BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No. ORDER/NH/KL/2022-23/22666-22667]

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

In respect of –

1. OneLife Capital Advisors Limited (PAN: AAACO9540L)

2. Mr. Pandoo Naig (PAN: ACNPN2800J)

In the matter of IPO of Paramount Printpackaging Limited

A. FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an investigation in respect of the Initial Public Offering (IPO) of Paramount Printpackaging Limited (hereinafter referred as '**PPL'**/'**Issuer Company'**) which was floated during the period of April 2011. The scope of the investigation was to analyse and examine whether the Book Running Lead Manager (BRLM) (Merchant Banker) to the IPO viz. OneLife Capital Advisors Limited (hereinafter referred to as **'Noticee no.1'**) ensured due diligence and care with regard to the disclosures made in the IPO prospectus of PPL. The Managing Director of Noticee no. 1 is Mr. Pandoo Naig (hereinafter referred to as **'Mr. Naig' / 'Noticee no.2'**). Noticee nos. 1 and 2 are hereinafter collectively referred to as '**the Noticees**'.

2. Based on the findings of the investigation, it is alleged that the Noticee no.1 failed to carry out due diligence with regard to disclosures made in the IPO prospectus of the PPL and also failed to disclose material '*conflict of interest*' information in the prospectus. Therefore, it is alleged that Noticee no.1 and its Managing Director Noticee no.2 have violated the provisions of Clauses 1, 2, 3, 4, 6, 7, 11, 12, 13 and 18 of code of conduct given under Schedule III r/w Regulation 13 of SEBI (Merchant Bankers Regulations), 1992 (hereinafter referred to as **'Merchant Bankers Regulations'**) and Regulation 64 (1) of SEBI (Issue of Capital and Disclosure Requirements Regulations), 2009 (hereinafter referred to as **'ICDR Regulations**').

3. In view of the above, SEBI initiated adjudication proceedings against the Noticees.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Suresh B Menon was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated January 01, 2021 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**), to inquire into and adjudge the aforementioned alleged violations of the provisions of law by the Noticees, under the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). Pursuant to the superannuation of Shri Suresh B Menon, the undersigned was appointed as AO in the matter vide communique dated June 07, 2022.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. SEBI/EAD1/SBM/KL/18868/2021 dated August 10, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticees by the erstwhile AO enumerating the findings/observations of the investigation and the allegations made against the Noticees. The allegations leveled against the Noticees in the SCN and the submissions/replies of the Noticee are discussed in detail in the following paragraphs of the order. The text of the provisions of law as alleged in the SCN by the Noticees i.e. Clauses 1, 2, 3, 4, 6, 7, 11, 12, 13 and 18 of code of conduct given under Schedule III read with Regulation 13 of Merchant Bankers Regulations and Regulation 64 (1) of ICDR Regulations, is given below:

Merchant Bankers Regulations

Code of conduct.

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

Schedule III

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

2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.

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.

11. A merchant banker shall avoid conflict of interest and make adequate disclosure of its interest.

12. A merchant banker shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.

13. A merchant banker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as merchant banker which would impair its ability to render fair, objective and unbiased services.

18. A merchant banker shall maintain arm's length relationship between its merchant banking activity and any other activity.

ICDR Regulations

GENERAL OBLIGATIONS OF ISSUER AND INTERMEDIARIES WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE

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.

D. REPLY AND HEARING

6. The service of the SCN and subsequent communication with the Noticees are briefly given below:

Sl. No.	Communication with the Noticees	
1.	Vide letter and email dated August 12, 2021, SCN was served on the Noticees	In response to the SCN, the Noticees vide emails dated August 31, 2021, September 30, 2021 and November 12, 2021 sought additional time to make submissions in reply to the SCN, which was granted in the interest of natural justice
2.	Vide email dated December 08, 2021 the Noticees sought copies of documents in the instant matter as specified therein.	In response to the Noticees' aforesaid request, all the relied upon documents in the instant matter were provided to the Noticees vide email dated December 12, 2021
3.	Further, vide letter dated January 04, 2022 the Noticees made submissions in reply to the	In this regard, the concerned department of SEBI vide email dated February 08, 2022 informed that as per the provisions of Settlement

	allegations mentioned in the SCN. Vide another letter dated January 04, 2022 the Noticees informed that they have filed application for settlement in terms of the provisions of SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as '**Settlement Regulations**').	Regulations, passing of final order shall be kept in abeyance by the Adjudicating Officer till the settlement application by the Noticees is disposed of. Subsequently, vide email dated July 28, 2022 the said department informed that as the Noticees failed to submit the revised settlement terms within the time period prescribed under Settlement Regulations, the application filed by Noticees was rejected. Thereafter, vide letters dated August 24, 2022 and October 04, 2022, the Noticees were advised to make additional submissions in reply to the SCN, if any. Further, the Noticee vide email dated November 11, 2022 made submissions in the matter and also requested for an opportunity of hearing.

7. In the interest of the natural justice and in view of the request made by the Noticees, the Noticees were provided with an opportunity of hearing in the matter before the undersigned. The hearing was conducted on November 15, 2022, through online webex platform and the Noticee no.2, Mr. Kunal Katariya (Advocate) the authorised representative (AR) of the Noticees and Ms. Sana Hussain employee of Noticee no.1 attended the hearing. During the course of the hearing, the AR and Noticee no.2 reiterated the submissions made by the Noticees vide

letters dated January 04, 2022 and November 11, 2022. The Noticees sought additional time to make further submissions, which was granted and thereafter, the Noticees vide letter dated November 21, 2022 made submissions in the matter. The aforesaid submissions of the Noticees are discussed in detail in the following paragraphs of the order. I note that the principles of natural justice have been adhered to.

E. CONSIDERATION OF ISSUES AND FINDINGS

8. The issues arising for consideration in the instant proceedings are:-
    i. Whether the Noticees have committed violations as brought out in the SCN?
    ii. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15HB of the SEBI Act?
    iii. If yes, what would be the monetary penalty that can be imposed on the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

ISSUE I: Whether the Noticees have committed violations as brought out in the SCN?

ISSUE II: If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15HB of the SEBI Act?

9. Noticee no. 1 was the lead Merchant Banker for the IPO of PPL as noted from the prospectus dated May 2, 2011. I note that the instant proceedings deal with respect to the specific findings of investigation vis-à-vis the role of the Merchant Banker (Noticee no.1) to the IPO of PPL. I note that the Managing Director (MD) of Noticee

no.1 is Noticee no.2. It is relevant to mention Section 27(1) of the SEBI Act, 1992 in this context, which provides the following:

"27(1): Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly"

In view of the above, it is noted that Noticee no.2 being the MD of Noticee no.1 is liable for the violations committed by the Noticee no.1 during the course of its conducting of business.

10. Before dealing with the contentions of Noticees made in reply to the allegations mentioned in the SCN, I find it pertinent to deal with preliminary objections raised by the Noticees with regard to delay in issuance of SCN in the matter. The Noticees, inter-alia, submitted that "*..In the present case, the SCN is issued after a gap of 10 years. In all our correspondence we have stated that the records are no longer available with us (i) we surrendered our Merchant Banking license in the year 2014 (ii) The period of 5 years for maintaining of records as per Merchant Banking Regulations was over and we were not required to maintain the records. As a result, we were unable to produce all the records SEBI sought and are unable to provided supporting documents to show due diligence by us…. Therefore, the allegations in the SCN ought to be dropped qua us on the preliminary ground of inordinate delay."*. I also note that the aforementioned submissions were made by the Noticees with respect to all the allegations made in the SCN.

