WTM/AB/IVD/ID2/1089/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee no.	Noticee Name	PAN
i.	M/s. Corporate Capital Ventures Pvt. Ltd.	AAECR4815P

*(The aforesaid entity is hereinafter referred to by its name or as "**the Noticee**")*

In the matter of ICL Multitrading India Ltd.

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1. Present proceedings have emanated from a show cause notice dated November 18, 2020 (hereinafter referred to as "**the SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to M/s. Corporate Capital Ventures Pvt. Ltd. (hereinafter referred to as "**the Noticee**") for violations of provisions of Clauses 1, 3, 4, 6 & 7 of Code of Conduct specified under Schedule III readwith Regulation 13 of SEBI (Merchant Banker) Regulations, 1992 (hereinafter referred to as "**MB Regulations**") and Regulation 106P(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (since rescinded) (hereinafter referred to as "**ICDR, 2009**") readwith Regulation 301(2) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR, 2018**").

2. Prior to issue of the SCN, SEBI had passed an *ex-parte* interim order on July 05, 2019 (hereinafter referred to as "**the interim order"**), against the Noticee, a SEBI

registered Merchant Banker, for alleged non-compliance with the provisions of ICDR, 2009. SEBI vide the interim order directed the Noticee as under:

> *"(i) CCV shall not take up any new assignment relating to merchant banking activities in the securities market, till further orders from SEBI.*
>
> *(ii) CCV shall, in cases of pending assignments where it is already engaged as a merchant banker prior to issuance of this order, disclose the direction specified at para 9(i) above, in the offer documents pertaining to the issues concerning such assignments. CCV shall provide to SEBI details of all such assignments, within 7 days of receipt of this order."*

3. The interim order was passed against the Noticee for its failure to fulfil the underwriting obligation which devolved upon it pursuant to the undersubscription of the SME IPO of ICL Multitrading India Ltd. (hereinafter referred to as "**ICL" / "the issuer"**). The SME IPO of ICL for 21,00,800 equity shares at Rs. 85 per equity shares (total amount - Rs. 17.86 crore) opened on November 19, 2018 and was extended till December 03, 2018, based on a request by ICL. The Noticee was the Lead Manager cum Merchant Banker for the aforesaid IPO of ICL on NSE. Further, IPO of ICL was underwritten by the Noticee.

4. Pursuant to the passing of the interim order, the Noticee was heard when the Noticee *inter alia* made certain allegations against ICL, the issuer. Thereafter, Whole Time Member, SEBI vide the confirmatory order dated January 16, 2020, confirmed the directions contained in the interim order against the Noticee and also directed an investigation into the events surrounding the abovementioned SME-IPO of ICL and the allegations raised by the Noticee against ICL. The direction as given in the confirmatory order dated January 16, 2020 were as follows:

> *"…….(i) In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B read with Section 19 of the SEBI Act, 1992, hereby confirm the interim directions issued vide order dated July 05, 2019 against the Noticee. CCV shall remain prohibited from taking up any new assignment relating to merchant banking activities in the securities market, till further orders from SEBI. Further, CCV shall, in cases of pending assignments where it is already engaged as a merchant banker prior to issuance of the interim order, disclose the direction*

specified above, in the offer documents pertaining to the issues concerning such assignments.

(ii) Further, I hereby direct an investigation into the events surrounding the abovementioned SME-IPO of ICL and the allegations raised by the Noticee against ICL. Such investigation shall look into the roles played by ICL and CCV in the entire matter and shall be concluded expeditiously. CCV and ICL are hereby directed to extend all necessary co-operation to the investigation and any failure to do so on their part may lead to drawing of adverse inferences against them

(iii) This order shall remain in force till further directions. ……."

5. As directed in the aforesaid confirmatory order dated January 16, 2020, SEBI initiated an investigation into the role of the Noticee in the SME IPO of ICL and also the allegations made by the Noticee against ICL during the hearing held before Whole Time Member, SEBI, before passing of the confirmatory order.

6. In the meantime, being aggrieved by the directions in the interim order and confirmatory order dated January 16, 2020, the Noticee, in February 2020, preferred Appeal No. 79 of 2020, before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**"). Vide its order dated October 22, 2020, Hon'ble SAT disposed of the Appeal no. 79 of 2020, with the following directions:

"…….2. After hearing the counsel for the parties, we find that the respondent issued an interim order dated 5th July, 2019 and, thereafter, confirmed it on 16th January, 2020 prohibiting the appellant from taking new assignments as a merchant banker till further orders.

3. On a query raised by us, Mr. Gaurav Joshi, learned senior counsel for the respondent informed that the matter is still under investigation and they will take another six months to complete the investigation. We are of the opinion that the restraint order against the appellant is continuing for the past 15 months and the appellant is restrained from doing business on the basis of an alleged charge which is still being investigated and is far away from being adjudicated at the moment. We are of the opinion that such interim orders cannot be allowed to continue indefinitely.

4. Considering the aforesaid we dispose of the appeal with the following directions:-

(a) The respondent will issue a show cause notice to the appellant within four weeks from today.
(b) Upon receipt of the show cause notice the appellant shall file its reply within four weeks thereafter.
(c) The authority appointed by SEBI will consider the matter after giving an opportunity of hearing to the appellant and will pass a final order within six months from today.
(d) In the event the matter is not decided finally within the stipulated period by the authority it would be open to the appellant to approach the Tribunal by moving an application for modification of the interim order as well as the confirmatory order. The appeal is accordingly disposed of……..”

7. As directed by the Hon’ble SAT, on completion of the investigation, the SCN was issued to the Noticee, within four weeks of the aforesaid order passed by Hon’ble SAT wherein the Noticee is alleged to have violated provisions of Clauses 1, 3, 4, 6 & 7 of the code of conduct under Schedule III to Regulation 13 of MB Regulations and Regulation 106P (1) of ICDR, 2009. I also note that, upon completion of investigation, separate adjudication proceedings have also been initiated by SEBI against ICL and its Managing Director for alleged violation of section 15 HB of the SEBI Act, 1992.

8. The key findings of the investigation as contained in the SCN and the allegations levelled therein against the Noticee, are reproduced hereunder:

   a) The Noticee was appointed as the Lead Manager to the IPO of ICL vide mandate letter dated June 12, 2018 given by ICL and subsequent MOU dated July 15, 2018 signed between the Noticee and ICL. The Noticee carried out the due diligence of the records of ICL and on the basis of the documents submitted before it and representations made and warranties given, it assisted ICL in drafting the Prospectus for the IPO. It was observed that the DRHP was filed with NSE on July 21, 2018 within a week time from the signing date of MOU. From the above dates of events, the SCN alleges that time taken for the necessary due diligence was hardly a week.

   b) Further, the underwriting agreement between ICL and the Noticee was entered into on November 08, 2018. Subsequently, IPO opened on November 19, 2018

and was scheduled to close on November 22, 2018. Thereafter, the issue was extended till December 03, 2018. In this regard, the Noticee has submitted that during the extended period while meeting different investors and persons having interest in securities market, the Noticee got the information by persons, namely Manish Garg, Sandeep Arora and Niraj Chaudhary, that ICL and its management were offering various cash discounts for subscription to the equity shares of ICL. Thus, it is inferred that the alleged irregularities in ICL were found by the Noticee after the original date of closure of the issue i.e. November 22, 2018.

c) During investigation, the Noticee submitted that after the receipt of the aforesaid information, it got suspicious and tried culling out more information about the IPO from various market participants/ sources, upon which it was revealed that ICL had suppressed various information / facts from the Noticee and was involved in kickbacks in cash for the subscription of the shares. The Noticee further stated that they approached the ICL and its management and asked them to provide replies to the above facts/queries (regarding offering of cash discounts to investors for the said IPO), to which the management of the ICL could not furnish any answer instead tendered evasive replies, simultaneously requested that the said facts should not be disclosed to the Statutory Authorities. According to the Noticee, when it did not agree to this, under pressure ICL agreed to withdraw the said IPO and accordingly, handed over the Issue Withdrawal Letter. However, during investigation, the Noticee failed to submit any supporting documents, in this regard and only submitted that the Noticee met the management of ICL, personally. Further, during investigation, the applicants of the said SME IPO had denied the allegations of cash discounts or cash back for applying in the SME IPO by submitting that they were not offered any cash discounts and no funds were transferred to them.

d) The Noticee has alleged various irregularities by ICL pertaining to Mr. Pramod Kumar Saxena who was Group CEO of ICL, payment made to the market maker (Nikunj Stock Broker Ltd.), doubtful independence of Mr. Pankaj Kumar Jha (Independent Director of ICL) and Mr. Saroj Kumar Jha (Independent Statutory Auditor of ICL) during the submissions made before WTM, SEBI after passing

of the interim order. However, pursuant to the investigation, adverse observation was found only w.r.t. the allegations made by Noticee regarding Mr. Pankaj Kumar Jha and Mr. Saroj Kumar Jha & Associates. The investigation findings w.r.t. the said allegation are as follows:

I. Mr. Pankaj Kumar Jha was a director (stated to be independent by ICL) of ICL from December 15, 2017 onwards while Saroj Kumar Jha & Associates were the Statutory Auditor of ICL from April 26, 2016 onwards.

II. Mr. Pankaj Kumar Jha has submitted to have done articleship training during August 08, 2008 to February 12, 2012 under Saroj Kumar Jha (Partner of Saroj Kumar Jha & Associates, the statutory Auditor of ICL).

III. Upon perusal of the Bank statement of Mr. Pankaj Kumar Jha, it was observed that various funds were received by Mr. Pankaj Kumar Jha during the period June 2018 to March 2019. In this regard, Mr. Saroj Kumar Jha & Mr. Pankaj Kumar Jha has submitted that Mr. Pankaj Jha has conducted bank audit of Syndicate Bank, Punjab National Bank, Oriental Bank of Commerce, and other works on an agreement basis for Saroj Kumar Jha & Associates for which these payments were made during the aforesaid period. In this regard, while both Mr. Pankaj Kumar Jha and Mr. Saroj Kumar Jha have admitted their aforesaid association, however, they have not furnished any supporting documents in this regard.

IV. In view of the above and based on the submissions made by these entities, it is alleged that Mr Pankaj Kumar Jha carrying out audit on behalf of Saroj Kumar Jha & Associates, who is the statutory Auditor of ICL in the period before and during SME IPO and also receiving payments for the same, both Pankaj Kumar Jha and Saroj Kumar Jha (HUF) cannot be considered as “independent” and both are associated with same company i.e., ICL.

V. In this regard, as per the provisions of section 149(6)(e)(ii)(A) of the Companies Act, 2013, *an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director who, neither himself, nor whose relative(s) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company.*

VI. Disclosure made by ICL in its Draft Red Herring Prospectus ("DRHP") dated November 10, 2018 at point no. 6 on page no. 119 regarding Mr Pankaj Kumar Jha being an independent director of ICL was found to be incorrect and misleading. Similarly, ICL in its DRHP dated November 10, 2018 at page nos 54 & 216 had disclosed that Saroj Kumar Jha & Associates, the statutory Auditor of ICL was Independent Peer Review Certified Auditor, which was also found to be incorrect and misleading. In view of the above, the SCN alleges that the Noticee failed to perform adequate due diligence and also failed to ensure that the investors are provided with true and adequate information vide the DRHP.

e) The issue regarding withdrawal of IPO was brought to the notice of NSE only on November 29, 2018 by the Noticee. Even then the emails sent by the Noticee to NSE w.r.t withdrawal of issue were seen to be vague and without any plausible reasons for withdrawal.

f) Further It is noteworthy that the Noticee was marked a copy of the email dated November 30, 2018 (email sent by ICL to NSE confirming the non-withdrawal of IPO) to which the Noticee did not respond or react. It was only after the issue closed on December 03, 2018 that the Noticee again sent an email to NSE reiterating withdrawal of Issue on November 29, 2018. Thus, the Noticee despite being aware of the issue continued to remain open did not intervene or communicate to NSE till December 03, 2018 till issue was closed.

g) In this regard, the Noticee has stated that they had terminated the Underwriting Agreement dated July 15, 2018 on November 29, 2018 itself. In support, the Noticee has forwarded a copy of the termination letter stating that the same was handed over to ICL management personally during a meeting. However, the said claim of the Noticee has been denied by ICL vide email dated November 10, 2020 wherein they have submitted that the Noticee had never issued any termination letter to the issuer company/ICL. Also that no such termination letter was given by the Noticee or communicated to or acknowledged by ICL. Thus, based on submissions made, it could not be confirmed whether the Noticee had terminated the Underwriting Agreement before closure of the IPO or not. It is pertinent to note that underwriting involves determining the risk and price of the proposed security and it gives assurance to the proposed investors as well. The obligation cannot be withdrawn unilaterally on the basis of mere allegations without evidentiary proof and that to at the later stage of IPO. All the allegations made by the Noticee are based on research or findings after the closure of the issue. This defeat the purpose of underwriting, gives wrong impression in the securities market and detrimental to the interests of the investors as well.

h) With regard to the allegation by the Noticee after the passing of the interim order dated July 05, 2019 and cited the reasons for their email to NSE for withdrawal of the IPO, it was observed that many of the allegations pertain to period after the closure of the IPO.

i) Noticee has brought alleged wrongdoings by ICL and its management to SEBI's notice only after the interim order was passed restraining them from carrying on their business. If the alleged wrongdoing were already in knowledge of Noticee as early as from before November 29, 2018, the same should have been officially communicated by Noticee to NSE and/or SEBI at the earliest and they need not have waited till after their business was effected.

j) The Noticee did not comply with the provisions of Clauses 1, 3, 4, 6 & 7 of the Code of Conduct under Schedule III to Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992.

k) The Noticee failed to honour its underwriting obligations and thus, violated the provisions of Regulation 106P(1) of the ICDR Regulations, 2009 read with Regulation 301(2) of the SEBI (ICDR) Regulations, 2018.

l) The Noticee has been called upon by the SCN to show cause as to why appropriate directions under Section 11B (1) and 11(4) read with Section 11(1) of the SEBI Act, 1992 should not be issued against them.

9. I note that the Noticee has filed a detailed reply dated December 16, 2020, to the SCN. I also note that personal hearing in the matter was held for the Noticee on February 4, 2021, subsequent to which the Noticee has filed written submission dated March 5, 2021. The Noticee has raised the following key contentions to the allegations levelled in the SCN:

a) During the course of promoting the IPO, the Noticee came across certain alarming information from third party informants, which were being actively suppressed by ICL from the Noticee. Below summarised is the said suppressed information ("**Suppressed Information**") —

i. That Mr. Pramod Kumar Saxena was not just a consultant to ICL, but the group CEO and therefore, a prominent key managerial person with regards whom, detailed disclosures had to be made in the stock exchange filings;
ii. That the statutory auditor i.e. M/S. Saroj Kumar Jha (HUF) was in fact not independent, and therefore, all the financials and books of accounts and statements audited by M/S. Saroj Kumar Jha (HUF) could not be made the basis of the disclosures in the stock exchange filings;
iii. That Mr. Pankaj Kumar Jha, who was disclosed as an independent director of ICL was not in fact independent by virtue of his relationship with Mr. Saroj Kumar Jha (the auditor), and moreover that multiple legal proceedings were pending against Mr. Pankaj Kumar Jha; and
iv. That ICL was offering cash discounts against IPO subscriptions to the investors.

b) The nature of the Suppressed Information was such that it would amount to gross violation of the SEBI provisions including the ICDR Regulations, 2009. Accordingly, the Noticee tried to confront ICL to determine the veracity of this Suppressed Information.

c) As ICL was non-responsive to the request for documents and acting in an evasive manner, and given its representatives even resorted to threatening the representatives of the Noticee and their family members, the Noticee decided to invoke its rights under Clauses 17.4 of the Underwriting Agreement, and thereby terminate the Underwriting Agreement.

d) Accordingly, a withdrawal letter dated November 29, 2018 was issued by ICL to the NSE and the Noticee and a termination letter dated November 29, 2018 was issued by the Noticee to ICL.

e) While the complaints made by ICL are looked into via these proceedings, SEBI fails to even appreciate the need for examining the claims and contentions raised against ICL and its promoters by the Noticee, being an entity vested with the responsibility to protect investor interests. Had the NSE and SEBI completed the investigation in the matter, ICL's actions would become apparent and there would be no justification for penalising the Noticee.

f) The facts in the present matter adequately demonstrate that the Noticee, being an intermediary registered with SEBI, was acting in the best interest of the securities market and the investors. The Noticee was demonstrating a high degree of professional standards, fairness and promptitude in its dealing. The Noticee’s conduct was aligned with the fundamental objects of SEBI as a market regulator. On noticing suspicious information about ICL and observing the fact that ICL was suppressing information from the Noticee with the object of suppressing the same from prospective investors, the Noticee did everything in its capacity to prevent misleading the investors and protect the market integrity. Despite the inherent conflict of interests in the role of the Noticee as a merchant banker, the Noticee in observance of its code of conduct, acted independently with greater focus on protecting the interest of investors, than interests of ICL.

This is a case where despite the Noticee taking proactive steps for avoiding any active fraud being played upon the investors by making misstatement / non-disclosures in the ICL IPO, the market regulator is penalising the very entity i.e., the Noticee that proactively took all measures to adhere to the market regulators' objects.

g) The actions of the Noticee i.e., termination of the Underwriting Agreement was well within its contractual rights under the Underwriting Agreement. Clause 17.4 thereof entitles the Noticee to terminate the Underwriting Agreement at any point in time if found that that issuing company i.e., ICL is suppressing material information from it, and thereby avoiding disclosure of the same to the prospective investors. ICL has not only breached the provisions of Clause 17.4 of the Underwriting Agreement by suppressing material information, but also Clauses 3, 4, 5, 6, 9 and 12 of the Issue Agreement entered with the Noticee, which further validates the Noticee's action. Therefore, the Noticee was acting well within its contractual rights while terminating the Underwriting Agreement. In any event, even ICL consented to mutually terminate the Underwriting Agreement and withdraw the IPO, as can be seen from its Withdrawal Letter. Therefore, there does not arise the question devolvement of the issue or of fulfilling any underwriting obligations by the Noticee.

h) It may further be noted that underwriting is a commercial activity undertaken as per the ICDR, 2009 undertaken with an object to instil confidence in the investors. If the very issue was being progressed based on deceit and fraud, withdrawal of the IPO is the only manner of protecting the investors. SEBI's stand on the withdrawal of underwriting obligation being unilateral and against the interest of the investors is therefore not correct. It is most respectfully submitted that SEBI cannot enforce the performance of a void agreement which is a commercial understanding between the parties. In any event, no investor has been adversely affected by the said withdrawal. Even the applicants to the issue have received their monies back, and therefore, the allegation of detriment to the investors does not stand ground.

i) Moreover, the Noticee's engagement with ICL was withdrawn and intimated to NSE before the closure of the IPO and not after. SEBI's stand that the withdrawal was after the closure of IPO is based on the submission of ICL and the report of NSE which is baseless and incorrect. The records would demonstrate that even ICL later on admitted to having handed over the Withdrawal Letter albeit under duress.

j) As can be seen from the SCN, the allegation of SEBI that inadequate due diligence was conducted by the Noticee is based entirely on a singular ground/ understanding - that the period for which due diligence was conducted by the Noticee was just one (1) week. While this understanding basis which the allegation is made is itself erroneous, as the Noticee had in fact conducted due diligence over a period of eight (8) months between November 2017 to June 2018, it is submitted that the said approach of SEBI is imprudent and unfitting as the 'time-frame' within which a due diligence is completed cannot be the only factor for determining the quality and comprehensiveness of such due diligence.

k) Being mindful of its responsibilities provided under the Code of Conduct under Merchant Banker Regulations, the Noticee had forthwith informed NSE of its reasons for withdrawing from the IPO. As submitted in its Reply, the Noticee informed NSE of the irregularities observed with ICL on November 30, 2018 itself. It is wrongly alleged in the SCN that the Noticee delayed in approaching the NSE.

l) Without prejudice to the foregoing, considering the debarment already undergoing since the interim order, the learned Member consider disposing of the SCN without any adverse directions by giving the benefit of doubt. This is requested considering the harsh direction still in force and when the economy and business which was adversely affected by the pandemic is recovering, the Noticee be not penalised yet again which will be like a civil death of the Noticee. In light of the above, it is prayed before the learned Member that considering the punishment already undergone, the present proceedings be disposed of without subjecting the Noticee to any further adverse directions and/or monetary penalty.

10. I have considered the allegations made in the SCN, the reply of the Noticee to those allegations, submissions made during the hearing and the written submissions filed by the Noticee. Upon a careful consideration of the same, I observe that the first allegation made in the SCN against Noticee is of the violation of Regulation 106P (1) of ICDR, 2009. The said Regulation 106P(1), reads as under:

> ***Underwriting by merchant bankers and underwriters.***
> *"106P(1) The issue made under this Chapter shall be hundred per cent. underwritten.*
> *Explanation: The underwriting under this regulation shall be for the entire hundred percent of the offer through offer document and shall not be restricted upto the minimum subscription level."*

11. The aforesaid regulation provides that any issue made under Chapter XA of ICDR, 2009 shall be 100% underwritten. I note that, in the instant case, the issue of ICL was 100% underwritten by the Noticee, who was the Lead Manager cum the Merchant Banker. There is no dispute by the Noticee, on this factual position. However, the SCN alleges that the Noticee is in violation of Regulation 106P(1) since, it failed to meet the underwriting obligation which devolved upon the Noticee subsequent to the undersubscription of the IPO of ICL. I do not agree with such an inference being drawn by the SCN. Regulation 106P(1) merely stipulates the requirement to have the issue 100% underwritten, which has been complied in the present case.

12. The next allegation against the Noticee is that Noticee did not exercise proper due diligence before filing DRHP of ICL with NSE. The said allegation of failure to exercise proper due diligence have been made for two reasons. First reason given in the SCN is that Noticee filed the draft offer document of ICL with NSE within a week's time after its engagement by ICL. Second reason given in the SCN is that Mr. Pankaj Kumar Jha (independent director of ICL) and M/s. Saroj Kumar Jha & Associates (Statutory Auditor of ICL) are not 'independent'. Regarding the first reason, the Noticee has contended that before filling the second DRHP in July 2018, ICL had also filed its first DRHP in March 2018 for which the Noticee had initiated

the first-level due diligence of ICL based on the preliminary information and documents provided by ICL and publicly available information, in November 2017 itself. I agree with the contention of the Noticee and find that the allegation in the SCN which seeks to draw an adverse inference about the quality of due diligence exercise being conducted by the Noticee merely on the basis of time devoted by the Noticee for such exercise without considering the fact that the Noticee had filed first DRHP in March, 2018 for which Noticee had started due diligence in November, 2018, as not sustainable.

13. Regarding the second reason that Mr. Pankaj Kumar Jha (independent director of ICL) and M/s. Saroj Kumar Jha & Associates (Statutory Auditor of ICL) are not 'independent', I note that the SCN has relied on the findings of the SEBI investigation which has revealed that Mr. Pankaj Kumar Jha has stated to have done articleship training during August 08, 2008 to February 12, 2012 under Mr. Saroj Kumar Jha (partner of Saroj Kumar Jha & Associates, Chartered Accountants). From the bank statements of Mr. Pankaj Kumar Jha, the investigation has further observed that various fund transfers were made to Mr. Pankaj Kumar Jha during the period June 2018 to March 2019. In this regard, Mr. Saroj Kumar Jha & Mr. Pankaj Kumar Jha have submitted during investigation that Mr. Pankaj Jha has conducted concurrent bank audit of Syndicate Bank, Punjab National Bank, Oriental Bank of Commerce, and other works on an assignment basis for M/s. Saroj Kumar Jha & Associates for which these payments were made during the aforesaid period. In view of the above and based on the submissions made by these entities, the SCN has alleged that Mr Pankaj Kumar Jha was carrying out audit on behalf of Saroj Kumar Jha & Associates, who were the statutory Auditor of ICL in the period before and during SME IPO of ICL and also receiving payments for the same, both Mr. Pankaj Kumar Jha and M/s. Saroj Kumar Jha & Associates, Chartered Accountants, cannot be considered as "independent" and both are associated with same company i.e., ICL. In its defence, the Noticee has pleaded it has carried out all reasonable due diligence in the SME IPO of ICL and no such information was ever revealed by the statutory auditor or the independent director or ICL and/or its management. It is the case of the Noticee that ICL and its management deliberately suppressed this information and that the Noticee cannot be held liable for the same.

14. I note that as per the provisions of section 149(6)(e)(ii)(A) of the Companies Act, 2013, an independent director in relation to a company, means *"a director other than a managing director or a whole-time director or a nominee director who, neither himself, nor whose relative(s) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company."* I note that the underlying intent of the extant aforesaid provision of the Companies Act, 2013, is to ensure that the independent director is reasonably disconnected and independent of the Statutory Auditor of the company. I also note that admittedly Mr. Pankaj Kumar Jha was undertaking concurrent audit assignments with M/s. Saroj Kumar Jha & Associates, during the currency of the SME IPO of ICL, which was in direct conflict with the spirit of the aforesaid provision of law. I do not agree with the contention raised by the Noticee for the reason that merely because the information was suppressed by the Statutory Auditor and/or ICL and its management, it does not discharge the Noticee, who was the Lead Merchant Banker for the issue, from its obligation to independently verify and examine the documents/claims, before proceeding to certify and issue the due diligence certificates for the SME IPO of ICL. I note that the connection between Mr. Pankaj Kumar Jha and Saroj Kumar Jha & Associates, was apparently glaring and ought to have been noticed by the Noticee from the publicly available records (MCA) itself. I note that Mr. Pankaj Kumar Jha had declared that he was also the director of Brainers Commercial Private Limited. From the records available at MCA 21 Portal, it is found that Mr. Pankaj Kumar Jha is a significant owner of 50% shareholding of Brainers Commercial Private Limited and M/s. Saroj Kumar Jha & Associates is its Statutory Auditor. This fact itself ought to have evinced further inquiry by the Noticee. However, I find that no such efforts were taken by the Noticee in its due diligence exercise.

15. The Noticee has contended that no underwriting obligation can be fastened upon it since the issue was withdrawn by ICL itself. It is also the case of the Noticee that even if it is held that the issue was not withdrawn by ICL, the underwriting obligation still cannot be fastened upon the Noticee since ICL and its management has supressed material information which has resulted into breach of certain clauses of

the Underwriting Agreement, rendering the Underwriting Agreement voidable at the instance of the underwriter (i.e. the Noticee). The Noticee states that it had terminated the Underwriting Agreement on November 29, 2018 itself, by handing over the Termination Letter to ICL and thus, according to the Noticee, no underwriting obligation can be cast upon it.

16. I do not agree with the aforesaid contention of the Noticee. Before dealing with the same, the following chronology of events must be considered beforehand:

08/11/2018	Underwriting Agreement executed between ICL and the Noticee
19/11/2018	Issue open date
22/11/2018	Issue close date (original)
29/11/2018, 3:05 PM	An email was sent from ICL to the Noticee stating that the withdrawal letter not be submitted to the NSE till evening
29/11/2018, 03:40 PM	An email from email id :- groupceopkumar@gmail.com was sent from ICL to NSE to intimate wrongdoings by the Noticee and request for intervention
29/11/2018, 06:54 PM	Noticee email to NSE for withdrawal of issue
29/11/2018	Post receipt of above email, NSE has Con call with Noticee and ICL
30/11/2018	Email from ICL – issue not to be withdrawn till December 03, 2018
03/12/2018 , 05:00 PM	Issue close date
03/12/2018, 08:06 PM	An email sent again Noticee to NSE confirming the withdrawal of Issue on November 29, 2018.
06/12/2018	Devolvement notice by RTA to ICL and the Noticee and email correspondence between NSE, Noticee and RTA regarding issue handling

17. The Noticee has claimed that when the management of ICL was threatened with the possibility of reporting the alleged malpractices by them to the statutory authorities, only then under pressure they agreed to hand over the issue Withdrawal Letter. ICL has claimed that the Issue Withdrawal Letter may have been signed by it as part of a bunch of documents and given to the Noticee even before the issue open date. I have perused the copy of the issue Withdrawal Letter dated November 29, 2018. After examining the same, I find that the fields of 'Date of Letter' and the

'Date of Final Prospectus' have been filled with human handwriting, as opposed to the remaining text of the entire Withdrawal Letter which is printed. Thus, I note that the date of execution of the Withdrawal Letter cannot be conclusively said to be November 29, 2018. From the facts of the present case, I find it more probable that the issue Withdrawal Letter of ICL might have been demanded by the Noticee and issued by ICL and handed over to the Noticee, even before November 29, 2018, probably as a failsafe measure for the merchant banker so that the issue can be withdrawn by it before the issue close date so that no underwriting obligation is devolved upon it. If the Withdrawal Letter was drafted, printed and executed on November 29, 2018 itself, then there apparently is no other explanation as to why the two fields of 'Date of Letter' and 'Date of Final Prospectus' would be handwritten instead of being printed. The Noticee has claimed that it had confronted the management of ICL on November 29, 2018 and obtained the Withdrawal Letter from it, and handed over the Underwriting Termination Letter. However, I note that the Noticee has not been able to produce any evidence of meeting with the management of ICL on November 29, 2018 and the purported Underwriting Termination Letter dated November 29, 2018, also does not bear any acknowledgement of ICL. ICL has also denied having received any Termination Letter dated November 29, 2018. Thus, the claims of the Noticee stand unproved.

18. In view of the above, I find that though the Issue Withdrawal Letter was issued by ICL, but it was not issued on November 29, 2018, rather it was obtained by the Noticee at a much earlier date and it was only after realizing the imminent possibility of an Underwriting drawdown being cast upon it, the Noticee decided to hand over the Issue Withdrawal Letter to NSE. ICL disagreed for such a Withdrawal of IPO, and conveyed the same to the Noticee vide email at 3:05 PM on November 29, 2018. The Noticee vide email dated November 29, 2018 at 3:15 PM, intimated to ICL that the issue has already been withdrawn as per ICL's Withdrawal Letter. ICL wrote to NSE at 3:40 PM on November 29, 2018, claiming that the Withdrawal Letter has been procured in advance before opening of the issue and the Noticee has been threating to withdraw the issue before the issue close date. The Noticee writes an email to NSE at 6:54 PM on Novemeber 29, 2018 intimating the Withdrawal of the issue. Having received two contradictory emails, NSE has a Con Call with the representatives of ICL and the Noticee. Thereafter, on November 30, 2018, ICL

writes an email to NSE confirming that the issue is not withdrawn. The said email is also marked to the Noticee. From the above chronology of events, I find that ICL has been insisting that the issue is not to be withdrawn and the Noticee is insisting for withdrawal of the issue. I note that in an IPO, the final decision to pursue with the issue process is that of the issuer company. The merchant banker is merely an intermediary to aid and assist the issuer in the public issue process. Hence, in the above chronology of events, despite the insistence of ICL to proceed with the IPO, the Noticee is seen to have been keen on withdrawal of the issue. There apparently appears to be only one explanation for this contradictory behaviour of the Noticee. By November 29, 2018, the Noticee had come to realize that the issue was going to be undersubscribed, and there was an imminent high probability of the devolvement of underwriting obligation being cast upon it. Hence, the Noticee, being in possession of the pre-signed Withdrawal Letter, insisted upon withdrawal of the issue. However, ICL did not agree with the same and hence, two contradictory emails were sent to NSE, one being sent by the Noticee asking for withdrawal of issue and the other being sent by ICL insisting on continuing with the issue.

19. I note that the Noticee has claimed that by pressing for Withdrawal of the issue, the Noticee was acting in the interest of the investors by not allowing delinquent and fraudulent issuer like ICL from accessing the securities market. I do not agree with this explanation being offered by the Noticee. I note that, had that been the case, the Noticee would have mentioned the reasons for Withdrawal of IPO in its email dated November 29, 2018 and December 3, 2018 to NSE. Instead, I find that the said emails were extremely vague and the only reason for withdrawal being cited in the said emails was that ICL has called for withdrawal of the issue. From the reply of the Noticee, I find that the Noticee has claimed that they were first made aware on November 23, 2018, of the fact that the Statutory Auditor was not 'independent', when the market maker (Nikunj Stock Broker Ltd.) communicated to the Noticee that they have received a sum of Rs. 89.25 Lacs from Saroj Kumar Jha HUF. I note that, had the Noticee any concerns about the issue not being in the interests of the investors, it ought to have raised the red flags to the regulatory authorities on November 23, 2018 itself. Instead I find that, the Noticee started pressing for withdrawal of IPO only from November 29, 2018 onwards i.e. at the verge of issue closing date. Thus, I find that the Noticee insisted on Withdrawal of the IPO only to

avoid the subsequent drawdown obligation that otherwise would have been cast upon it since the IPO was grossly undersubscribed.

20. I note that the Noticee has alleged that the information about Mr. Pramod Kumar Saxena, being the Group CEO of ICL, was not disclosed by ICL to the Noticee. I find that SEBI investigation could not reach to any such conclusion that Mr. Pramod Kumar Saxena was indeed the Group CEO of ICL. I note that the Noticee had also alleged that cash discounts/ kicknacks were being offered by ICL and its management to lure the investors into the IPO. With respect to this allegation by the Noticee, I note that the SEBI investigation has revealed that Mr. Manish Garg, Mr. Sandeep Arora, Mr. Niraj Chaudhary and Mr. Naveen Parashar have confirmed the allegations made by them in the affidavits forwarded by the Noticee. However, despite seeking the same, entities have not substantiated their allegations with any verifiable details or documentary proof. As regards the Noticee's allegations that funds were routed to 62 applicants under the IPO under instructions of ICL's management, the SEBI investigation reveals that same has not been supported by any details or documentary proof. The applicants who have replied to SEBI queries have denied receiving any cash back / kickback or funds from ICL in this regard. Thus, I note that, none of the allegations as made by the Noticee, in respect of investors being offered cash discounts, are tenable.

21. Now, the question before me is to determine whether the Noticee has violated Clauses 1, 3, 4, 6 & 7 of the Code of Conduct under Schedule III to Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992. The text of the aforesaid provision is reproduced hereunder:

Code of conduct.

13.Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

SCHEDULE III

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

[Regulation 13]

CODE OF CONDUCT FOR MERCHANT BANKERS

1. A merchant banker shall make all efforts to protect the interests of investors.

3. A merchant banker shall fulfil its obligations in a prompt, ethical, and professional manner.

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

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.

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.

22. As discussed, in the preceding paras, the Noticee is found to be slack in the due diligence exercise conducted by him in failing to identify the relation between Saroj Kumar Jha and Pankaj Kumar Jha. The investors were misrepresented through the disclosures in the Prospectus with respect to the status of Mr. Pankaj Kumar Jha and M/s. Saroj Kumar Jha & Associates, as being 'independent'. The apparent insistence by the Noticee for withdrawal of the IPO in order to avoid the devolvement of underwriting obligation, was an unethical and unprofessional conduct by the Noticee and such a conduct of the Noticee was detrimental to the interest of investors in the securities market. In view of the above, I find that the Noticee has violated Clauses 1, 3, 4 & 6 of the Code of Conduct under Schedule III to Regulation 13 of the MB Regulations. For the aforesaid violation, the Noticee is liable for appropriate directions under Section 11B(1) of the SEBI Act, 1992. I note that the Noticee has been restrained from taking up new assignments as merchant banker, since the passing of the interim orderdated July 5, 2019. I also note that over 20 months have lapsed since these directions have been in force against the Noticee. Therefore, as sufficient period of restraint has already been undergone by the Noticee, I find that, no further directions under Section 11B of the SEBI Act, 1992 are called for in the present case.

23. In view of the above, I, in exercise of powers conferred upon me under Section 11B of the SEBI Act, 1992, read with Section 19 of the SEBI Act, 1992, hereby direct

that the directions issued against the Noticee vide the interim order dated July 5, 2019 and confirmed vide the confirmatory order dated January 16, 2020, are hereby revoked and the present proceedings are disposed off.

24. This order shall come into force with immediate effect. A copy of this order shall be served upon the Noticee, ICL, all recognized stock exchanges and all depositories, for information and necessary action, if any.

Sd/-

Date: March 16, 2021 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA