BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/VV/AS/2022-23/19863]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

D&A Financial Services (P) Ltd
(SEBI REGN No: INM000011484)
13, Community Centre,
East of Kailash, New Delhi-110 065

In the matter of IPO of Shilpi Cable Technologies Ltd

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1. Shilpi Cable Technologies Ltd. (hereinafter referred to as '**Company'** or **'SCTL'**) is a listed company, whose shares are listed on National Stock Exchange of India Limited ("**NSE**") and Bombay Stock Exchange Limited ("**BSE**"). The Company came out with an Initial Public Offer ("**IPO**") for issuance of 80,98,145 equity shares of face value Rs.10/- each through 100% book building process at a price of Rs. 69/- per fully paid up equity share (including a premium of Rs 59/- per equity share) and aggregating to approximately Rs. 55.87 crore. SCTL was listed on the exchanges, BSE and NSE, on April 08, 2011. On the date of listing, on BSE the scrip opened at Rs.78.35/-, touched a high of Rs.84.65/- before closing at Rs. 47.60/- and thereby registered a fall of 39.25% from the opening price. On NSE, it opened at Rs.78.00/- and touched a high of Rs.84.70/- before closing at Rs. 48.05/- and thereby registered a fall of 38.4% from the opening price. Accordingly, Securities and Exchange Board of India ("**SEBI**") *suo moto* initiated investigation in the matter of IPO of the Company.

2. The observations of investigation are detailed in following paragraphs:

   a) The Company was incorporated on July 09, 2006 as a public limited company with the name M/s Rosenberger Shilpi Cable Technologies Limited. It was established as a 50:50 joint venture between Shilpi Communications Pvt. Ltd and Rosenberger Hochfrequenztechnik GmbH & Co KG, Germany, to take up the project of Radio Frequency (RF) cables. On May 10, 2008, the said joint venture ceased and all the shareholding of Rosenberger Hochfrequenztechnik GmbH & Co KG in the company was transferred to Shilpi Communication Pvt. Ltd. On October 21, 2008, the name of company was changed to Shilpi Cable Technologies Ltd.

b) SCTL vide letters dated November 26, 2014, November 28, 2014, December 09, 2014 and February 19, 2016 *inter alia* submitted, that it had made certain payments to Saraswati Vincom, Prerna Arcade, Progressive Trade Impex and Essential Trade Expo Pvt. Ltd. towards repayment of unsecured loans. Further, it was observed from the Red Herring Prospectus dated March 15, 2011 (hereinafter referred to as "**RHP**") and Prospectus dated March 28, 2011 (hereinafter referred to as "**Prospectus**") filed by SCTL as regards its IPO, that details of unsecured loans taken by SCTL, if any, from the aforesaid entities were not disclosed therein.

c) Vide letter dated February 25, 2015, SCTL submitted that in the RHP and the Prospectus, the financial details were presented as on September 30, 2010 (*within the time limit of six months prescribed*) and accordingly the details of unsecured loans as on September 30, 2010 had been duly disclosed in the "*Risk Factors*" of the RHP/ Prospectus. SCTL further submitted that the unsecured loans from Progressive Trade Impex Pvt. Ltd. of Rs. 0.70 crores, from Prerna Arcade Pvt. Ltd. of Rs. 10 crores and from Essential Trade Expo Pvt. Ltd. of Rs. 0.5 crores had been taken after September 30, 2010, and hence were not shown in the RHP/ Prospectus.

d) It was further observed that SCTL in its reply dated February 19, 2016 submitted that, it had also taken an additional unsecured loan of Rs. 4.70 crores from SE Investments Ltd on November 25, 2010, apart from the unsecured loans availed from Prerna Arcade, Progressive Trade Impex and Essential Trade Expo Pvt. Ltd. Therefore, the aforesaid unsecured loans taken by SCTL amounted to Rs 15.90 crores, resulting in almost 100% increment in the figure of unsecured loans disclosed in the RHP, which was Rs. 15.91 Cr as on September 30, 2010. It was also observed that the aforesaid additional unsecured loan taken by SCTL between the filing of Draft RHP and the issue open date, had materially increased the risks associated with SCTL and should have been incorporated in the "*Risk Factors*" disclosed in the offer documents/ prospectus.

