeds and thus aided and abetted MEL in siphoning off of the IPO proceeds.

3. In view of the above, SEBI initiated proceedings against AFSL in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as '**the Intermediaries Regulations**'). SEBI vide order dated November 25, 2016 appointed a Designated Authority (hereinafter referred to as 'DA') under Section 19 of the SEBI Act read with Regulation 24 of the Intermediaries Regulations to enquire into the alleged violations of provisions of Clause 4, 6 and 7 of Schedule III of the Code of Conduct for Merchant Bankers specified under Regulation 13 of SEBI (Merchant Bankers) Regulation, 1992 ('**Merchant Banker Regulations**'), Regulations 8(2) (b), (e), (f) and 64(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('**ICDR Regulations**'), and Regulation 3 (a), (b), (c), (d) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('**PFUTP Regulations**') read with Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act 1992, ('**SEBI Act**'). On completion of the proceedings, the DA vide Report dated July 31, 2018 recommended suspension of the certificate of registration granted to AFSL for a period of One year.

4. Subsequently, SEBI issued a Show Cause Notice dated March 14, 2019 ("**SCN**") in terms of Regulation 28(1) of the Intermediaries Regulations, to ASFL (hereinafter referred to as "**the Noticee")**, asking it to show cause as to why the action recommended by the DA or any other penalty should not be imposed on the Noticee as deemed fit.

5. The Noticee was advised to reply to the SCN within twenty one (21) days from the date of receipt of the SCN. SEBI also informed the Noticee that in case of failure to reply, it would be presumed that they had no explanation to offer and that the matter would be proceeded on the basis of the evidence available on record. The Noticee was further advised to indicate

if they would like to avail an opportunity of personal hearing before SEBI. A copy of the Report of DA was also forwarded to the Noticee along with the said SCN.

6. ***Service of SCN and reply:*** The SCN was served to the Noticee through Speed Post with acknowledgment and also through hand delivery. The Noticee vide letter dated April 02, 2019 acknowledged the receipt of SCN and submitted the following:

1. That the management of AFSL changed in 2008 and we obtained fresh registration certificate in September 2008. The IPO of Midvalley as the first IPO under the new management. After the IPO of Midvalley, we have successfully completed over 55 IPOs and also managed over 20 takeover transactions. We have been inspected by SEBI teams on regular basis and our work was found satisfactory by the respective SEBI team. Since grant of our fresh registration & inspection by SEBI, we have never been penalised by SEBI for our merchant banking activities or for any other matters.

Submissions of the Noticee in respect of alleged violation of Clause 4, 6 and 7 of Schedule Ill of the Code of Conduct for Merchant Bankers specified under Regulation 13 of SEBI (Merchant Banker) Regulations, 1992 and Regulations 8(2) (b), (e), (f) and 64(1) of the SEBI (ICDR) Regulations, 2009 for incorrect disclosure of "Other Directorships" of Independent Director- Mr. C Vasan:

i. Mr. C. Vasan was a Non-Executive Independent Director of the Company. The details of other directorship were provided by Mr. C. Vasan himself to us.

ii. He had not disclosed (intentionally or un-intentionally) about his directorship in Tanmathra Creative Solutions Pvt. Ltd. & l) NV Media Pvt. Ltd., in which he was appointed in February 2007 & October 2007 respectively. Further Mr. C. Vasan had not pointed out of the said fact (intentionally or un-intentionally) while signing the Offer Document also neither to the Compliance Officer nor to the Merchant Banker:

iii. In those days i.e. in the year 2010-11, the concept of Director identification Number ("DIN") was relatively new and MCA was guiding how to register & obtain DIN. The MCA portal did not have a feature whereby one can independently re verify the "other directorships " of a particular director.

iv. For the Public Issue disclosure, the requirement of disclosing DIN of respective Director was not incorporated in SEBI DIP Guideline i.e. till August 2009 & was incorporated only after SEBI ICDR Regulations, 2009 come into effect. This also shows that the concept of DIN was a relatively new one at the time of Midvallley IPO. Thereafter, even in March 2011, the master data of any company at MCA portal did not reflect the details of director;

v. The DRHP was filed with SEBI in August 2010 and the RHP was filed with the RoC, Chennai in December 2010. None of the relevant concerned person(s) at SEBI or ROC had raised any point regarding this matter at that time. If there were any mechanism to re-verify the other directorship, then SEBI/ RoC would definitely raise this point at that time.

vi. In those days there were no source in the public domain that provides independent information to establish other directorship and the information provided by the Independent Director and the Company was indeed the only source of information regarding other directorships.

vii. That a merchant banker needs to study anything worth studying or material enough as deep as possible but does not mean that a merchant banker needs to doubt each and every data disclosed by the company or its officials. Tanmathra Creative Solutions Pvt. Ltd. & UNV Media Pvt. Ltd. (the

companies which were not disclosed as "other directorships" of C. Vasan) are not identified as violators or parties to the violations of MEL IPO by the investigation team. No material from the Enquiry Report dated July 31, 2018 suggests that these companies were involved in any material transaction with the Issuer Company. That undisclosed data is in no way material to the actual workings or the IPO of MEL and did not cause any proved prejudice or otherwise to the investors in the IPO.

Submissions of the Noticee in respect of alleged violation of Regulation 3 (a), (b), (c), (d) and 4 (1) of PFUTP Regulations read with Section 12 (a), (b), and (c) of SEBI *Act, 1992 in respect of* the *allegation that we had colluded with certain entities and had aided and abetted MEL in siphoning of the funds received from the IPO and caused harm to the Investors.*

Connection with Eduexel Infotainment Ltd. (Eduexel) and Omni Ax's Software Ltd. (Omni) because of the "fact" that Shreyas Shah (Director of our parent company - Mahshri Enterprises Pvt. Ltd.) became an "Independent Director" in both these companies 4 months after the IPO.

a) Shreyas Shah became a "Non-Executive - Independent Director" in Eduexel and Omni in May 2011 (i.e. four months after the IPO) and became a Director of AFSL in May 2013 (i.e. almost 2 years After the IPO).
b) No evidence that Shreyas Shah had any influence over the fund flow conduits or over AFSL as a merchant banker during the period of the alleged violation. Our further submissions on the appointment of Shreyas Shah on the Board of Eduexel & Omni are as under:

- We submit that at the time of appointment of Shreyas Shah as Independent Director of Eduexel, he was aged 23 years with interest in the field of acting and entertainment. In Fact, it was due to his acquaintance with one Mr. Prabir Sarkar that Shreyas Shah accepted appointment on Board of Eduexel only in furtherance of his interest in the field of entertainment and the desire to get

corporate exposure in this field. Further, due to common acquaintance of Mr. Prabir Sarkar with Mr. Rajendra Jain (who was an executive director of Omni during the said period) Shreyas Shah was introduced with Omni Ax's Software Ltd. in May 2011 and he therefore agreed to be appointed as Independent Director in Omni as well.

- Shreyas Shah, being an Independent Director and thereby holding non-executive position, was not involved in any day-to-day decisions of the management much less movement of funds between Eduexel, Omni and any other entity. It may also be noted that the movement of the funds in question did not occur during the tenure of Shreyas Shah on the Board of company.
- During the period between November 2010 and March 2011, the Open Offer process of Eduexel was going on under the provision of SEBI (SAST) 1997. The Post Offer PA was released on March 23, 2011. Nowhere in the Open Offer documents of Eduexel is there any reference made to Shreyas Shah clearly showing that he came in as an Independent Director after completion of the Open Offer process. The fact that approximately 4 (four) months had lapsed since the date of the IPO of MEL and appointment of Shreyas Shah on the Board of Eduexel is no cause to lead anyone to an adverse conclusion that he was earlier also involved with Eduexel and the same is a far-fetched notion and is nothing but a desperate and false attempt to connect the two wholly unconnected situations.
- In May 2011, 4 (four) new Directors were appointed to the Board of Eduexel including Shreyas Shah and 2 (two) existing Directors resigned from the Board of Eduexel. If Shreyas Shah was appointed only due to his connection with AFSL, then there would have been no reason to appoint 3 other Directors on the Board or for 2 existing Directors to resign from the Board of Eduexel. Therefore, credence should be given to the fact that the appointment of Shreyas was made with the view of carrying out the change required in the Board of Eduexel and not for any other purpose.

- A person who is alleged to be "cunning and smart" enough to have influence over "fund flow" conduits despite not having any directorship, shareholding or even employment with these entities cannot be "foolish" enough to become an independent director in such an entity after conducting such acts. He has thereafter resigned from Eduexel and Omni in 2015 and during his tenure has not signed any material document or letter which could prove that he had some beneficial interest in these companies apart from being a "professional" who was appointed an independent director and resigned in normal course of business.

  Connection with Aman Tie-up Private Limited (Aman) because AFSL received a RTGS of Rs. 7.10 Lacs from this fund flow conduit entity during the IPO process and other transactions involving Aman.

a) After the closure of Issue, MEL had to make certain payments to BSE, CDSL&NSDL for which the company had to transfer said funds to us for facilitating such payments. We have hence received Rs.7.10 Lacs via RTGS on Jan 21, 2011, for this cause. The Bank statement, as available from State Bank of India, does not reflect the name of Aman Tie-up. Further since the funds were received via RTGS and the Issuer Company claimed the same, we have not gone into the details of from where the fund was transferred. As far as our accounts are concerned; we have credited these sums to the account of Midvalley only (as re-imbursement) of these expenses to BSE, CDSL & NSDL.

b) We don't have any knowledge about the linkage between Midvalley and Aman Tie-up. Apart from transfer of this Rs. 7.10 Lacs via RTGS on Jan 21, 2011, we don't have other transaction with Aman Tie-up. Further this amount represent only around 0.12% of the Issue Size, which is immaterial in nature.

c) Once again we would like to explain that the fact that a RTGS was received does not prove material relevant connection or influence over Aman Tieup and further even if it proves a connection as to say "AFSL knew this entity" there is no evidence available with the respected DA which proves AFSL had any involvement with Aman Tieup and its alleged siphoning of funds activities.

Connection with Arihant Baid, India Securities Broking Pvt. Ltd., Regent Finance Corporation Ltd., and Mercury Fund Management Pvt. Ltd. because of the fact that they were "public" shareholders of AFSL at various times.

a) We submit that AFSL has no knowledge or control over and was not involved in transfer of funds that may have been made by Mercury Fund to any other entity. (i) any transfer made by Eduexel to Mercury Fund, was between the private parties over which AFSL had no knowledge or control. Also submit that the transactions between Mercury Fund, Regent Finance Corporation Limited, India Securities Broking Private Limited, the same have been made between private parties and AFSL has no control over the same. The fact that Arihant Baid, director of Regent Finance Corporation Limited and India Securities Broking Private Limited were minor shareholders of AFSL holding not more than 3.06 % totally was happenstance and not attributable to AFSL. AFSL being a listed entity does not have any control or knowledge over the dealings in its shares made by other persons.

b) Further, we submit that these entities have not acquired the shares in AFSL through some corporate action such as Preferential Allotment, Rights Allotment, etc. They have acquired these shares from the open market through open purchases. AFSL or its promoters or its directors have not sold

any shares in the open market during the said period including 1 year ahead of such increase in shareholding of fund flow conduits. Hence it must be concluded that these shares were acquired by these entities independently of AFSL and had no connection with AFSL just like any public shareholder trades which take place in a listed company stock from time to time.

c) There is no evidence that there was fund flow matching or links with AFSL with respect to the share trading activities of these entities in AFSL scrip. As the names of all these four entities suggests these entities are in the business of investment and trading of securities and these activities seem very much in the routine course of business.

Hearing and submissions:

7. Vide hearing notice dated May 16, 2019 an opportunity of personal hearing was granted to the Noticee on May 28, 2019. The hearing notice was served through speed post with acknowledgment and also through e-mail. The Noticee vide letter dated May 20, 2019 acknowledged the receipt of hearing notice and confirmed the attendance.

8. On May 28, 2019 Mr. Kunal Mehta, Mr. Shripal Shah, Mr. Deepak Biyani, Mr. Chetan Thakkar and Ms. Tejal Patankar appeared on behalf of AFSL and made *inter alia* the following submissions:
    a) Regarding non-disclosure of directorships of Mr. Vasan, it was highlighted that he was an independent director of Midvalley and the Companies in which he was a director, had no connection with the present case.
    b) His relationship with Eduexel was disclosed in the RHP.
    c) The due diligence was undertaken by AFSL during August 2010 – January 2011. At that point of time, it was physically not possible for the Merchant Banker to verify directorship since the MCA did not provide the facility at that point of time.

Thus, the merchant banker had to rely upon the information provided by the company and its directors.

d) SEBI has not shown how the merchant banker could have verified the information from the public domain.

e) The question posed during the hearing i.e. *"was there a red flag in the certificate given by Mr. Vasan"* is beyond the SCN. SEBI may issue a supplementary SCN if it intends to make an allegation based on that.

f) The reading of the certificate given by Mr. Vasan showed that he held shares in MEL.

g) Regarding the allegation of non-disclosure of the letter of arrangement dated January 27, 2011, it was submitted that the DRHP was filed in August 2010. Thereafter, the merchant banker sought the information of agreement from the company and it provided a list. The same was added to the RHP. The information was verified with the Board Minutes and other data given to AFSL. During its process, it did not find any minutes referring to the November 15, 2010 agreement / letter of arrangement.

h) It is possible that the agreement had never existed. SEBI has not provided sufficient material to show that it existed.

i) The minutes of the companies' meetings are not required to be maintained for 5 years and therefore the same cannot be produced.

j) The utilization of funds by MEL was not within the control of AFSL.

k) Regarding the connection with Eduexel, the connection has been drawn based on the directorship of Mr. Shreyas Shah. However, he became a director in AFSL 2 years after he was a director in Eduexel. He became a director in Eduexel only because of his interest in the acting field.

l) When he became a director in Eduexel, there was nothing on "watch out investors" against it.

m) Regarding the payment made to Aman Tie Up, the amount of Rs. 7.10 lakh was transferred as RTGS. The amount was paid before alleged siphoning of funds. Further MEL has also identified this payment as its own.

n) There was no common directorship in Aman Tie Up.

o) SEBI's treatment with other merchant bankers may kindly be considered. Reliance is placed upon the order of Hon'ble SAT in the matter of Almondz Global. Further, AFSL's past record may also be considered.

p) In the entire alleged transactions, there was no gain for AFSL.

9. The Noticee was granted two weeks' time to file written submissions in the matter. Vide letter dated June 11, 2019 submitted the following additional written submissions:

9.1 It is submitted that the material facts presented by the Merchant Banker have not been taken into consideration.

9.2 Incorrect and unsustainable allegation of passive approach of the Merchant Banker in conducting due diligence in respect of disclosure of "Other Directorships" of Independent Director- Mr. C Vasan:

9.2.1 It is submitted that Mr. C. Vasan was a Non-Executive Independent Director of MEL at the time of filing the Prospectus of MEL with the Registrar of Companies, Chennai ("RoC"). The Merchant Banker had taken certain steps to conduct due diligence pertaining to the directors of the Company in various respects such as their shareholding, directorships, litigations, transactions with the Company etc.

9.2.2 In view of the duty cast on the Merchant Banker to exercise due diligence and satisfy itself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer document, as a first step to ascertaining the details of other directorships held by Mr. C. Vasan, the Merchant Banker had submitted a due diligence checklist to the Company *inter-alia* raising queries for details of all the

Companies/Firms/ Ventures/ Partnerships/ Proprietorships in which the Directors of the Company are Directors/ Partners/ Proprietors etc. to be furnished, on the letterhead of the Company, duly signed by an authorized signatory and/or duly signed by the respective individuals.

9.2.3 The Merchant Banker had sought a confirmation from Mr. C. Vasan on the directorships held by him in companies other than MEL as the same was required to be disclosed in the Offer Documents. In response, to such confirmation sought from Mr. C. Vasan, Mr. C. Vasan submitted a letter dated August 1, 2010 to the Merchant Banker disclosing the other directorships held by him at the time of the filing of the Draft Red Herring Prospectus in respect of the initial public offer of equity shares of MEL. At the ninth paragraph of the said letter dated August 1, 2010, provided details of the other directorships of Mr. C. Vasan where it was clearly stated that Mr. C. Vasan is interested as a director only in Eduexel. Neither Tanmathra Creative Solutions Pvt. Ltd. nor UNV Media Pvt Ltd were reflected as companies in which Mr. C. Vasan is interested as a director. Further, the Draft Red Herring Prospectus ("DRHP"), the Red Herring Prospectus ("RHP") and the Prospectus (collectively "the Offer Documents") of MEL are all read, approved, sealed and signed by the then directors of MEL including Mr. C. Vasan and the same only reflect Eduexel as the only other company in which Mr. C. Vasan holds directorship.

9.2.4 The omission of reference to his directorship in Tanmathra Creative Solutions Pvt. Ltd. nor UNV Media Pvt Ltd. was not pointed out and corrected by Mr. C. Vasan and the same was not disclosed at any time by him for the reasons best known to him. The originals of the above Offer Documents were submitted to the SEBI, RoC and Stock Exchanges by MEL after verification by all directors of MEL and the Company Secretary & Compliance Officer as well the Manager, Accounts and Finance of the Company. Therefore, it is evident that such information was not disclosed by C. Vasan even to the other officers and management of the Company which would ordinarily have been disclosed to them by him as per Companies Act, 1956.

9.2.5 Further, in the years 2010 and 2011, the concept of Director Identification Number ("DIN") was relatively new and the Ministry of Corporate Affairs ("MCA") was providing constant guidance on how to register & obtain DIN as most stakeholders continued to remain unfamiliar with the operational aspects of DIN. The MCA portal did not have a feature whereby one can independently re-verify the "other directorships" of a particular director. The search feature enabled searches only by utilising the name of a company. Therefore, it was impossible to procure specific information of the directorships held by an individual without having knowledge of the company in whom such directorship was held.

9.2.6 In the findings under the Enquiry Report, the DA has brought on record evidence in the form of details of other directorships of Mr. C. Vasan available on the website of the MCA, as of the date July 23, 2013 (being the time period when facility to access details of other directorships was made available on the MCA) which reflects that Mr. C. Vasan was a director of Tanmathra Creative Solutions Pvt. Ltd. and UNV Media Pvt Ltd. However, there is no evidence reflecting that such information was available on the website of the RoC, as of the date of the Draft Red Herring Prospectus, the Red Herring Prospectus and the Prospectus of MEL or that the directorship of Mr. C. Vasan Tanmathra Creative Solutions Pvt. Ltd. nor UNV Media Pvt Ltd was even reported to the RoC in the time period prior to the date of the Prospectus of MEL.

9.2.7 Lastly, it also pertinent to note that even if the other directorship held by Mr. C. Vasan in Tanmathra Creative Solutions Pvt. Ltd. & UNV Media Pvt Ltd was not disclosed in the Offer Documents of MEL, the Enquiry Report does not contain any finding that Tanmathra Creative Solutions Pvt. Ltd. or UNV Media Pvt Ltd were involved in any material transaction with the Company or that there was any substantial material fact about these companies which if disclosed would affect the decision making process of the investors. Without prejudice to the above, it is therefore, submitted that non-disclosure of "other directorship" of a "non-material

company" of a "non-executive independent director" was not material from investor's decision-making point of view in respect of investment in the IPO of MEL.

9.2.8 The facts regarding shareholding in MEL, directorship in MEL and compensation received as a director of MEL were verifiable from other corporate and financial records of MEL and were so verified by the Merchant Banker. For such details, the Merchant Banker was not required to place reliance solely on the letter of Mr. C. Vasan. Therefore, the statement in respect of shareholding which only conveys that Mr. C. Vasan would be interested to the extent of shares held in MEL was eventually cross-verified by the Merchant Banker from the corporate records of MEL from the available records and accordingly, the Merchant Banker made factual disclosures in the Offer Documents on page 124 of the Prospectus clearly showing that Mr. C. Vasan does not hold any shares in MEL. However, since the disclosure of other directorships could only be verified from the said letter of Mr. C. Vasan at that point in time, the Merchant Banker made disclosures in the Offer Documents as per the said letter as also its due diligence as was feasible at the relevant time.

9.2.9 In any event and without prejudice, the Merchant Banker submits that the queries put to the Counsel at the time of arguments were not part of the Show Cause Notice addressed to the Merchant Banker and as such, are not a charge against the Merchant Banker in the Show Cause Notice. The charge was that information as regards Mr. C. Vasan's other directorships was available in the public domain. This has not been proved and as such, the Merchant Banker cannot be held to have violated the relevant regulations on the basis of such a charge.

9.3 Wrongful allegation of passive approach of the Merchant Banker in conducting due diligence in respect of non-disclosure of alleged arrangement for acquiring screening rights between MEL and Eduexel in the RHP and the Prospectus of MEL

9.3.1 It is mentioned at paragraph 4(ii) of the January 2017 Notice that "The arrangement

for acquiring screening rights existed between MEL and Eduexel since November 15, 2010 and the same was not disclosed in the RHP/Prospectus for the IPO". Paragraph 13 of the Enquiry Report inter-alia records that "reply of the Noticee with respect to its being not aware of the arrangements between MEL and Eduexel is not convincing in view of the fact that the Noticee was connected to Eduexel".

9.3.2 At the outset, it is stated that the DRHP of MEL was dated as of August 26, 2010 and therefore, the arrangement for acquiring screening rights between MEL and Eduexel which is purportedly alleged to be in existence from November 15, 2010 onwards is a post DRHP filing event. No reference of such alleged arrangement was found in the minutes of the meetings of Board and shareholders of the Company perused by the Merchant Banker. No arrangement of November 15, 2010 pertaining to screening rights was disclosed to the Merchant Banker pursuant to the above requests for information/documents.

9.3.3 It is submitted that acquisition of screening rights was one of the Objects of the IPO. The Merchant Banker had specifically discussed the objects of the issue and business of the Company with the Company representatives and sought details and copies of any existing or proposed arrangements with other parties for acquisition of screening rights. The Company representatives had assured the Merchant Banker that all agreements in respect of acquisition of screening rights would be made post April 2011 and no such agreements were in existence and therefore none were produced before the Merchant Banker for inspection by the Merchant Banker at the time of filing of any of the Offer Documents.

9.3.4 The Merchant Banker also held continuous discussions with the Company for the updates/changes in the Offer Documents post the filing of the DRHP until the filing of the Prospectus to ensure that full and complete disclosures are made in the Offer Documents. In fact, the senior management of the Merchant Banker also met the Company officials to re-confirm certain portions of the Offer Documents and tried to ensure that all material developments are disclosed therein. Based on

discussions/confirmations received from the relevant persons at the Company, several changes were also carried out in the updated draft red herring prospectus and the said changes were presented to SEBI as well prior to filing RHP with RoC. The above confirmations on non-existence of any screening arrangements were also provided at the time of filing the RHP and the Prospectus specifically by the Company in as much as the management of the Company issued a letter dated December 20, 2010 to the Merchant Banker confirming that there are no material developments relating to the Business, Objects of the Issue, Group Companies, etc. of the Company. During these discussions, no other document or information came to light which would lead the Merchant Banker to suspect existence of the Letter of Arrangement.

9.3.5 Further, as step of independent verification, the Merchant Banker had also sought the funds deployed certificate from the statutory auditors of the Company which reflected that the Company had only incurred Issue expenses amounting to Rs.23.95 lacs as on November 19, 2010 towards the Objects of the Issue. The financial statements of the Company for the period of November 2010 contained no noting of any payment made to Eduexel in the context of the abovementioned screening arrangement of November 2010.

However, the Merchant Banker cannot be held liable for any omission in the information furnished to it by the Company representatives even after such efforts which efforts are acknowledged as proper means of diligence.

9.3.6 **Failure of the DA to produce the Letter of Arrangement dated November 15, 2010:** The allegation of the DA that the Merchant Banker was aware of the arrangements between MEL and Eduexel is false, misconceived and without basis. The said allegation is made based on the reference of the alleged Letter of Arrangement dated November 15, 2010 ("Letter of Arrangement") found in an Agreement dated January 27, 2011 executed between MEL and Eduexel. It is

submitted that Agreement dated January 27, 2011 appears to have been executed after the filing of the Prospectus of MEL with the RoC and after closure of the Issue Period of the IPO of MEL. Therefore, the said Agreement dated January 27, 2011 did not form part of the due diligence of the Merchant Banker. The alleged Letter of Arrangement has not been produced on record in the present proceedings. It is submitted that to the knowledge of the Merchant Banker, such an alleged Letter of Arrangement does not exist, as the Merchant Banker has never come across the same. Assuming without admitting that such alleged Letter of Arrangement did exist, then, without having the benefit of reading the contents of the Letter of Arrangement, the DA has only speculated that the contents thereof were such that they would have been required to be disclosed in the RHP and Prospectus of MEL and were not so disclosed. It is submitted that it is a well settled principle that a statement forming part of a conversation, letter. etc., cannot be taken as evidence against a party, without giving to the party, at the same time, the benefit of the entire residue or what was written or said on the same occasion. In law, the mention of the alleged Letter of Arrangement dated 15th November 2010 in the Agreement dated 27th January 2011 does not prove its existence. Therefore, in the absence of the original or copy of the Letter of Arrangement, the very existence of the alleged Letter of Arrangement is in question. Therefore, the Merchant Banker cannot be held liable for non- disclosure of any screening arrangement where the existence of such arrangement itself, at the relevant point in time, is not proven.

9.3.7 Inability of Eduexel to have provided screening arrangements to MEL in November 2010: The January 2017 Notice alleges that the alleged Letter of arrangement was for acquisition of screening rights by MEL from Eduexel which was covered under the Object of the Issue to acquire screens (i.e. theatres). "Screening agreements" would mean an agreement between the owner of the theatre, in this case being Eduexel and MEL which would allow MEL the use of the theatres of Eduexel for its film exhibition business. However, on a perusal of the audited accounts of Eduexel

for the Financial Years 2010-11 and 2011- 12, no such fixed assets were mentioned in the Audited Accounts by the Auditor of Eduexel. Hence it seems that the alleged Letter of Arrangement, if it exists may not be a screening agreement but something else. However, since the alleged Letter of Arrangement is not produced in the present proceedings, no conclusion can be drawn that same was in respect of acquisition of screening rights by MEL from Eduexel which was covered under the Object of the Issue. It must be proven beyond reasonable doubt against the Merchant Banker that it had committed any such violation of suppressing information pertaining to the alleged Letter of Arrangement with the requisite mens rea; and in the absence of such proof, no penal action should be taken against the Merchant Banker.

9.3.8 Knowledge of the alleged Letter of Arrangement by virtue of connection with Eduexel: It is alleged at paragraph 4 of the January 2017 Notice that because of the alleged connection between the Merchant Banker and Eduexel, the Merchant Banker played an active role in suppressing the information pertaining to the alleged Letter of Arrangement in the Offer Documents. The only connection between the Merchant Banker and Eduexel is of a common director, Shreyas Shah who was appointed on the Board of Eduexel in May 2011 i.e. almost after 4 (four) months of the IPO, as an Independent Director. Shreyas Shah was, at the time of the IPO of MEL, a director on the Board of the holding company of the Merchant Banker namely Mahshri Enterprises Private Limited. It is also clarified that while Mr. C. Vasan resigned from MEL in March 2011, Shreyas Shah become a director of Eduexel only in May 2011. It is submitted that at the time of the IPO and subsequent alleged siphoning of funds, there was no connection between the Merchant Banker and Eduexel. The alleged connection (if any) is also a post facto event (i.e. almost 4 months after the IPO).

9.3.9 Further, it is wrongly alleged that Mr. C. Vasan who was a promoter director of Eduexel was also connected to the Merchant Banker. There is no basis for this inference. On the basis of such imagined connection it is wrongly concluded that disclosures of other directorships of Mr. C. Vasan and screening arrangements

between the Company and Eduexel were suppressed. In this regard, it is important to note that the fact of Mr. C. Vasan being a director of Eduexel was clearly disclosed in the Offer Documents.

9.4 Wrongful allegation of role of the Merchant Banker in transfer of the funds raised by MEL in its IPO to Eduexel, Omni Ax's Software Limited, Aman tie-up. Mercury Fund Management Company Limited Regent Finance Corporation Limited and Arihant Baid.

9.4.1 At the outset it is submitted that the Merchant Banker has not colluded with any of the entities specified in the Enquiry Report and has not aided and abetted MEL in siphoning of the funds received from the IPO and caused harm to the investors and therefore is not in violation of Regulation 3 (a), (b), (c), (d) and 4 (1) of PFUTP Regulations read with Section 12 (a), (b), and (c) of SEBI Act.

9.4.2 At the outset, it is also submitted that certain entities namely Eduexel, Omni Ax's Software Limited ("Omni"). Aman Tie-up. Mercury Fund Management Company Limited, Regent Finance Corporation Limited and Arihant Baid (collectively "Fund Flow Conduits") who have allegedly acted as conduits in alleged siphoning off funds from the IPO proceeds of MEL and who in fact, have either no relationship with the Merchant Banker or are only associated with the Merchant Banker as public shareholders of the Merchant Banker, have been alleged to be connected to the Merchant Banker in various respects. Based on these alleged connections, it has been inferred that the Merchant Banker has aided and abetted the siphoning of funds. It is submitted that the instances of connections with the Fund Flow Conduits mentioned above are common ordinary connections which can lead to no inference that Merchant Banker was hand-in-glove with the Fund Flow Conduits for alleged siphoning of the Issue Proceeds. There is no material brought on record by the DA to show that there was any activity on part of the Merchant Banker in accessing the funds through itself or through any entities controlled by it. No credence has been

given to the fact that a merchant banker does not have any access to the Issue Proceeds and the said proceeds are transferred from the public issue account to the account of an issuer company at the close of the IPO after receiving confirmation on the closing of the IPO process from the merchant banker and are thereafter, solely controlled by the Company i.e. MEL.

9.4.3 The IPO of MEL opened in January 2011 and MEL was listed in January 2011. Based on the investigation reports and papers collected by the Merchant Banker from the "inspection" of documents carried out by it at the office of SEBI on March 16, 2017, it appears that it is found by the SEBI team that the alleged transfer/siphoning of the Issue Proceeds happened in January & February 2011 from MEL to the various Fund Flow Conduits.

9.4.4 The Enquiry Report has failed to consider the following issues in concluding that the Merchant Banker was party to any fund siphoning in the IPO:

i) The nature of the role, connection or influence of the Merchant Banker in respect of the Fund Flow Conduits.

ii) Whether having insignificant or irrelevant connection with the Fund Flow Conduits is proof that the Merchant Banker (in capacity as a SEBI registered merchant banker) has aided or abetted the siphoning of funds raised through the IPO of MEL?

It is submitted that the connections sought to be established between the Merchant Banker and the Fund Flow Conduits are immaterial in the context of the fund siphoning activity as they, in no way indicate that the Merchant Banker is complicit in the fund siphoning activity

9.4.5 Irrelevant connection with Eduexel and Omni:

i) The connection between the Merchant Banker and Eduexel and Omni is of a common director, Shreyas Shah who was appointed on the Board of Eduexel and

Omni in May 2011 i.e. almost after 4 (four) months of the IPO, as an Independent Director. Shreyas Shah was at the time of the IPO of MEL, a director on the Board of the holding company of the Merchant Banker namely Mahshri Enterprises Private Limited. It is submitted that at the time of the IPO and subsequent alleged siphoning of funds, there was no connection between the Merchant Banker and Eduexe1 and Omni. Shreyas Shah was neither a Director nor a key managerial personnel nor an employee of the Merchant Banker, Eduexel or Omni during the said period of January 2011 to February 2011 which is the period when alleged siphoning of Issue Proceeds occurred.

ii) The alleged connection (if any) is also a post facto event (i.e. almost 4 (four) months after the IPO) and more than 2 (two) months after the alleged siphoning of monies.

iii) It is submitted that Shreyas Shah became a Non-Executive Independent Director in Eduexel and Omni in May 2011 (i.e. four months after the IPO) and became a Director of the Merchant Banker in May 2013 (i.e. almost 2 years after the IPO). The DA's entire case is based on the erroneously assumed premises that there existed some prior connection between the Merchant Banker and Eduexel and Omni. The above dates of appointment of Shreyas Shah as an Independent Director of Eduexel and Omni and the Director of AFSL itself show that there was no connection between the Merchant Banker and Eduexel as of the date of the IPO. It submitted that no other evidence of connection the Merchant Bank and Eduexel has been submitted by the DA and no such connection exists. The fact of post-facto common directorship on the Boards of the Merchant Banker and Eduexel and Omni are not sufficient to prove that the Merchant Banker "AIDED" and "ABETTED" the siphoning of funds. It is submitted that in fact and in terms of the evidence provided by the DA, there is no material which shows that Shreyas Shah had any connection with directing the flow of funds raised through the IPO process, all of which were paid to the relevant parties much prior in time to Shreyas Shah being appointed as a Director on the Board

of Eduexel and Omni.

iv) Further the respected DA has ignored the facts mentioned above and has mentioned in paragraph 24 of the Enquiry Report that "the appointment of Directors, even if independent needs deliberate consideration at various level of corporate hierarchy which is a time consuming process" and hence Shreyas Shah had direct/indirect influence in the decision making process at the time of funds transfer. It is submitted that the above conclusion by the DA on Shreyas Shah exerting any influence in the decision-making process at time of transfer of funds in the IPO is highly speculative and without factual basis. No evidence that Shreyas Shah had any influence over the Fund Flow Conduits or over the Merchant Banker as a merchant banker during the period of the alleged violation has been brought to the fore by the DA.

v) It is also pertinent to note that Shreyas Shah occupied position only as a Non-Executive Independent Director in Eduexel and Omni and therefore, was not vested with any executive powers much less powers to determine fund flow from the IPO when he did not even occupy a non-executive position in either of the companies. Shreyas Shah, was not involved in any day-to-day decisions of the management of the companies. It may also be noted that the movement of the funds in question did not occur during the tenure of Shreyas Shah on the Board of any of the companies and conclusion arrived at by the DA that Shreyas Shah had a direct/indirect influence in the decision making process pertaining to funds flow in the IPO is entirely baseless and desperately weaved together to arrive at a convenient conclusion in the absence of any direct and definite evidence of any wrong-doing on the part of the Merchant Banker.

vi) It is further submitted that at the time of appointment of Shreyas Shah as Independent Director of Eduexel, he was aged 23 years with interest in the field of acting and entertainment. In fact, it was due to his acquaintance with one Mr. Prabir Sarkar that Shreyas Shah accepted appointment on Board of Eduexel to further his interest in the field of entertainment and the desire to get corporate

exposure in this field. Further, due to common acquaintance of Mr. Prabir Sarkar with Mr. Rajendra Jain (who was an executive director of Omni during said period) Shreyas Shah was introduced with Omni in May 2011 and he therefore agreed to be appointed as Independent Director in Omni as well. Till date Shreyas Shah continues to remain involved in the said field…

vii) It is also submitted that Shreyas Shah has thereafter resigned from Eduexel and Omni in the year 2015 in normal course of business and during his tenure he had no other interest in these companies apart from being an independent director.

viii) It is reiterated that Shreyas Shah had no knowledge of the financial dealings of Eduexel and Omni with MEL. It seems that 2 (two) separate facts of independent directorship and payment of IPO proceeds to Omni and Eduexel which occurred in separate time periods are being unnecessarily connected to reach to a pre-determined and assumed conclusion.

ix) It is submitted that:

a) there is also a distinct lack of supporting documents or concrete actions of the Merchant Banker showing that the Merchant Banker has abetted the siphoning of funds as alleged or otherwise;

b) There is no evidence to show that Shreyas Shah had knowledge of the Fund Flow Conduits and there is no evidence at all available with the respected DA that he had influence or involvement in the actual alleged siphoning of funds conducted between MEL and Eduexel or Omni.

Despite the fact that Shreyas Shah was not a director or employee of the Merchant banker during the said IPO process; but was a director and promoter of its corporate promoter-Mahshri Enterprises Pvt. Ltd., the DA has wrongly considered him becoming an "Independent Director" in Eduexel and Omni after four months of the IPO as a connection sufficient enough to conclude that the Merchant Banker was connected with the Fund Flow Conduits during the IPO process and consequently that the Merchant Banker has aided and abetted the siphoning of funds by these entities.

9.4.6 Irrelevant connection with Arihant Baid, India Securities Broking Pvt. Ltd.. Regent Finance Corporation Ltd., and Mercury Fund Management Private Limited.

i) It is submitted that the Merchant Banker is a SEBI Registered Merchant Banker and the shares of the Merchant Banker have been listed on BSE Limited since 1995. The Merchant Banker has had over 1000 shareholders since more than 2 (two) decades. The scrip of the Merchant Banker has been a frequently traded scrip.

ii) It is submitted that the Merchant Banker has no knowledge or control over and was not involved in transfer of funds. It is evident that the flow of funds transfer to the Fund Flow Conduits -Arihant Baid, India Securities Braking Pvt. Ltd., Regent Finance Corporation Ltd., and Mercury Fund Management Private Limited does not show any involvement of the Merchant Banker and no funds are received into the account of the Merchant Banker from MEL or the Fund Flow Conduits or transferred out of the account of the Merchant Banker to MEL or the Fund Flow Conduits.

iii) The only connection between Mercury Fund Management Pvt. Ltd. and the Merchant Banker is that it was a shareholder of the Merchant Banker holding 3.05% shares. The shares were not issued by the Merchant Banker either as a preferential allotment or a rights issue. The shares were purchased by Mercury Fund from the open market and the shares were not purchased from either of the promoters of the merchant banker.

iv) Similarly, the only connection between the Merchant Banker and India Securities Broking Pvt. Ltd. is that the said India Securities Broking Pvt. Ltd. is a shareholder of the Merchant Banker holding 1.97% shares. This shareholding was also acquired from the open market; not from either of the promoters of the Merchant Banker and certainly was not the outcome of either a preferential issue or a rights issue.

v) As regards Regent Finance Corporation Ltd., the only connection is that a director of Regent Finance Corporation Ltd., i.e. Arihant Baid is a shareholder of the Merchant Banker who held 1.09% of its shares. This is yet another indirect connection. No material is produced to demonstrate Arihant Baid's role in Regent

Finance Corporation or any link between Arihant Baid and the Merchant Banker (other than merely his shareholding in the Merchant Banker) which would suggest that the Merchant Banker was hand in gloves with Arihant Baid.

9.5 Proportionality of the penalty proposed to be imposed: SEBI should not ignore the principle of proportionality in meting out punishment. It is submitted that imposition of the recommended penalty would cause grave harm to the business of the Merchant Banker and also its clients and its employees. In the year 2008, Mr. Shripal Shah through the holding company - Mahshri Enterprises Private Limited acquired controlling stake in the Merchant Banker. Further, the new management applied for and obtained fresh registration as a Merchant Banker from SEBI due to the change in control and new SEBI registration number was allotted in the year 2008. Thereafter, from 2009 till 2019, the Merchant Banker has handled around 60 initial public offerings and 25 takeover transactions as a merchant banker. Since the change in management of the Company in the year 2008, the Merchant Banker has been inspected by SEBI teams from time to time and no penal action has been taken by SEBI on the Merchant Banker for merchant banking related errors or violations till date. The Merchant Banker has the distinction of being the first merchant banker to successfully complete an initial public offer on the Small and Medium Enterprises platform of the stock exchanges in India and has been one of the front runners in the arena since then. The Merchant Banker has received awards from BSE Limited- SME Platform for being "Top Performing Merchant Banker" for each year since the last 6 years. Currently, the Merchant Banker has been mandated to manage over 20 IPO transactions aggregating to over Rs. 500 crores which are on-going at various stages. The Merchant Banker currently employs around 20 persons dedicated to the merchant banking division and on a group level employs more than 50 persons. The Merchant Banker is one of top most and important market intermediaries involved in servicing the SME sector which is a highly underserviced sector due to lack of focus from large financial services players and hence, any action on the Merchant Banker would impact the growth and goodwill of SME capital markets also.

9.6 Placed reliance on Navaneetha krishnan Vs. State by Inspector of Police [(2018) 16 SCC 161]; Padala Veera Reddy vs State of A.P. [1989 Supp (2) SCC 706] as to the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. "

10. Thereafter, vide letter dated January 15, 2020, the Noticee has been given an opportunity to file submissions in addition to what they have already filed. In response, the Noticee vide letter dated January 31, 2020 stated that they reiterate all the submissions made vide letter dated June 11, 2019 and oral submissions made and also repeat the submissions made before the DA.

Consideration and Findings:

11. I shall now proceed to deal with the merits of the case on the basis of material available on record such as SCN, the Report submitted by DA, oral and written submissions made and the documents relied upon therein. On perusal of the same, the following issues arise for consideration:

i. **Whether MEL siphoned of the IPO proceeds and deviated from the objects of the issue?**

ii. **Whether the Noticee is connected to certain entities which acted as conduits to the siphoning of funds from the IPO proceeds and aided and abetted MEL in siphoning off of the IPO proceeds?**

iii. **Whether the Noticee failed to carry out independent verification of the statement submitted by MEL as to the directorship of Mr. C Vasan and failed to ensure disclosing arrangement for acquiring screening rights between MEL and Eduexel thereby provided wrong due-diligence certificates to SEBI;**

iv. **If answer to issue No.1, 2 and 3 is in affirmative, whether the Noticee has violated the provisions of Clause 4, 6 and 7 of the code of conduct for Merchant**

Bankers as mandated under schedule III specified under Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992, Regulations 8(2) (b), (e), (f) and 64(1) of the SEBI (Issues of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to the SEBI (ICDR) Regulations, 2009 and the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992?

12. Before dealing with the merits of the case, the relevant legal provisions, the contravention of which have been alleged in the instant case are reproduced hereunder:

SEBI (Merchant Bankers) Regulations 1992:

SCHEDULE III

CODE OF CONDUCT FOR MERCHANT BANKERS

[Regulation 13]

Clause 4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.

Clause 6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

Clause 7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

SEBI (Issues of Capital and Disclosure Requirements) Regulations, 2009:

Documents to be submitted before opening of the issue:

Regulation 8 (2) The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-regulation (2) of regulation 6 if the Board has not issued observations:

…

(b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;

…

(e) a due diligence certificate as per Form D of Schedule VI, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken;

(f) a due diligence certificate as per Form E of Schedule VI, after the issue has opened but before it closes for subscription.

Due diligence

Regulation 64 (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.

SEBI (Prohibitions of Fraudulent and Unfair Trade Practices) Regulations, 2003:

Prohibition of certain dealings in securities under SEBI (PFUTP) Regulations, 2003

Regulation 3. No person shall directly or indirectly –

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

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

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

Regulation 4 SEBI (PFUTP) Regulations, 2003.

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

SEBI Act 1992:

12A. No person shall directly or indirectly—

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

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

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

Issue No.1 : Whether MEL siphoned of the IPO proceeds and deviated from the objects of the issue?

13. Before dealing with the allegations against the Noticee, it would be appropriate to note the following facts and circumstances brought out by SEBI's investigation, leading to such allegation:

13.1 I note that MEL had come out with its IPO for issue of 85,71,429 equity shares of Rs. 10/- each. The price band of the IPO was Rs. 64/- to Rs. 70/- per equity share and bid

period of the IPO was from January 10, 2011 to January 12, 2011. The IPO was subscribed 4.41 times and the IPO price was Rs. 70/- per equity share, aggregating to Rs. 60 crore. The scrip was listed on BSE Limited (hereinafter referred to as 'BSE') on January 27, 2011. The main objects of the IPO were as follows:

(i) Entering into screening agreement with 300 cinema theatres,

(ii) Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens ,

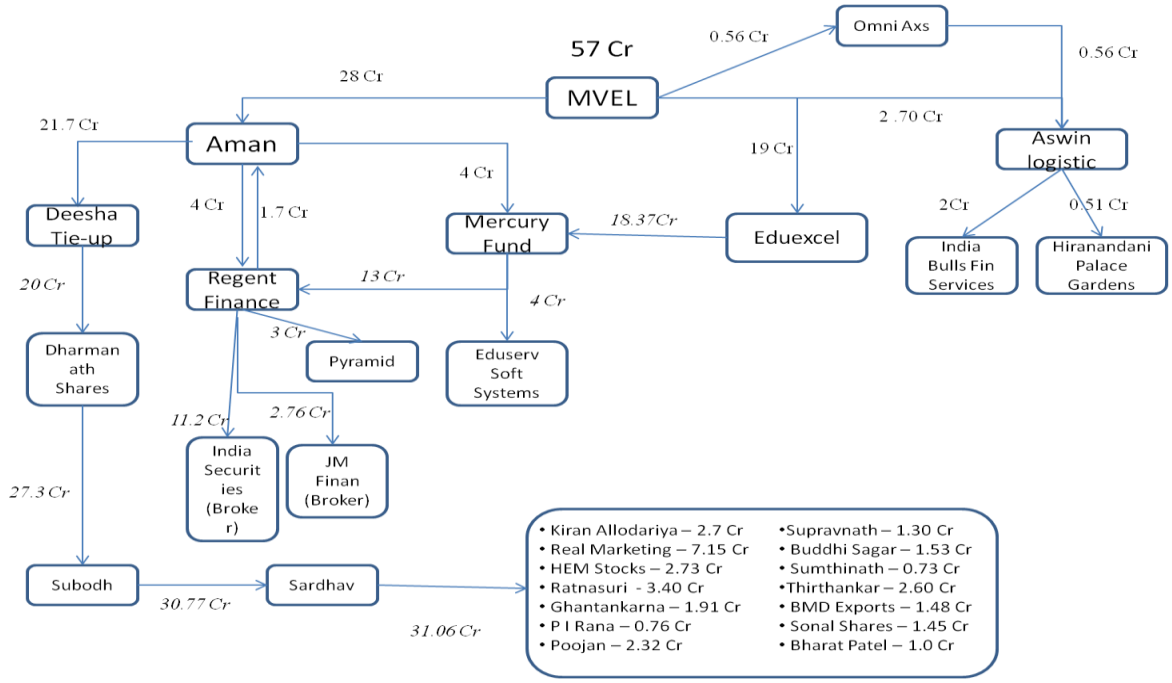
(iii) Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business,

(iv) General Corporate Expenses,

(v) Meeting the IPO expenses

13.2 I note that IPO price was Rs.70/- per equity share. Price of the scrip had seen sharp fall on listing day, first reaching a level of Rs. 55/- intraday and finally closing at Rs. 58.05 i.e. 17% less than the IPO price. Subsequently, during January 28, 2011 to February 28, 2011, the price of the scrip decreased to Rs. 50.50/- (Feb 10, 2011) then increased to Rs. 99.15/- (February 25, 2011) and finally closed at Rs. 89.15/- on February 28, 2011.

13.3 I note that Rs. 60 crores was collected from the IPO proceeds out of which Rs. 3 crores were paid to the Merchant Banker/the Noticee herein as fees for its services and Rs. 57 crores was received in its bank account. The fund movement in relation to the IPO proceeds received by MEL as per the bank statements is depicted as under:



13.3.1 As per the bank statements of MEL, it is observed that Rs. 50.263 Crores were paid to Aman Tie-up Private Limited (Rs. 28 Crores), Eduexel Infotainment Limited (Rs. 19 Crores), Aswin Logistic Ventures (Rs. 2.703 Crores) and Omni Ax's Software Limited (Rs. 0.56 Crores).

13.3.2 Post IPO, the funds received by Aman Tie-Up Pvt. Ltd. from MEL were eventually provided (fund transfers through layers of entities) to 15 entities who traded in the scrip MEL viz., (1)Bharat Babubhai Trivedi, (2) BMD Exports Private Limited, (3) Buddhisagar Shares And Services Pvt Ltd, (4) Ghantakarna Shares and Services Pvt Ltd, (5) Kiranbhai Popatbhai Alodariya, (6) Poojan Tradecom Pvt Ltd, (7) Prakashbhai Ishwarbhai Rana, (8) Ratnasuri Shares and Services Pvt Ltd, (9) Real Marketing Pvt Ltd, (10) Sonal Shares Investment & Company, (11) HEM Stocks And Shares Services Pvt Ltd, (12) Sumtinath Shares And Services Pvt Ltd, (13) Suparshvanath Stock And Service, (14) Tirthankar Shares and Service Pvt Ltd. and (15) Pyramid Sales Pvt. Ltd.

13.3.3 Out of Rs.19 Crores funds received by Eduexel from MEL, Rs. 18.37 Crores were

transferred to Mercury Fund Management Co. Ltd. Mercury Fund Management Co. Ltd. Transferred the said amount to three entities viz., Regent Finance Corporation Pvt. Ltd. (Rs.13 Crores), Edserve Soft Systems Ltd. (Rs. 4 Crores) and Shri Acharya Mahapragya (Rs. 1.37 Crores). Regent Finance further transferred Rs 11.2Crores to India Securities Broking Private Limited and Rs. 2.76 Crores to JM Financial (Brokers).

13.3.4 MEL paid Rs. 2.70 crore to Aswin Logistic Ventures and Rs. 0.56 crore was paid to Omni Ax's Software Ltd. Omni Ax's Software Ltd. had immediately transferred the said amount to Aswin Logistic Ventures. Thus, Aswin Logistic Venture received a total of Rs. 3.26 crore.

13.3.5 Further, the Company failed to furnish any evidence as regards the purchase/installation of Projectors, use of screening rights, revenue generated etc. for the Objects viz., Entering into screening agreement with 300 cinema theatres, Renovation and Up-gradation of cinema infrastructure with Digital Equipment and other related assets for select 100 screens, Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business and general Corporate Expenses.

from the material available on record that out of Rs.60 crores of IPO proceeds, the company had utilized only Rs.3.00 crore towards the objects of the issue. Further, it is concluded based on the bank statements that out of Rs.60 crore raised through IPO, an amount of Rs.50.263 crore was diverted by MEL to its connected entities and out of the said Rs.50.263 crores, Rs.24.7 crore was diverted to 15 entities through fund conduit Aman Tie Up. These entities eventually traded in the scrip of MEL.

Therefore, it is concluded that MEL had deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus and siphoned of the IPO proceeds.

Issue No.2 : Whether the Noticee is connected to certain entities which acted as conduits to the siphoning of funds from the IPO proceeds and aided and abetted MEL in siphoning off of the IPO proceeds?

Connections of Noticee:

14. I note from the SCN that the Noticee was allegedly connected to the Eduexel, Aman tie up, Mercury Fund, Regent Finance Corporation Ltd., India Securities Broking Pvt. Ltd. and Arihant Baid who were observed to be fund flow conduits in siphoning of the IPO proceeds of MEL to the trading entities. The following connections of the Noticee with fund flow conduits are alleged in the DA Report:

14.1 **Connection of the Noticee with Eduexel and Omni Ax's Software Ltd.**

14.1.1 It is noted from the DA Report that Mr. Shreyas Shrenik Shah (DIN: 01835575) is a common director of the Noticee and Eduxel. Mr. Shreyas Shrenik Shah and his family holds 100% shares of Mahshri Enterprises Private Limited which is a holding Company of the Noticee (7183030 (65.45%) shares). I also note that Shreyas Shrenik Shah is common director in Omni Ax's Software Limited and the Noticee.

14.2 Connection of the Noticee with Aman Tie-Up Private Limited

14.2.1 Aman Tie-Up Private Limited received Rs. 28 crores from the IPO Proceeds. It was observed that Aman transferred Rs. 7.10 lakhs to the Noticee on January 21, 2011 i.e. just prior to listing of shares of MEL.

14.3 Connection of AFSL with fund flow conduit — Mercury Fund, Regent Finance Corporation Ltd. India Securities Broking Pvt. Ltd. and Arihant Baid:

14.3.1 As per the DA Report, the Noticee was connected to Mercury Fund as a shareholder of the Noticee, holding 3,35,000 (3.05%) shares. Similarly, the Noticee was also observed to be connected to Regent Finance Corporation Limited. It is noted that Mr. Arihant Baid who is one of the directors of Regent Finance Corporation Limited is also a shareholder of the Noticee and holds 1,20,000 shares (1.09%) of AFSL. Further, India Securities Broking Private Limited is also a shareholder in AFSL and holds 2,16,000 (1.97%) shares of AFSL.

14.3.2 As regards the allegation of connection of the Noticee with Eduexel and Omni Ax's

Software Ltd., I note that the Noticee has contended that Mr. Shreyas Shah, Director, was appointed on the Board of Eduexel and Omni Ax's Software in May 2011 and therefore it is a post facto event. There is no dispute as to the appointment date of Mr. Shreyas Shah in Eduexel and Omni Ax. It is noted that Mahshri Enterprises Private Limited is the parent company of the Noticee which holds 7183030 (65.45%) shares in AFSL. Mr. Shreyas Shah and his family holds 100% shares of Mahshri Enterprises Private Limited. Further, it is to be noted that Mr. C Vasan, (Independent Director of Midvalley) is also the promoter director of Eduexel. It is also a fact that Rs. 19 crores were transferred to Eduexel by MEL out of the IPO Proceeds under the pretext of "Advance for acquisition of film rights. It is the submission of the Noticee itself that Mr. Shreyas Shah joined Eduexel when Mr. C. Vasan retired from Eduexel. Further, it is also submitted by the Noticee that Mr. Shreyash Shah had personal acquaintance with Eduexel's Board member. I note that it is difficult to get direct evidences in such cases, however, several connecting factors such as Mr. Shreyas Shah's shareholding along with his family members in the parent company, his personal acquaintance with Eduexel's Board member, I note that the Noticee and Eduexel is connected through Shreyas Shah.

14.3.3 As regards the alleged connection with Aman Tie Up I note that there was a fund transfer from Aman Tie-up Private Limited amounting to Rs. 7,10,000/- to the Noticee. The Noticee submitted that the fund was transferred to meet certain payments to BSE, CDSL NSDL etc. which were related to the IPO and that the same was paid by Aman Tie-up on behalf of MEL. It is contended by the Noticee that the bank statement of State Bank of India did not reveal from where the RTGS came and MEL claimed the said amount. In this regard, they have not submitted any evidence to substantiate their claim. In the absence of any evidence, I am not inclined to accept the said contention of the Noticee. It is pertinent to note that the AFSL has accepted third party payments from an entity viz., Aman Tie Up which received Rs. 28 crores from the IPO Proceeds of MEL. Further, the concerned transactions with Aman Tie-up and its own admission with respect of accepting the payment made by Aman Tie-

up on behalf of MEL proves that AFSL and Aman Tie-Up were connected.

14.3.4 As regards the alleged connection of the Noticee with Fund flow Conduits viz., Mercury Fund, Regent Finance Corporation Ltd. India Securities Broking Pvt. Ltd. and Arihant Baid, I note that the Noticee contended that they are public shareholders of the Noticee and their purchase of shares was through open market and not through any corporate action and no director/promoter ever sold any shares to them. Hence, it is contented that the Noticee is not liable for the commission or omission of its public shareholders. I note that the Noticee has admitted the connection as mentioned in the DA Report. Whether the said connection resulted in aiding and abetting the siphoning of funds of IPO of MEL is to be gathered from various attending circumstances of the case.

14.3.5 I note that the six different connections with this conduits -as a fact- not been disputed by the Noticee. The Noticee has disputed the relevance of these six connections mentioned in the SCN in terms of the allegation of 'aiding and abetting' the siphoning of the IPO proceeds through fund conduits. Even if on a standalone basis each of these connections were, for a moment, to be assessed may be inconclusive for the determination of 'aiding and abetting'. However, all the six connections seen in conjunction leads to the preponderance of probability that the Noticee had knowledge of the siphoning of the funds and a regulator cannot shut its eyes towards this abnormal coincidence of connections detailed above and allow the wrong doings happen in the securities market to the detriment of investors.

14.3.6 In these kind of cases no direct evidence will be forthcoming, hence the attending circumstances like fund transfer with Aman Tie-up and shareholders of the Noticee acting as fund flow conduits of the IPO proceeds etc. are to be considered.

i. I note from the documents available on record that Aman Tie-up had transferred approximately Rs.28 crores to the account of MEL between December 2010 and January 07, 2011. MEL received the proceeds of the IPO in its account on January 25, 2011 and on the same date it transferred Rs. 28 crores to Aman Tie-up. Further, Aman Tie-up transferred Rs.21.70 crores to

Deesha Tie-up Private Limited, Rs. 4 crores to Regent Finance Corporation Private Limited and Rs, 4 crores to Mercury Fund. Further, these funds eventually were transferred to certain entities which had traded in the scrip of MEL during the investigation period. I also note that from Rs.18.37 crores received by Mercury Fund from Eduexel, Rs.13 crores was transferred to Regent Finance Corporation Private Limited and Regent Finance Corporation Private Limited further transferred Rs. 11.20 crores to India Securities Broking Private Limited.

ii. I note that the allegation against the Noticee is that it had aided and abetted the MEL in siphoning of IPO funds. The Noticee contended that the fact that the conduits were connected to the Noticee is not sufficient to support the allegation that MEL aided and abetted. In siphoning of funds, as in this case, complex web of intermediate layers of entities are involved to obfuscate the detection of the siphoning. As part of the process of obfuscation entities/conduits are chosen in a way they perform their respective roles for the achievement of the ulterior motive without easy detection. Therefore, conduits may either be not directly connected to the diverting company or may be connected to the company in some capacity which capacity is taken as shelter by diverting company or they may be connected to other entities who are aiding and abetting by identifying those conduits or many such variations of for effective obfuscation. In other words, the aiding and abetting the ulterior objective of siphoning of funds can also be done by an entity by identifying certain entities known to it to stand as conduits for siphoning of funds. It could also be possible the conduits may be known to the primary diverter and the abetter as well. What evidence is sufficient to prove whether any entity was instrumental in achieving the ulterior objective also depends on the role played by these entities. Depending upon facts and circumstances of the case, in respect of substantiating whether someone was performing the function of acting as conduit, the evidentiary requirement would be different

from substantiating whether someone abetted the siphoning by identifying his known entities to act as conduits. In this connection the evidence of connection is relevant contrary to the contention of the Noticee.

iii. It is an established position of law that the preponderance of probability of various evidentiary leads can be sufficient to render a finding on the allegation against the entity. There are several circumstantial evidence of the Noticee being connected to the conduits. At the initial assessment, the question may arise whether the mere connection of the Noticee to the conduits through whom funds have been siphoned off would be sufficient to lead to the finding of aiding and abetting by the Noticee. However, it also raises question why the first level conduits who have received the IPO funds from MEL are connected to the Noticee. This also holds good in respect of the some of the second level and third level conduits. The Noticee though contested that some of the connections are post facto the fund transfer also contended that the connections are only a chance. I note that the Noticee was connected to some of the first level and second level conduits cannot be considered as mere co-incidence.

iv. The aspect of multiple connections leads to the fact that the Noticee had knowledge of the fund diversion and also considering the fact that the Noticee being the Merchant Banker by his omission and commission in respect of such diversion/siphoning of funds lead to the preponderance of probability that Noticee was part of the scheme perpetrated by the Company and by virtue of the same, the Noticee had aided and abetted MEL in siphoning of the funds received from the IPO to the detriment of investors of MEL. Thus, I conclude that the Noticee has violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1) of PFUTP Regulations read with Section 12 (a), (b) and (c) of SEBI Act, 1992.

v. Further, I note that the Noticee has placed reliance on the proposition set out

in the judgment in the case of *Navneethakrishnan Vs. State by Inspector of Police 2018 (16) SCC 161* referring the four principles observed in the matter of *Padala Veera Reddy Vs. State of A.P. 1989 Supp (2) SCC 706*. I note that the proposition set out in the said judgment with respect to the commission of a criminal offence has no relevance to the present case dealing with the violation of due diligence and violations of PFUTP Regulations by a merchant banker. I also note that the evidence required to be established in the present case is on the principles of preponderance of probability basis and not beyond reasonable doubt as claimed by the Noticee. Similarly, the judgment in the case of Subramanian Swamy Vs. Union of India and Ors., AIR 2016 SC 2728 on the proposition of mens rea has also no application in the present case.

Issue No.3: Whether the Noticee failed to carry out independent verification of the statement submitted by MEL as to the directorship of Mr. C Vasan and failed to disclose arrangement for acquiring screening rights between MEL and Eduexel thereby provided wrong due-diligence certificates to SEBI.

Non-Disclosure of 'Other Directorship' of MEL's Director:

15. I note from DA Report that one of the allegation against the Noticee is incorrect disclosure of "Other Directorship" of Independent Director Mr. C. Vasan i.e. non-disclosure of directorship held in the Companies Tanmatra Creative Solutions Pvt. Limited an UNV Media Pvt. Ltd.

15.1 In this regard, the Noticee has contended that they have exercised due care in conducting their due diligence from the material provided by the Issuer Company and available in the public domain which is reasonably expected to access and assess. Further, the Noticee stated that during those days there were no source in the public domain that provides independent information to establish other directorship and the information provided by the Independent Director and the Company was indeed the only

source of information regarding other directorships. The Noticee further contended that Tanmathra Creative Solutions Pvt. Ltd. & UNV Media Pvt. Ltd. (the companies which were not disclosed as "other directorships" of C. Vasan) are not identified as violators or parties to the violations of MEL IPO and hence "other directorship" of a "non-material company" of a "non-executive independent director" surely would not have been material from investor's decision making point of view.

15.1.1 As regards the contention of materiality of disclosure of other directorship of Mr. C.Vasan is concerned, I note that the term "material" has not been defined under the ICDR Regulations. However, as understood in market parlance and also defined in Explanation to Regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, "material" means anything which is likely to impact an investors' investment decision. In respect of the failure to disclose the other directorships of Vasan Chidambaram, in general, the details of the directorships in other companies may have an impact on the decision making of the investors, as the directorship in a company is considered as one of the parameters for successful stewardship of the Company. Therefore, the fact that listed company has a director who has been associated with the decision making of a profit making or efficiently run companies may have an impact on the decision making of the investor. However, what matters is that which information is material depends on the facts and circumstances of the case. It would have been a different case when the listing company intent to have contracted with another company as related party. However, that is not the case here. Further the listed company has no object of deployment of funds to the two companies in which the directorship of Vasan Chidambaram was not mentioned. Neither the funds were actually deployed nor siphoned off through the other two companies. It should have also been different case if regulatory actions have been taken against any of these two companies. However, there is no such material available on record to that effect as well. Further no adverse material is available on record that in the fact and circumstances of the case, the directorship in these two companies are so material that non publication of those details would have

appreciable impact on the decision making of the investors. Therefore, in the facts and circumstances of the case, the preponderance of probability of the facts of the case leads to the conclusion that the said information cannot be considered as material.

15.1.2 However, the aspect of whether an information is material or not can be verified only after the information is on record of the Merchant banker. For instance, assuming that regulatory action taken against a company wherein the director of the issuing company is involved, can be assessed only after the ascertainment of the fact that the issuer company's director was director in such company. Therefore, the due diligence effort on the part of the merchant banker requires raising the question of whether Vasan Chidambaram was director in how many of the companies. Therefore what is material is whether there is any proof of such question raised to the issuer Company. The Noticee stated that as a first step to ascertaining the details of other directorships held by Mr. C. Vasan, the Merchant Banker had submitted a due diligence checklist to the Company *inter-alia* raising queries for details of all the Companies/Firms/ Ventures/ Partnerships/ Proprietorships in which the Directors of the Company are Directors/ Partners/ Proprietors etc. to be furnished. However no supporting document was submitted to support the same. However, Mr. C. Vasan submitted a letter dated August 1, 2010 to the Merchant Banker disclosing the other directorships held by him at the time of the filing of the Draft Red Herring Prospectus in respect of the initial public offer of equity shares of MEL. At the ninth paragraph of the said letter dated August 1, 2010, provided details of the other directorships of Mr. C. Vasan where it was clearly stated that Mr. C. Vasan is interested as a director in Eduexel. Therefore, though the proof of whether the relevant details of directorships was asked is not adduced by the Noticee, the letter dated August 1, 2010 indicates that the relevant query has been raised by the Noticee. Therefore, in this regard, I find that by raising the relevant query, the first level of due diligence has been effected by the Noticee. Coming to the second level of due

diligence required to be done by Noticee, i.e., the verification of the details submitted by Mr. C. Vasan, I note the contention of the Noticee that there was no online facility available during the year 2010 in the website of Ministry of Corporate Affairs. I note that in such a scenario for the time period covered, the verification would be cumbersome and practically near impossible to ascertain the details of the directorship of Mr. C. Vasan from every RoC. Therefore, I give benefit of doubt on this second level of due diligence in verifying the details provided by Mr. C. Vasan.

Non-Disclosure of arrangement for acquiring of screening rights:

15.2 I note from the DA Report that the second aspect of the allegation against the Noticee is with respect to non-disclosure of arrangement for acquiring screening rights between MEL and Eduexel.

15.2.1 The Noticee contended that the DRHP of MEL was dated August 26, 2010 and therefore, the arrangement for acquiring screening rights between MEL and Eduexel which is purportedly alleged to be in existence from November 15, 2010 onwards is a post DRHP filing event. No reference of such alleged arrangement was found in the minutes of the meetings of Board and shareholders of the Company perused by the Merchant Banker. No arrangement of November 15, 2010 pertaining to screening rights was disclosed to the Merchant Banker pursuant to the above requests for information/documents and there was no other avenue available to the Merchant Banker to ascertain the existence of this arrangement. As there is no letter of arrangement, the Merchant Banker also had no knowledge of the existence of such Letter of Arrangement and therefore, the Merchant Banker cannot be held liable for any omission in the information furnished to it by the Company basis which disclosures were made in the Offer Documents of MEL.

15.2.2 I note that one of the prime objective of the IPO was to enter into screening agreement with 300 cinema theatres. The same is noted from the Offer documents under the section Internal Risk Factors which reads as under:

"Our Company intends to use part of the proceeds up to Rs. 1,200.00 lacs out of

the total Issue proceeds for acquisitions as described in the paragraph titled "Acquisition of company, acquisition of screening rights of company having similar line, range and objects of business" on page 62 under the Section titled "Objects of the Issue" beginning on page 60 of the Prospectus. This forms approximately 20% of the Issue Proceeds. We have not yet entered into any definitive agreements to utilize the funds allocated for acquisitions. There can be no assurance that we will be able to conclude definitive agreements for such expenditures on terms anticipated by us. As on the date of the Prospectus, we have not yet identified specific acquisition targets."

15.2.3 It was therefore, incumbent upon the Noticee to raise relevant questions for bringing out the relevant information in the DRHP/RHP which is required for the investors to take informed decision. The said aspect relates to raising the relevant question regarding the previous/immediate steps taken by the MEL in relation to achievement of the objects clause prior to the date of DRHP/RHP. Had the Noticee undertaken the said exercise being a prudent merchant banker, it would have certainly surfaced the details of any existing or future arrangement to achieve the desired object for which MEL has come with its IPO. The evidence submitted by the Noticee in support of its taking a due diligence regarding this aspect, in its written submission dated June 11, 2019 only shows that the Noticee has asked for the details of the cost of the Project and means of the finance, details about the cost of the project giving break up, activity wise and the means of finance. There is no evidence submitted by the Noticee on the aspect of due diligence done by it by raising the relevant query on the aspect of any arrangements already made by it regarding the realization of objects clause. This is the minimum diligence that can be reasonably expected to be exercised by a merchant banker having reasonable diligence in the conduct of its own affairs. I note that as part of their due diligence done for the IPO the Noticee submitted the list of documents to be provided for an IPO of the Company and reply of MEL to the details sought. Perusal of the same indicates that the Noticee has

simply acted upon the confirmation of MEL that there are no material developments from the filing of DRHP. I note that had there been a specific query as part of their due diligence on the aspect of existing arrangements relating to the achievement of the objects clause, the MEL may have replied specifically on this aspect. But the mere general confirmation from the MEL indicates, that the Noticee has not raised the specific query. I note that Regulation 64(1) of the ICDR Regulations state that the lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the IPO including the veracity and adequacy of disclosure in the offer documents. By virtue of the failure to raise the relevant queries on the aspects of objects of the IPO, the information relating to the arrangements of MEL towards the achievement of the object was not made available before the investors, which in effect results in the duty of the Merchant banker to satisfy himself on the adequacy of the disclosure in the offer documents. Therefore, I find that the Noticee has violated Regulations 64(1) of the ICDR Regulations.

15.2.4 I also note that the Noticee's contention that it had no chance to peruse the letter of arrangement dated November 2010 entered into between the MEL and Eduexel for obtaining the theatrical rights which is similar/identical to the object of the IPO. They have stated that if there was any kind of screening arrangement between Midvalley and Eduexel, and if the Company suppressed the fact about such screening arrangement from the Merchant Banker they should not be held responsible. The Noticee argued that it has no occasion to know the arrangement mentioned in the agreement dated January 27, 2011 prior to the date of prospectus which is January 14, 2011. In this context, I note that the essence of first leg of due diligence is raising the relevant query to satisfy oneself from the perspective of discharging its duty of ensuring adequacy and veracity of disclosures in the offer document. As already held there was no such due diligence on this first leg. Though the Noticee claims to have interacted with the Company official, I note that AFSL had failed to submit any evidence in respect of its first leg of due diligence.

15.2.5 Further the Noticee contented on the existence of the "arrangement" mentioned in

the agreement dated January 27, 2011. In this context, I note that the first leg of due diligence would be satisfied only when the relevant query/information was sought relating to the objects clause. The fact that whether the information pursuant to the query was not provided by the issuer company or whether the information itself was not in existence, cannot come to the rescue of the Merchant banker, in discharging its initial leg of due diligence. For the same reason, by virtue of its non-production, it cannot be argued that no conclusion can be drawn that arrangement was in respect of acquisition of screening rights by MEL from Eduexel. The contention of the Noticee that such screening rights are not reflected in the fixed assets is in fact an argument in support of the second leg of due diligence i.e, the verification of the information provided by the issuer company. In the present facts and circumstances of the case, the second leg of due diligence would come only when the Noticee has performed the first level of due diligence and the issuer company has given the information and then comes the second leg of due diligence of verifying the information. Therefore, on this ground as well, the Noticee cannot claim discharge of its duty of due diligence by seeking the relevant information from the Issuer Company.

15.2.6 I note that as per Clause 4 of the code of conduct for merchant bankers as mandated under schedule III of the Merchant Banker Regulations, a merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment. However, in the present case, I note that the Noticee has not exercised independent professional judgment by raising the relevant query in respect of the existing arrangement relating to the objects clause. Being a prudent Merchant Banker, the Noticee was expected to act in an independent professional manner while carrying out its due diligence and not rely solely on the declarations of MEL and statutory auditor.

15.2.7 Further, I note that Clause 6 of the code of conduct states that a Merchant Banker shall ensure adequate disclosures are made to the investors in a timely manner in

accordance with applicable regulations and guidelines so as to enable them to make a balanced and informed decision. Clause 7 of aforementioned code of conduct states that a merchant banker shall endeavor to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims and are made aware of the attendant risks before taking any investment decision. Further, as per Regulation 8(2)(b),8(2)(e) and 8(2)(f) of the ICDR Regulations, a merchant banker has to submit a due diligence certificate to SEBI, at the time of registering the prospectus with Registrar of Companies, before the opening of issue and after the issue has opened but before it closes for subscription, stating that all material disclosures of the issuer as on date have been made through the RHP.

15.2.8 A merchant banker holds a position of great trust and responsibility. The Noticee cannot evade its primary responsibility as a Merchant Banker to undertake all reasonable efforts to carry out thorough due diligence for ensuring accurate and complete disclosures in the offer documents and to apply independent professional judgment.

15.2.9 In this regard, I place reliance on the observations of the Hon'ble SAT in Appeal No. 39 of 2011 in the matter of *Enam Securities Pvt. Ltd. Vs. SEBI* decided on February 15, 2012 wherein the obligations and responsibilities of a merchant banker under the merchant bankers' regulations were discussed. Regulation 13 of the merchant bankers regulations provides that every merchant banker will abide by the code of conduct as specified in Schedule III thereof. "…*It places an onerous duty on a merchant banker not only of protecting the interest of the investors but also of ensuring that adequate disclosures are made in a timely manner without making any misleading or exaggerated claims and to render best possible advise to the clients. A merchant banker is required to maintain high standards of integrity, dignity and fairness in the conduct of its business and is required to promptly inform the Board any violation or non-compliance of the regulatory framework that come to its notice. A merchant banker is also required to submit to the Board complete particulars of*

the transactions of acquisition of securities of any body corporate as required by regulation 27 and also make disclosures to the Board relating to its activities, as required under regulation 28 of the merchant bankers regulations. In a way, a merchant banker is an expert body which is also a point of contact between the regulator i.e. the Board and the corporate entity on whose behalf it is working. Therefore, a merchant banker is the eyes and ears of the regulator whose responsibility is to ensure that the corporate entity utilizing its services is acting in accordance with the laid down norms and in case of violation, bring the violation to the notice of the regulator for appropriate action. It is in this context that the code of conduct for merchant bankers prescribes that a merchant banker shall, at all times, exercise due diligence, ensure proper care and exercise independent professional judgment".

15.2.10 I also note that the Hon'ble SAT in the case of *Almonds Global Securities Ltd. Vs. SEBI* decided on 13.05.2016 in paragraph 52 enunciated the principles of due diligence in the following words:

"52. This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances".

Considering the above facts and circumstances and the case laws detailed above, I am of view that the Noticee had failed to carry out proper due diligence with respect to the information and declaration contained in the RHP/Prospectus. By virtue of the said failure to give correct disclosures in the RHP/Prospectus, I am also of the view that the Noticee had submitted wrong due diligence certificates to SEBI with respect to the declarations and statements contained in the RHP/ Prospectus.

Summary:

16. In sum, I note the following:

    i. The Noticee is connected to the Eduexel, Aman tie up, Mercury Fund, Regent Finance Corporation Ltd., India Securities Broking Pvt. Ltd. who were observed to be fund flow conduits in siphoning of the IPO proceeds of MEL to the trading entities.

    ii. The said multiple connections, on preponderance of probability leads to the conclusion that the Noticee had knowledge and as a Merchant Banker the Noticee's omission and commission in respect of such siphoning off leads to the conclusion that it aided and abetted the fund flow conduits in siphoning of the IPO proceeds of MEL.

    iii. The Noticee has not exercised independent professional judgment by raising the relevant query in respect of the existing arrangement relating to the objects clause of the IPO, prior to the publication of RHP..

17. Therefore, in light of aforesaid observations and facts and circumstance of the case, I am of the view that the Noticee had failed to carry out proper due diligence with respect to the information and declaration contained in the RHP/Prospectus which had resulted into the investors being deprived of making informed decisions with respect to investing in the shares of MEL. By virtue of the aforesaid acts/failure, I find that the Noticee has violated the provisions of Clause 4, 6 and 7 of Schedule III of the Code of Conduct for Merchant Bankers specified under Regulation 13 of SEBI (Merchant Banker) Regulations, 1992 and Regulations 8(2) (b), (e), (f) and 64(1) of the ICDR Regulations. Further, the Noticee had aided and abetted MEL in siphoning of the funds received from the IPO and caused harm to the investors and thereby has violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1) of PFUTP Regulations read with Section 12 A (a), (b) and (c) of SEBI Act.

18. I note that Enquiry proceedings are mainly disciplinary proceedings initiated against intermediaries registered with SEBI. Section 12(3) of the SEBI Act provides that: *"The Board may, by order, suspend or cancel a certificate of registration in such manner as*

may be determined by regulations…". As per intermediaries Regulations, an intermediary can be proceeded against for violation of securities laws. As regards the proportionality of the punishment, the Noticee has claimed that from 2009 till 2019, they handled around 60 initial public offerings and 25 takeover transactions as a merchant banker. The Merchant Banker has been inspected by SEBI teams from time to time and no penal action has been taken by SEBI on the Merchant Banker for merchant banking related errors or violations till date. Upon considering the totality of the facts and circumstances, the interest of securities market and my observations/findings detailed above, I am of the view that prohibition on taking up fresh assignments and new clients shall be commensurate with the violations found hereinabove.

19. In view of the above, I in exercise of the powers conferred upon me in terms of Section 19 read with Section 12 (3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby prohibit the Noticee i.e. Aryaman Financial Services Limited, Merchant Banker, SEBI Registration No. INM000011344 from taking up any new assignment and not to take up any new clients for a period of three months.

20. This order shall come into force immediately.

21. The copy of this order shall be served upon the Noticee and BSE in accordance with regulation 30(3) of the Intermediaries Regulations.

22. The SCN issued against the Noticee is accordingly disposed of.

DATE: March 11, 2020 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA