

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/DS/AO/ 12-20 /2017-18]

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

In respect of:

Sr. No.	Name	PAN No.
1.	Rushil Décor Limited	AABCR3005N
2.	Shri Ghanshyam Ambalal Thakkar	AAJPT5528R
3.	Shri Krupesh Ghanshyambhai Thakkar	AAJPT5527A
4.	Shri Narendra Kumar Jain Kabdi (Since Deceased)	AAGPH4953H
5.	Shri Harshadbhai Navnitlal Doshi	ACZPD1788M
6.	Shri Shankar Prasad Bhagat	ACWPB7495G
7.	Shri Hasmukh Kanubhai Modi	AELPM6128E
8.	Shri Vipul Vora	AAZPV5436G
9.	Corporate Strategic Allianz Limited	AACCC8085A

In the matter of Rushil Décor Ltd.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the alleged irregularities in the Initial Public Offering (hereinafter referred to as ‘IPO’) of Rushil Décor Ltd. (hereinafter referred to as Noticee No. 1/ RDL) for the period July 07, 2011 to July 12, 2011 and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the ‘SEBI Act’) and Regulations made there under.
2. Noticee No. 1 came up with an IPO of 54,00,000 equity shares of face value ₹ 10 at an issue price of ₹ 72 per share for cash aggregating ₹ 38,88,00,000. The Red Herring Prospectus (RHP) was filed on June 08, 2011 and the Prospectus was filed on June 28, 2011. The bids opened on June 20, 2011 and closed on June 23, 2011.
3. Noticee No. 1 vide letter dated February 22, 2016 to SEBI, submitted the following as utilization of IPO proceeds:

Sr. No.	Particulars	Submission of RDL (₹)
1	Building & Civil Construction	9,05,73,014
2	Plant & Machinery (including related expenses)	16,89,39,414
3	Public issue expenses	1,95,57,021
4	Repayment of Unsecured Loan	9,59,16,439
5	Margin of Working Capital Requirement	3,34,42,589
Total		40,84,28,477

4. Noticee No. 1 had repaid unsecured loans amounting to ₹9,59,16,439 out of IPO proceeds. It was alleged in the Show Cause Notice (SCN) dated November 15, 2016 that unsecured bridge loans of ₹7,06,00,000 (18.16% of the total issue size), were

raised during Pre-IPO period of March-June, 2011 which was not disclosed to the public. These loans were repaid immediately upon receipt of IPO proceeds. Details of Bank Statement in this regard was provided to Noticees along with the SCN.

5. It was alleged that the details of the aforesaid outstanding bridge loan of ₹7,06,00,000 was not disclosed in the Prospectus for the IPO. On the contrary, at page 59 of the Prospectus it was categorically stated that “*Our Company has not raised any bridge loan against the proceeds of this Issue.*”
6. Based on above, it was alleged that Noticee No. 1 and signatories of the prospectus namely Shri Ghanshyam Ambalal Thakkar, Shri Krupesh Ghanshyambhai Thakkar, Shri Narendra Kumar Jain Kabdi, Shri Harshadbhai Navnitlal Doshi, Shri Shankar Prasad Bhagat, Shri Hasmukh Kanubhai Modi and Shri Vipul Vora (hereinafter referred to as Noticee Nos. 2 to 8, respectively and collectively Noticees) violated Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ICDR Regulations).
7. It was also alleged that Corporate Strategic Allianz Limited (hereinafter referred to as Noticee No. 9) who was the Book Running Lead Manager (BRLM) to the IPO, failed to exercise due diligence and verify the adequacy of disclosures. It was further alleged that it failed to verify the truthfulness and completeness of the aforesaid disclosures made by RDL and, therefore, violated Regulation 64(1) of ICDR Regulations and Regulations 13 of SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as Merchant Bankers Regulations) read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned was appointed as Adjudication Officer vide order dated September 02, 2016 to inquire and adjudge under Sections 15HB of the SEBI Act, 1992, the aforesaid allegations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. A common Show Cause Notice dated November 15, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN.
10. Vide separate letters dated December 05, 2016, Noticees replied to the SCN and made following submissions:
 - a) *It is submitted that adequate disclosure had already been made in the prospectus. On p.74 of the prospectus, Sources of fund and Details of balance fund deployment have been mentioned. The Repayment of unsecured loan/Suppliers credit of Rs. 15.20 Crores has been mentioned as part of the deployment of balance funds for FY 2012. Hence, this disclosure has already been made in the prospectus that the IPO proceeds will be used towards repayment of unsecured loans. The repayment of unsecured loans of Rs. 7.06 Crores alleged by yours good self as undisclosed is towards the Rs 15.20 Crores already contemplated to be repaid in the prospectus. For these reasons, the entire inquiry is misconceived and has been initiated on a factually incorrect basis.*
 - b) *In any case, out of the total project cost of Rs.73.29 Crores and expenses of Rs. 55.70 Crores has already been incurred. The differential amount of Rs.17.68 Crores includes the Repayment of unsecured loans/Suppliers credit of Rs. 15.20 Crores. This Repayment had always been contemplated as part of the project cost to be made from IPO proceeds. Moreover, the surplus IPO funds are free to be used for general purposes and can be used towards Repayment of unsecured loan taken for the project mentioned in the objects of the issue.*
 - c) *No disproportionate gain or unfair advantage has been gained by the company in repaying a loan taken for business purposes. The loan was taken for carrying*

out the business of the company and since the IPO proceeds have been used for the objects specified in the prospectus, no loss has been caused to the investors. Moreover, there is no question of the default being repetitive in such a situation. For this reason, No penalty can be imposed on the company and the proceedings should be dropped.

11. Vide its reply dated December 06, 2016, Noticee No. 9, who is the Merchant Banker to the issue, made the following submissions :

- I. Bridge loan means the loans which are short term up to 1 year, with relatively high interest rates and are usually backed by some form of collateral such as real estate or inventory. The company had not availed any bridge loan against the proceeds of the issue (IPO) and provided any security hence we have mentioned that “our company has not raised any bridge loan against the proceeds of this issue”. On page number 74 of the prospectus we have mentioned on the basis of certificate issued by statutory auditors of the company M/s D.R Thakkar & Co that the company had incurred expenditure of ₹. 5570.58 Lacs and for financing the said cost the company apart from other means of finance raised unsecured loans of ₹1014.17 lacs. In addition to this, on the said page of the prospectus we have clearly mentioned that “ since the objects of the issue stated are to be funded from the IPO, the amount spent till date on the objects, certified by the statutory auditors shall be recouped from the proceeds. Thus, it is very much clear that we had indicated that the amount already spent towards fulfillment of the objects shall be recouped from the public issue proceed (Refer page no.74 of the Prospectus)*
- II. The repayment of unsecured loans of ₹7.06 Crores alleged by your good self as undisclosed is a part of ₹1014.17 Lacs already contemplated to be repaid/ recouped on page no 74 of the prospectus.*

12. Noticees were granted opportunity of personal hearing on March 21, 2017. Shri Hasmukh Modi, Company Secretary and Shri Vipul Vora, Chief Financial Officer attended the hearing on behalf of Noticee No. 1 to 8 and made the following submissions:

- I. That Noticee No. 1, filed the IPO document on March 25, 2010 and got final approval in April 2011 after 6 observations. Issue was opened on 20.06.2011 and raised ₹40.63 Crores. Current price of the scrip is ₹661.*
- II. In the meanwhile the company was continuing with project and had already spent 80% of the project cost.*

- III. *Referring to page 73 of the Offer Document, it was submitted that total of ₹ 5570 Lakhs was spent on project till 30.04.2011 as certified by the statutory auditor.*
- IV. *The sources of ₹ 5570 Lakhs was indicated in page 74 of the Offer Document which included amongst others unsecured loan of ₹1014 Lakhs.*
- V. *An amount of ₹1520.22 was used from IPO proceeds to repay the unsecured loan as the amount was spent for the objects of IPO and recouped from public issue process.*
- VI. *The details of persons from whom the loan ₹7.06 Crores is raised by the company was handed over to the ARs during the course of the hearing.*
- VII. *The ARs while admitting that these loans were indeed raised nevertheless submitted that the lenders are known to the promoters and they have lent the sum mentioned therein to help the Noticees to execute the project in the meanwhile before the IPO was cleared by SEBI.*
- VIII. *That there is no bridge loan obtained by the Noticees as is generally understood in the industry. In the case of a bridge loan, usually a lien is marked under IPO proceeds which is not the case herein. The issue size is ₹40.63 crores and the amount repaid towards unsecured loans is ₹7.06 crores which is not material and significant amount.*
- IX. *Even otherwise, the same is permitted to be repaid under the head "General Corporate purposes" and "Repayment of Unsecured Loans / Suppliers' Creditors" as disclosed in the Offer Document and certified by Thakkar and Company, Chartered Accountants.*
- X. *The loan of ₹5.94 crores raised between 16th June, 2011 and 21st June, 2011 was in the normal course of business could not have been shown in the RHP filed on 08th June, 2011 and since there is no material change, even the provisions of Regulation 60(4) of ICDR Regulations are not attracted.*

13. The AR (Mayur Parikh, Director, Corporate Strategic Allianz Ltd.), of Noticee No. 9 appeared for the personal hearing on April 07, 2017 and reiterated the submissions made vide its reply dated December 06, 2016. He further submitted that there was a delay of 15 months between filing of DRHP and its clearance by SEBI. In the meanwhile, the company was incurring debts to keep the project going. These details were stated in the Offer Document. It was also mentioned that the unsecured loan shall be recouped from the IPO proceeds, as certified by the statutory auditors. The loan amounts were repaid to minimize the interest cost.

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully examined the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee Nos. 1 to 8 have made incorrect statements in the RHP and violated the provisions of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations?
 - b. Whether Noticee No. 9 being the Book Running Lead Manager (BRLM) has violated the provisions of Regulation 64(1) of ICDR Regulations and Regulations 13 of Merchant Bankers Regulations read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations?
 - c. Does the violation, if established, attract monetary penalty under Section 15HB of SEBI Act, 1992?

FINDINGS

Issue I: Whether Noticee Nos. 1 to 8 have made incorrect statements in the RHP and violated the provisions of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations?

15. The relevant provisions are as under:

ICDR Regulations

"Manner of disclosure in the offer document.

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

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

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain: (i) the disclosures specified in Schedule II of the Companies Act, 1956; and

i) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof"

Clause 2(VII)(G) and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a). 2 (VII)(G) –

Sources of financing of funds already deployed : The means and sources of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue.

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

Due diligence.

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.

16. ARs of the Noticees have, during the hearing on March 21, 2017, submitted that Shri Narendra Kumar Jain Kabdi (Noticee No. 4) had expired and submitted a copy of Death Certificate dated May 11, 2015 issued by Municipal Corporation of Greater Hyderabad. Accordingly, the present Adjudication Proceedings against Shri Narendra Kumar Jain Kabdi (Noticee No. 4) stands abated in view of the observations of Hon'ble Supreme Court, in ***Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)***, wherein the court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim '*actio personalis moritur cum persona*' (personal action dies with the death of the person) would apply.

17. Now I deal with the matter on merits for the other Noticees.

18. Noticee No. 1 entered the capital market by way of an offer of equity shares to the public with an issue of 54,00,000 equity shares of face value ₹. 10. The issue price was ₹. 72/- per equity share for cash aggregating ₹. 38,88,00,000. The bids for the IPO opened on June 20, 2011 and closed on June 23, 2011.

19. Utilization of IPO proceeds submitted by RDL is tabulated as under:

Sr. no.	Particulars	Submission of RDL (Rs.)
1	Building & Civil Construction	9,05,73,014
2	Plant & Machinery (including related expenses)	16,89,39,414
3	Public issue expenses	1,95,57,021
4	Repayment of Unsecured Loan	9,59,16,439
5	Margin of Working Capital Requirement	3,34,42,589
Total		40,84,28,477

20. It was alleged vide SCN dated November 15, 2016 that Noticee No. 1 had repaid unsecured loans amounting to ₹. 7.06 Crores from out of IPO proceeds. ₹. 7,06,00,000 loans amount were raised between March - June, 2011 (and ₹. 7,06,76,960 was repaid immediately upon receipt of IPO proceeds as tabulated below:

Name of the Entity	Date of Loan Repayment by RDL	Amount of Loan Repaid By RDL (Rs.)	Date of Loan Receipt by RDL	Amount of Loan Receipt by RDL (Rs.)
Ajitnath Arcade Pvt. Ltd.	07/07/2011	10525458	16/06/2011	20000000
	07/07/2011	9474542	17/06/2011	1900000
	07/07/2011	9864359	17/06/2011	8100000
	07/07/2011	135641	18/06/2011	10000000
	07/07/2011	4954756	21/06/2011	15000000
	07/07/2011	5045244		
	07/07/2011	7434853		
	07/07/2011	7565147		
Ashaben Miteshbhai Adani	08/07/2011	5000000	18/03/2011	3200000
			21/03/2011	1000000
			23/03/2011	800000
Bhavik Parikh HUF	08/07/2011	4000000	11/04/2011	1100000
			20/04/2011	1000000
			25/04/2011	1000000
			26/05/2011	900000
S.H.Parikh HUF	08/07/2011	1100000	11/04/2011	1100000

Hitesh Rajesh Kheskani	08/07/2011	1000000	11/05/2011	1000000
Bhartiben I. Mistry	08/07/2011	500000	21/03/2011	500000
Bhagvatiben A. Mistry	09/07/2011	1000000	21/03/2011	1000000
Rohit B. Thakkar	13/07/2011	700000	14/06/2011	1000000
	13/09/2011	375453		
Hanshaben Rameshchandra Shah	12/07/2011	501507	09/04/2011	500000
Bhavin S. Parikh HUF	13/07/2011	1500000	09/05/2011	1500000
Total		70676960		70600000

21. Noticees submitted that, the company filed the IPO document on March 25, 2010 and got final approval in April 2011 after 6 observations. As per SEBI website, the RHP was filed with ROC on June 15, 2011 and final Offer Document was filed with ROC on July 07, 2011. Issue was opened on June 20, 2011 and closed on June 23, 2011 after raising ₹ 40.63 Crores.
22. It was submitted by the Noticees that out of the unsecured loans repaid from the IPO proceeds, loan amount of ₹1.12 Crores was raised before 30.04.2011 and it is included in the source of funds as unsecured loans and certified by Chartered Accountants D R Thakker & Co at page 73/74 of the prospectus as stated earlier at Para 11.
23. It was further submitted during the course of hearing that the remaining amount of ₹5.94 Crores (i.e. 7.06 Crores – 1.12 Crores) were raised between June 16, 2011 and June 21, 2011, after filing of RHP in June 08, 2011. None of the parties from whom unsecured loans were raised were related to the promoters or associates of the company.
24. It was alleged in the SCN that ₹7.06 Crores loans availed by the company immediately prior to IPO and repaid from the IPO proceeds was in the nature of Bridge Loan which was not disclosed in the Prospectus. On the contrary, at page 59 of the Prospectus it was categorically stated that *“Our Company has not raised any bridge loan against the proceeds of this Issue.”*
25. According to Noticees, ₹7.06 Crores of unsecured loans is not a bridge loan against IPO Proceeds. Further out of ₹7.06 Crores unsecured loan, an amount of ₹1.12 Crores was already raised and included in the Prospectus as certified by Statutory Auditor as

on April, 30, 2011. The remaining unsecured loan of ₹5.94 Crores was raised after filing of RHP and before allotment of securities.

26. The term 'Bridge Loan' is not defined in ICDR Regulations. **Black's Law Dictionary** defines it as "A temporary loan granted by a Bank to Corporate or sovereign borrower, generally intended to be replaced by longer term or permanent financing from the Capital Markets. Bridge Loans may be secured or unsecured and generally have maturities of less than one year." Hence, it is understood to be a short-term loan that is used until a company secures permanent financing and is usually backed by some form of collateral. Bridge Loan is also known as interim financing, gap financing or swing loans, bridge loans "bridge the gap" during times when financing is needed but is not yet available. Noticee No. 9, the Merchant Banker to the issue also stated that Bridge Loans are short term loans up to one year, with relatively high interest rates and are usually backed by some form of collateral such as real estate or inventory.
27. In terms of Regulation 57 (2) (a) read with clause VII(G) of Part A of Schedule VIII of the ICDR Regulations, the means and source of financing including details of bridge loan or *other financial arrangement*, which may be repaid from the IPO proceeds must be disclosed in the RHP and the Prospectus. The BRLM is an independent expert associated with capital market and being a SEBI registered Intermediary, is expected to exercise due diligence at each and every stage of IPO and to verify the veracity of statements made in the Prospectus.
28. In response to the said allegations, the Noticees have submitted that Loans raised by the Noticee No. 1 were used for the objects of the issue and for the benefit of the company. The Noticees have also contended that ICDR Regulations require disclosure of only 'material developments' as per Regulation 60(4) of the ICDR Regulations and in the instant case of ₹7.06 Crores of unsecured Loans were not 'material' compared to the issue size of ₹40 Crores.
29. I note that in terms of regulation 60(4) (a) of ICDR Regulations, an issuer making an IPO, as in this case, is obligated to 'make prompt, true and fair disclosure of all material developments' which 'may have material effect on the issuer' and take place between

date of registering the RHP with RoC and the date of allotment of shares in the IPO. The disclosure in this regulation has to be promptly made by issuing a public notice in all newspapers in which pre-issue advertisement was made.

30. There is no dispute that unsecured loans amounting to ₹ 5.94 Crores were raised after the filing of the RHP on June 08, 2011. Availing such loans subsequent to the filing of RHP and repayment of the said loans from out of the IPO proceeds are all matters having direct impact on the financials of the company and therefore are of material significance to investors while making investment decisions in the IPO of the company. Investors are not aware that after filing of RHP on June 08, 2011 and before allotment of securities, the company in the instant case has incurred certain financial liabilities in the form of unsecured loans to the extent of ₹ 5.94 Crores which it seeks to repay from the IPO proceeds. The size of the IPO is ₹40,84,28,477. Out of 7.06 Crores of unsecured loans, Noticee has explained that 1.12 Crores were incurred for project financing prior to filing of RHP and also included at page 73/ 74 of the Prospectus and certified by D. R. Thakker, Statutory Auditor of the Company as spent on project cost and can be recouped from IPO Proceeds. That leaves unsecured loans of ₹ 5.94 raised after filing of DRHP and before allotment of securities which constitutes 14.54 % of the issue size. These loans were raised between May and June 2011, immediately prior to IPO and repaid immediately after the IPO. Investors are unaware of these financial liabilities and further that these liabilities would be paid from IPO Proceeds. Noticee has not issued any advertisement in newspapers as required under Regulation 60(4) of ICDR Regulations. The contention of the Noticees that those developments were not material cannot be accepted having regard to the quantum of loan vis-à-vis size of IPO.
31. Noticees have submitted that the repayment of the aforesaid loans was indeed disclosed in the prospectus. Noticees submitted that at page 72 of the Prospectus, the general corporate purpose has been provided which is stated herein:

General Corporate Purpose

The balance amount of Net Proceeds after meeting the aforesaid objects will be used for financing general corporate purpose including but not limited to acquisitions of assets and enterprises, funding working capital requirement of the company and loan repayments.

32. Noticees further submitted that at page 73/74 of the Prospectus, it was clearly mentioned that the amount spent of the objects of IPO shall be recouped from the IPO proceeds. The relevant paragraphs of the prospectus are reproduced below:

Deployment of Funds

We have incurred the following expenditure on the project till April 30th 2011. The same has been certified by our statutory auditors M/s. D.R. Thakkar & Co., Chartered Accountants *vide* their certificate dated May 10th 2011.

Sr No	Particulars	Cost (Inclusive of Taxes)	Advance	Amount upto 30,2011 (₹ in Lakhs)
1.	Land	56.27	-	56.27
2.	Land Development	55.75	-	55.75
3.	Building & Civil Construction	1106.14	226.29	1332.43
4.	Plant & Machinery	3051.78	705.04	3756.82
5.	Miscellaneous Fixed Asset	22.01	4.02	26.03
6.	Preliminary & Pre-operative Expenses	323.00	-	323.00
7.	Issue Expenses	20.28	-	20.28
	Total	4635.23	935.35	5570.58

Sources of funds

S.No	Particulars	Amount upto April 30,2011
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		(₹ in Lakhs)
1	Term Loan	1454.58
2	ECB term Loan	2532.47
3	Internal Accrual	63.31
4	Suppliers Credit	505.75
5	Unsecured Loans	1014.47
	Total	5570.58

Since the objects of the issue stated are to be funded from the IPO, the amount spent till date on the objects, certified by the statutory auditors, shall be recouped from the public issue proceeds.

33. However, it may be noted that the Statutory Auditor provided certificate (included in the prospectus, as aforesaid) for the loans raised till April 30th, 2011. Thus, even if the contentions raised by the Noticees are accepted, then the IPO proceeds could be used to repay the loans raised till April 30, 2011. The prospectus does not include the loans raised by the Noticees after April 30, 2011. Therefore, I am of the opinion that the prospectus but did not disclose the loans raised between May and June 2011 amounting to ₹5.94 Crores. Further, Noticees did not issue any public notice with respect to the loans raised between May and June 2011 as required under Clause 2(VII)(G) of Part A of Schedule VIII of the ICDR Regulations. The unsecured loans repayment as mentioned in the Prospectus at Page 73, included the loans raised before April 30th, 2011 but not later. Clause 2(VII)(G) of Part A of Schedule VIII of the ICDR Regulations specifically require that the means and sources of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue have to be disclosed under Regulation 57 of the ICDR Regulations. Therefore, by whatever name called, any loans or financial arrangement that are sought to be repaid from out of the IPO proceeds need to be disclosed in terms of Regulation 60(4) of ICDR Regulations as in the present case, it is a material development considering that such loans constituted 14.54% of the size of IPO.
34. In view of the above, I find that the aforesaid developments are undoubtedly important and material having an impact on the investment decisions of the applicants in the IPO

and thus required prompt disclosure to the investing public. Since these material developments had happened after filing the RHP but before the opening of the issue, the same ought to have been disclosed to the investors through public advertisements and updated in the prospectus. However, no disclosures in this regard were made through public advertisements nor updated in the prospectus filed with the RoC on July 07, 2011. Hence, I find that the Noticee Nos. 1 to 3 and 5 to 8 have violated the provisions of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations.

35. It is pertinent to note that it has been held by the Hon'ble Securities Appellate Tribunal in the matter of **HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI, SAT Appeal No. 99 of 2007**, that "*an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator*".
36. Further in the present case, Noticee No. 9 being SEBI registered Intermediary and independent professional in the capital market, had failed to ensure that adequate, accurate/ complete and all relevant material disclosures were made in the offer document and failed to update the offer document regarding the changes in material facts (Loan amounting to ₹ 5.94 Crores taken by Noticee Nos. 1 to 8). Noticee No. 9 as the BRLM in the IPO of RDL had the obligation of ensuring that the offer document contains true and correct disclosures and does not contain any statement or information that is false or misleading, or contain any material omission and I find Noticee No. 9 had failed to carry out its statutory obligation in this regard.
37. According to the ICDR Regulations due diligence has been explained as follows:

"Due diligence.

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

38. The role of Merchant Banker in an IPO is succinctly explained by the WTM of SEBI in order dated December 28, 2011 in the matter of Brooks Laboratories Ltd. as under:

“Making accurate disclosure is the corner-stone of the IPO process. No lapses and inaccuracies can be tolerated in this regard. It is on the strength of disclosures that the investors take decisions to invest. The scheme of things requires the company should make full and fair disclosure of the state of its affairs and the Merchant Banker should conduct due diligence in respect of the disclosures. Therefore, I will also like to deal with the matter of due diligence carried out by the merchant banker in this particular issue. A Merchant Banker is appointed for the purpose of managing the issue of an IPO of a Company and it plays a fiduciary role by coordinating the activities of the Company, the Regulatory Bodies, and the Investors. The Merchant Banker has responsibilities towards the Company, to manage the entire process of issue of its IPO, and to investors to present the Company's information before them in a concise and unambiguous form.

In order to fulfill all his responsibilities the Merchant Banker must work diligently. The process through which he verifies and summarizes the Company's information is thus called the process of Due Diligence. The merchant banker plays a vital role in channeling the financial surplus of the society into productive investment avenues and is therefore expected to exercise due diligence to ensure the adequacy and appropriateness of the disclosures made in offer document. Reference is drawn to the interpretation made by Supreme Court in the matter of Chander Kanta Bansal V. Rajinder Singh Anand MANU/SC/7310/2008 : (2008) 5 SCC 117 as under:

The words “due diligence” have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one’s work and duties, showing care and effort. As per Black’s law Dictionary (18th Edn), “Due Diligence” means the diligence reasonably expected

from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) “due diligence”, in law, means doing everything reasonable, not everything possible. “Due Diligence” means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.

Due diligence may not merely mean to passively report all that has been reported to the Merchant banker but to unearth everything that is worth finding out. It is about making an active effort to find out material developments that would affect the interest of the investors. It is on the faith that the intermediary has conducted the due diligence with utmost sincerity that the investing public goes forward and decides to invest in a particular company.

It is important to note that with the market moving towards a disclosure based regime, the role of merchant bankers in performing their due diligence functions has become even more important. SEBI's various operational guidelines issued from time to time with reference to merchant bankers primarily addresses the need to enhance the standard of due diligence and disclosures. It is evident that the Merchant Banker is the focal point in a public issue, without him acting diligently and complying strictly with the letter and spirit of the rules and regulations framed there under, the issue cannot be properly regulated and investors are put to grave danger, which may not be in the interest of the capital market.”

39. It is pertinent to mention order of Hon'ble Securities Appellate Tribunal in the matter of **Keynote Corporate Services Ltd. v. SEBI, SAT Appeal No. Appeal No. 84 of 2012**, which states as follows: As a matter of fact BRLM is responsible for adequacy and veracity of all disclosures in all documents pertaining to issue of IPO, since as BRLM/Merchant Banker solemn duties are cast on him and for justifying the same he has to play a pro-active role by looking into authenticity of various matters/disclosures/statements, etc. contained in prospectus; ... BRLM has to bring out documents pertaining to IPO so that investors can take judicious and informed decisions on subscription to IPO and thus he is responsible for failing investor's trust

in prospectus of ESL for IPO and for doing considerable higher damage to securities market.

40. It would be difficult to second guess as to how many investors would not have subscribed to the IPO, had true disclosures regarding loan repayment from the IPO proceeds been made or whether they would have still bought the shares at a premium. True and fair disclosures are important in an IPO as the investors rely on the statements and disclosures made by the Issuer Company while making investment decisions.
41. In view of the above discussions in the pre-paras, it is concluded that Noticee Nos. 1 to 3 and 5 to 8 have failed to comply with of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations and Noticee No. 9 has failed to comply with of Regulation 64(1) of ICDR Regulations and Regulations 13 of Merchant Bankers Regulations read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations.

(c) Does the non-compliance, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992?

42. The aforesaid violations attract penalty under section 15HB of the SEBI Act which reads as follows:

“15HB:

Penalty for contravention where no separate penalty has been provided.- Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”

43. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

- a. the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
- b. the amount of loss caused to an investor or group of investors as a result of the default
- c. the repetitive nature of the default

44. It may also be noted that the Investigation Report has not quantified the profit/loss for the nature of violations committed by Noticee Nos. 1 to 3 and 5 to 9 and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors.
45. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia held that *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”*
46. However, it is noted that the project is completed and operational at Chikmangalur. SEBI team visited the same and observed that the plant is in operation at the site. And that major vendors have also confirmed receipt of money for the suppliers made towards the establishment of the plant. The IPO proceeds are completely utilized as per the quarterly Disclosures dated November 03, 2012, made to the Stock Exchanges under Clause 43(1) of the Listing Agreement. In the said disclosure, it was stated that the IPO proceeds have been utilized as per the objects of the issue duly certified by the Statutory Auditors and the company has started full-fledged commercial production of Medium Density Fiber Board (MDF) with effect from September 06, 2012. The shares which were issued at a price of ₹ 72 are now trading at ₹705 (as on May 12, 2017 at BSE). These factors are considered as mitigating factors while arriving at the quantum of penalty.
47. Although with the benefit of hindsight it can now be said that the investors have not lost out anything due to surge in the share price from the issue price of ₹72 to the

present ₹705 (as on May 12, 2017 at BSE), the same does not go so far as to purge the non-disclosures of the financial liabilities incurred after filing of the Prospectus but before allotment of securities at the time of IPO. Hence, the violation of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations by Noticee Nos. 1 to 3 and 5 to 8 and Regulation 64(1) of ICDR Regulations and Regulation 13 of Merchant Bankers Regulations read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations by Noticee No. 9 is established for the reasons more specifically set out in the preceding paragraphs.

ORDER

48. After taking into consideration the nature and gravity of the charges established, the mitigating factors as discussed in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose the following penalties:

- i. ₹ 7,00,000 /- (Rupees Seven Lakhs Only) on Noticee Nos. 1 to 3 and 5 to 8 in terms of Section 15HB of the SEBI Act, 1992 for the violation of Regulation 57(1) and 57(2)(a) read with Clause 2(VII)(G) and (XVI)(B)(2) of Part A of Schedule VIII of ICDR Regulations. No penalty is imposed on Noticee No. 4 who is since deceased and proceedings stand abated in respect of him.
- ii. ₹ 8,00,000 /- (Rupees Eight lakhs Only) on Noticee No. 9 in terms of Section 15HB of the SEBI Act, 1992 for the violation of Regulation 64(1) of ICDR Regulations and Regulations 13 of Merchant Bankers Regulations read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations.

Noticee Nos. 1 to 3 and 5 to 8 shall be liable jointly and severally to pay the aforesaid penalty at para 47 (i).

49. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment

in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Chief General Manager (Enforcement Department), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

50. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai

DATE: 12.05.2017

**S V KRISHNAMOHAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**