e) It was observed that D&A Financial Services (P) Ltd (hereinafter referred to as "**Noticee**") was the Book Running Lead Manager (hereinafter referred to as "**BRLM**") for the IPO of SCTL and vide letter dated September 30, 2020, it had submitted as follows:

   i. The disclosure regarding the unsecured loans taken by SCTL was based on the available latest audited financial statement as on September 30, 2010 and provided by the statutory auditor of SCTL at the time of finalization of RHP.

ii. No information regarding the said additional amount of unsecured loans to the tune of Rs. 15.90 crore and taken between November 03, 2010 and March 28, 2011 was informed by SCTL and its management. During the finalization of the RHP, Noticee had sought details of material developments, since the last audited balance sheet dated Sept 30, 2010, which might have affected the financial conditions of SCTL. However, apart from certain material litigations post September 30, 2010, SCTL or its management did not intimate the Noticee about details of additional unsecured loans taken after September 30, 2020.

iii. Noticee had further submitted that during the finalization of RHP, it was provided with the extracts of the signed minutes of Board, Audit Committee as well as General Meeting held from the signing of Draft RHP till the date of signing the RHP/ prospectus. However, there was no mention of availing of additional unsecured loans in the minute's book of the Board and other Committee's meetings.

iv. It had also submitted that since it did not know if these unsecured loans taken after September 30, 2010, there was no occasion for it to have gone into the details thereof. Further, it had submitted that SCTL, its directors (including independent directors), IPO Committee, the Audit Committee, the CFO and the Compliance Officer appeared to have intentionally concealed this information from Noticee and had the information been shared with it, it would have certainly disclosed the same in the RHP/ prospectus along with other disclosures that were made with respect to unsecured loans.

f) It was observed that there was a specific item under the heading '*Risk Factors*', mentioned on page xxv of the RHP that dealt with risks associated with unsecured loans, wherein, SCTL had stated that it had unsecured loans, to the tune of Rs. 15.91 crore as on September 30, 2010, that might be repayable on demand, adversely affecting its business operations.

g) The additional unsecured loans of Rs. 15.90 Cr taken by SCTL, after the filing of Draft RHP and before the filing of prospectus (*in particular between November 3, 2010 and March 28, 2011*), resulted in almost 100% increment in the figure of unsecured loans disclosed in the RHP and was almost one-third of the issue size. It was observed that the aforesaid increase in the figure of unsecured loans, which had materially increased the risks, were not mentioned by SCTL while filing of RHP.

3. The Noticee being a BRLM for an IPO is mandated *inter alia* to ensure that adequate disclosures and the attendant risks to be made available to the investors before taking any investment decision. Therefore, the Noticee as the BRLM should have categorically asked SCTL and examined the latest status of unsecured loan balance as on date of filing of RHP/ prospectus with SEBI/ ROC, as the item of unsecured loan was separately mentioned in the offer document and the Noticee should not have merely accepted SCTL's submissions regarding the balance of unsecured loan as on September 30, 2010. It was desired that Noticee being a BRLM to SCTL IPO issue should have acted prudently and should have made efforts to enquire and examine SCTL's latest unsecured loan position, independently as part of its due diligence process.

4. In view of the above observations, it has been alleged that by failing to exercise due care and diligence, the Noticee as the BRLM to SCTL IPO issue has violated the provisions of Regulation 64 (1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as '**ICDR Regulations**') and Regulation 13 read with clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct as specified under schedule III of the SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as '**Merchant Banker Regulations**').

5. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the aforesaid provisions of the ICDR Regulations and the Merchant Banker Regulations by the Noticee. Accordingly, vide communication order dated July 09, 2021, Shri Parag Basu ("**erstwhile AO**") had been appointed as the Adjudicating Officer under Section 15I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) in the matter to inquire and adjudge under Rule 5 of the Adjudication Rules and under Section 15HB of the SCRA, of the alleged aforesaid violations by the Noticee. Thereafter, pursuant to transfer of erstwhile AO, undersigned has been appointed as the Adjudicating Officer vide communication order dated March 11, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

6. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, a notice to show cause no. EAD-2/ADJ/PB/AS/OW/24364/2021 dated September 14, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee by erstwhile AO calling upon it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of

the Adjudication Rules and why penalty, if any, be not imposed under Section 15HB of the SEBI Act, as the case may be for respective alleged violations as mentioned hereinabove.