11. In respect of the aforementioned contentions of the Noticees, I note that even though SEBI Act has not prescribed any period of limitation for issuance of SCN, it has now become well settled that SCN has to be issued within reasonable time period. In this context, I find it pertinent to rely on the decision of Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, wherein it was held that: *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."* In the instant matter, based on the documents available on record, I note that the investigation was initiated against the issuer company PPL and its three directors, Statutory Auditor to the IPO of PPL and also against three other connected entities. Pursuant to the investigation conducted against PPL, I note that the investigation into the role of the Noticees in IPO of PPL was initiated in the year 2017. Subsequently, in the year 2018, the Noticees were issued summons and were followed up with submitting relevant documents. Thereafter, the investigation was concluded in November 2020. The erstwhile Adjudicating Officer was appointed in January 2021 in the instant matter which included a total of four entities including the two Noticees. Later, common SCN was issued to the four entities in the month of August 2021 in the instant matter and the erstwhile Adjudicating Officer passed two orders against two other entities. In this context, I note that the process of investigation dealt with utilisation of IPO proceeds, verifying transactions from

various bank account statements, issuing summons to entities and granting them sufficient time to attend the same. I further note that Covid-19 lock down restrictions also hampered the process of conducting proceedings in the matter. Therefore, the contentions of the Noticees in this regard cannot be accepted.

12. I note that the allegations levelled against the Noticees are of not performing due diligence in respect of disclosures made in the IPO prospectus. As a BRLM to the IPO of PPL, the Noticee was expected to have the record of the supporting documents in respect of the information disclosed in the prospectus even after the completion of process of IPO. The provisions of ICDR Regulations clearly specify the obligations of lead merchant banker of an issue as given below:

ICDR Regulations

SCHEDULE XI

[See regulation 28(3) and 102]

BOOK BUILDING PROCESS

PART A

(17) Maintenance of Books and Records.

(a) A final book of demand showing the result of the allocation process shall be maintained by the lead book runner.

(b) The book runner/s and other intermediaries associated in the book building process shall maintain records of the book building prices.

(c) The Board shall have the right to inspect the records, books and documents relating to the book building process and such person shall extend full co-operation.

CHAPTER VI

GENERAL OBLIGATIONS OF ISSUER AND INTERMEDIARIES WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE

Due diligence. 64. (1)

(4) The responsibility of the lead merchant banker shall continue even after the completion of issue process.

13. In this regard, I find it pertinent to mention that Hon'ble Supreme Court in the case of Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117 held that…*"Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs…..".* Further, it is relevant to mention that the Code of Conduct as given in the Merchant Banker Regulations prescribes that a merchant baker shall all times exercise due diligence and ensure proper case and exercise independent professional judgment.

14. I will now proceed to deal with the allegations levelled against the Noticees in the SCN (in *seriatim*), the submissions made by the Noticees and record my observations/findings in the subsequent paragraphs. It is relevant to mention that wherever SCN states '*submissions made by Noticee no.1 to SEBI'*, the same had been referred to the submissions made by the Noticee no.1 during the course of the investigation. Further, it is noted that the Noticees (as mentioned in previous paragraph 10) have made, *delay in issuance of SCN and non-availability of the supporting documents*, as common submissions in reply to all the allegations made

in the SCN. Therefore, the same are not reproduced in the below mentioned paragraphs for the sake of brevity.

14.1. **<u>Disclosure mentioned at Page xiv, Page xiii and Page 35 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been disclosed in the prospectus:

a. ***Page xiv (under pt. 12)-*** *'As on the date of the Prospectus, we have not entered into any definitive agreements for implementing the Objects of the Issue or incurred any expenses towards the same.'*

b. ***Page xiii (under pt. 11)-*** *'However, our Company has confirmed the order of three machines (CD 102-6+L Heidelberg Speedmaster, High Speed Cutter POLAR 115X and Suprasetter A 105) to Heidelberg India Private Limited by paying them token money of Rs.34.68 Lacs.'*

c. ***Page 35 (under Deployment of Funds in the Project) –*** *'As per the certificate issued by our statutory auditor M/s M. V. Damania & Co., Chartered Accountants dated March 25, 2011, details of funds deployed up to March 25, 2011 and the sources of funds are tabulated below:'*

Sr. No.	*Particulars*	*Amount (Rs. Lakhs)*
1	*Land*	*0.00*
2	*Site development, Civil Work and Building Construction*	*0.00*
3	*Plant & Machinery and other Ancillaries*	*34.68*
4	*Electrical Installation*	*0.00*
5	*General Corporate Purposes*	*0.00*
	Long Term Working Capital	*0.00*
	Issue Related Expenses	*62.90*

	Total	*97.58*
	Sources of Funds:	
	Internal Accruals	*97.58*

On perusal of the above-mentioned disclosures made in the prospectus of PPL and the submissions of Noticee no.1 in this regard, it was prima facie observed that the Noticee no.1 relied on a letter issued by the auditor viz. M V Damaniya & Co., which stated that an advance payment of Rs. 34.68 lakhs was made by PPL to Heidelberg India Private Limited (Heidelberg) towards Plant and Machinery.

Further, Noticee no. 1 submitted that the expense of Rs. 34.68 lakhs was incurred by PPL in the normal course of expansion of business and raised the funds by way of bank loan, incorporate deposits, unsecured loans etc., which are different from the funds of IPO proceeds. However, it is observed that the aforesaid advance payment forms a part of the main objects of the issue and also appeared under the head 'details of funds deployed' in the IPO prospectus of PPL [point 3 (i) (c) above].

Further, it is observed that the disclosures made by PPL in the prospectus appears to be contradictory whereas, in one instance, PPL stated that they had not entered into any definitive agreement for implementing the objects of the issue or incurred any expenses towards the same [point 3 (i) (a) above], and at another instance PPL stated that it had already placed orders for three machines by paying them an advance amount [point 3 (i) (b) above].

In view of the above, it is alleged that Noticee no.1 has not ensured consistency in the information in respect of the disclosures made in the prospectus of IPO of PPL. Therefore, it is alleged that Noticee no.1 failed as a Merchant Banker to verify the supporting documents vis-a-vis payment details, bills of purchasing materials etc. independently to confirm the statements made by the company/auditor before disclosing the same in the prospectus and thus failed to carry out independent due diligence w.r.t. disclosures made by PPL in its IPO prospectus.

ii. Submissions of the Noticee in reply to the SCN

We reiterate that the Company verified the following documents and reviewed/discussed the following during inspection:

i. Verified the Audited balance sheet of the last 5 years with analysis of activities and profitability of the Company.
ii. Verified the certificate issued by M. V. Damaniya
iii. Verified the minutes of the Board of Directors and Committee meetings
iv. Discussion with the management regarding the same

In addition to the above, as a merchant banker and lead manager to the issue, the Company followed the provisions of Income Tax Act, Sales Tax Act, Value Added Tax, Labour Laws and other incidental provisions of other acts arising during the course of our due diligence in the case of PPPL.

iii. Findings

The findings of the investigation brought out that the Noticee no.1 failed to submit bills supporting the purchase of machinery by PPL from Heidelberg (in the year 2011) which amounted to Rs. 34. 68 lakhs. However, the investigation also brought out that the Noticee relied on the certificate dated March 25, 2011 issued by the auditor to the IPO, M V Damaniya & Co. as regard the disclosure made in this regard. It was stated in the said disclosure made at page 35 of the prospectus that the funds deployed until March 15, 2011 for Plant & Machinery was Rs. 34.68 lakhs and for meeting the Issue Expenditure was Rs. 62.90 lakhs, respectively. The relevant copies of certificates signed by the auditor were also submitted by the Noticees to SEBI during the course of the investigation

Further, the SCN alleged that PPL made contradictory disclosures whereas, in one instance, PPL stated that they had not entered into any definitive agreement for implementing the objects of the issue or incurred any expenses towards the same [page xiv], and at another instance PPL stated that it had already placed orders for three machines by paying them an advance amount [page xiii]. I find that the said allegation does not hold merit. I note that another disclosure made at page 33 of the prospectus gave reference to the both aforesaid points under the head 'Objects of the issue', in respect of machine purchases by PPL. The relevant extracts of the said are reproduced below:

- *page 33 of the prospectus*

*"…We have considered the above quotations for the budgetary estimate purpose **and have not placed orders for 100 percent of the above mentioned plant and machinery. However, Our Company has confirmed order of three machines CD 102-6+L Heidelberg Speedmaster, High Speed Cutter POLAR 115X and Suprasetter A 105 to Heidelberg India Private Limited by paying them token amount of Rs.34.68 lacs**. The actual cost of procurement and actual supplier/dealer may vary. We do not intend to purchase any second hand machineries." (emphasis supplied)*

In view of the observations made above, I note that while it may not be uncommon to rely on the documents certified by a Chartered Accountant, a prudent Merchant Banker while acting as a BRLM to the IPO, does thorough due diligence regarding the disclosures. It is also expected from a Merchant Banker to obtain evidence such as supporting bills to verify the authenticity, and satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate. Therefore, I hold that the Noticees should have conducted a thorough due diligence in respect of the disclosures made at page xiii, page xiv and page 35 of the prospectus.

14.2. <u>**Disclosure mentioned at Page xiii of Prospectus**</u>

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the prospectus of PPL:

a. 'Substantial portion of our revenues is derived from small number of customers. Our top ten customers contributed 80% of our sales for financial year 2009-10. Similarly, for financial years 2007-08 and 2008-09, the sales to the top ten customers were 89% and 73% respectively….'

Noticee no.1 claimed that due diligence had been carried out by it, however, bills or invoices or documents evidencing purchase orders by the top customers of PPL or bank statements showing receipt of money for the aforementioned sale transactions, have not been provided by Noticee no.1 to SEBI.

ii. Submissions of the Noticees in reply to the SCN

The information was on the basis of restated audited numbers for the year FY 2008, FY 2009 and FY 2010 as provided by the Company and the discussion with their management. The Noticees believed that the financials issued by the statutory auditors were audited and thus they were true and fair and free from any discrepancies.

The following due diligence was carried out by the Company:

i. Verification of the name of the top customers provided by PPPL for verification and based on the audited balance sheet and based on the turnover of the respective years 2008, 2009 & 2010
ii. Verification of sales with bank statements for money received
iii. Verification of VAT returns filed by the Company
iv. Payment of VAT by the Company

v. Purchase & reconciliation of raw materials for converting into finished goods for the purpose of sales to the customers

iii. Findings

The Noticees in this regard, submitted that they relied upon the submissions of PPL and the audited balance sheets of PPL for the years 2008, 2009 and 2010 duly signed by the Auditor. The copies of the audited balance sheets mentioned above, were also submitted to SEBI during the course of the investigation. However, I note that the Noticees both during the investigation and in reply to the SCN failed to produce the supporting documents (bills/invoices/documents validating purchase orders by top ten customers of PPL for FY 2008, 2009 and 2010) citing the time lapse as a primary reason.

In this regard, it is seen that the said disclosure was made under the Section of 'RISK FACTORS' and sub-head 'Internal Risk Factors'. The disclosure also specified the risk factor which stated as *'We believe that we are dependent on a few customers for substantial part of our sales**. In the event, any of these top ten customers decide to procure their packing material requirements from other suppliers, our revenues and profitability may get adversely affected**. Our management keeps on developing new customers for increasing our sales as well as to reduce the dependence on few customers' (emphasis supplied)*

Risk factors are an important part of the prospectus. Therefore the Merchant Banker needs to satisfy himself with supporting documents that the risk factors mentioned are factually correct. I note that while it may not be uncommon to rely on the documents certified by a Chartered Accountant, a prudent Merchant Banker while acting as a BRLM to the IPO, does thorough due diligence regarding the disclosures. It is also expected from a Merchant Banker to obtain evidence such as supporting bills to verify the authenticity, and satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate. Therefore, I hold that the Noticees should have conducted a thorough due diligence in respect of the disclosures made at page xiii, page xiv and page 35 of the prospectus.

14.3. **Disclosure mentioned at Page xx and Page 66 of Prospectus**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the prospectus of PPL:

a. *'Currently, we have availed of insurance policies covering stocks, building, furniture, plant and machinery, vehicles and key man policies for a total cover of Rs. 3,601.97 lacs'*

Insurance Cover (p.66)

b. *'Details of the policies:*

From the perusal of the aforementioned disclosures, it is observed that the total sum assured w.r.t the insurance policies as mentioned in the table above amounted to Rs. 3521.97 lacs, which did not match with the amount of Rs. 3601.97 lacs, as stated at page 66 in the prospectus (point I(a) above). Therefore, it is alleged that Noticee no. 1 as a Merchant Banker failed to verify the correctness of amount of total sum assured of the insurance policies, as stated in the prospectus of PPL.

Further, from the perusal of the documents available with SEBI, it is prima facie observed that the validity of insurance policy in the name of Mr. Divyesh Sukhadia *(coverage maturity date) is until July 12, 2061 and not until July 12, 2066 as declared in the prospectus of PPL. It is also observed that the validity of insurance policy in the name of Mr. Dharmesh Sukhadia (coverage maturity date) is until July 28, 2067 and not until July 28, 2066 as declared in the prospectus of PPL.*

Therefore, it is alleged that Noticee no.1 failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

The aggregate of all the policies stood at Rs. 36.01 Crores at the time of IPO. The prospectus specifically clarifies that the "insurance policies obtained are in the usual course of business" which infers that the policies which are not covered in the usual course of business are excluded from the insurance covered details mentioned therein at page 66. Thus, the lists of all the major policies are provided on page 66 of the prospectus.

Additionally, the dissimilarity between the Coverage maturity dates of the promoters personal insurance policies was a typographical error due to oversight. Please accept our sincere apologies for the same. We humbly state the same in any case does not have any bearing on the company as it relates to the insurance policy of the promoters and is in that sense immaterial.

iii. Findings

It is observed that the total insurance cover was stated as Rs. 3,601.97 lakhs at page xx of the prospectus, whereas, the total of the sum insurance of policies mentioned in a Table at page 66 of the prospectus amounted to Rs. 3521.97 lakhs. I hold that that there is a difference of Rs. 80 lakhs in the total cover of the insurance policies as stated above. In this regard, I note that the insurance cover mentioned at page 66 of the prospectus by PPL are stated as policies taken during its usual course of the business and did not specifically state as the total sum insured of all the policies taken by PPL.

Further, as regards the maturity coverage date of the Key Man policies of promoters of PPL, the Noticees admitted to the typographical error. The Noticees also requested that the said error do not have a bearing on the company and is in sense immaterial.

In view of the observations made above, it is seen that the Noticees have admitted to difference in the error in disclosing the validity of the policies. It also points out to the difference in calculation of the total sum assured. It is also noted that the Noticees have not submitted any documents during the investigation regarding the due diligence done by the Noticees in this regard. Therefore, I hold that the Noticees have not done thorough due diligence in respect of the aforesaid disclosures made at Page xx and Page 66 of Prospectus.

14.4. **Disclosure mentioned at Page xx of Prospectus**

i. **Allegations leveled against the Noticees as mentioned in the SCN.**

It is observed that the following has been stated in the prospectus of PPL:

Our Promoters have given personal guarantees in relation to certain debt facilities provided to us.

a. *'Mr. Divyesh Ashwin Sukhadia, Mr. Dharmesh Ashwin Sukhadia and Mr. Anuj Vipin Sukhadia, Mr. Vipul Ashwin Sukhadia, and Mr. Ashwin Babulal Sukhadia have given personal guarantees in relation to majority of our unconsolidated secured debt facilities'*

On perusal of submissions of Noticee no.1 in this regard, it is prima facie observed that the documents supporting details in respect of Mr. Anuj Sukhadia have not been provided. Therefore, it is alleged that Noticee no.1 failed as a Merchant Banker to verify the supporting documents pertaining to personal guarantees given by all the promoters of the company and thus failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

The inspection team of the Company, at the time of inspection, had checked the following documents to verify the authenticity of the information provided by the management of PPL.

i. Documents provided by the management which were kept with the bank as personal guarantees
ii. Documents evidencing loan obtained by PPL
iii. Indebtedness of the Company based on audited balance sheet

iii. Findings

The relevant documents pertaining to Directors of Issuer Company were submitted by the Noticees to SEBI during the course of the investigation. However, I note that the Noticees failed to submit documents supporting Personal Guarantees given by Mr. Anuj Sukhadia as disclosed at page xx of Prospectus. The Noticees in this regard cited time delay as primary reason for not being able to trace the documents and submitting the same to SEBI to support the information disclosed in the prospectus.

In this context, I note that the said disclosure was made under the Section of 'RISK FACTORS' and sub-head 'Internal Risk Factors' in the prospectus. The disclosure also specified the risk factor which stated as follows:

> *"35. Our Promoters have given personal guarantees in relation to certain debt facilities provided to us.*
>
> *Mr. Divyesh Ashwin Sukhadia, Mr. Dharmesh Ashwin Sukhadia and Mr. Anuj Vipin Sukhadia, Mr. Vipul Ashwin Sukhadia, and Mr. Ashwin Babulal Sukhadia have given personal guarantees in relation to majority of our unconsolidated secured debt facilities. In the event that our Promoters withdraw or terminate their guarantees, the lenders for such facilities may ask for alternate guarantees, repayment of amounts outstanding under such facilities, or even terminate such facilities.* ***We may not be successful in procuring guarantees satisfactory to the lenders, and as a result may need to repay outstanding amounts under such facilities or seek additional sources of capital, which could adversely affect our financial condition****. For further information, please refer to -Financial Indebtedness on page 153 of the Prospectus. (emphasis supplied)"*

It is pertinent to note that documents relating to Bank Guarantees pertaining to the promoters except one were available and those were submitted to SEBI during the course of investigation. It is very difficult to agree with the contention of the Noticees that they were not able to obtain the documents pertaining to one director due to passage of time. I further note that risk factors are an important part of the prospectus. Therefore, the Merchant Banker needs to satisfy himself with supporting documents that the risk factors mentioned are factually correct.

In view of the observations made above, it can only be inferred that the Noticees could not submit the relevant documents as they have not done the due diligence properly. Therefore, I hold that the Noticees have not conducted due diligence, expected from a Merchant Banker, in respect of the aforesaid disclosures made at page xx of the prospectus as mentioned above.

14.5. **<u>Disclosure mentioned at Page xxi, Page 64 and Page 119 of Prospectus</u>**

I. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the Prospectus of PPL:

a. *'Our Company's aggregate export obligations under the EPCG scheme as on December 31, 2010, amounting US $ 93 lacs, may not be fulfilled, which could result in a retrospective levy of import duty with penalty which may adversely affect our Company's financial results. We have obtained licenses under Export Promotion Capital Goods scheme. As on December 31, 2010, the total outstanding export obligations under EPCG scheme are US $ 93 lacs and the duty saved thereon is Rs. 529.42 Lacs……'*

b. *'……..The Company has purchased Fixed Assets under the "Export Promotion Capital Goods Scheme" (EPCG). As per the terms of the license granted under the scheme, the Company is required to achieve export commitment of Rs 419,764,292 over a period as defined in EPCG License expiring at various dates. In the event of company being unable to execute its export obligations, the Company shall be liable to pay customs duty of Rs. 52,941,879/- and interest on the same at the rate of 15 percent compounding annually. The Company is hopeful of meeting its export obligation and accordingly no provision is required for the same in books of accounts.'*

The submissions made by Noticee no. 1 pertaining to the aforementioned disclosures were perused. In this regard, it is prima facie observed that the documents evidencing the license under EPCG scheme, outstanding obligations and liabilities of the company etc. were not provided by Noticee no. 1 to SEBI in its submissions. It is further observed that though Noticee no.1 has stated that they had carried out the due diligence by verifying a list of documents in this regard, no such documents have been provided to SEBI by Noticee no.1. Therefore, it is alleged that Noticee no.1 failed as a Merchant Banker to verify the supporting documents pertaining to license under EPCG and outstanding obligations independently and thus failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

II. Submissions of the Noticees in reply to the SCN

The Audit team verified the following documents as a part of due diligence:

i. Copy of the license received from EPCG
ii. Terms and conditions of the said licenses.
iii. Verification of Import of raw material of goods against the said licenses.
iv. Verification of export of goods against the said licenses.
v. Total export obligation on the import of the material.
vi. Outstanding export obligations under the above licenses.
vii. Payment of duty in case of failure to comply with the licensing terms.

III. Findings

The submissions made by Noticee no.1 pertaining to the aforementioned disclosures were perused. In this regard, I note that the Noticees failed to submit documents supporting the license obtained by PPL under Export Promotion Capital Goods (EPCG) scheme and outstanding export obligations/liabilities of the issuer company PPL during the course of the investigation and in reply to the SCN. The Noticees in this regard cited time delay as primary reason for not being able to trace the documents and submitting the same to SEBI to support the said information disclosed in the prospectus.

In this context, I note that the said disclosure was made under the Section of 'RISK FACTORS' and sub-head 'Internal Risk Factors' in the prospectus. The disclosure also specified the risk factor which stated as follows:

38. **"***Our Company's aggregate export obligations under the EPCG scheme as on December 31, 2010, amounting US $ 93 lacs, may not be fulfilled, which could result in a retrospective levy of import duty with penalty which may adversely affect our Company's financial results.*

We have obtained licenses under Export Promotion Capital Goods scheme (EPCG). As per the licensing requirement under the said scheme, we are required to export goods of a defined amount, failing which, we have to make payment to the Government of India equivalent to the duty benefit enjoyed by us under the said scheme along with interest. ***As on December 31, 2010, the total outstanding export obligations under EPCG scheme are US $93 lacs and the duty saved thereon is Rs. 529.42 Lacs. In case we fail to fulfil these export obligations in full, we will have to pay duty proportionate to unfulfilled obligation along with the interest.*** *Further, some new plant and machinery will be imported under the then EPCG scheme" (Emphasis supplied)*

I note that risk factors are an important part of the prospectus. Therefore, the Merchant Banker needs to satisfy himself with supporting documents that the risk factors mentioned are factually correct. I further note that though a Merchant Banker relies on the information given by the Issuer company pertaining to issuer company's obligations and liabilities, the Merchant Banker is expected to do thorough due diligence. It is also expected from a Merchant Banker to obtain evidence such as supporting documents to verify the authenticity, and satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate.

In view of the observations made above, I hold that the Noticees have not conducted due diligence, expected from a Merchant Banker, in respect of the aforesaid disclosures made at page xxi/page 64/page 119 of the prospectus as mentioned above.

14.6. **<u>Disclosure mentioned at Page xxii, Page 3, Page 59, Page 57, Page 64 and Page 144 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the Prospectus:

a. 'Our Company currently has a manufacturing facility for manufacturing 20 lacs cartons per day'

b. 'We have a manufacturing unit located at Navi Mumbai, Maharashtra. The entire manufacturing process from its designing to packaging and to delivery of goods is done under one roof. The unit is located on land which admeasures 33,000 sq. feet and has two stories plus a basement to store raw materials and finished products' *c. 'Our Company's plant has the capacity to convert approximately 500 tons of paper board every month. In terms of finished products, our Company has the capacity to produce 20 lac cartons a day '*

'Following table put forth product wise capacity utilization

Particulars	Capacity (lac per day)	Capacity Utilization* (%)			
		Fiscal 2008	Fiscal 2009	Fiscal 2010	For the nine month period ended December 31, 2010
Duplex Board Cartons	20	89.52	46.29	69.79	63.97

** Our capacity utilization may vary depending upon the size of cartons. Hence, it cannot be taken as a true indicator of capacity utilization.*

The submissions made by Noticee no. 1 pertaining to the aforementioned disclosures were perused. In this regard, it is prima facie observed that the documents in respect of the site visit to the manufacturing unit by Noticee no.1 or any independent verification by Noticee no.1 on the capacity utilization, have not been provided to SEBI by Noticee no.1. Therefore, it is alleged that Noticee no.1 as a Merchant Banker failed to verify the manufacturing facility of the company, its actual capacity utilization etc. In the absence of such independent verification, it is alleged that Noticee no.1 failed to carry out independent due diligence w.r.t. disclosure made in the prospectus of PPL as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

We reiterate that the Audit team had conducted a visit to the said property and understood its operations and functions.

The following due diligence was carried out by the Company to check the authenticity of the statement:

i. *Board resolution for acquisition of premises from MIDC.*
ii. *Copy of the lease agreement with MIDC*
iii. *Copy of registration of document with registrar of assurance.*
iv. *Terms and conditions of the said agreement.*
v. *Payment of lease rent.*
vi. *Area of the premises.*
vii. *Space available for the storage of raw materials and finished goods.*
viii. *Insurance policy for the premises.*

iii. Findings

The submissions made by Noticee no.1 pertaining to the aforementioned disclosures were perused. In this regard, the findings of the investigation brought out that while copies of the lease agreement with MIDC dated May 09, 2005 were submitted by the Noticees, the documents to support site visit at Navi Mumbai by the Noticees or any independent verification on the capacity utilization, have not been provided to SEBI. The Noticees in this regard cited time delay as primary reason for not being able to trace the documents and submitting the same to SEBI to support the said information disclosed in the prospectus.

I note that the said disclosure in made under the section of 'Business Overview' in the prospectus, which forms an important part of the information mentioned in the prospectus. In this context, I hold that though a Merchant Banker relies on the information given by the Issuer Company pertaining to Issuer Company's capacity utilization and it manufacturing units' details, it is expected of a Merchant Banker to obtain documents to verify the authenticity of such information. Further, it is expected from a Merchant Banker to individually satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate before making the disclosure in the prospectus.

In view of the observations made above, I hold that the Noticees have not conducted due diligence by the Noticees while making the said disclosures in this regard at Page xxii, Page 3, Page 59, Page 57, Page 64 and Page 144 of Prospectus.

14.7. **<u>Disclosure mentioned at Page 60, Page 61 and Page 63 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the Prospectus of PPL:

a. 'We have in our factory two Heidelberg machines, one 4 color machine which can print four different colors in the same pass and one 5 color machine which can print five colors in the same pass…'

b. 'We have three high speed BOBST brand machine. Out of these three BOBST die cutting machines, one is equipped to do foil stamping in single pass along with die cutting which helps in reducing the process time and high quality production.'

c. 'For this process we have two high speed BOBST machines, which are capable of pre-folding cartons at 180 degrees with straight line and lock bottom type pasting and are design to paste from small to big size carton up to 105cm with utmost precision…'

d. 'Finished product is then dispatch to customer site through our own transport fleet. We have four delivery trucks of two ton, four ton, six ton and nine tons, which enable us to deliver finished products of small to big size to different customer site in stipulated time…'

e. 'It has one Cummins make diesel generator set with a capacity of 380 KVA, 415 volts backup that can be relied upon in case of power failures. We have also installed a 630 KVA transformer for uninterrupted supply of power. For the proposed expansion, we are planning to install diesel generator set with a capacity of 750 KVA.'

The submissions of Noticee no.1 in respect of the aforementioned disclosures were perused. In this regard and it is prima facie observed that the documents evidencing the independent verification by Noticee no.1 in respect of the *aforementioned disclosures have not been submitted to SEBI by Noticee no.1. It is further observed that though Noticee no.1 has submitted that due diligence was carried out by them on company's site in respect of the aforementioned disclosures, however the documents evidencing the company site visit by Noticee no.1 have not been submits to SEBI. Therefore, it is alleged that Noticee no.1 failed as a Merchant Banker to verify whether the company actually has machines and generators to ensure uninterrupted power supply and own transport fleet etc., which has been stated in the prospectus of PPL. In view of the above, it is alleged that Noticee no.1 failed as a Merchant Banker to carry out independent due diligence w.r.t. disclosure made in the prospectus of PPL, as mentioned above.*

ii. Submissions of the Noticees in reply to the SCN

The due diligence was carried out by the officials of the Company by personally visiting the premises and by verification of the following documents:

i. Copy of bills for machineries installed for printing, production, die cutting, folding, etc
ii. Capacity of the machines
iii. The finished product capacity per day based on the productions.
iv. Companies integrated facilities which includes pre-press, procuring of raw material from various sources, cutting paper as per requirement, printing, hot foil stamping, varnishing, UV coating, lamination, embossing, punching and pasting with various machines installed specifically the Heidelberg machine installed for printing & BOBST die cutting and pasting machines.
v. Copies of documents of diesel generator set
vi. Copies of the documents of fleet vehicle

iii. Findings

It is observed that the aforementioned disclosures made at page Page 60, Page 61 and Page 63 of Prospectus contain information pertaining to issuer company's capacity to print cartons. The findings of the investigation brought out that documents supporting independent verification of the Noticees as regards the capacity of PPL's carton production were not submitted to SEBI. The Noticees in this regard cited time delay as primary reason for not being able to trace the documents and submitting the same to SEBI to support the said information disclosed in the prospectus.

I note that as the Issuer Company's one of the businesses is cartons production, any information disclosed in this regard must have been thoroughly verified by the Noticees. I also note that the aforesaid disclosure in made in the prospectus under the section 'Object of the Issue', which forms a part of an important information disclosed in the prospectus. In view thereof, it is expected from a Merchant Banker to individually satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate before making the disclosure in the prospectus. Therefore, I hold that on failure to do the same, the Noticees have not conducted enough due diligence by the Noticees while making disclosures in this regard in the prospectus

14.8. **<u>Disclosure mentioned at Page 4 and Page 59 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the Prospectus of PPL:

a. 'In FY 2009 and 2010, we executed orders from 104 and 108 customers respectively. We have executed order for clients in Maharashtra, Goa, Gujarat, Karnataka, Himachal Pradesh, Madhya Pradesh and UK, in the recent years…'

In this regard, it is prima facie observed that the documents evidencing an independent verification by Noticee no.1 in respect of the executed orders from 104 and 108 customers (FY 2009 and 2010 respectively) have not been provided by Noticee no.1 to SEBI. Therefore, it is alleged that Noticee no.1 being the Merchant Banker failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

The officials of the Company verified the authenticity of the documents by scrutinizing the following documents:

i. Customers list of PPL
ii. Ledger balances of customers
iii. Type of customers with sales invoice received and payments received.

The Company had checked the documents which were satisfactory to ensure authenticity of the disclosures stated in the prospectus.

iii. Findings

The Noticees in this regard, submitted that they relied upon the submissions of PPL and the audited balance sheets of PPL for the years 2009 and 2010 duly signed by the Auditor. The relevant copies were also submitted to SEBI during the course of the investigation. However, I note that the Noticees failed to submit bills or invoices or bank statements showing receipt of money evidencing genuineness of the top ten customers of PPL.

I note that even in the reply submissions made to the SCN, the Noticees failed to produce the supporting documents (bills/invoices/documents validating customer transactions of PPL for FY 2009 and 2010) citing the time lapse as a primary reason. In this regard, I note that the said disclosure was made under the Section of 'SUMMARY OF BUSINESS' and sub-heading of 'Customer Base'. I note that any information disclosed under this section is an important information as it gives an overview of company's business prospects. I note that while it may not be uncommon to rely on the documents certified by a Chartered Accountant, a prudent

Merchant Banker while acting as a BRLM to the IPO, does thorough due diligence regarding the disclosures. It is also expected from a Merchant Banker to obtain evidence such as supporting bills to verify the authenticity, and satisfy itself that the information disclosed in the prospectus is devoid of any ambiguity and is accurate. In view of the above, I hold that the Noticees should have conducted a thorough due diligence in respect of the aforesaid disclosures made at page 4 and page 59 of the prospectus.

14.9. **<u>Disclosure mentioned at Page 76 of Prospectus (Brief Biographies of Directors)</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

i. It is observed that the following has been stated in the Prospectus of PPL:
Board of Directors
a. 'Under our Articles of Association, we are required to have not less than three Directors and not more than 12 Directors. Our Company currently has six Directors on its Board. In this regard, it is seen that, one of the directors of PPL viz. Mr. Rohit Doshi had completed his education in Chartered Accountant studies (CA) as stated in the Prospectus of PPL at page 76.

However, from the perusal of the documents submitted by Noticee no.1 to SEBI, it is observed that Mr. Rohit Doshi has completed only Group 1 exam of CA, and did not complete charted accountant studies to qualify him as CA. Further, in respect of one of the directors of PPL viz. Mr. Rohit Doshi, it is observed that documents supporting Mr. Rohit Doshi being a director in Trim Plastics, have not been submitted by Noticee no.1 to SEBI. Further, in respect of another director of PPL viz. Mr. Vikram Patel, it is seen that documents have not been provided by Noticee no.1 to SEBI supporting that he had been a partner in M/s Ruchit Enterprise as *stated in the prospectus of PPL. Further, in respect of Mr. Hemang Engineer, it is observed that no document has been provided by Noticees no. to support that he had been a practicing-lawyer, as stated in the prospectus of PPL.*

In view of the above, it is alleged that Noticee no.1 relied on the information in respect of the biographies of directors just on the basis of statements/ information given by the respective directors of PPL and did not carry out independent verification of such details. It is further alleged that independent due diligence was not carried out by Noticee no.1 w.r.t. the professional background and experience of the directors of PPL. Therefore, it is alleged that Noticee no.1 as a Merchant Banker failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

The officials of the Company carried the due diligence by verifying the following documents:

i. Declarations provided by the directors
ii. Copies of qualification certificates/mark sheets provided by the directors
iii. Signed Annual disclosures provided by the directors
iv. Brief profiles provided by the directors

Moreover, as per the prospectus, the statement in the prospectus about qualification of Mr. Rohit Doshi is mentioned as "He has studied Chartered Accountancy" and not completed Chartered Accountancy. Except that, the above documents were verified by the officials to incorporate in the prospectus.

iii. Findings

The findings of the investigation brought out that the Noticees failed to submit supporting documents in respect of information disclosed under the section of brief biographies of the directors. The Noticees also failed to submit the same in the course of the adjudication proceedings, citing time lapse as a primary reason for not being able to trace the said documents.

It is observed from the disclosure made page 78 of the prospectus that one of the Directors Mr. Rohit Parananddas Doshi “ *has studied Chartered Accountancy (CA) and* ***has been practicing as an independent finance consultant for more than 30 years***” (emphasis supplied). As the said disclosure clearly mentioned that the director had been practicing finance consultant for a long time, the statement ‘he has studied CA’ appears to be misleading implying that the director completed CA. I further note that the Noticees failed to submit supporting documents in respect of biography information disclosed vis-à-vis the directors of issuer company Mr. Vikram Patel and Mr. Hemang Engineer.

In this regard, I note though a Merchant Banker relies on the information given by the Issuer company pertaining to biographies of directors of issuer company, it is expected of a Merchant Banker to conduct independent verification and obtain evidence to verify the authenticity of such information, before making such disclosure in the prospectus. In view of the above, I hold that the Noticees should have conducted a thorough due diligence in respect of the aforesaid disclosures made at page 76 of the prospectus.

14.10. **<u>Disclosure mentioned at Page 58 and Page 65 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN.

It is observed that the following has been stated in the Prospectus of PPL:

P. 58- ‘As on December 31, 2010, we had 86 full time employees….’

P.65 – ‘…As on December 31, 2010, we have approximately 86 employees’

On examination on the abovementioned disclosures as stated in the prospectus of PPL, it is observed that both the statements are ambiguous. Therefore, it is alleged that Noticee no.1 as a Merchant Banker failed to verify the supporting documents vis-a-vis the no. of employees on the payroll of the company, pay slips of employees etc. and thus failed to provide uniform, correct and unambiguous information in the Prospectus of PPL. In view of the above, it is alleged that Noticee no.1 as a Merchant Banker failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

The disclosure was based on the details provided by the Company as per their records and declarations to us. The following documents were checked as a part of due diligence by the Company:

i. Copy of the list of employees.
ii. Salaries paid to the employees with bank statement
iii. Copy of appointment letters, acceptance by the employees.
iv. Functions and duties of the employees.
v. Attendance registers.
vi. Awards and Recognition in the fields of business of PPPL.

PPL had 86 employees as per the records provided by them. The word approximately was not meant to display the ambiguity or uncertainty in the number of employees.

iii. Findings

The allegation pertains to ambiguity in information disclosed related to number of employees of the issuer company. At one instance it is mentioned as ‘we had 86 full time employees’ and another instance it is mentioned as ‘we have 86 employees approximately’. In this context, I note that the Noticees ought to have disclosed precise information in respect of number of employees of the issuer company in prospectus. A disclosure relating to the number of employees could be done without any ambiguity. That such a straight forward disclosure has not been done properly demonstrates the lack of proper due diligence by the Noticees. Therefore, I hold that the Noticees have failed to conduct due diligence in this regard.

14.11. **Disclosure mentioned at Page 31 and Page 32 of Prospectus**

i. Allegations leveled against the Noticees as mentioned in the SCN

It is observed that the following has been stated in the Prospectus of PPL:

'We have obtained quotations dated September 20, 2010 from Precise Consulting & Engineering Private Limited, A 602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the factory shed…'

The submissions of Noticee no. 1 in respect of the aforementioned disclosures were perused. In this regard, it is observed that documents to support that the quotations received by PPL were given by genuine entities, who were actually involved in the business, were not submitted by Noticee no.1 to SEBI. Although Noticee no.1 has stated that the market reputation of the party had been verified, it is observed that documents supporting the same have not been provided by Noticee no.1.

Further, from the perusal of the documents available with SEBI, it is seen that the address as stated on the quotation given by Precise Consulting & Engineering Private Limited is different from its address as stated on the KYC documents (obtained from Indian Bank). In this context, it is alleged that Noticee no.1 as a Merchant Banker failed to verify the supporting documents vis-a-vis site visits from companies from whom quotations were received to verify if they actually exist or not, the line of business of the company from whom quotations have been received etc. before disclosing the same in the Prospectus. Therefore, it is alleged that Noticee no.1 as a Merchant Banker failed to carry out independent due diligence w.r.t. disclosures made in the prospectus of PPL, as mentioned above.

ii. Submissions of the Noticees in reply to the SCN

This statement is based on the documents submitted by PPPL. The following documents were verified during the due diligence was carried out by us:

i. Quotations invited by the entities for factory shed was scrutinized by us
ii. Certificate of incorporation/MOA of the entities
iii. Short list of the parties who had submitted the lowest quotations and quality of the works specified in the quotations
iv. Previous experience of the parties in the field of establishing of the factory shed.
v. Market reputation of the party

By verifying the documents provided by the entities, OCAL ensured that the entities were genuine and they were in the relevant line of business.

iii. Findings

The findings of the investigation alleged that the Noticees failed to provide supporting documents in respect of due diligence conducted while verifying the quotations received by the issuer company from one Precise Consulting & Engineering Private Limited. I note that the said disclosure was made under the section of 'Objects of the issue' which forms an important part of the information disclosed in the prospectus.

Further, the investigation also brought out that the address of Precise as disclosed in the prospectus is different from the address mentioned in the KYC document obtained from Indian Bank. I also note that the Noticees did not make specific submissions in respect of the aforesaid allegation.

It is expected of a Merchant Banker to conduct proper verification in respect of quotation details and obtain evidence to verify the authenticity of such information, before making such disclosure in the prospectus. Therefore, I hold that the Noticees have failed to conduct due diligence in this regard.

14.12. **<u>Disclosure mentioned at Page xiii and Page 31 of Prospectus:</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN

It is observed that the following has been stated in the Prospectus of PPL:
'Our Company has earmarked land for acquisition and is in the process of acquiring the land situated at Bhilad, Gujarat admeasuring 4.00 acres. The acquisition of the land is critical to the Objects of the Issue. Any delay in the acquisition of land may delay our project, which in turn will have an adverse effect on our results of operations….'

'We have executed an MOU dated September 21, 2010 with M/s. Highway Services Private Limited for the land located at Gujarat and aggregating approximately 4 acres of land on ownership, subject to the execution of a definitive agreement and there after initiate action for obtaining necessary licenses/approvals from the competent authorities for setting up new plant. The MOU is valid till 225 days….'

In respect of the aforementioned disclosures, the copy of the Memorandum of Undertaking (MOU) dated September 21, 2010, has been perused. It is observed that the MOU was valid only for 180 days and not for 225 days, as stated in the aforementioned disclosures. In this regard, Noticee no.1 stated that the validity of the MOU was extended for 225 days by executing a separate agreement with mutual consent of both the parties, but it is observed that no such separate agreement has been provided by Noticee no.1 to SEBI. Therefore, it is alleged that Noticee no.1 as a Merchant Banker failed to verify the supporting documents properly before disclosing the same in the prospectus pf PPL and hence failed to *carry out independent due diligence w.r.t. disclosure made in the prospectus of PPL, as mentioned above.*

ii. Submissions of the Noticees in reply to the SCN

We have based our diligence on the Memorandum of understanding between Highway Services Private Limited and PPPL.

The following due diligence was carried out by us:
Board resolution for acquisition of land at Bhilad, Gujarat.
MOU signed with the party for acquisition of land at Bhilad, Gujarat
Terms and conditions of the MOU and validity of the agreement
Agreement for extension of MOU from 180 days to 225 days
The consideration payable on the acquisition
Verification of related party transactions

Thus, the authenticity was verified by checking the aforementioned documents. The Company had checked the documents which were satisfactory to ensure authenticity of the disclosures stated in the prospectus.

iii. Findings

I note that in the absence of supporting documents, I note that the submissions of Noticees that 'MOU was extended for 225 days by executing separate agreement' were not accepted during the investigation. I also note that Noticees have failed to submit any document in this regard, in its reply to the SCN.

In this context, I note that the said disclosure was made in the prospectus under the section of section of 'Objects of the issue' which forms an important part of the information disclosed in the prospectus.

In the absence of supporting documents, the contentions of the Noticees cannot be accepted. It is expected of a Merchant Banker to conduct independent verification and obtain evidence to verify the authenticity of such information, before making such disclosure in the prospectus. Therefore, I hold that the Noticees have failed to conduct due diligence in this regard.

14.13. **<u>Disclosure mentioned at Page 58 of Prospectus</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN

It is observed that the following has been stated in the prospectus of PPL:
'Our company has also received Star Printers of India Award in 2009 from "The All India Federation of Master Printers".
In respect of the aforementioned disclosure, it is seen that the evidence supporting the receipt of an award by the company from "The All India Federation of Master Printers" has not been provided by Noticees no. 1 to SEBI in its submissions. Therefore, it is alleged that Noticee no.1 failed as a Merchant Banker to verify the supporting documents as mentioned above and thus failed to carry out independent due diligence in respect of the aforementioned disclosures.

ii. Submissions of the Noticees in reply to the SCN

It may be noted that the officials of the Company, at that time, verified the authenticity of the information by checking the certificate/award issued to the PPL by "The All India Federation of Master Printers".

iii. Findings

The findings of the investigation brought out that the Noticees failed to submit supporting documents in respect of due diligence conducted while verifying receipt of award "The All India Federation of Master Printers" by the issuer company. I also note that Noticees have failed to submit any document in this regard in reply to the SCN. I note that while disclosing the said information and claiming receipt of awards, it is expected of a Merchant Banker to conduct independent verification and obtain evidence to verify the authenticity of such information, before making such disclosure in the prospectus.

In view thereof, I hold that the Noticees have failed to conduct due diligence in this regard.

14.14. **<u>Allegation in respect of non-disclosure of 'conflict of interest' information in the prospectus by the Noticees.</u>**

i. Allegations leveled against the Noticees as mentioned in the SCN

The investigation was also conducted to verify if any fraudulent transactions had taken place between the Noticee no.2 and the vendors to whom the IPO proceeds had been transferred. Accordingly, summons were issued to Mr. Pandoo and he appeared for statement recording on February 3, 2020 in line with directions issued vide Summons dated January 16, 2020.

From the submissions of Mr. Pandoo, it is observed that OCAL was having business dealings with Precise over the years and also an introduction fee (for the purpose of introducing PPL to OCAL) for the IPO of PPL was paid by OCAL to Precise. Further, it is seen that as OCAL had business dealings with Precise in the past, the payment of introduction fee to Precise by PPL was allegedly made on the directions of Mr. Pandoo. This prima facie appears to be a conflict of interest situation from the point of view of the Merchant Banker viz. OCAL, which should have been appropriately disclosed to the investors. However, it is alleged *that OCAL had not disclosed the same. In view of the above it is alleged that OCAL and Mr. Pandoo have violated Clause 2, 3, 11, 12, 13 and 18 of code of Conduct given under Schedule III r/w Regulation 13 of Merchant Bankers Regulations and Regulation 64 (1) of ICDR Regulations.*

ii. Submissions of the Noticees in reply to the SCN

It is submitted that we were introduced to PPL on a referral of Dakshesh Patel, director of Precise. We did not have any business relationship with Precise. Our dealing with Precise was only to the extent of Precise introducing PPL as a company looking to go public. It is submitted that the IPO of PPL was floated on April 11, 2011 while our payment transaction (introduction fee) with Precise is dated October 7, 2011. It is further pertinent to note that this introduction fee was refunded to us by Precise on May 5, 2014 as the contract with Precise was terminated. Therefore, the question of any disclosure in the prospectus does not arise when the transaction itself between us and Precise is subsequent to the floating of IPO.

In the SCN it is stated that allegedly on instructions of Pandoo Naig, PPL made payments to Precise out of the IPO proceeds. It is submitted that it is an erroneous and baseless allegation. The Ld. WTM in the Order dated March 16, 2020 and the Ld. AO in the Order dated November 20, 2020 have also come to a finding that we had no role in directing the utilisation of proceeds. The orders conclude that PPL and its directors had a pre-determined plan wherein it first raised money from the public through the IPO route by concealing material information, making false/wrong and inadequate disclosures regarding the *vendors, then transferred the IPO proceeds to pre-decided vendors within a few days and thereby mis-utilised and diverted the proceeds of the IPO. The Ld. WTM and Ld. AO had expressly held that the contention of PPL and its directors we had defrauded PPL and its directors and on our instructions all the misdeeds were carried out is unsustainable. Thus, such allegation of PPL against us is conclusively false and baseless in view of the Order of Ld. WTM and Ld. AO. Thus, we have no role in the transaction between PPL and Precise.*

Any business transaction between Precise and PPL is independent of any transaction between Precise and us. The transactions being completely independent of each other, there is no conflict of interest as neither transaction influences/prejudices the other transaction or the interest of the investors in PPL.

iii. Findings

The findings of the investigation brought out that Rs. 2 crores were transferred from one Precise Consulting & Engg Pvt. Ltd. (Precise) (one of the vendors to whom IPO proceeds were transferred) to Noticee no.1 on October 07, 2011. I note that the said transaction occurred at a later date after the IPO of PPL was floated in the month of April 2011 and the filing of the prospectus dated May 02, 2011. Further, except for the recorded statement dated February 03, 2020 of Noticee no.2, no other material has been made presented before me in respect of the said allegation. On perusal of the aforesaid statement dated February 03, 2020 of Noticee no.2, I note that nothing is in record to conclusively prove that Noticee no.2 was having business dealing with Precise before the time period of floating the IPO of PPL in April 2011 and/or filing the IPO prospectus dated May 02, 2011.

In view thereof and in the absence of supporting records, I note that 'conflict of interest' situation cannot be conclusively proved. Therefore, I note that the allegation made in the SCN i.e. the Noticees failed to disclose the 'conflict of interest' situation (in view of the business dealings) with Precise in the IPO prospectus dated May 02, 2011, do not hold merit.

15. Based on the discussions made above and the findings mentioned at the summarised table above, the following are noted:

i. The disclosures mentioned at 14.1 to 14.5 reflect under the section of 'Risk Factors' in the prospectus, which are important information to investors investing in the IPO of PPL. In view thereof, and as already established above for the reasons stated therein, I hold that the Noticees should have conducted a thorough due diligence in this regard.

ii. The disclosures mentioned at 14.3 and 14.10 pertains to errors in reflecting number of total sum insured of policies of PPL and number of employees of PPL, respectively. In view thereof, and as already established above for the reasons stated therein, I hold that the Noticees should have conducted a thorough due diligence in this regard.

iii. The disclosure mentioned at point 14.9 pertains to brief biographies of Directors of PPL and at point 14.13 pertains to receipt of an award by PPL. In view thereof, and as already established above for the reasons stated therein, I hold that the Noticees should have conducted a thorough due diligence in this regard.

iv. The other disclosures mentioned at points 14.6, 14.7, 14.8, 14.11 and 14.12 were made under the Sections of 'Business Review' and 'Objects of the Issue' which form important part of the information provided in the prospectus. In view thereof, and as already established above for the reasons stated therein, I hold that the Noticees have failed to conduct a thorough due diligence in this regard.

16. As observed from the above, apart from ensuring thorough due diligence in respect of general information disclosed in the prospectus, I note that the Noticees failed to provide documents in support of the due diligence conducted, even in respect of important disclosures made in the sections of 'Objects of Issue' and 'Business review'. I further note that during the course of the investigation, the Noticees submitted documents in 17 files in support of their submissions. In this context, I find that while the Noticees were able to submit so many documents, they were unable to produce the relevant documents relating to the due diligence that they claim to have done.

17. The Hon'ble SAT in the matter of Almondz Global Securities Limited and ors. vs SEBI (Appeal 275 of 2014) vide order dated March 13, 2016 held that:

"61……. True and accurate disclosures are important for common investors to take an informed decision regarding investment in the upcoming IPO. The purpose for which the disclosures are required to be made will, thus, be frustrated if the same were inaccurate or untrue or incomplete."

Further, the Hon'ble SAT in the matter of Keynote Corporate Services Ltd. Vs SEBI (order dated February 19, 2014) held:

"...Due diligence on part of Merchant Banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. It is about making an active effort to find out material developments that would affect interest of investors. It is on faith that intermediary has conducted due diligence with utmost sincerity that investing public goes forward and decides to invest in a particular company.

…. ensuring the truth and correctness of the letter of offer is a fundamental responsibility of the merchant banker which he has to discharge by exercising due diligence. In fact, 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..."

18. In view of the above, I hold that the Noticees have violated the provisions of Clauses 1, 3, 4, 6, 7 code of conduct given under Schedule III r/w Regulation 13 of Merchant Bankers Regulations and Regulation 64 (1) of ICDR Regulations.

19. As the aforementioned violations are established against the Noticees, I note that the Noticees are liable for imposition of penalty in terms of Section 15HB of the SEBI Act.

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees. (provision quoted as on May 2011)

ISSUE III: If yes, what would be the monetary penalty that can be imposed on the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

20. For the purpose of determining the quantum of the penalty under Section 15HB in the instant matter, it is relevant to mention the factors specified in section 15J of the SEBI Act, which reads as under:-

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as 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.

21. I find it pertinent to mention that in the proceedings under Section 11 (1), 11 (4) and 11B of the SEBI Act were also initiated in the matter against issuer company

PPL and its Directors. In this regard, Whole Time Member, SEBI conducted 11B proceedings and vide Order ref no. WTM/MB/IVD/ID6/7231/2019-20 dated March 16, 2020, inter-alia, established the following violations committed by the entities mentioned therein:

…40. According to the Noticees, they only sent verbal reminders to the said recipients of funds, and asked the Merchant Banker about the status. In my understanding, once the IPO process was over, the Merchant Banker – Onelife had no role in directing the utilization of issue proceeds. The Noticees have failed to show any bit of due diligence on their part before transferring the funds to the recipient entities. Subsequently, for a period of around 3 years, the Noticees were only waiting for the recipient entities to honor their commitments.

In addition to the above, I find that the Noticees provided wrong disclosures in Prospectus/RHP, as they never intended to utilize the IPO proceeds for the Objects stated in the prospectus… These wrong disclosures resulted in misstatements in the Prospectus which misled and defrauded the investors in securities market in connection with the issue of shares of the company.

…

45. In view of the above findings and observations, it is concluded that the Noticees had a pre-determined plan where under it first raised money from the public through the IPO route by concealing material information, making false / wrong and inadequate disclosures regarding the vendors, then transferred the IPO proceeds to pre-decided vendors within a few days and thereby mis-utilized and diverted the proceeds of the IPO.

..

60. I find that PPL, its Managing Director - Divyesh Ashwin Sukhadia and Whole Time Directors namely, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia violated the provisions of regulations 57 (1) and 57 (2) (a) r/w Clause 2 (XVI) (B) (2) of part A of schedule VIII and 60 (7) (a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009, section 12 A (a),(b),(c) of the SEBI Act,1992 and regulations 3 (b),(c),(d), 4 (1), 4(2) (e), (f), (k), (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

22. I note that the investigation did not bring out any amount of disproportionate gain or unfair advantage or the amount of loss caused to the investors, as a result of the default of the Noticees in the instant matter. Further, the material available on record also did not indicate repetitive nature of the default by the Noticees. In this context, I note that though the promoters, directors and the auditors are primarily responsible for making genuine and true disclosures in the offer documents, the role of the Noticee no.1 as the merchant banker is also important in ensuring due diligence in respect of disclosures made in the prospectus.

23. In this context, it is relevant to mention that in the matter of Wordlink Finance Limited vs. SEBI (Appeal no. 36 of 2007), the Hon'ble SAT held the following:

"The appellant as a merchant banker had certified the statement as true and correct**. If the appellant had carried out due diligence and verified the aforesaid statement from the records of the company at the time when the prospectus was issued, it would have been discovered that the shares allotted to the non-promoters in the year 1992 even though had a lock –in period of five years had not been* *stamped as non –transferable.* ***This default had, obviously, been committed by the company and the appellant cannot be blamed but certainly there was lack of due diligence on the part of the appellant at the time of certifying the prospectus.

The question that now arises is – what penalty should be imposed on the appellant? *The Securities and Exchange Board of India has debarred the appellant from dealing in securities or associating with any of the activities in the capital market for a period of three years. This penalty, in the circumstances of the case, appears to be too harsh and disproportionate to the gravity of the default committed by the appellant. The learned counsel for the appellant, however, contends that at the most the appellant could be said to have been guilty of lack of due diligence and nothing more and, therefore, mere censure would be enough. We do not agree with this submission.* ***It is true that the appellant is guilty only of lack of due diligence in the performance of its duties but that had serious consequences for some of the investors who have lost their money when they purchased the shares as stated above****.* ***To carry out due diligence is the primary responsibility of the merchant banker and since the appellant failed in discharging that duty, we are of the view that it deserves to be debarred from dealing in securities or in carrying out any activities relating to the capital market. The ends of justice, in our view, would be adequately met if the period of debarment is reduced from three years to six months. We order accordingly. We have reduced this period keeping in view the fact that there is no allegation that the appellant had colluded with the company in deliberately suppressing the true facts. " (****Emphasis supplied****)***

24. I also note the submission of the Noticees that they have surrendered the registration as a Merchant Banker on January 20, 2014.

25. I place my reliance on the aforementioned judgments of the Hon'ble SAT along with considering the mitigating factors in the instant matter, before arriving at a monetary penalty to be imposed on the Noticees.

F. ORDER

26. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, the mitigating factors, and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Inquiry Rules, 1995, I hereby impose a monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only) on the Noticees to be paid jointly and severally under Section 15HB of the SEBI Act, 1992 for the violation of the provisions as established above.

27. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

28. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.inon the following path, by clicking on the payment link.

ENFORCEMENT Orders Orders of AO PAY NOW

29. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the “The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051”. They shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

30. It may be noted that in the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

31. In terms of Rule 6 of the Inquiry Rules, 1995, copies of this order are sent to the Noticees at their respective addresses on record and also to SEBI.

Mumbai **N HARIHARAN**

December 30, 2022 **ADJUDICATING OFFICER**