7. On receipt of records, it was observed that the Noticee has filed its reply vide letter dated October 11, 2021 and requested for personal hearing in the matter. Accordingly, in terms of Rule 4(3) of the Adjudication Rules and on the reply to the SCN of the Noticee, an opportunity of personal hearing has been granted to the Noticee online *via* Webex platform on July 21, 2022. On scheduled date, authorized representative of the Noticee, Ms. Leena Tuneja, Advocate had appeared for hearing and advanced the arguments on behalf of Noticee's reply dated October 11, 2021. She also requested for one weeks' time to make additional written submissions. Vide letter dated July 26, 2022, the Noticee had made additional written submissions and accordingly, hearing concluded in the concerned matter. The submissions made by the Noticee vide letters dated October 11, 2021 and July 26, 2022 in the matter *inter alia* is as follows:

    a. The role and responsibility of a BRLM is not of an investigator but of ensuring that all the disclosures as made available to it and are reflected from the audited accounts are duly made/disclosed in the Offer Document. It is impossible for a BRLM to investigate into something which is not even mentioned or reflected in any books of accounts or other corporate records being maintained by the Company.

    b. It may also be submitted herein that the records and documents are the property of the company and effective control in respect thereto is with the Board of Directors of the company. There is no legal entitlement for a BRLM to seek any specific clarifications if the issuer company chooses to conceal/ camouflage or misrepresent such facts to BRLM.

    c. In the RHP and Prospectus the disclosure(s) are based upon the available latest audited financial statement as on 30th September, 2010 which is in compliance with requirements of Regulation 68 of the ICDR Regulations.

    d. No such information regarding availing of any further unsecured loans were provided to us by the management of the company. None of the records made available and checked by us reflected availing of any additional amount of unsecured loans from, Saraswati Vincom, Progressive Trade Impex (P) Limited, Prerna Arcade (P) Ltd and Essential Trade Expo (P) Ltd, between the period starting from 3rd November, 2010 till 28th March, 2011. The said transactions were after the 30th September, 2010, which is the date up to which details of unsecured loans were disclosed in RHP and Prospectus.

e. Without prejudice, it is submitted that issuer company and its management at no point of time have admitted or stated that they have provided details of additional loans taken from above said parties to the Merchant Banker before or after the filing of RHP and Prospectus.

f. It had disclosed about the details of unsecured loans taken from various parties including S E Investments to the tune of Rs 15.91 Crore at risk factors number 24 as well as under financial statement as disclosed under section "Financial Statements" in RHP and Prospectus. In view of risks associated with issuer-company having availed unsecured loans from various parties, the said risk was duly disclosed by us under "Risk Factors" in RHP and Prospectus.

g. As per your letter itself the said unsecured loans were from date of filing of DRHP i.e November 03, 2010 and the issue open date i.e. 22nd March, 2011. It is submitted that the disclosure(s) with respect to unsecured loans taken have been made till 30th September, 2010 on the basis of restated audited financial statement given by statutory auditor of the company and made available to it by the management of the company.

h. At the time of finalization of RHP, in order to update DRHP, as required it had asked Issuer Company to provide many information/documents and after receipt of those information(s)/ Documents(s), it had disclosed and updated information(s) which was disclosed in DRHP on the basis of information/documents received from Issuer Company.

i. Other than seeking information and documents from the issuer Company, it had also inspected and taken in its records minute(s) of Board Meeting(s) held during period 23rd August, 2010 till 15th March, 2011 i.e. after filing of DRHP till the finalization of RHP and also minutes of Board Meeting(s) held during period 16th March, 2011 till 31st March, 2011 i.e. after finalization of RHP till filing of Prospectus.

j. A specific query/inquiry was made to issuer company to provide details about material developments if any, which might affect financial conditions of issuer company, since the last audited balance sheet i.e. 30th September, 2010. In response, the Issuer Company had provided it details of some material development(s), which taken place after last audited balance sheet i.e. 30th September, 2010, through its letter/undertaking dated 18th February, 2011 and which may affect its financial positions and accordingly it had disclosed those material information(s) at page no. 233 to 235 of the RHP.

k. Even in the information provided to us by way of material developments, the issuer company had not intimated it about the details of additional unsecured loans taken after 30th September, 2010 till 28th March, 2011. In accordance with Regulation 60(4) of SEBI (ICDR) Regulations, 2009, the issuer company is under obligation to provide prompt, true and fair disclosures about the material developments, if any, which may affect its financial positions for the stub period, it seems the issuer company had intentionally failed to disclose the same.

l. The details of additional unsecured loans to the tune of Rs. 15.90 crore were neither provided nor intimated to it by the issuer company, its Compliance Officer and Chief Financial Officer, at any point of time up to the date of finalization of prospectus nor they were found to be reflective in the records of the company, when the same were inspected by it.

m. The Company Management, IPO Committee the Audit Committee, the CFO and the Compliance Officer of the Company, are all under an obligation by the Companies Act, 1956 and SEBI (ICDR) Regulations as well as the bilateral contract signed with the BRLM to update the BRLM on "every material development" which takes place in the Company till the trading of the issued securities commences. We sought additional information from the Company based on the specific communication with the Company and all material developments which had taken place were incorporated in the offer document.

n. It is a settled position that every change(s) and every material transactions happening in the company from the date of filing of DRHP till the date of filing of RHP and Prospectus, should be discussed in the Board meeting amongst the members of the Board and the Board members should be appraised by the officer concerned and company secretary regarding the material transactions if any, pertaining to the IPO and the same needs to be recorded in the minute's book. The minutes of board meeting(s) held during period starting from 23rd August, 2010 till 28th March, 2011 does not record or reflect any such unsecured loans. Furthermore minutes of board meeting(s) held between 15th March, 2011 and 28th March, 2011, wherein the RHP and Prospectus respectively was approved by the members of the Board, CFO and Company secretary, also does not contain any statement/declaration nor any statement had been recorded regarding the transactions entered pertaining to availement of unsecured loans, in between the date of filing of DRHP and RHP and Prospectus, which clearly shows that the management of the issuer company intentionally concealed/hid these material transactions and information to the Board.

o. Factum of raising or taking of unsecured loans cannot be verified through information available in public domain. The Company has to pass a Board Resolution for taking of unsecured loans, however, there was no resolutions passed as such taking of unsecured loans is nowhere reflected in records of the Company including copies of minutes provided to it for such period. Since the BRLM did not know of these unsecured loans, there was no occasion for the BRLM to have gone into the details thereof as to from whom the unsecured loans were taken, what was the objective, tenure, repayment etc. of the said unsecured loans. The Company, its Board of Directors, including the Independent Directors, IPO Committee, the Audit Committee, the CFO (qualified Chartered Accountant) and the Compliance Officer of the Company (qualified Company Secretary) appear to have concealed this information from the BRLM and kept the BRLM absolutely in the dark.

p. The word '*Due Diligence*' have not been defined by SEBI either in the ICDR Regulations and the Merchant Bankers Regulations. As per Black's Law Dictionary (18th Edition) "*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. Due diligence is a process based on mutual trust which is derived from Memorandum of Understanding (hereinafter referred to as "**MoU**") signed between BRLM and Issuer Company, declarations and undertakings obtained from Promoters & the Issuer Company and a trust/reliance on the report's undertakings and certifications from experts such as Auditors', Compliance Officer (A Qualified Company Secretary). In this regard, the Noticee has placed reliance upon the judgement of Hon'ble SAT in the matter of *Imperial Corporate Finance and Others vs SEBI* (2005 61 SCL197 SAT) and *Almondz Global Securities Limited vs SEBI.*

q. As a Lead Manager, it had ensured adequate *due diligence* and proactively inspected records and called for documents which would enable it to make proper and true disclosures. It had tried its best to disclose the requisite details based on the documents which were made available to it and kept in the registered office of the issuer company. It had carried out *due diligence* in the best possible manner. Further, as a Merchant Banker it ensured 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.

r. The BRLM understands its obligations under the Merchant Bankers Regulations as well as the fiduciary relationship with the investors in the securities market and submits that it exercised its *due diligence* to ensure that the disclosures in the offer Documents were true, adequate and fair.

s. The BRLM had done pro-active *due diligence* and the information that was shared with it was duly included/updated for including all material changes and hence the Noticee, as a Merchant Banker had not violated the provisions of Regulation 64(1) of the ICDR Regulations and Regulation 13 read with Clause 1, 2, 3, 4, 6, 7 & 21 of the Code of Conduct as specified under Schedule Ill of Merchant Bankers Regulations.

t. Hence it is most humbly prayed that the present proceedings may kindly be dropped, holding that there has been no breach or violation by the BRLM.

8. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticee made during the instant proceedings before the undersigned. Before dealing the case, it would be appropriate to provide reference to the provisions alleged to be violated by the Noticee at the relevant time and same read as under: -

ICDR Regulations, 2009

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.*

Merchant Bankers Regulations, 1992

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.

……

21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

9. In the facts and circumstances of this case, the limited question before me in this case is – whether, the Noticee being a BRLM to the IPO of the Company has failed to exercised due care and diligence, by not ensuring adequate disclosures made in DRHP, RHP and Prospectus of the Company for impugned IPO. The basis of raising aforesaid question is the unsecured loan of Rs 15.90 crores undertaken by the Company from Progressive Trade Impex Pvt. Ltd. (Rs. 0.70 Cr), Prerna Arcade Pvt. Ltd. (Rs. 10 Cr), Essential Trade Expo Pvt. Ltd. (Rs. 0.50 Cr) and S E Investments Ltd (Rs 4.70 Cr) during November 3, 2010 and March 28, 2011. Further, the aforementioned unsecured loan of Rs. 15.90 crores had been undertaken by the Company, after the filing of Draft RHP and before the filing of Prospectus i.e., between November 3, 2010 and March 28, 2011, which resulted in almost 100% increment in the figure of unsecured loans disclosed in the RHP and was approximately one-third of the issue size. The aforesaid unsecured loans were not disclosed in the RHP and Prospectus of the Company and therefore, it has been alleged that the Noticee has failed to ensure that adequate disclosures are made to the investors and that they are made aware of attendant risks before taking any investment decision.

10. I note that the Noticee in its reply has specifically stated that the information regarding the impugned unsecured loans has been concealed from it, by the Company, the Company's Board of Directors (including the Independent Directors), IPO Committee, the Audit Committee, the CFO (*qualified Chartered Accountant*) and the Compliance Officer of the Company (*qualified Company Secretary*). Further, for obtaining impugned unsecured loans, no Board Resolutions has been passed by the Company. In this regard, the Noticee has produced copies of the minutes of board meeting(s) held during period starting from 23rd August, 2010 till 28th March, 2011 and specifically mentioned about the minutes of board meeting(s) held

between 15th March, 2011 and 28th March, 2011, wherein the RHP and Prospectus, respectively, was approved by the members of the Board, CFO and Company secretary of the Company. In this regard, I have perused the documents produced before me by the Noticee and from the same, I note that there is no mention of the aforementioned unsecured loans in the board minutes. Further, from the reply of the Company made during the investigation, it is abundantly clear that, it has not disclosed the information related to impugned unsecured loans of Rs 15.90 crores to the Noticee. However, I am also of a view that a merchant banker cannot attempt to pass on its "*due diligence*" responsibility to any other entity such as the Company. It is necessary for the merchant banker to take proactive measures to verify all available information.

11. Therefore, the next question arises in this case, is regarding the steps/ efforts undertaken by the Noticee to obtained such a material information from the Company. In this regard, the Noticee has stated that at the time of finalization of RHP, in order to update DRHP, as required, it had asked the issuer Company to provide several information/documents. Further, the Noticee had also inspected and taken in its records minute(s) of Board Meeting(s) held during period 23rd August, 2010 till 15th March, 2011. The Noticee had also made specific query/inquiry to the issuer Company to provide details about material developments if any, which might affect financial conditions of issuer company, since the last audited balance sheet i.e., 30th September, 2010. In this regard, I note that, the Noticee has made several attempts to obtained "*material information*" from the Company and also inspected several important documents containing material information about the Company. However, as stated above, the information provided by the Company did not contain the desired and crucial information related to the impugned unsecured loans of Rs 15.90 crores. Similarly, the said information could also not be obtained/ deciphered by the Noticee from the important documents inspected by it during the course of issuance of RHP and Prospectus.

12. I note that, in terms of Regulation 64(1) of the ICDR Regulations, a lead merchant banker should exercise *due diligence* and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. Further, in terms of Clause (4) of the Code of Conduct specified under Schedule III of the Merchant Banker Regulations, a Merchant Banker shall at all times exercise *due diligence*, ensure proper care and exercise independent professional judgment. In my view, "*diligence*" means careful and persistent application or effort and "*diligent*" means careful and steady in application to one's work and duties, showing care and effort. Therefore, "*due diligence*" means doing everything reasonable and such diligence, which a prudent man would exercise in the conduct of his own affairs i.e., reasonable diligence.

13. I further note that, in terms of Regulation 60(4) of the ICDR Regulations, the issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer. Further, under the Companies Act, 1956, ICDR Regulations, as well as the bilateral contract signed between the Company and the BRLM to its IPO, the Company was under an obligation to update the BRLM on "*every material development"* which takes place in the Company.

14. I also note that, in the SCN, it has been mentioned that the Noticee, being BRLM should have categorically asked the Company and examined the latest status of unsecured loan balance as on date of filing of RHP/ Prospectus, as the item of unsecured loan was separately mentioned in the offer document, and should not have merely accepted SCTL's submissions regarding the balance of unsecured loan as on September 30, 2010. In this regard, I note that, the Noticee has asked the Company to provide information related to the "*every material development*" and same has been provided by the Company vide letter/undertaking dated 18th February, 2011. In my view, the information related to impugned unsecured loans is covered under the information falling within the realms of "*every material development*". Further, as contested by the Noticee, the information related to "*unsecured loans*" of a Company is not readily available in public domain and same has also not found any mention in the board meeting minutes of the Company during relevant period of time.

15. With regard to principle of "*due diligence*", the roles and responsibility and independent verification expected from a Merchant Banker, it is relevant to mention the Hon'ble SAT order in the matter of *SEBI vs Almondz Global Securities Ltd.* dated May 13, 2016, wherein, the Hon'ble SAT had *inter alia* held that:

    "….. It is settled law that due diligence means reasonable diligence expected from a Merchant Banker. A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker. A Merchant Banker cannot be expected to act like an investigating agency and start with a note of suspicion as regards the bona fides of the company, on whose behalf it is entrusted with the task of drafting and preparing the DRHP, RHP and the Prospectus, etc. After the signing of a Memorandum of Understanding by the MB with the Issuer Company to draft and finalise the offer documents required for the IPO, a relationship of trust and confidence ensues between the two and cannot be unilaterally breached by any of the parties from the date of signing of the Memorandum of Understanding till the conclusion of the IPO……. The Issuer Company is primarily responsible for making complete and accurate disclosures in the Offer Documents through the MB. Undoubtedly, the MB has to employ its own independent Due

Diligence, but in effect an MB relies upon the information / documents / records furnished by the Issuer Company to be included in the Offer Documents at various stages of the IPO. It is pertinent to mention here that the MB will conduct its due diligence based on the material brought before it by the Issuer Company, but it cannot be expected to perform this duty in a vacuum when information is not made available to it."

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

16. I further note that, Hon'ble Supreme Court in its judgement in the matter of "*Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117* has *inter-alia* stated that *"…. that due diligence in law means reasonable diligence and doing everything reasonable, not everything possible*".

17. I note that, SEBI regulations require that the offer document of a company shall contain adequate disclosures so as to enable investors to take well informed investment decisions. Further, a merchant banker is required to exercise *due diligence* and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosures in the offer documents. As per the principle specified by the Hon'ble Supreme Court, the due diligence expected from a professional is '*reasonable diligence*' and as per the Hon'ble SAT, the diligence expected from a merchant banker is such care as would be taken by a reasonable person. Considering the facts and circumstances of this case, I am of a view that, the Noticee has made sincere efforts to obtain the information related to material development in the Company and also inspected and verified the content of the minutes of board meeting's during relevant point of time. Though, it is true that the Noticee has not asked specific questions regarding impugned unsecured loans taken by the Company, however, in my opinion the said information is duly covered under the "*every material development*" sought by the Noticee from the Company. I further note that, neither the Company nor the management has provided the information related to impugned unsecured loans taken by it during November 03, 2010 and March 28, 2011 i.e. post submission of draft RHP, wherein, under statute the Company was under the obligation to provide prompt, true and fair disclosure of all material developments to the Noticee during relevant time.

18. In view of the above discussion so far, the specific facts and circumstance of this case and considering the factum of the aforementioned judgements of Hon'ble Apex Court and Hon'ble SAT, I am inclined to give benefit of doubt to the Noticee regarding efforts undertaken by it in ensuring adequate disclosures of impugned unsecured loans to the tune of Rs 15.90 crores post submissions of DRHP and under such circumstances, I found that the Noticee has not violated the alleged provisions of the ICDR Regulations and the Merchant Bankers Regulations in this case and accordingly, the SCN is disposed of *qua* the Noticee, D&A Financial Services (P) Ltd.

19. In terms of Rule 6 of the SEBI Adjudication Rules copy of this order is sent to the Noticee and also to SEBI.

Date: September 30, 2022	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**