

## SECURITIES AND EXCHANGE BOARD OF INDIA

### FINAL ORDER

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992**

**In respect of:**

| Sr. No. | Noticee                                                                                 | PAN                                                                          |
|---------|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 1.      | Austral Coke and Projects Ltd. (Now known as Greenearth Resources and Projects Limited) | AABCN1393B                                                                   |
| 2.      | Ratan Lal Tamakhuwala                                                                   | ACUPT7280P                                                                   |
| 3.      | Rishi Raj Agarwal                                                                       | AEQPA0755E                                                                   |
| 4.      | S.K. Chowdhary                                                                          | ACQPC6525N                                                                   |
| 5.      | Rajendra Kumar Khaitan                                                                  | AGBPK7497A                                                                   |
| 6.      | M. K Sinha                                                                              | AABPN8367H                                                                   |
| 7.      | Prem Ranajan Kumar Chaurasia                                                            | APZPKZ1943C                                                                  |
| 8.      | Alok Bansal                                                                             | Not Available                                                                |
| 9.      | Sunil Mandloi                                                                           | ARQPM8797H                                                                   |
| 10.     | MM Damani                                                                               | Not Available                                                                |
| 11.     | Ajit Kumar Jindal                                                                       | AFDPJ4129H                                                                   |
| 12.     | SIC Stock and Services Pvt. Ltd.                                                        | NSE Registration No.<br>INB231180333<br>BSE Registration No.<br>INB011180339 |

*(Aforesaid entities are hereinafter individually referred to by their respective name or noticee number and collectively as “the Noticees”.)*

**In the matter of Austral Coke and Projects Ltd.**

| SCN  | Number of SCN                                                                    | In respect of                                                      | Final Order No. and date                                    |
|------|----------------------------------------------------------------------------------|--------------------------------------------------------------------|-------------------------------------------------------------|
| SCN1 | SCN dated June 09, 2015 issued under following numbers:<br>EFD/DRA2/14681/ 2015, | Mis-statement in RHP,<br>Mis-statement<br>regarding utilisation of | WTM/AB/IVD/ID2/21684/202<br>2-23 dated December 05,<br>2022 |

|      |                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                               |                                                             |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------|
|      | EFD/DRA2/14682/ 2015,<br>EFD/DRA2/14683/ 2015,<br>EFD/DRA2/14704/ 2015,<br>EFD/DRA2/14705/ 2015,<br>EFD/DRA2/14707/ 2015,<br>EFD/DRA2/15687/ 2015.                                                                                                                                                                                                                                                                        | IPO proceeds and<br>siphoning of IPO<br>proceeds.                             |                                                             |
| SCN2 | SCN dated June 09, 2015 issued<br>under following numbers:<br>EFD/DRA2/14709/ 2015,<br>EFD/DRA2/14710/ 2015,<br>EFD/DRA2/14711/ 2015,<br>EFD/DRA2/14712/ 2015,<br>EFD/DRA2/14713/ 2015,<br>EFD/DRA2/14714/ 2015,<br>EFD/DRA2/14715/ 2015,<br>EFD/DRA2/14717/ 2015,<br>EFD/DRA2/14719/ 2015,<br>EFD/DRA2/145681/ 2015,<br>EFD/DRA2/15692/ 2015,<br>EFD/DRA2/15693/ 2015,<br>EFD/DRA2/15690/ 2015,<br>EFD/DRA2/15683/ 2015. | Manipulation of books<br>of accounts and<br>execution of fictitious<br>trades | WTM/AB/IVD/ID2/21685/202<br>2-23 dated December 05,<br>2022 |

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1. The present proceeding emanates from aforementioned show cause notices i.e. SCN1 and SCN2 issued to the aforesaid Noticees by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). SCN1 and SCN2 are hereinafter also collectively referred to as “**SCNs**”.
  2. The SCN1 came to be issued to the Company in the backdrop that in August 2008, Austral Coke and Projects Ltd. (hereinafter referred to as “**Austral Coke**”/ “**Company**”) came out with an Initial Public Offer (IPO). The issue opened on August 7, 2008 and closed on August 13, 2008. The shares of the company are listed on BSE and NSE. SEBI received reference from Income Tax Department and complaints from investors in the year 2009, informing SEBI that the books of accounts of the Company have been manipulated and several misstatements in the prospectus of the Company have been made with an intent to mislead the investors. These misstatements are relating to Company’s coke production

capacity and the disassociation of promoters from another Company namely, Gujarat NRE Coke Limited. In view of the above an ex-parte interim order was passed against Austral Coke on September 01, 2009 inter alia prohibiting it from raising any further capital in any manner, directly or indirectly till further directions.

3. In the Red Herring Prospectus (RHP) of Austral Coke, it was mentioned that capacity of 2,00,000 Metric Tonnes (MT) per annum was added to the existing capacity of the Company of 1,75,000 MT per annum. The RHP also mentioned that the Chairman and Promoter of Austral Coke, Noticee no. 2 (Ratan Lal Tamakhuwala) and Managing Director and Promoter of Austral Coke, Noticee no. 3 (Rishi Raj Agarwal) have voluntary disassociated themselves from Gujarat NRE Coke Ltd. due to family dispute. SEBI sought information in the matter in order to examine the possible violations of securities laws.
4. In response, the Company *inter-alia* informed that the points raised in the complaints are baseless allegations made by their business competitor and rival i.e. Gujarat NRE Coke Ltd. It was mentioned that Gujarat NRE Coke Ltd. was promoted by the promoters of Austral Coke, but, due to serious family disputes, the promoters disassociated themselves from Gujarat NRE Coke Ltd and developed their own business, which made them entangle in an unnecessary and undesired war of complaints. As regards, the capacity of coke production, the Company submitted that work on two new chimneys commenced in April / May 2007 and got completed in November 2007, and, the trial production started in December 31, 2007. The Company provided a copy of the project completion certificate from the State Bank of India. The Company also submitted that the chimneys were fully erected much before the publication of the RHP, but were requiring certain post completion touching repairs, finishing. The Company asserted that they have correctly mentioned in the RHP that the capacity of production of coke was raised from 1,75,000 MTPA to 3,75,000 MTPA by adding the manufacturing capacity of 2,00,000 MTPA. In support of their submissions, the Company provided a certificate from the Chartered Engineer, Kamothi Engg. & Inspection Services. The Company also submitted that the manufacturing capacity of 2,00,000 MTPA coke was estimated on the basis of technical specifications of the expansion program and that the manufacturing capacity is

determined by the size and systems of the plant and machinery installed and not on the number of ovens and chimneys. The Company also submitted that earlier their 80 ovens were producing 1,75,000 MTPA of coal because of the old stamping procedure and they have updated their technology and also changed the stamping procedure and the size of 58 ovens. The new chimneys are capable of producing 2,00,000 MTPA coal. Further, the Company has already disclosed all the litigations which had material impact on the performance of the Company.

5. In view of the information made available, the SCN1 alleged that the Company made misstatements in its RHP regarding production capacity of the LAM Coke Plant of the Company and the dis-association of the Chairman and MD of Austral Coke from Gujarat NRE Coke. The SCN1 also alleged misstatement regarding utilization of IPO proceeds under Clause 43A of Listing Agreement and siphoning off a portion of the IPO proceeds. Therefore, it is alleged in the SCN1 that the Company and the directors have violated Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with Regulations 3 (b), (c), (d), 4(1) ,4(2)(e), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations, 2003"**) and clause 6.2 of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, (hereinafter referred to as **"SEBI DIP Guidelines 2000"**) since rescinded read with Regulation 57(1) of (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as **'ICDR Regulations, 2009'**) (since repealed).
6. The SCN2 alleged that that the purchases and sales figures shown in the books of accounts of Austral Coke, were inflated by passing fictitious purchase/ sales entries from/ to entities belonging to Noticee no. 11, which were just paper entities/ companies without any real business. Therefore, it is alleged in the SCN2 that the Company and the directors have violated Regulations 3(b) to (d), 4(1) ,4(2)(e), (k) and (f) of SEBI PFUTP Regulations, 2003 and Noticee no. 11 has violated Regulations 3(b) to (d), 4(1) ,4(2)(e) of SEBI PFUTP Regulations, 2003.

7. SCN2 also alleges that Noticee no. 12 contributed to the rise in price by executing trades at prices higher than the last traded prices during the period from July 31, 2009 to August 30, 2009 and has violated Regulations 3(a) to (d), 4(1), 4(2)(a) of SEBI PFUTP Regulations, 2003. Clauses A(1) to (4) of Code of Conduct for Stock Brokers prescribed in Schedule II of Regulation 7 of SEBI(Stock brokers) Regulations, 1992.
8. The details of the Noticees in the SCN1 and SCN2 are as under:

| Noticee No. | Name of Noticee                  | Designation/ Role/ Nature of Noticee                                                                             |
|-------------|----------------------------------|------------------------------------------------------------------------------------------------------------------|
| 1           | Austral Coke and Projects Ltd.   | Company with respect which misstatement in RHP and siphoning of proceeds of IPO has been alleged.                |
| 2           | Shri Rishi Raj Agarwal,          | Managing Director and promoter of the Company                                                                    |
| 3           | Ratan Lal Tamakhuwala            | Chairman, Executive Director and promoter                                                                        |
| 4           | Mr. Rajendra Kumar Khaitan       | Independent and Non-Executive Director                                                                           |
|             | Mr. S. K. Chowdhary              | Independent and Non-Executive Director                                                                           |
| 6           | Dr. M. K. Sinha                  | Independent and Non-Executive Director                                                                           |
| 7           | Prem Ranajan Kumar Chaurasia     | Director                                                                                                         |
| 8           | Alok Bansal                      | Director                                                                                                         |
| 9           | Sunil Mandloi                    | Director                                                                                                         |
| 10          | MM Damani                        | Director                                                                                                         |
| 11          | Ajit Kumar Jindal                | Entity alleged to have facilitated Austral Coke to manipulate its books of accounts by creating paper companies. |
| 12          | SIC Stock and Services Pvt. Ltd. | Registered intermediary                                                                                          |

9. I note that the SCN1 and SCN2 dated June 09, 2015 was issued and served through hand delivery/ post to all the Noticees. From the material available on record, I note that several opportunities of personal hearing in the matter have been granted to the Noticees by quasi-judicial authorities prior to this matter being placed before me. Hearing opportunities were granted to the Noticees on October 05, 2016, July 12, 2017, January 17-18, 2018. However, hearing could not be completed for all the Noticees and the Company sought inspection of documents which was completed in January 17-18, 2018. Subsequently, the Noticees sought cross-examination of several entities. The quasi-judicial authority allowed cross-examination of Mr. Ashish Satam, Noticee no. 11 and Mr. R.K Kamothi. The date of cross-examination was re-scheduled at four occasions due to non-appearance/non-availability of parties and one entity Noticee no. 11 did not make himself available for cross-examination. Cross-examination of Mr. R.K Kamothi, Mr. Ashish Satam was completed on March 18, 2021 and thereafter, an opportunity of hearing was granted to the Noticees on July 14, 2021 by earlier quasi-judicial authority. Subsequently, the matter was placed before me on August 09, 2021 due to demitting of office upon completion of tenure of the earlier quasi-judicial authority. An opportunity of personal hearing was granted to the Noticees on February 15, 2022 and February 22, 2022 which was re-scheduled to February 24, 2022 due to administrative exigencies. Noticee no. 1, 2 and 3 sought adjournment of hearing scheduled on February 15, 2022 vide letter dated February 09, 2022. On February 22, 2022, the authorized representative of Noticee no.1, 2 and 3 appeared before the undersigned and requested to adjourn the hearing for 15 days. The authorized representative sought an adjournment citing difficulty in collating documents during the ongoing pandemic and ill health of Noticee no. 3. Noticee no. 4,5 and 6 neither appeared for the hearing nor sought an adjournment of the hearing. Another opportunity of hearing was granted to all the Noticees on March 16, 2022 on which date authorized representative of Noticee no. 1,2,3 and 4 appeared for hearing and none appeared on behalf of Noticee no. 5 and 6. Further, no request for adjournment was received from Noticee no. 5 and 6. Since the notice for hearing scheduled on March 16, 2022 could not be delivered to Noticee no. 6, another opportunity of hearing was granted to Noticee no. 6 on April 28, 2022. In response to the hearing notice, the daughter of Noticee no. 6 informed that the Noticee has passed away. Accordingly, hearing in the matter was concluded on April 28, 2022. Subsequently, vide email dated November 04, 2022, the Company was requested to

submit bank statement of the public issue account of the Company. The Company submitted the said bank statement vide email dated November 26, 2022.

10. Before dealing with the issues involved, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

**Section 12A of SEBI Act**

*No person shall directly or indirectly—*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

**Relevant extract of the provisions of the PFTUP Regulations, 2003:**

**Regulation 3. Prohibition of certain dealings in securities**

*No person shall directly or indirectly –*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

**Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices**

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

*Explanation – For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.*

*(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: —*

*(a) indulging in an act which creates false mor misleading appearance of trading in the securities market;*

*(e) any act or omission amounting to manipulation of the price of a security;*

*(k) an advertisement that is misleading or that contains information in a distorted manner may influence the decision of the investors;*

*(r) planting false or misleading news which may induce sale or purchase of securities.*

**Relevant extract of provisions of DIP Guidleines, 2000 (since rescinded)**

*6.2 The prospectus shall contain all material information which shall be true and enable the investors to make informed decision on the investments in the issue.*

**Relevant extract of provisions of ICDR Regulations, 2009 (since repealed)**

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

*111 (2) Notwithstanding such rescission: (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

11. SCN1, *inter alia*, made the following allegations:

- (i) Austral Coke and Projects Ltd (hereinafter referred to as “Austral Coke”/“ACPL”) came out with an Initial Public Offer (IPO) in August 2008. The issue opened on August 7, 2008 and closed on August 13, 2008. The shares of ACPL were listed on BSE and NSE. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation in the matter of Austral Coke.

- (ii) SEBI, vide letter dated October 29, 2008, advised the company to provide the following information/ explanation:
- a. List of dates for the addition of two new chimneys by Austral Coke including date of commencement of work, date of completion of the work, date of commencement of trial production etc. along with supporting documents.
  - b. The basis on which it was mentioned in the Red Herring Prospectus (RHP) of Austral Coke that capacity of 200000 Metric Tons per annum (MTPA) was added to the existing capacity of the company of 175,000 MTPA. Documentary evidence for both the earlier capacity of 175,000 MTPA and addition of 20000 MTPA.
  - c. Details of financing, if any, for the construction of the two chimneys.
  - d. Explanation was also sought on the allegations received against Noticee 2, and Noticee 3, that they were forcibly removed from Gujarat NRE Coke Ltd. by the shareholders under the direction of the Hon'ble Calcutta High Court for defalcation, whereas, the RHP of Austral Coke stated otherwise - that they had voluntarily disassociated themselves from Gujarat NRE Coke Ltd. due to family dispute.
- (iii) Austral Coke, replied through letter dated November 28, 2008 without providing any specific reply to our queries. Therefore, vide letter dated December 2, 2008, the company was advised to provide point wise specific reply to the SEBI letter dated October 29, 2008. Vide letter dated December 8, 2008, the company submitted its reply. The relevant extract of the same is as provided below:
- a) That the work on the two chimneys commenced in April / May 2007 and got completed in November 2007, and, the trial production started in December 31, 2007. Austral Coke provided a copy of the project completion certificate from the State Bank of India. The company also submitted that the chimneys were fully erected much before the publication of the RHP, but were requiring certain post completion touching repairs, finishing;
  - b) That they have correctly mentioned in the RHP that the capacity of production of coke was raised from 175,000 MTPA to 375,000 MTPA by adding the manufacturing capacity of 200000 MTPA. Austral Coke provided a certificate from the Chartered Engineer, Kamothi Engg. & Inspection Services in support of the same. Austral Coke submitted that

the manufacturing capacity of 20000 MTPA coke was estimated on the basis of technical specifications of the expansion program;

- c) That the capacity of manufacturing is determined by the size and systems of the plant and machinery installed and not on the number of ovens and chimneys. Austral Coke also submitted that earlier their 80 ovens were producing 175,000 MTPA of coal because of the old stamping procedure and they have updated their technology and also changed the stamping procedure and the size of 58 ovens. The company also submitted that new chimneys are capable of producing 200000 MTPA coal; .
- d) That they have already disclosed all the litigations which had material impact on the performance of the company.

(iv) From the information made available it appears that Austral Coke had made certain misstatements in its prospectus, as follows:

- a) Misstatement regarding production capacity of the LAM Coke Plant
- b) Misstatement regarding the dis-association of the Chairman and MD of Austral Coke from Gujarat NRE Coke
- c) Misstatement regarding utilization of IPO proceeds as disclosed under Clause 43A of the Listing Agreement.

#### **Misstatement regarding production capacity of the LAM Coke Plant**

- (v) Allbank Finance Ltd. was the merchant banker of the issue of Austral Coke. Noticee 20, vide SEBI letter dated October 31 , 2008, was advised to inform whether due diligence was exercised by them in verifying the production capacity and number of chimneys of Austral Coke & Projects Ltd.'s plant at Bhachau, Kutch, Gujarat. They were also advised to inform whether any visit was made by their officials to the plant of ACPL at Bhachau, Kutch, Gujarat before the public issue to verify the production capacity and the number of chimneys.
- (vi) Allbank vide its letters dated November 4, 2008 and January 2, 2009 provided the following documents:
  - a) Copy of the letter from Austral Coke dated July 05, 2008, which states that the expansion of LAM coke capacity at their existing plant at Bachau, Gujarat is completed.

- b) Copy of the certificate dated August 18, 2008 from Chartered Engineer Kamothi Engg. and Inspection Services, who certified that the company had capacity of 175,000 tons per annum(TPA) of LAM coke and has completed setting up of 2 chimneys which can generate maximum output of 2 lac TPA.
- c) Another certificate issued by Kamothi Engg. & Inspection Services dated January 23, 2009.
- d) Certificate dated January 27, 2009 issued by Shri Vilas J.Badrapurkar to confirm that the facilities by way of additional chimneys (2 no.s) along with other auxiliaries and expanded capacity of tones were in place at the time of filing of RHP.
- e) Certificate issued by two banks i.e. State Bank of India (SBI) and Bank of India (BOI) regarding the completion of the company's expansion projects at Lunva, Gujarat.

(vii) Allbank also confirmed that no visit was made by them to the plant before the public issue to verify the production capacity and the number of chimneys.

(viii) It is observed from the investigation report (**IR**) that the statement of Shri R.J. Kamothi (Kamothi), Chartered Engineer, Kamothi Engg. & Inspection Services, was recorded on September 17, 2009 by the investigating authority (**IA**). On a specific query raised by IA, regarding the basis on which he had issued the said certificates and whether he had carried out any plant/ site visit for the same. He, inter alia, narrated that the officials of Austral Coke approached him for certifying capacity, both existing as well as capacity after expansion, and the details regarding the existing & expansion capacity were provided by the officials of Austral Coke by Fax/ Hand delivery. Kamothi submitted that on the basis of said documents he issued certificate dated August 18, 2008, May 31, 2008 (valuing the plant and machinery of Austral Coke Unit I), June 16, 2008 (valuing the plant and machinery of Austral Coke Unit II) and January 23, 2009 (certifying that additional chimneys and 58 ovens were completed in first week of July 2008). He confirmed that he had not visited the plant at Lunva due to health problem and that he visited the plant only on September 11, 2009. He confirmed that all the certificates were issued at the request of Austral Coke and he received amounts in the range of Rs. 5000-6000 for issuing the certificates. He claimed that the following amounts were paid to him by Austral Coke.

| Sr. No. | Date                 | Amount<br>(Rs.) | Mode                                         | Certificate date |
|---------|----------------------|-----------------|----------------------------------------------|------------------|
| 1.      | May 31, 2008         | 4494            | Cash                                         | May 31, 2008     |
| 2.      | June 16, 2008        | 4494            | Cash                                         | June 16, 2008    |
| 3.      | September 2,<br>2008 | 5625            | Cheque no. 783991 dated<br>September 2, 2008 | August 18, 2008  |
| 4.      | January 23, 2009     | 6742            | Cash                                         | January 23, 2009 |

- (ix) It is further observed from the IR that summons were issued to Shri Vilas J. Bardapurkar (Vilas), Chartered Engineer of Techn-o-Aid Consultants Pvt. Ltd to appear in person on September 19, 2009 for recording his statement. Shri Ashish Satam, Director and COO of Techn-o-Aid Consultants Pvt. Ltd. appeared before SEBI on behalf of Shri Vilas J. Bardapurkar. Shri Ashish Satam informed that he had visited the plant site of Austral Coke at Lunva, Bachau on January 25-26, 2009 along with Shri Krishnan, Asst. V.P. of Noticee 20 and was accompanied by officials of Austral Coke, on the basis of which the project completion certificate dated January 27, 2009 was issued. He submitted that during his visit four chimneys and 158 ovens were ready at the plant site, of which only one chimney was operational and other 3 chimneys were under maintenance as informed by the officials of Austral Coke at the site. He further informed that on the basis of the project completion certificate dated September 12, 2008 issued by BOI, certificate was issued by Shri Vilas J Bardapurkar stating that facilities were in place in 1st week of July 2008.
- (x) It is further observed from the IR that the statement of Shri Anjan Bhattacharya, AGM and branch head of the concerned branch of SBI which had disbursed the loan was recorded on September 8, 2009. He submitted that he would verify his records to ascertain whether the same was issued by SBI. Subsequently, vide letter dated September 10, 2009, SBI confirmed that the said certificate was issued by them. SBI vide letter dated October 09, 2009 informed SEBI that the project completion certificate dated July 18, 2008 was issued on the basis of a letter dated July 15, 2008 from Austral Coke.

- (xi) It is also observed from the IR that BOI vide their letter dated April 05, 2011 have stated that they had submitted project completion certificate dated September 12, 2008 on the basis Chartered Engineer's certificate of Shri Subhash Banthia on behalf of Perfect Valuations & Consultants dated August 18, 2008 certifying completion of the project (which was issued without carrying out independent assessment of the project status).
- (xii) A visit was made by a team of two SEBI officials to the plant site Austral Coke at Lunva, Kutch on September 14 and 15, 2009. It was observed that two old chimneys with ovens were operational. While majority of the ovens of the third chimney were operational, only a couple of ovens of the fourth chimney were operational.
- (xiii) In the statement of Shri Gopal Tamakhuwala (Gopal), General Manager of Austral Coke, recorded on September 14 and 15, 2009., he was, inter alia, advised to provide:
- a copy of the approved plan for the construction of two new chimneys,
  - a copy of the concerned approval that may have been received from the concerned village panchayat / taluka
  - a copy of the letter from the pollution control board for the expansion of the capacity by addition of two new chimneys.
  - When he was asked to provide the dates on which the two new chimneys were completed and the date of commencement of commercial production, if any, Gopal submitted that according to his knowledge, it was completed 15 months back and near about that time itself production had commenced. As the fourth chimney was not operational during the visit by SEBI officials, Gopal was asked to confirm whether any commercial production was made from this chimney. He submitted that according to his knowledge the fourth chimney was in operation, but, that some ovens were under maintenance and that the commercial production had started from the fourth chimney as well. He also submitted that only 8 ovens were working in the fourth chimney at that point of time, and, that the balance ovens were under maintenance, as there was a technical fault and quality of finished products was not satisfactory. He also submitted that since one and half months the productions from the 8 ovens had started, and, further confirmed that no

commercial production had commenced from the balance 22 ovens as on the date of inspection from the 4<sup>th</sup> chimney.

- (xiv) The inspection team observed that though the project completion report issued by Shri Vilas J. Bardapurkar, showed building and other construction for the Chimney no. 3 and 4 at ` 61.54 lacs and ` 470.16 lacs respectively, however, during the plant visit, the inspection team noticed that besides the four chimneys and ovens, there was only a small two storey structure and there was no other building at the LAM coke site.
- (xv) On September 15, 2009, Gopal was asked whether the assets shown in the project report of Shri Vilas Bardapurkar existed at the plant site, he replied that everything existed at the site and can be verified anytime. No Building was shown for the chimney no. 3 and 4. Shri Tamakhuwala was asked to confirm whether assets shown under Sr. No. 16 to 34 of the project completion report of Shri Vilas Bardapurkar were a part of the refractory unit instead of the LAM coke plant, and he confirmed that same belonged to refractory and not the LAM coke plant.
- (xvi) Gopal was further asked to provide inter-alia the following details for the period April 1, 2008 to September 14, 2009.
- a. Daily production figures from the LAM coke plant
  - b. All sales invoices for LAM coke plant
  - c. All purchases of raw material for the LAM coke plant
- (xvii) Gopal submitted that he did not have all the documents handy with him and that he would submit all of them within a week:
- When advised to inform who were the contractors for the construction of two chimneys and 58 ovens for the expansion project, Gopal replied that he was not aware of the contractor and will submit contact details of the contractors within a week.
  - When asked to provide the stock of finished goods and raw material for the LAM coke plant as on April 1, 2008 and September 14, 2009, Gopal replied that the same is not available with him and will be submitted to SEBI within a week.
  - When asked to confirm that instead of two sheds of 30,000 sq. ft. in the LAM coke plant as shown in the project completion report, there were four smaller sheds in the refractory division, Gopal confirmed the same.

- When asked to provide copy of the Inward and Outward register of the coke oven plant for the period April 1, 2008 to September 14, 2009, Gopal submitted that the same was not available with him and will be submitted within a week time.

(xviii) It is pertinent to mention here that none of the aforesaid details/ documents, which Gopal had undertaken to submit, were provided to IA. Therefore, from all of the above, it is alleged that Austral Coke had given wrong disclosures regarding the capacity of Austral Coke in the RHP of Austral Coke.

#### **Misstatement regarding the disassociation of the Chairman and MD of Austral Coke from Gujarat NRE Coke-**

(xix) In the RHP it was mentioned that Noticee 3, associated himself as one of the promoters of Gujarat NRE Coke Limited, however, due to family dispute he has disassociated himself from Gujarat NRE Coke Limited effective from 1997. It was noted by the IA from the High Court order dated October 3, 1997 that in a meeting of the Board of directors of Gujarat NRE convened on March 28, 1997 at Jamnagar, a resolution was passed removing Noticee 3 as the MD of Gujarat NRE. As per the order of the High Court, an EGM was held on December 4, 1997. In the minutes of the said meeting, it is mentioned that Noticee 3 and Noticee 2 were removed from the office of the director of the company. Therefore, Noticee 2 and Noticee 3 made misstatement by saying that they have disassociated themselves from Gujarat NRE Coke Ltd. due to family dispute.

#### **Misstatement regarding utilization of IPO proceeds as disclosed under Clause 43A of the Listing Agreement**

(xx) It was observed that the utilization of funds as shown by the company in the quarterly results filed by the company under Clause 43(A) of the listing agreement for the three quarters ended September 30, 2008, December 31, 2008 and March 31, 2009 is as given below:

| Sr. No. | Particulars | Utilization (in Crores as on |          |       |
|---------|-------------|------------------------------|----------|-------|
|         |             | Sept.                        | Dec. 31, | March |
|         |             |                              |          |       |

|       |                                                                                                          | <b>30,<br/>2008</b> | <b>2008</b> | <b>31, 2009</b> |
|-------|----------------------------------------------------------------------------------------------------------|---------------------|-------------|-----------------|
| 1     | Expenditure on development/ construction of the project as stated in the object clause of the prospectus |                     | 99.66       | 89.92           |
| 2     | Payment of high cost Debt and General Corporate purpose                                                  | 39.14               | 39.14       | 43.94           |
| 3     | Public issue expense                                                                                     | 1.80                | 3.49        | 8.43            |
| Total |                                                                                                          | 40.94               | 142.29      | 142.29          |

- (xxi) The company had issued 72.60 lakh shares at a price of Rs.96/- per share and raised RS.142.29 crores through an IPO which opened on August 7, 2008 and closed on August 13, 2008. As per the objects of the issue as stated in the RHP, the proceeds from the proposed Issue of Equity Shares were, inter alia, intended to be deployed for setting up of 150000 MTPA of LAM Coke plant at Sindhudurg in Maharashtra and a power plant in the same location.
- (xxii) However, Austral Coke informed BSE on December 10, 2008 that the Board of Directors of the Company at its meeting held on December 10, 2008 had decided to shift the plant location from Sindhudurg to Lunva, Gujarat, since the Company's existing plant was already there. The company stated that the proposed shift was in conformity with the clause "Land & Site Development" of Prospectus, wherein it had been specifically mentioned that management may decide for the relocation of project site to comply the regulatory policies or any other issues. However, the company, at the time of the public issue, had already shown to have a LAM coke plant in Gujarat with four chimneys, and, was supposed to start a new plant in Maharashtra in Sindhudurg with the funds raised in the IPO. Therefore, the reasons mentioned for relocation of the plant from Maharashtra to Gujarat does not appear convincing, especially since the company has not disclosed any regulatory or other issues which compelled the company to shift the location in a span of just 4 months from the IPO. Hence, the shifting of the plant site of the company from Sindhudurg to Gujarat does not appear to be as per the objects of the issue.
- (xxiii) In view of the decision arrived at as above by the Board of Directors on December 10, 2008 to shift the plant from Sindhudurg to Lunva, Gujarat, it is not clear how the

company could have utilized Rs.99.66 crore as on December 31, 2008 at the new plant site in just a span of less than twenty days. Also, it is observed that company had modified the break-up of funds utilization when it filed the quarterly report for the quarter ended March 2009, when compared with the previous quarterly report, without offering any explanation for such modification. Besides, when the SEBI officials inspected the site at Luvna on September 14 & 15, 2009, there were only four chimneys, which were already disclosed in the prospectus.

(xxiv) Austral Coke was advised to offer their comments on the following:

- The name and address of the plant(s) of ACPL in which the said ` 99.66 crore was spent along with the details thereof along with documentary evidence.
- The reason for reduction in the expenditure under the said head (Expenditure on development/ construction) as on March 31, 2009 to `89.92 crore vis-à-vis shown in December 31, 2008 as `99.66 crore.

(xxv) The break-up for head under the head “Pre-payment of High Cost Debt and General Corporate Purpose” in which the company had shown to have spent ` 39.14 crores for the quarter ended December 31, 2008. Austral Coke, vide its letter dated February 22, 2012, informed SEBI that:

- the break up for `99.6 crores spent from the IPO proceeds is as follows: `52.15 for plant and machinery and `47.50 crores for prospecting coal mines.
- Expenditure incurred on development / construction of the project as stated in the object clause of the prospectus and the address of the plant is Village Lunva, Taluka-Bachau, Dist-Kutch, Gujarat. With regard to the reduction in the expenditure under the said head Expenditure on development/ construction as on March 31, 2009 as compared to the previous quarter, the company stated that the difference between the amount spent of `99.66 crores and 89.92 crores is due to clerical error in groupings of the expenditure.
- With regard to the break up for under the head “Pre-payment of High Cost Debt and General Corporate purpose” the company has stated that it spent `1.21 crores for prepayment of high cost debt and `37.92 for general corporate purpose which is margin for additional working capital/ purchase of fixed assets.

- (xxvi) Austral Coke did not provide the documentary evidence in reply to any of the aforesaid queries of SEBI. The company also did not provide details regarding plant and machinery, acquisition of mines, prepayment of term loan and margins. Therefore, the company has been again advised to provide the details for the same along with documentary evidence. The company, vide its letter dated April 11, 2012
- (xxvii) As stated above, the company, at the time of the public issue, had already shown to have a LAM coke plant in Gujarat with four chimneys, and, was supposed to start a new plant in Maharashtra in Sindhudurg with the funds raised in the IPO. There was no capacity expansion in the said plant after the public issue. Therefore, the amount shown to have been spent on plant appears to have been siphoned off.
- (xxviii) It is observed from the IR that the bank statement of the public issue account of Austral Coke with Deutsche Bank was perused. As per the said account statement, as on September 2, 2008, the balance in the said account was Rs.139.29 crores. From the details provided by Deutsche Bank, the following are the initial transfers from the public issue account of Austral Coke:

| <b>Sr. No.</b> | <b>Name of the payee</b>                       | <b>Amount of Debit (Rs.)</b> | <b>Purpose</b>                                                                                    |
|----------------|------------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------|
| 1 .            | Austral Coke and Projects Ltd.                 | 39,14,28,000/-               | 36,60,27,000/- for general corporate purpose and Rs.2,54,01,000 for prepayment of high cost debt. |
| 2.             | Concept Communication Ltd.                     | 17,03,000/-                  | Issue expense                                                                                     |
| 3.             | ARC Financial Services Pvt. Ltd.               | 85,000/-                     | Issue expense                                                                                     |
| 4.             | Y.S, Hitech Secure Print (P) Ltd.              | 35,00,000/-                  | Issue expense                                                                                     |
| 5.             | Austral Coke and Projects Ltd.                 | 47,50,00,000/-               | for the purpose of acquisition of coal mines through their subsidiary Global Astra Pte. Ltd.      |
| 6.             | Bridge and Building construction Co. Pvt. Ltd. | 8,23,91,920/-                | -                                                                                                 |
| 7.             | AIS International                              | 8,73,77,056/-                | -                                                                                                 |

|              |                              |                        |                                      |
|--------------|------------------------------|------------------------|--------------------------------------|
| 8.           | Western Minerals             | 15,94,17,024/-         | LAM coke Project-Plant and Machinery |
| 9.           | Autumn Buildcon Pvt. Ltd.    | 6,13,08,000/-          | Shape wall bricks                    |
| 10.          | Superfast Commerce Pvt. Ltd. | 6,48,96,000/-          |                                      |
| 11.          | Century Tradelink Pvt. Ltd.  | 6,54,57,340/-          | Fire Bricks                          |
| <b>Total</b> |                              | <b>139,25,63,340/-</b> |                                      |

(xxix) From the above, it can be seen that Rs.36.6 crores were used by Austral Coke for General Corporate purpose while Rs.2.54 crores was used for prepayment of high cost debt. Austral Coke used Rs.47.50 crores for the purpose of acquisition of coal mines through subsidiary Global Astra Pte. Ltd. When asked to provide the status of the said acquisition, the company informed that they had acquired prospective mining rights however, no mines have been acquired by them.

(xxx) The company had altogether given Rs.52,08,47,340/- to five entities Bridge and Building construction Co. Pvt. Ltd., AIS International, Western Minerals, Autumn Buildcon Pvt. Ltd., Super-fast Commerce Pvt. Ltd. and Century Tradelink Pvt. Ltd. It was observed that all the said five entities are controlled by Shri Ajit Jindal. The trail of the said accounts were carried out and the findings of the trail carried out is provided as below:

| Sl. No | Name of the entity                             | Amount received from Austral Coke | Ultimate beneficiary |                       |
|--------|------------------------------------------------|-----------------------------------|----------------------|-----------------------|
|        |                                                |                                   | Name                 | Amount                |
| 1      | Bridge and Building Construction Co. Pvt. Ltd. | 8,23,91,920/-                     | -                    | -                     |
| 2      | AIS International                              | 8,73,77,056/-                     | Anarcon Resources    | 4,39,57,000/-         |
| 3      | Western Minerals                               | 15,94,17,024/-                    | Anarcon Resources    | 11,00,00,000/-        |
| 4      | Autumn Buildcom Pvt. Ltd.                      | 6,13,08,000/-                     | Anarcon Resources    | 5,50,00,000/-         |
| 5      | Superfast Commerce Pvt. Ltd.                   | 6,48,96,000/-                     | Anarcon Resources    | 3,00,00,000/-         |
| 6      | Century Tradelink Pvt. Ltd.                    | 6,54,57,340/-                     | Anarcon Resources    | 5,53,30,000/-         |
|        | <b>Total</b>                                   | <b>52,08,47,340/-</b>             |                      | <b>29,42,87,000/-</b> |

(xxxi) The said payments made by Austral Coke to the aforesaid six entities were shown to be advances given for supply and setting up of LAM Coke plant and were from the IPO proceeds as per the letter of the company dated April 11, 2012. Austral Coke had also mentioned that the above advances are still recoverable and the company was in process of recovery due from the company. From the above, it can be seen that Rs.29.42 crores from the IPO funds, which have been shown as utilized for plant and machinery, has actually been transferred to the promoter entity, Anarcon Resources Pvt. Ltd.

(xxxii) From all of the above, Austral Coke is alleged to have made wrong disclosures regarding the capacity of LAM Coke plant of Austral Coke in its RHP and also wrong disclosure regarding disassociation of its Chairman & MD from Gujarat NRE Coke. The company also appears to have made misstatements regarding utilization of IPO proceeds and part of the amount has been siphoned off by the promoters. Therefore, the company and the directors are alleged to have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (b), (c), (d), 4(1), 4 (2) (e), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Clause 6.2 of SEBI (DIP) Guidelines 2000 read with Regulations 57(1) and 111(2) of SEBI (ICDR) Regulations, 2009.

12. SCN2, *inter alia*, made the following allegations:

- (i) SEBI conducted an investigation in the matter of Austral Coke to examine the books of accounts of the company with regard to purchase and sales from/ to entities controlled by Noticee 8; and also examine the possible manipulation of price/ volume of the scrip during the period July 13, 2009 to August 31, 2009 i.e.(hereinafter referred to as 'investigation period') just prior to the proposed Board Meeting to be held on September 03, 2009 to *inter alia* discuss raising of funds up to 200 Million USD through QIP. Austral Coke came out with an Initial Public Offer (IPO) in August 2008. The issue opened on August 7, 2008 and closed on August 13, 2008. The shares of Austral Coke were listed on BSE and NSE.
- (ii) Vide, *ad interim* order dated September 1, 2009, SEBI prohibited Austral Coke from raising any further capital in any manner, directly and indirectly, whatsoever till further order.

- (iii) The Financial results of the company for the period December 31, 2008 to March 31, 2010 on quarterly as well as Yearly financial results are as follows:  
(` in crore)

| Particulars                        | Quarter ended (Un-Audited) |                  |                     |                      |                  |                      | Year ended           |                      |
|------------------------------------|----------------------------|------------------|---------------------|----------------------|------------------|----------------------|----------------------|----------------------|
|                                    | Dec. 31,<br>2008           | Mar. 31,<br>2009 | June<br>30,<br>2009 | Sept.<br>30,<br>2009 | Dec. 31,<br>2009 | March<br>31,<br>2010 | March<br>31,<br>2009 | March<br>31,<br>2010 |
| <b>Net Sales</b>                   | 73.38                      | 151.65           | 89.70               | 85.89                | 55.95            | 50.90                | 441.49               | 271.61               |
| <b>Other Income</b>                | 1.54                       | 2.06             | 0.76                | 2.37                 | 0.06             | 0.27                 | 3.94                 | 3.41                 |
| <b>Total Income</b>                | 74.92                      | 153.71           | 90.47               | 88.27                | 56.01            | 51.17                | 445.43               | 275.02               |
| <b>Expenditure</b>                 | -50.02                     | -121.43          | -54.82              | -73.05               | -41.23           | -74.98               | -312.07              | -230.96              |
| <b>Net profit/loss</b>             | 5.04                       | 5.70             | 15.38               | 3.02                 | 0.25             | -27.18               | 45.25                | -4.63                |
| <b>Equity</b>                      | -                          | 29.03            | 29.03               | 29.03                | 29.03            | 29.03                | 29.03                | 29.03                |
| <b>Face value of shares (in `)</b> | 10                         | 10               | 10                  | 1                    | 1                | 1                    | 10                   | 1                    |

- (iv) From the above, it can be seen that the company was showing continuous growth in net profit till quarter ended June 30, 2009. After the passing of the order dated September 1, 2009, the company showed bad results with reduced net profit of `3.02 crore and `0.25 crore for the quarters ended September 30, 2009 and December 31, 2009 and loss of `27.18 crore for the quarter ended March 31, 2010.
- (v) From May 5, 2009 onwards, the scrip witnessed declining trend and reached a low of `241.25 on July 13, 2009. From July 14, 2009, the scrip witnessed rising trend and reached a high of `452 on August 6, 2009. There was a stock split of 1:10 w.e.f. August 7, 2009 and subsequent to the same, the rising trend continued and reached a high of `57.4 on August 25, 2009. The scrip closed at `51.5 on August 31, 2009.
- (vi) Major corporate announcements made by Austral Coke and Projects Ltd. from the listing in September 2008 till passing of SEBI order dated September 1, 2009 are provided as Annexure to the Investigation Report (IR).
- (vii) From the same, it is observed that within a span of one month just before the scheduled board meeting to discuss raising of US\$200 million through QIP, the company made four major corporate announcements, while there was no such

announcement in almost 11 months after the listing of the company on September 4, 2008. It may be mentioned the company made four announcements during the period July 13, 2009 to August 31, 2009 and out of the said four days when the announcements were made, except for one announcement day, the price of the scrip witnessed increase on the balance three days of the announcement. The impact of the announcements on the price and volume of the scrip is provided as below:

| Sl. No. | Date       | Closing price | Closing price on the previous day | % Change | Traded volume | Traded volume on the previous day | % Change |
|---------|------------|---------------|-----------------------------------|----------|---------------|-----------------------------------|----------|
| 1       | 22/07/2009 | 350.1         | 339                               | 3.27     | 591931        | 557582                            | 6.16     |
| 2       | 6/8/2009   | 437.45        | 430.75                            | 1.56     | 528982        | 481588                            | 9.84     |
| 3       | 10/8/2009  | 47.15         | 44.9                              | 5.01     | 4573584       | 3241557                           | 41.09    |
| 4       | 26/08/2009 | 51.65         | 53.3                              | -3.10    | 1532775       | 1859359                           | -17.56   |

(viii) From the above, it can be seen that the announcements resulted in rise in price of the scrip in the range of 1.56% to 5.10% on three trading days and rise in volume from 6% to 41%. These announcements assume significance as they are made just prior to the proposed QIP, whose price is determined on the basis of the market price of the company as prescribed in the DIP guidelines.

(ix) Vide letter dated March 03, 2011, the company informed that the company's records and documents were destroyed in an unfortunate accident while transporting records from corporate office of the company in Mumbai to the registered office of the company in Kolkata. A copy of the FIR and Newspaper report in this regard was enclosed along with the said letter. Hence, it could not be ascertained whether the announcements made by the company were genuine or not.

#### **Manipulation in the books of accounts of the company with regard to purchase and sales**

(x) Financial year wise break-up of purchases and sales shown in the books of accounts of Austral Coke is given as follows:

| Description | F.Y. 2006-07 in<br>crore) | F.Y. 2007-08 in<br>crore) | F.Y. 2008-09 in<br>crore) | Total in<br>crore) |
|-------------|---------------------------|---------------------------|---------------------------|--------------------|
| Purchases   | 12.87                     | 145.27                    | 394.83                    | 552.97             |
| Sales       | --                        | 100.04                    | 394.71                    | 494.75             |

- (xi) KYC copies of the entities were sought from DCB, IDBI Bank Ltd., Axis Bank and ICICI bank Ltd. From the same, it was observed that for 23 entities, the authorized signatory was Noticee 8. In case of the balance two entities, where the authorized signatory was Mr. Debesh Kumar Mullick, however, the address of the entity was mentioned as 25, Black burn Lane, Room No. - 308, 3rd floor, Kolkata -700012, which was same as the address of the other entities where the authorized signatory was Noticee 8.
- (xii) A visit was made to the Ahmedabad office of the Income Tax Department to collect the documents, which were relevant for investigation purpose. Income Tax Department, vide letter dated January 27, 2011. and February 11, 2011 made available the following documents:
- a. Copies of certain sales bills of Austral Coke pertaining to sales with entities owned / controlled by Noticee 8;
  - b. Copies of certain purchase bills of Austral Coke pertaining to purchases with entities owned / controlled by Noticee 8.
- (xiii) From the copies of sales bills issued by entities owned/ controlled by Noticee 8 to Austral Coke, it was observed that though Noticee 8 had admitted that all his entities were based in Kolkata, some of the entities named below showed Ahmedabad addresses on their sales bills. It was found that most of the telephone numbers mentioned on these bills were of Bharat Sanchar Nigam Ltd. (BSNL). IA visited some of the locations mentioned on these sales bills. The findings as inter alia recorded in the visit report are as below:
- i. Bridge & Building Construction Co. Pvt. Ltd. and BBC Project Services Pvt. Ltd, had shown their address as B-14, Keshavbagh Appt., Ambawadi, Ahmedabad- 15 on the sales bill. Further, the telephone number viz. 26609911, which was shown as the contact number for BBC Project Services Pvt. Ltd., Navratan Marketing Pvt. Ltd., Autumn Buildcon Pvt. Ltd. and Jitesh Coal Agency, is registered in the BSNL directory with name as Shri Shambhusinh Udesinh Rajput and address as B14 Shreyas

Tekra, Keshavbag Appt., Ambawadi, 380015. However, though the address of BBC Project Services Pvt. Ltd. was shown on the sales bill as the address at which telephone number 26609911 was registered, the addresses of the other three entities as mentioned on the sales bills, was different from the address where the telephone number was registered. A visit was made to the said premise and the statement of Shri Shambhu Singh Rajput, in whose name the telephone number 26609911 was registered was recorded.

Shri Rajput vide his statement dated January 29, 2011 stated that he owns the Flat B-14, Keshavbagh Appt. since 1996 and he is the builder of the said apartment. He also stated that the telephone no. 26609911 is in his name for the last ten years. He further stated that he is in no way associated with any of the aforesaid five entities, except Bridge & Building Construction Co. Pvt. Ltd. He also clarified that his association with Bridge & Building Construction Co. Pvt. Ltd. was only till the year 2001, and, after that he only used to speak to Noticee 8 occasionally. He further stated that he does not have any dealing with Austral Coke and came to know about the company only during the IT raid.

- ii. AIS International, Navratan Marketing Pvt. Ltd. and Shilp industrial Products had shown their office address as Narayan Chambers, Ashram Road, 5th Floor, Ahmedabad. One entity called Alright Dealers Pvt. Ltd. had given its telephone no. as 26582492, which is registered as per BSNL directory in the name of one Sarla Udaysing Laxmichand with address as 7-A, 5th floor, Narayan Chamber Opp. Nehru Bridge, Ashram Road, 380009. Hence, a visit was made to Narayan Chambers. It was found that a firm named Asarpota & Asarpota was operating from the address 7-A, 5th floor, Narayan Chambers, Opp. Nehru Bridge, Ashram Road, 380009 with telephone no. as 26582492.

Asarpota & Asarpota inter alia informed SEBI vide letter dated February 01, 2011 that the fact that AIS International, Navretan Marketing Pvt. Ltd., Shilp Industrial Products were functioning from their premises was totally false and that none of the parties had used their premises at any point of

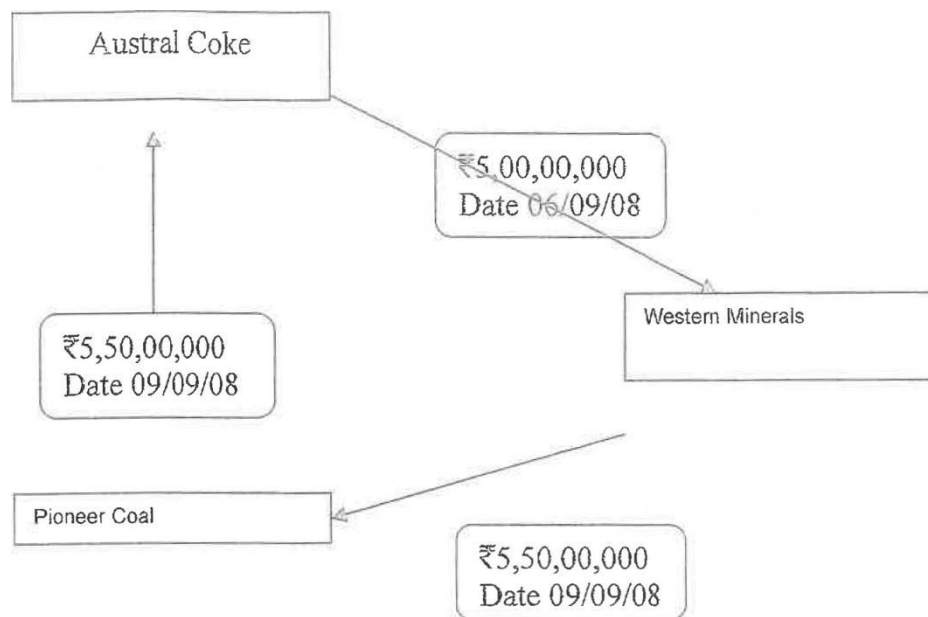
time. Vide the said letter, they further stated that somebody might have misused their telephone number and mentioned their address with malafide intentions.

During the visit to Keshavbagh Apartment to record the statement of Shri Rajput, the name of Asarpota & Asarpota was seen on the plan of one of the projects of Shri Rajput, who is a builder. It was informed by Shri Rajput that Noticee 8 used to visit his said premise. Therefore, it appears that Noticee 8 might have taken the address of Asarpota & Asarpota from the said plan at Shri Rajput's office.

- iii. Western Minerals had shown its address as Vedant Building, Kalpana Society, Municipal Market, Ahmedabad, 380009 and its contact number as 26401617: A visit was made to Vedant Building and it was found that no entity in the name of Western Minerals was operating from the said premise. Further, the telephone no. 26401617, which was shown as the contact no. of Western Minerals on the bill copy, was registered in the name of one Ritu Sobhag Brahmbhatt with address as A/3, Opp. Parimal Garden, Garden View Apartment, Ambawadi, 380006. A visit was made to the said premise and Ms. Ritu Sobhag Brahmbhatt and she was shown the bills raised by Western Minerals to Austral Coke Ms. Ritu Sobhag Brahmbhatt, vide letter dated January 29, 2011 informed SEBI that the telephone no. 26401617 is registered in her name for the last five years. She also stated that she does not know anything about Western Mineral and Austral Coke.
- iv. Imperial Refractories, Om Marketing, and Autumn Buildcon Pvt. Ltd. had given their address as Gota Chokhri, S G Road, Ahmedabad, 380054, which is a short address. Similarly, Superfast Commerce Pvt. Ltd. has given its address as Ellisbridge, Ashram Road, Near V S Hospital, Ahmedabad 380006, which is also a short address. A visit was made to the place near V S Hospital and no such entity was found around that address.

- (xiv) Noticee 8 in his statement recorded on April 08, 2011 he stated that he knew Shri Shambhusinh Udesinh Rajput because of business relationship for the construction of staff quarters for BSNL through his company Bridge & Building Construction Co. Pvt. Ltd., whose address was B-14, Keshavbag Appt., Ambawadi, and, that the other addresses were fake and he did not know anything about those addresses. Noticee 8 has further stated that he knew the telephone number 26609911 as belonging to Shri Shambhusinh Udesinh Rajput and that he did not know any other telephone numbers. He also clarified that the bill and challans, which had those addresses and telephone numbers, were not prepared and printed by him, and, that the company officials had prepared those bills and challans. He informed that the 14 entities belonging to him, who had shown their address as Ahmedabad, are only based in Kolkata and they never had any address in Ahmedabad, except for Bridge and Building Construction. He also confirmed that none of his other companies/ proprietorship firms had office in Ahmedabad.
- (xv) From the above, it is inferred that the addresses/ contact telephone numbers on the bills were given just to show that the entities were operating from Ahmedabad, while in reality, they were just paper entities/ companies operating from Kolkata.
- (xvi) Further, it was observed that a list of 12 entities belonging to Noticee 8, who had shown to have supplied raw materials as well as finished goods to Austral Coke, the GST(VAT) No. and CST no. shown by the said entities either does not exist or belong to some other entity. The same is provided as an annexure to the Investigation Report (IR).
- (xvii) Further, the list of 15 entities belonging to Noticee no. 8, in the name of which Austral Coke had shown to have booked sales. The report states that as per the existing provisions of law, the sale of LAM coke attracts VAT of 4% and on verification from the Commercial Tax Department of Gujarat and findings of the verification from the Commercial Tax Website of Govt. of Gujarat is provided as an annexure to the Investigation Report (IR).
- (xviii) From the above, it was observed that the VAT TIN and the CST TIN of the buyers, who are entities belonging to Noticee 8, and, to whom Austral Coke has shown to have booked sales and the GST(VAT) No. and CST no. of the suppliers of Austral Coke, who are entities belonging to Noticee 8 are either nonexistent or belong to some other entity. Therefore, the aforesaid entities belonging to Noticee 8, who had shown purchase/ sales to Austral Coke are just paper entities/ companies without any real business.

- (xix) Further, the bank accounts of the entities of certain entities of Noticee 8, who were suppliers of raw materials and capital goods to Austral Coke were analyzed to find out the utilization of funds received from Austral Coke. The findings of the same was provided as Annexure-5 to the SCN 2. From the annexure, it can be seen that the funds received from Austral Coke by the entities of Noticee 8 were routed back to the Austral Coke through the entities of Noticee 8.
- (xx) For example, the following chart shows how the funds were routed back to Austral Coke through the entities of Noticee 8.



- (xxi) It is observed from the Annexure that during the financial year 2008-09, funds to the tune of Rs.94.18 crore, which were transferred by Austral Coke to the entities of Noticee 8 for the fake purchases from them, were similarly received back by Austral Coke, after routing the funds through a few of the entities of Noticee 8.
- (xxii) The statement of Noticee 8 was recorded on April 8, 2011. The major submissions made by Noticee 8 are as follows:
- That through Mr. Nikhil Jalan he met Noticee 2 sometime in 2007.
  - That he opened the bank accounts as per the instruction of Noticee 2 and Noticee 3. He also submitted that they used to take the signed cheque books from him and give him commission of 0.40% in cash.

- c. That except for the address of Bridge and Building Construction, he does not know anything about other addresses that are shown as the addresses of certain proprietorship firms/ private limited companies owned by him and who had issued the bills to Austral Coke. He stated that the address of Bridge and Building Construction belongs to his friend Mr. Shambhu Singh Rajput as also the telephone number 26609911, which was shown as the contact number of Navratan Marketing Pvt. Ltd., BBC Project Services Pvt. Ltd., Autumn Buildcon Pvt. Ltd. and Jitesh Coal Agency. He also submitted that the bill, challan and letter head which have those addresses and telephone numbers have not been prepared and printed by him and the Austral Coke people had made them.
- d. That he had not taken any VAT/CST/GST numbers in any of the entities belonging to him and that Austral Coke might have used these numbers
- e. That the transactions shown in the bank accounts of the entities owned by him, which had shown purchase/sale transactions with Austral Coke are just banking transactions and he has not made any sale/purchase to Austral Coke. He also submitted that he had given only blank cheques signed to the representative of Austral Coke
- f. That the 14 entities belonging to him, who had shown their address as Ahmedabad are only based in Kolkata and they never had any address in Ahmedabad except for Bridge and Building Construction. He also confirmed that none of his other companies/ proprietorship firms had office in Ahmedabad.
- g. That he has never prepared any vouchers, bills for purchase/sale transactions with Austral Coke and he only signed blank cheques.
- h. That after the credit and debit transactions with Austral Coke in the bank accounts of entities belonging to him, there used to be balance left which he was allowed to withdraw in lieu of the opening of the bank accounts in the name of his entities and allowing Austral Coke to use them for their purpose.

The list of entities which Noticee 8 admitted to be owned/ controlled by him was provided as Annexure to the Investigation Report (IR).

- (xxiii) It may be mentioned that out of the 33 entities owned / controlled by Noticee 8, 24 entities are proprietorship concerns and 9 entities are Pvt. Ltd. companies. From the KYCs collected from the concerned banks, it was seen that Noticee 8 was the proprietor of all the proprietorship concerns. As regards the nine Pvt. Ltd. companies, Noticee 8 is the promoter of all the companies and also the authorized person in most of the entities. Further, only two Pvt. Ltd. companies have Sales Tax/Vat Numbers though they had shown to have purchase/sales transactions with Austral Coke.
- (xxiv) Therefore, it was inferred from the above that the purchases and sales figures shown in the books of accounts of Austral Coke, were inflated by passing fictitious purchase/ sales entries from/ to entities belonging to Noticee 8, which were just paper entities/ companies without any real business..

#### **Fictitious trades executed by SIC Stocks & Services Pvt. Ltd.**

- (xxv) Analysis of the trade log revealed that SIC had entered into fictitious trades i.e. SIC bought and sold shares of Austral Coke simultaneously for four consecutive trading days i.e. August 26, 27, 28 and 31, 2009 on behalf of the same client and created artificial volume in the scrip of Austral Coke & Projects Ltd. on NSE and BSE. The clients on the buy and sell side of the trades were the same. On BSE, SIC has executed the fictitious trades in the name of Shri Chetan Wadhwa (client code-C064) where in it bought and sold 696897 shares in the name of Shri Chetan Wadhwa. Similary, on NSE SIC has executed self trades in the name of Shri Narendrabhai Amin (client code-N056), wherein it bought and sold 7,94,790 shares in the name of Shri Narendrabhai Amin . The time difference between the buy and sell orders entered by SIC on behalf of its client Shri Chetan Wadhwa on BSE was 4 seconds for all the trades. On NSE, the time difference between the buy and sell orders entered by SIC on behalf of its client Shri Narendrabhai Amin was 2 seconds to 1.56 minutes. Therefore, all the aforesaid trades except two are synchronized. These trades did not result in change in beneficial ownership and resulted in creation of artificial volume in the scrip of Austral Coke and Projects Ltd. Details of the trades are provided in the relevant extract of the Investigation Report.
- (xxvi) Further analysis of the trade log revealed that SIC had executed reversal trade, wherein on August 26, 2009, Shri Chetan Wadhwa first bought 100000 shares from Shri Vijay Yuvraj Nanvare at 14:10:21 and then Shri Chetan Wadhwa sold 99000

shares back to Shri Vijay Yuvraj Nanvare within 3 minutes at 14:13:14 on the same day and this trades were synchronised with time difference of 4 and 6 seconds respectively. Shri Chetan Wadhwa placed the buy order for 1 lac shares at 14:10:20 and Shri Vijay Yuvraj Nanvare placed the sell order for 1 lac shares at 14:10:14. The trade between the two was executed at 14.10.21 for 1 lac shares. Again Shri Chetan Wadhwa placed the sell order for 1 lac shares at 14:13:10 and Shri Vijay Yuvraj Nanvare placed the buy order for 1 lac shares at 14:13:14. The trade between the two was executed at 14.13.14 for 99,000 shares and balance 1,000 shares matched in two trades with two clients. The said two trades were also executed at the same time as that of the trade between Shri Chetan Wadhwa and Shri Vijay Yuvraj Nanvare i.e. at 14.13.14 and the sell orders were entered prior to the order of Shri Chjetan Wadhwa. The aforesaid trading created artificial volume in the scrip of Austral Coke & Projects Ltd.

- (xxvii) It is important to mention that during the period July 13 to August 31, 2009, SIC had traded only on four trading days i.e. August 26, 27, 28 and 31, 2009 and bought and sold 9,00,060 shares of Austral Coke & Projects Ltd. on BSE on behalf of the client Shri Chetan Wadhwa. Out of the total traded volume of 9,00,060 shares, self trade and reversal trade volume was for 8,95,897 shares, which was 99.53% of the total trading done by SIC on behalf of Chetan Wadhwa. The self trades and reversal trades executed by SIC on August 26, 27, 28 and 31, 2009 accounted for 12.94% to 33.17% of the market volume on the said days. The summary of the same is provided as below:

| Exchange | Date      | Self trade volume<br>(no. of shares) | % Cont. to Market<br>volume |
|----------|-----------|--------------------------------------|-----------------------------|
| BSE      | 8/26/2009 | 297321                               | 19.39                       |
| BSE      | 8/27/2009 | 199864                               | 22.80                       |
| BSE      | 8/28/2009 | 199143                               | 16.47                       |
| BSE      | 8/31/2009 | 199569                               | 33.17                       |

(xxviii) Similarly on NSE, SIC had traded only on four trading days i.e. August 26, 27, 28 and 31, 2009 and executed self trades for 7,94,790 shares for the client Shri Narendrabhai Amin.

| Exchange | Date      | Self trade volume (no. of shares) | % Cont. to Market Volume |
|----------|-----------|-----------------------------------|--------------------------|
| NSE      | 8/26/2009 | 1,99,220                          | 8.53                     |
| NSE      | 8/27/2009 | 1,99,172                          | 19.19                    |
| NSE      | 8/28/2009 | 1,99,800                          | 12.33                    |
| NSE      | 8/31/2009 | 1,96,598                          | 23.51                    |

(xxix) This shows that the artificial volumes was created by SIC which accounted for substantial quantity of the total market volume. SIC created artificial volumes, around the same time as the various announcements were being made by Austral Coke, in the scrip by executing self trades/ reversal trades in the scrip on behalf of three clients.

(xxx) SIC Stock and Services P Ltd. appear to have violated Section 12A of SEBI Act, 1992 read with Regulations 3, 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and Regulation 7 r/w Clause A(1)(2)(3) AND (4) of the code of conduct for stock brokers as prescribed in schedule II of SEBI (Stock brokers & Sub-broker) Regulations 1992.

(xxxi) It is observed that Austral Coke along with its directors and promoters (Noticee 2 - Noticee 7) manipulated its books of accounts and showed fake purchases and sales to entities owned / controlled by Noticee 8. It was found that these entities were just paper companies and the funds transferred by Austral Coke to these entities for the fake purchases from them and funds were subsequently received back by Austral Coke after routing the funds through some of entities of Noticee 8. The manipulated financial results were disclosed in the Prospectus filed by Austral Coke.

- (xxxii) Therefore, Noticee no. 1 - Noticee no. 7 have violated Section 12A of the SEBI Act read with Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) and 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations.
- (xxxiii) Noticee no. 8 had facilitated Austral Coke to manipulate its books of accounts by creating paper companies and allowing Austral Coke to use those paper companies to show fake purchase and sales to inflate its turnover. The entities of Ajit Kumar Jindal were just used to issue fake purchase and sales bills and route funds towards the purchase and sales transactions of Austral Coke with entities of Noticee no. 8. Therefore, Noticee no. 8 has violated Section 12A of the SEBI Act, 1992 and Regulation 3 (b) to (d), 4(1), 4(2)(e) of PFUTP Regulations.
- (xxxiv) Noticee no. 9 contributed in the rise in price of the scrip by executing trades at prices higher than the last traded prices. Therefore, Noticee no. 9 has violated Section 12A of the SEBI Act and Regulation 3 (a) to (d), 4(1), 4(2)(a), of PFUTP Regulations, 2003 and Clause A(1) to (4) of code of conduct for stock brokers as prescribed in schedule II of Regulation 7 of SEBI (Stock brokers and sub-broker) Regulations, 1992.
13. This order is in five parts. The allegations made in the SCN1 against the respective noticees therein, are dealt in first 3 parts whereas allegations made in SCN2 against the respective noticees therein, are dealt in last two parts as under:
- (i) **Part A** – Allegation of misstatement regarding production capacity of the LAM Coke Plant, as per SCN1;
  - (ii) **Part B** – Allegation of misstatement regarding the disassociation of the Chairman and MD of Austral Coke from Gujarat NRE Coke, as per SCN1;
  - (iii) **Part C** – Allegation of misstatement regarding utilization of IPO proceeds as disclosed under Clause 43A of the Listing Agreement, as per SCN1;
  - (i) **Part D** – Manipulation in the books of accounts of the company with regard to purchase and sales, as per SCN2; and
  - (ii) **Part E** – Fictitious trades executed through SIC Stock & Services Pvt. Ltd. (Noticee no. 12) , as per SCN1.

## **Part A**

### **Allegation of mis-statement regarding production capacity of the LAM Coke Plant**

14. It is alleged in SCN1 that Noticee no. 1 made wrong disclosures regarding the production capacity of its LAM Coke Plant by claiming that its existing capacity of LAM coke production is 175,000 tons per annum **(TPA)** and that it has completed expansion of its LAM Coke plant by setting up two new chimneys which can generate maximum output of 2 lac TPA. It was alleged that the banks and Chartered Engineers certified the total claimed capacity of 3,75,000 TPA of the plant without visiting and physically verifying the plant before the closure of IPO i.e. August 13, 2008 and on the basis of information provided by Noticee no.1 itself. Further, there were several discrepancies relating to the assets found by SEBI officials during the site visit at the Company's LAM Coke Plant and assets found in the report of Shri Vilas J Bardapurkar, Chartered Engineer. Moreover, SCN1 also observes that Noticee no. 1 did not provide the documents requested by SEBI in support of completion of expansion of LAM Coke plant. In view of the same, it was alleged in the SCN1 that Noticee no. 1 made wrong disclosures regarding its LAM Coke production capacity in the RHP.
15. Noticee no. 1 submitted reply vide letter dated March 31, 2022. Noticee no. 2 and 3 submitted replies vide letter dated February 16, 2022 and March 12, 2022, respectively. The submission of the Noticees are summarized as follows:
  - a. Capacity expansion completion was certified by more than one outside & independent professional organization / people. In fact 3 of the organizations viz. SBI, BOI and AFL (subsidiary of Allahabad Bank) are PSU with direct control of the Government of India.
  - b. As regards to the fact that chartered engineer / bankers have issued certificate without visiting to the site, it is submitted that Mr. Ashish Satam COO Techn-o-Aid Consultant Pvt Ltd in his statement to SEBI on 19th Sep 2009 submitted that he had visited plant on 25-26th Jan 2009 along with representative of Mr. Krishnan of AFL. He also confirmed that during his visit four (4) chimneys and 158 ovens were ready at the plant site (certificate issued on 27th Jan 2009). Mr Ashish Satam confirmed his earlier contention during the cross-examination before SEBI.

- c. As regarding the bankers SBI/BOI, they were duly in knowledge of the project work at site and their concerned officers and empanelled engineers have visited the plant site several times. The company or its promoters/directors/officers have never denied for any inspections, review or examination at the plant site.
- d. Also, the SEBI team which visited the company plant site also confirmed that there were four chimneys along with the ovens. In fact, the only point they raised was that the only couple of oven of the fourth chimney were operational.
- e. Non-operation of full capacity depends on large number of Technical /Commercial factors which are dynamic and keeps on changing periodically. Also, it should be appreciated that the capacity of manufacturing is determined by the size and systems of the plant and machinery installed and not on the basis of number of ovens and chimneys. It is worth noting that it is the oven which produces LAM and that the chimneys are meant for taking the smoke to the skies & the number of chimneys does not determine the production capacity. The number of chimney is determined by the proximity of ovens to the chimney. (For information, the complainant in this case i.e. Gujarat NRE Coke, have claimed production of 400,000 MTPA with just two chimneys).
- f. Alos we like to mention that after every eighteen months or as and when required coke oven maintenance/ technical upgradation is being carried out and we always do that in phase manner such that the capacity under maintenance breakdown/ technical upgradation does not go below 560. During maintenance the entire oven, fire bricks are replaced by reusing the old bricks and adding new bricks wherever required. However, entire/partial strip downstrip down of complete oven and chimney are done such that there are no blockages in the tunnel flew, platform flew and chimney flew etc. during the visit of the SEBI officials the plant was under technical maintenance.
- g. There is no case that SBI/BOI/AFL all being Govt. of India owned PSU's will sanction and disburse such large amount of money to the any borrower without following the proper procedure and due diligence. Also, the concerned officers and empanelled engineers have to certify the status & completion of the project before the sanctioned amount is disbursed to the company.
- h. In fact, non-reliance on the certificate issued by the bankers will lead to the inference that the integrity of the system/people is in question, therefore we humbly request SEBI to rely on these certificates.

- i. The rating agency "CARE" officials have also certified the existence of 4 chimneys at site during their visit to plant site on November 22 and 23rd 2007 and we also brought this to your notice along with all the documents in support of their plant visit vide our letter dated December 08, 2008.
- j. None of the independent professional chartered engineer/ bankers has denied the issuance/genuineness of the completion certificate issued by them.
- k. Taking into consideration all the above facts and the certificates issued by different independent professional agencies, its proved beyond doubt that whatever disclosures were made in the prospectus were true and correct. It is proved beyond doubt that the allegation as regards to misstatement in prospectus regarding the plant capacity has no merit.
- l. In conclusion it can be said that the existence of asset is not in question. The only thing which has to be verified is whether the addition capacity of 200000 MTPA was completed before IPO in August, 2008. Nowhere in the statement recorded of various certifying authorities as well as the report of the SEBI team which visited the plant site has brought on record any facts or evidences to the effect that the said additional capacity was not completed at the time of the IPO.
- m. Therefore, any inference drawn from the fact that the person issuing the Completion certificate has not visited the plant site, is not at all an evidence that the capacity was not completed at the time of the IPO.
- n. We respectfully submit that a grave misconception has arose since it has been assumed by the SEBI that the certifying authorities has not visited the plant site, the addition capacity was not completed at the time of the IPO and a misstatement has been made in prospectus as regards plant capacity is concerned. But neither has it been established by the SEBI nor any evidence/material is brought on the record by the SEBI to substantiate the allegations.
- o. Therefore, Noticee submit that the company and the promoters have never made any misstatement regarding production capacity of the LAM Coke Plant. And whatever disclosures were made in the DRHP were genuine and reflected the true and fair view of the plant capacity.

16. I have gone through the allegation on the issue of wrong disclosures regarding production capacity of LAM Coke plant at Gujarat in the RHP and the submission of Noticees.

17. I note that in the RHP following disclosure was made regarding the existing coke production capacity and the expansion project at the existing facility:

*At page 99 of the RHP following is mentioned:*

*“The company has completed the expansion of 2 Lac MT Per annum of LAM Coke recently, and two chimney and 58 Ovens and additional auxiliaries has been added accordingly.”*

*At page 256 of the RHP following is mentioned:*

***“Operations***

*In 1994, ACPL started its operations with equipment rental and hiring segment. It conceptualized the coke manufacturing divisions in 2004, and subsequently commenced operations in 2006 at Kutch with an installed capacity of 1.75 lakh mtpa. Due to the wide gap between supply and demand, ACPL strategises to focus on coke manufacturing and undertake expansion. Additionally, .....”*

*At page 257 of the RHP following is mentioned:*

***“Expansion projects at existing facility (Bhuj):***

*ACPL is also undertaking expansions at its existing location for two coke manufacturing facilities of 1 lakh mtpa each. The said projects will be commissioned during FY09. These projects will be based on the existing technology but would incorporate increased automation levels.”*

18. The Noticee has pointed out that the SCN itself provides that during the visit made by SEBI officials to the plant site of Austral Coke at Lunva, Kutch on September 14 and 15, 2009, it was observed that there were 4 chimneys at the plant, however, all the ovens of third and fourth chimney were not found operational. Further, the Capacity expansion completion was certified by more than one outside & independent professional organization/people out of which 3 organizations were SBI, BOI and Allbank Finance Limited which are Government of India owned PSUs. None of the independent professional chartered engineer/ bankers has denied the issuance/genuineness of the completion certificate issued by them. These certificates confirmed that there were four (4) chimneys and 158 ovens ready at the

plant site. Moreover, the capacity of manufacturing is determined by the size and technical specification of the plant and machinery installed and not on the basis of number of ovens and chimneys. During the visit of SEBI officials, the LAM Coke production at the plant was not operating at full capacity due to the periodic technical maintenance of the plant.

19. I note that the fact that the Chartered Engineer, SBI and BOI certified the completion of expansion project of Noticee no. 1 without carrying out independent physical verification of the completion of the project cannot lead to a conclusion that claimed maximum production capacity of 3,75,000 TPA in the RHP of Noticee no.1 was not available. In fact, one of the Chartered Engineers and the Merchant Banker found that all the four chimneys and 158 ovens were available at the plant during their visit in January, 2009 i.e. after 6 months of the IPO. Further, the production capacity of Coke can only be assessed by a competent expert and as such the allegation in the SCN1 regarding wrong disclosure of the coke production capacity is not supported by any expert opinion/certificate. Moreover, there is nothing on record placed before me that indicates the correlation of coke production capacity with the number of chimneys installed at the plant. However, I note that in the disclosure made by Noticee no. 1 in its RHP, it is provided that the Company has completed the expansion of 2 Lac TPA of LAM Coke recently, and accordingly two chimneys and 58 Ovens and additional auxiliaries has been added to the existing coke production facility of Noticee no. 1. The said disclosure gives rise to a reasonable presumption that that the two new chimneys and 58 ovens were added to the coke production facility of Noticee no.1 for increasing the capacity of coke production by 2 Lac TPA. As mentioned above during the visit by SEBI officials to the plant site of Austral Coke at Lunva, Kutch on September 14 and 15, 2009, 4 chimneys were available at the plant site. Therefore, in absence of any material available on record that proves that the claimed maximum production capacity of 3,75,000 TPA was not available at the time of issuance of RHP, I find that the allegation of wrong disclosure of LAM coke production capacity in the RHP against Noticee no. 1 is not established.

### **Part B**

#### **Misstatement regarding the disassociation of the Chairman and MD of Austral Coke from Gujarat NRE Coke**

20. I note that the SCN alleges that in the RHP it was mentioned that Noticee 2, associated himself as one of the promoters of Gujarat NRE Coke Limited, however, due to family dispute he has disassociated himself from Gujarat NRE Coke Limited effective from 1997. It was noted by the IA from the High Court order dated October 3, 1997 that in a meeting of the Board of directors of Gujarat NRE convened on March 28, 1997 at Jamnagar, a resolution was passed removing Noticee no. 2 as the MD of Gujarat NRE. As per the order of the High Court, an EGM was held on December 4, 1997. In the minutes of the said meeting, it is mentioned that Noticee no. 2 and Noticee no. 3 were removed from the office of the director of the Company. Therefore, Noticee no. 2 and Noticee no. 3 made misstatement by saying that they have disassociated themselves from Gujarat NRE Coke Ltd. due to family dispute.
21. The submissions of the Noticees are summarized as below:
- a. The complaint by Gujarat NRE Coke has its origin in the family dispute which has been going on since 1997. The Hon'ble Calcutta High Court had only appointed Chairman for the meeting of the shareholders of Gujarat NRE Coke held on 4th December 1997 and not given any order or direction to remove the directors. Had there been any directions of the Hon'ble High Court there was no need for holding such a meeting then.
  - b. Under the provisions of the Companies Act, 1956 the directors can be removed only by the shareholders of the company at a meeting according to the due procedure laid down u/s 284 of the Act.
  - c. In the meeting held on 4th December 1997 the shareholders voted to remove the directors namely Mr Ratan Lal Tamakhuwala and Mr Rishi Raj Agarwal. However, the matter of validity of the election held is sub-judice. It is nowhere mentioned in the minutes of the board meeting that the directors were forcibly removed.
  - d. Mr Ratan Lal Tamakhuwala and Mr Rishi Raj Agarwal under the provisions of the Companies Act, 1956 were and continues to be eligible for appointment as director.
  - e. As regards the use of word "disassociate" in RHP in connection with Gujarat NRE Coke we will bring to your kind notice that Oxford English Dictionary meaning of the word "association" affiliation, alliance, companionship, fellowship, friendship, partnership.

- f. In the present case as Mr Ratan lal Tamakhuwala and Mr Rishi Raj Agarwal were no longer director of Gujarat NRE Coke it was perfectly justified in saying that they were not associated or disassociated with the Gujarat NRE Coke as their affiliation or alliance or fellowship or partnership with the company has ended.
- g. The company had in its RHP (Page no. 165 to 176) had clearly disclosed the nature of family dispute involving Gujarat NRE Coke under Section VI: Legal and regulatory information (Outstanding Litigation) under sub heading: outstanding litigation involving directors and promoters.
- h. In conclusion Noticees prayed that there was no intent on the part of the promoters/directors to misstate anything in the RHP and there was no forced removal from directorship of Gujarat NRE Coke as alleged.

22. In this regard, I note that from the minutes of the extraordinary general meeting of the shareholders of M/s Gujarat NRE Coke Limited held on December 04, 1997 that Noticee no. 2 and 3 were removed from the office of director of M/s Gujarat NRE Coke Limited with 5102725 number of votes in favour the resolution proposed for removal of these Noticees and NIL votes against the said resolution. In the said minutes it is also mentioned that the said extraordinary general meeting was held pursuant to Order dated October 03, 1997 passed by the appellate bench of the Hon'ble Calcutta High Court.

23. I note that Noticee 2 and 3 have submitted that all relevant litigations have been mentioned in (Page no. 165 to 176) of RHP wherein the nature of family dispute involving Gujarat NRE Coke has been disclosed under the head "Legal and regulatory information (Outstanding Litigation)" - sub heading outstanding litigation involving directors and promoters. I have perused the relevant pages of RHP as mentioned by Noticee no. 2 and 3 and the details of outstanding litigation mentioned in the RHP. In this regard, I note that although the details of some cases given under the head of outstanding litigation indicate that a dispute exists between Noticee no. 2 and 3 and Gujarat NRE Coke, it does not contain any information regarding removal of Noticee no. 2 and 3 from the office of director of M/s Gujarat NRE Coke Limited pursuant to the resolution passed in extraordinary general meeting of shareholders of the said company held on December 04, 1997. Thus, removal by the shareholder was portrayed as a voluntary disassociation. This was very material because in case

of removal the director loses the confidence of shareholders which is not the case with voluntary disassociation.

24. As per Clause 6.2 of DIP Guidelines, 2002 applicable at the relevant time, the prospectus should contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue. In the present case, Noticee no. 2 and 3 who were the promoter and director of Noticee no. 1 were removed from the board of Gujarat NRE Coke Limited pursuant to a court order. The court order mentioned in the minutes of the extraordinary meeting has not been made available before me. Moreover, while mentioning the disassociation of Noticee no. 2 and 3 from Gujarat NRE Coke Limited in the RHP, the existence of a court order/ litigation in connection to such disassociation has also not been mentioned in the RHP. From the material available on record, RHP and the replies of the Noticees, I note that Gujarat NRE Coke Ltd. was engaged in the production of LAM coke in India. Prior to incorporating the Company, Austral Coke as a competitor of Gujarat NRE Coke Limited for undertaking LAM coke production activities, Noticee no. 2 was promoter of Gujarat NRE Coke Limited and Noticee no. 3 was Key Managerial Personnel instrumental in handling operation of Gujarat NRE Coke Limited. Both Noticee no. 2 and 3 claimed to have been instrumental in the growth of the Gujarat NRE Coke Limited and executing the project set up of the said company. Noticee no. 2 has also stated that he was associated with Gujarat NRE Coke Limited by associating himself with the Company since inception. Considering the above facts, I find that the disassociation of Noticee no. 2 and 3 from Gujarat NRE Coke Limited was material information which to enable the investors for making informed decision for investing in the IPO of Noticee no. 1. The facts and circumstances which led to the removal of Noticee no. 2 and 3 from Gujarat NRE Coke Limited wherein their association was established since an early stage and wherein they were handling key operations were material and relevant for investors in the IPO of Noticee no.1, especially as Noticee no. 1 was set up as a rival competitor of an established LAM Coke producer i.e Gujarat NRE Coke Ltd. The fact that Noticee no. 1 in its RHP did not mention that the removal of Noticee no. 2 and 3 was pursuant to resolution passed in extraordinary general meeting of shareholders of Gujarat NRE Coke Ltd. held on December 04, 1997 and instead mentioned that their disassociation was due to a family dispute amounts to suppression of material information in the RHP. In view of the above, I find that

Noticee no. 1 has violated clause 6.2 of DIP Guidelines, 2000 read with Regulation 57(1) of ICDR Regulations, 2009.

### **Part C**

#### **Misstatement regarding utilization of IPO proceeds as disclosed under Clause 43A of the Listing Agreement and siphoning of IPO proceeds (29.42 Crore)**

25. SCN1 alleges that the utilization of funds as shown by the Company in the quarterly results filed by the Company under Clause 43(A) of the erstwhile listing agreement for the three quarters ended September 30, 2008, December 31, 2008 have been misstated. Further, a part of the IPO proceeds has been siphoned off by to a promoter group entity Anarcon.
26. The Submission of the Noticees are as follows:
- The Board of Directors of the company in its meeting held on 10<sup>th</sup> December 2008 decided to shift the plant location from Sindhudurg (Maharashtra) to Lunva (Gujarat) because of the unavoidable reasons of not getting the environmental clearances.
  - It will not be out of place to point out that since last several years various projects across India were facing environmental challenges. All the newspaper and magazines have very clearly brought out this fact and the corporate sector in India has been pleading with the various State Governments and Central Government to bring out clear guidelines in this regards.
  - In the given circumstances it is pertinent to be noted that the decision of relocation of the plant to Lunva, Gujarat was taken in the interest of all the stakeholders of the company, as at Lunva the company was already running the LAM Coke plant and the location was also ideally suited commercially. The Board of Noticee no. 1 intimated the shifting and setting of the New Plant to Lunva Gujarat to the Stock Exchange on December 10, 2008.
  - In RHP under *Section II: Risk Factors* the company has clearly explained the risk of delays/ non-receipt of the requisite regulatory/statutory approvals and consequently need to relocate the project site.

*Relevant extract of the same is reproduced below for your kind perusal*

*"Our Company may face risks of delays / non receipt of regulatory / statutory approvals or licenses for any of our objects arising out of the issue. Any delay in receipt of licenses or approvals could result in cost and time overrun. We would be applying for various licenses, approvals at various stages of implementation for the proposed projects. Any delay in receipt or non-receipt of licenses or approvals that may be required for the proposed projects. Any delay in receipt or non-receipt of licenses or approvals that may be required for proposed expansions could result in cost & time over-run, and accordingly adversely affecting our operations and profitability. Our project is in Red Category zone of the Pollution control Board, so in case of any future local, environmental/ government or any other issues/policies arises, the management may decide for the relocation of the project site."*

- e. As regards mis-utilization of IPO proceeds details given below may be referred:

Utilization of IPO Proceeds (Rs. In lacs)

| S.No.        | Particulars                  | Actual          |
|--------------|------------------------------|-----------------|
| 1            | Captive Power Plant          | --              |
| 2            | 150,000 LAM Coke             | 5208.48         |
| 3            | Acquiring mining rights      | 4750            |
| 4            | Prepayment of High Cost Debt | 254.01          |
| 5            | General Corporate Purpose    | 3713.15         |
| <b>Total</b> |                              | <b>13925.63</b> |

- f. The Company also continued maintenance and modernization of the existing plant to make it suitably fit for production of coke. In continuation to set up the Project at new project site (Lunva, Kutch -Gujarat) it was decided to buy land adjacent to the existing plant of the company and accordingly the amount of Rs. 40 Crores Approx. were incurred in order to acquire the said land which are having the present market value of Rs.80 Crores Approx.
- g. An Independent Auditor along with a reputed valuer having experience of more than 10 years have certified existence of fifth plant and its infrastructure and installation cost which was met from the IPO proceeds. A certificate dated 09.08.2017 by M/s Bhalotia & Co. (Chartered Accountants) and a certificate dated June 06, 2017 issued by the technical consultants M/s Riya Carbons have been submitted to justify existence of the 5<sup>th</sup> Plant fully in operational condition built out of the IPO proceed.
- h. Acquisition of prospecting mining licenses: Regarding the payment made to the foreign subsidiary "Global Astra Pte Ltd" of Rs 47.50cr towards the acquisition of

prospecting mining licenses in different coal fields, totally admeasuring to 1,00,000 hectares in Mozambique, Republique De Guinee, South Africa and the same was duly informed to respective stock exchanges during the month of September, 2009. Further the same can be verified by the bank accounts of the company and the correspondence in already placed on record.

- i. The company through its step down subsidiary Astra Energy Ltd. had also acquired 16 prospective mining licenses for rich iron ore , bauxite and manganese ore blocks totally admeasuring 12,63,000 acres in Guinea, Western Africa. It is note- worthy to mention that Austral Coke was the first Indian company to get mining licenses in Guinea and the same is also being considered as the biggest acquisition in terms of mining area. Copies of mining licenses have been submitted by the Company in support of its submission. It is because of the malafide & wrong complaints made by the Gujarat NRE Coke and its present management against the Company which led to lot of misinformation and damaging the reputation of the Company. This in turn led to lot of financial stress for the company and the company could not invest any further money for exploration and other mining activities and due to the same and other various other reasons some of the mining licenses got suspended and company's working have been jeopardized by regulatory actions like Income tax search operations and SEBI ex-parte orders followed by the investigations by the Serious Fraud Investigation Office gave the Company huge negative publicity in the media due to which, the Company's expansion plans got major set-back since the banks and other financial institutions refused to extend further credits. In result, valuable assets of the Company which were acquired by spending huge capital could not be developed and implemented. As a result the company could not complete the mine acquisition which led to cancellation of the said prospecting license and loss to the Company for the amount already paid. Copy of Cancellation letter is submitted by the Company in support of its submission.
- j. It is submitted that the Income tax Dept. has also accepted the veracity of the payment made (Appellate order dated 31.08.2012 for AY 2009-10). The Commissioner of Income Tax (A) Central-11, Kolkata, in his order dated 09.08.2012 for the A.Y.2009-10 has categorically established that: *'There is no dispute on the facts that the sum of Rs.47.43 cores transferred by the Company to its subsidiary, Global Astra Pte Ltd, Singapore for acquisition of coal mines, was out of the funds collected through the IPO. Thus as far as source of fund transfer is concerned, it is fully explained. The said transaction is duly accounted for in the*

*Company's books of accounts and the financial statements of the relevant previous year and accepted by the AO. Further the Company also filed the audited financial statements of the subsidiary as on 31.03.2009, reflecting the investment made by the Company."*

- k. The transaction was genuine and was in agreement with the disclosures made in the prospectus, the amount was transferred for acquisition of prospecting mining licenses and genuineness of the transaction is well established by the Income Tax Department being a statutory body of Government of India.
- l. There was no mis-utilization of funds by transferring the same to acquire the mining licenses abroad and it was completely in agreement and conformity with the objects of the IPO.
- m. Regarding the query for Rs 39.67cr disbursed between 1st week of September 2008 to 31<sup>st</sup> December 2008, Noticee submit that Rs. 2.54 cr. was utilized towards repayment of its high cost debt with State Bank of Indore and Rs. 52.88 Lacs was utilized towards meeting the Public Issue Expenses and the balance Rs. 36.60 cr. was utilized for other general corporate purposes as per the object of the issue as disclosed in the RHP. All the payments can be verified by the bank accounts of the Company.
- n. Payment of Rs. 52.08 crore to suppliers for procurement of materials, plant & machinery for setting up of new Coke Plant: As regards to payment made for Rs. 52.08 cr, it is submitted that the Company has entered into an agreement dated 02<sup>nd</sup> Day of September, 2008 with one Mr. Ajit Jindal & others, for procurement of materials and setting up of Coke Plant. The Company had advanced the amount of 74.05 Crores to entities belonging to Noticee no. 11 as listed in SCN for supply of raw material required in setting up the LAM coke plant.
- o. After relocation of Plant to Gujarat, Noticee no. 11 expressed his un-willingness to supply the plant and machinery to the New site. Ajit Jindal and its concerns paid back Rs. 74.05 Crores back to the current account of the Company maintained at ABN Amro Bank. A certificate of Independent Chartered Accountant has been submitted by the Company in support of this submission.
- p. Fixed assets have been created post IPO and there has been no diversion of funds as alleged in the SCN.
- q. It is alleged in the SCN that amount of Rs.29.42 crores out of the total amount of Rs.52.08 crores advanced to suppliers namely Mr. Ajit Jindal & Associates for supplying of materials and plant and machinery for setting up of coke plant as

envisaged in the prospectus is being transferred by the Company to its group concern M/s Anarcon Resources Pvt Ltd and the said transfer of Rs.29.42 Cr to group entity is being viewed as siphoning of IPO proceeds by the promoters as alleged in para 34 of the SCN by SEBI.

- r. We at the outset deny the allegation and submit that there is a total misconception of the fact and our role in the transaction. While alleging us with a serious charge of siphoning of IPO proceeds by the promoters, SEBI has not considered the interest free loans and advances given by M/s Anarcon Resources Pvt Ltd to the Company during the relevant time and also thereafter. Any amount transferred by Ajit Jindal controlled group entities as pointed in the SCN to M/s Anarcon Resources Pvt Ltd (a group company of Austral coke) was towards some other business deal between Anarcon Resources Pvt Ltd and Ajit Jindal controlled group of entities and the same has got no resemblance or connection with the payment made by Austral Coke Ltd to Ajit Jindal and his associate group/ entities for the purpose of procurement of raw material, plant and machinery for setting up of additional coke plant, as discussed above.

27. I have perused the allegations in the SCN1, submission of the Noticees and the documents provided by them in support of their submission. I note that the SCN1 alleges that Noticee made misstatements regarding utilization of IPO proceeds and part of the IPO proceeds has been siphoned off by the promoters. As per the RHP the objects of the issue were as follows:

- a. Setting up of 1,50,000 MTPA of Low Ash Metallurgical Coke (LAM Coke) at Sindhudurg in Maharashtra.
- b. Setting up of 8 MW Captive Power Plant (CPP) at Sindhudurg in Maharashtra.
- c. Acquisition of coal mines to acquire more prospecting mining licenses and also to start mining in acquired licenses.
- d. Prepayment of High Cost Debt
- e. Issue expenses
- f. General Corporate Purposes

28. As per RHP for the public issue, a portion of the funds raised through the IPO were to be deployed for setting up of a proposed LAM Coke Plant of 1,50,000 MTPA at Sindhudurg, Maharashtra however within 4 months from the issue, allegedly without

any convincing reasons and in non-conformity with the objects of the issue, the Company shifted the location of the proposed plant to Lunva, Gujarat, where it already had a 4 chimney LAM Coke Plant. Further, within 20 days from the date of decision i.e. from October 10, 2008 to December 31, 2008 Noticee no.1 spent Rs. 99.66 Crores from the IPO proceeds at the new plant site.

29. As regards the shifting of plant from Sindhudurg, Maharashtra to Lunva, Gujarat, Noticee no. 1 has contended that the plant location was shifted because it was not getting the environmental clearances, and at Lunva it had an already running LAM Coke Plant due to which setting up of the new plant as per the object of the IPO at Gujarat was commercially viable. The Company also submitted that in its RHP under Section II: Risk Factors, it has informed that in case of non-receipt of regulatory clearance, the consequential need to relocate the project site. I note that Noticee no. 1 has not submitted any proof in regard to its inability to get the environmental clearance. However, in view of the fact that RHP informed about the possibility of relocation of proposed plant location at Sindhudurg Maharashtra under certain circumstances, the fact that the plant location was subsequently shifted to Lunva, Gujarat cannot lead to a conclusion that there was a misstatement regarding utilization of IPO proceeds under Clause 43A of Listing Agreement as alleged in the SCN.

30. Further, during investigation upon analysis of the public issue account of Austral Coke with Deutsche Bank following was observed:

| S. no. | Transferred to/Utilised by                                                                                                       | Amount (Rs. in Crores) |
|--------|----------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1      | Utilised by Noticee 1 for General corporate expenses and pre-payment of high cost debt                                           | 39.14 (36.60+2.54)     |
| 2      | Noticee 1 transferred funds to 3 entities for Issue Expense                                                                      | 0.53                   |
| 3      | Noticee 1 transferred funds to its subsidiary Global Astra Pte. Ltd for the purpose of acquisition of mines and mining licenses. | 47.50                  |

|   |                                                                                                                                                                                                                                                      |               |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 4 | Noticee 1 transferred funds to 6 Entities controlled by Noticee no. 11(Bridge and Building construction Co. Pvt. Ltd., AIS International, Western Minerals, Autumn Buildcon Pvt. Ltd., Super-fast Commerce Pvt. Ltd. and Century Tradelink Pvt. Ltd) | 52.08         |
|   | <b>Total</b>                                                                                                                                                                                                                                         | <b>139.25</b> |

31. As regards Rs 47.50 Crore mentioned at serial no. 3 at para 30 above, it was observed in the SCN that the Company has only acquired mining licenses out of the IPO proceeds and no mines have been acquired by the Company as stated in the objects of the issue. I note that the Company has contended that Rs.47.50 Cr were paid by it from IPO proceeds through its foreign subsidiary “Global Astra Pte Ltd.” towards the acquisition of prospecting mining licenses in different coal fields of Africa. These licenses were later suspended as the Company's working have been jeopardized by regulatory actions due to which it could not complete the mine acquisition which led to cancellation of the said prospecting license and loss to the Company for the amount already paid.
32. In this regard, I note that in the RHP, one of the objects of the issue was disclosed as “Acquisition of coal mines to acquire more prospecting mining licenses and also to start mining in acquired licenses.” The allegation of misstatement regarding utilisation of IPO proceeds in the SCN is based on the response of Noticee no. 1 that although the Company has acquired mining rights, no mines have been acquired by them. I note that the SCN does not allege that mining rights/licenses have not been acquired by the Company in line with the objects of the issue. Therefore, the fact that the Company acquired mining licenses is not disputed in the present case. What is alleged in the SCN is the fact that Company has not acquired mines amounts to misstatement regarding utilisation of IPO proceeds under Clause 43A of the Listing Agreement. Noticee no. 1 in its reply has admitted that it did not acquire any mines. Moreover, the Company has not demonstrated any initiative for acquiring mines in line with the objects of the issue. The contention of the Noticee that it could not acquire any mines due to regulatory action against it cannot be sustained as the proceeds of IPO were available with the Company and there was no restraint imposed on the Company from deploying the said funds for fulfilling the objects of

the issue. I note that in the RHP, the estimated cost of acquiring mines and mining licenses was shown as Rs. 40 Crores and Noticee no. 1 transferred an amount of Rs. 47,50,00,000/- to its subsidiary Global Astra Pte. Ltd. for the purpose of acquiring mining licenses. I further note from SCN1 that under Clause 43A of the listing agreement, the utilization of IPO proceeds for “Expenditure on development/construction of the project as stated in the object clause of the prospectus” for quarters ending December 31, 2008 and March 31, 2009 is disclosed as Rs. 99.66 Crores and 89.92 Crores respectively. In this regard, as per SCN1, the Company has submitted the break-up of Rs. 99.6 Crores spent from the IPO proceeds as follows: Rs. 52.15 Crores for plant and machinery and Rs. 47.50 crores for prospective coal mines. Further, the Company also submitted that the difference between the amount 99.66 crores and 89.92 crores spent from IPO proceeds for quarters ending December 31, 2008 and March 31, 2009 was due to a clerical error. In this regard, I note that Noticee no. 1 has not demonstrated that they took any initiatives to acquire mines through its subsidiary Global Astra Pte. Ltd. or entered into any agreement to acquire mines out of the proceeds of the IPO. Thus, I find that the fact that the Company did not deploy the IPO proceeds for acquisition of mines and disclosed that the funds were utilized as per the object of the issue which included acquisition of mines amounts to misstatement regarding utilization of IPO proceeds as disclosed under Clause 43A of Listing Agreement.

33. As regards Rs.52.08 Cr mentioned at serial no. 4 at para 30 above, it was observed that these funds were transferred to 6 entities controlled by Noticee no. 11 for supply and setting up LAM Coke Plant, out of which Rs. 29.42 Crores were transferred to Anarcon Resources Pvt. Ltd. a promoter group entity of Noticee no. 1. In view of the same, it was alleged in the SCN that there was no capacity expansion in plant after public issue, hence Noticee no. 1 has made misstatements regarding utilization of IPO Proceeds and Rs.29.42 Crores has been siphoned off.
34. With regard to the payment of Rs. 52.08 Crore to entities controlled by Mr. Ajit Jindal (Noticee no. 11), Noticee no. 2 and 3 have submitted that actually the Company has advanced Rs. 74.05 Crores to 9 entities controlled by Noticee no. 11 which includes Rs. 52.08 Crores transferred to 6 entities as mentioned in the SCN1. Noticee no. 2 and 3 have further submitted that Rs. 74.05 Crores were advanced to 9 entities controlled by Noticee no. 11 for supply of raw materials, plant and machinery

required in setting up the additional LAM Coke Plant. Subsequently, Mr. Jindal expressed his unwillingness to supply the requisite materials including plant and machinery at the new site and accordingly, he returned the full amount of advances back to the Company from the bank accounts of the entities owned and controlled by him within 3 months from the date of such advances. Noticee no. 2 and 3 also provided statement of account of the Company in support of its submission showing that the Company transferred Rs. 74.05 crores to 9 entities controlled by Noticee no. 11 and received them back through some other entities controlled by Noticee no. 11. Further, Noticee no. 2 and 3 have stated that the fund transfers of Rs. 29.42 Crores from the entities controlled by Noticee no. 11 to the promoter group company M/s. Anarcon Resources Pvt. Ltd. (Anarcon) as mentioned in the SCN was in connection with some other business deal between Anarcon and the entities controlled by Noticee no. 11.

35. I note that the SCN alleges that Rs. 52.08 Crore out of the IPO proceeds were transferred to 6 entities controlled by Noticee no. 11 for supply and setting up of LAM Coke Plant, out of which Rs. 29.42 Crores were transferred to Anarcon which is a promoter group entity of the Company. In response to this allegation, Noticee no. 1 on one hand and Noticee no. 2 and 3 on the other hand submitted contradictory responses. On one hand Noticee no. 2 and 3 have contended that in fact Rs. 74.05 Crore out of the IPO proceeds was advanced to 9 entities controlled by Noticee no. 11 and the entire fund was returned to the Company through some other entities controlled by Noticee no. 11. Noticee no. 2 and 3 have also submitted a certificate dated August 09, 2017 issued by a Chartered Accountant (**“CA Certificate for return of IPO proceeds”**) for certifying that Rs. 74.05 Crore advanced to 9 entities controlled by Noticee no. 11 have been received back by the Company within 3 months. Noticee no. 2 and 3 have also denied that the fund transfer of Rs. 29.42 Crore to Anarcon by the 6 entities controlled by Noticee no. 11 was out of the IPO proceeds, and submitted that the said fund transfer was regarding some unconnected commercial transaction between Anarcon and the entities controlled by Noticee no. 11.
36. On the other hand, the Company has submitted that funds amounting to Rs. 52.08 out of the IPO proceeds have been utilized for setting up the 5<sup>th</sup> LAM Coke Plant. The Company vide its reply dated March 31, 2022 has also submitted copies of bills

showing purchase of bricks for an amount of Rs. 3,01,53,380/- made by the Company from Anarcon during April, 2008 to March 2009. A certificate dated August 09, 2017 from a Chartered Accountant (**“CA Certificate for IPO Utilisation”**) for certifying expenditure of Rs. 52.08 Crore out of the IPO proceeds for setting up the 5<sup>th</sup> LAM Coke Plant has been submitted by the Company.

37. In this regard, firstly, I note that even though Noticee no. 2 and 3 have claimed that the Company has advanced funds of Rs. 74.05 crores to 9 entities controlled by Noticee no. 11 and received the said funds back within 3 months, they did not provide any reliable documentary evidence such as bank statements to prove the same. The statement of accounts of the Company provided by Noticee no. 2 and 3 did not show receipt/return of funds from the 6 entities controlled by Noticee no. 11 to whom Rs. 52.08 Crore was transferred from the IPO proceeds as alleged in the SCN. The statement of accounts provided by Noticee no. 3 only shows that during September, 2008 to February, 2009, the Company made a payment of Rs. 74.05 Crore to 11 entities controlled by Noticee no. 11 and received Rs. 74.05 Crore from some other entities.

38. The summary of the statement of Accounts submitted by the Company is as follows:

| I                                                                                                                                                                                                         | II                                                                                                                                                                                                                              | III                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fund transfer of Rs 52.08 Crore made to 6 entities out of the IPO proceeds as alleged in the SCN1 (transferred from Deutsche Bank Account of the Company)                                                 | Payment of Rs 74.05 Crore made to 9 entities controlled by Noticee no. 11 (as claimed by Noticee no. 2 & 3)                                                                                                                     | Receipt of Rs. 74.05 Crore from 6 entities controlled by Noticee no. 11 in DCB Bank and Abn Amro Bank of the Company: (as claimed by Noticee no. 2 & 3)        |
| 1. Western Minerals,<br>2. Bridge and Building construction Co. Pvt. Ltd.,<br>3. AIS International,<br>4. Autumn Buildcon Pvt. Ltd.,<br>5. Super-fast Commerce Pvt. Ltd.<br>6. Century Tradelink Pvt. Ltd | 1. Western Minerals<br>2. Bridge & Building Co. Pvt. Ltd.<br>3. AIS International.<br>4. Autumn Buildcon Pvt. Ltd.<br>5. Superfast Commerce Pvt. Ltd.<br>6. Century Tradelink Pvt. Ltd.<br>7. Harsh Mineral & Metal Trading Co. | 1. Parasnath coals and coke Sales,<br>2. United Coal Supplier,<br>3. Coal Supply Agency,<br>4. Balaji Energy Corporation,<br>5. Bharat Coal & Coke Corporation |

|  |                                                              |                                |
|--|--------------------------------------------------------------|--------------------------------|
|  | 8. Imperial Refractories<br>9. Excell Engineering Equipments | 6. Industrial Coal<br>Supplier |
|--|--------------------------------------------------------------|--------------------------------|

39. As per the statement of accounts submitted by Noticee no. 2 and 3, funds were transferred from the IPO proceeds of the Company to 9 entities controlled by Noticee no. 11 as mentioned at Column II at para 38 above, during September 06, 2008 to December 03, 2008 and the same were received back from 6 other entities as mentioned at Column III at para 38 above during December 12, 2008 to March 13, 2009. Noticee no. 2 and 3 only provided statement of accounts prepared by the Company which are not a reliable proof of return of IPO proceeds in the account of the Company. Accordingly, vide letter dated November 07, 2022, Noticee no. 3 was requested to provide bank statements showing the transactions mentioned in the statement of accounts submitted by him. Vide letter dated November 12, 2022, the Company provided bank statement of DCB Bank and Abn Amro Bank. From the bank statements provided by the Company, I note that one of the transactions mentioned in the statement of account submitted by Noticee no. 2 and 3 does not match with the entry shown in bank statement of the Company. As per the account statement, on February 16, 2009, the Company received Rs. 11,94,77,662 from one "Bharat Coal & Coke", however, as per the bank statement submitted by the Company the said funds were received from Balaji Energy Corporation. Further, the bank statement does not reflect the name of all the entities from whom the funds have been credited in the account of the Company. In view of the above, I find that the bank statements submitted by the Company cannot be relied upon to prove that funds of Rs. 74.05 Crores were received back in the Company from the entities controlled by Noticee no. 11. Further, even assuming that the statement of accounts submitted by Noticee no. 2 and 3 show genuine transactions, I find that the fact that the Company received Rs. 74.05 Crores from some entities controlled by Noticee no. 11 within 3 months of the IPO does not prove that the funds which were transferred out of the IPO proceeds of the Company were returned back to the Company, especially in view of the fact that Company has claimed to have regular purchase and sales deals with entities belonging to Noticee no. 11. The account statement of the Company clearly shows that the Company did not receive back funds from the same entities to whom the initial transfer of funds from the IPO proceeds was made. Moreover, as mentioned above, one transaction involving substantial amount of Rs.

11,94,77,662/- as mentioned in the account statement submitted by Noticee no. 2 and 3 does not match with the entry shown in the bank statement of the Company. In view of the above, I find that the statement of accounts of the Company and the Bank statements of the Company submitted in these proceedings cannot be relied upon to prove that Rs 52.08 Crore transferred out of the IPO proceeds to 6 entities controlled by Noticee no. 11 were returned to the Company. Therefore, I find that Noticee no. 2 and 3 have made such bald claims about return of IPO proceeds in the account of the Company through some entities controlled by Noticee no. 11 in their reply submitted in these proceedings only to escape from the consequences of any liability arising out of these proceedings.

40. I will now consider the submission of Noticee no. 1 that funds amounting to Rs. 52.08 out of the IPO proceeds have been utilized for setting up with the 5<sup>th</sup> LAM Coke Plant. In this regard, I note that Noticee no.1 in its RHP has disclosed that the estimated cost of project for setting up of the 5<sup>th</sup> LAM Coke plant of 1,50,00 MTPA capacity is Rs. 78.12 Crore. However, vide reply dated March 31, 2022, the Noticee has submitted that Rs. 52.08 Crores out of the IPO proceeds have been utilized for setting up the said plant. Moreover, the CA certificate dated August 09, 2017 submitted by the Company for supporting the said contention states that the original copies of bills and other relevant documents were not made available to the CA due to a fire incident in the vehicle while moving the records and documents from Bombay to Kolkata and a police enquiry report is obtained for the same. I note that the police enquiry report claimed to be obtained by CA in this regard has not been submitted by the Company along with the CA certificate. The CA certificate also claims that the schedule of expenditure with respect to setting up the 5<sup>th</sup> LAM coke plant has been prepared and certified on the basis of Bill of Quantities (BOQ), Layout and drawings and the project completion certificate dated June 06, 2017 issued by an entity "M/s Riya Carbons" who is the technical supervisor/consultant of the Company. In this regard, I note that the CA certificate submitted by the Company has not been issued based on the original bills under the pretext of fire incident. Moreover, the fact that the project completion certificate was issued by M/s Riya Carbons (technical advisor of the Company) in the year 2017 for a project claimed to be completed in March 2010 i.e. 7 years after the claimed date of project completion gives rise to a reasonable inference that the said certificate has been obtained by Noticee no. 1 post issuance of SCN1 dated June 09, 2015 to escape the

consequences of any liability arising out of these proceedings. It is observed from the copies of bills provided by Noticee no. 1 along with the CA Certificate for IPO Utilisation, that these bills pertain to purchase of various construction materials such as bricks, mould, sand etc. from numerous entities during the relevant time. In this regard, I note that no fund trail or proof of payment made out of IPO proceeds to the sellers of these construction materials have been submitted by the Company. Moreover, even assuming that these bills are genuine, the fact that Austral Coke purchased construction material during the relevant period does not prove that the said material was for utilized for setting up a new plant, especially, in view of the submission of Noticee no. 2 that the existing plant of the Company undergoes routine maintenance during which bricks and other materials are replaced. In view of the above, the CA Certificate dated August 09, 2017 issued for certifying utilisation of IPO proceeds on the basis of the project completion certificate of M/s Riya Carbons and the copy of bills provided by the Company cannot be relied upon to prove that Rs 52.08 Crore out of the IPO proceeds were utilized for setting up the 5<sup>th</sup> LAM coke plant as stated in the RHP.

41. I note that the Company also submitted bank account statement of the public issue account of the Company with Deutsche Bank to show the utilization of IPO proceeds in accordance with objects of the issue which were not legible. In view of the above, vide email dated November 04, 2022, the Company were requested to provide legible bank statements in support of their submission. The Company sought time to submit the said bank statement, accordingly, the Company was allowed time till November 27, 2022 to submit the aforesaid bank statement. Vide email dated November 26, 2022, the Company *inter alia* submitted the bank statement of the public issue account of the Company with Deutsche Bank along with a summary of fund transfers made to the entities controlled by Noticee no. 11 from the said Deutsche Bank A/c of the Company. I note that none of the transactions mentioned under “summary of capital expenditure” in the reply dated November 26, 2022 match with the entries shown in the Deutsche Bank A/c statement of the Company. For instance, the Company has shown that on October 06, 2008 funds to the tune of Rs. 329,186,000/- were transferred by the Company to 3 entities namely, Western Mineral, AIS International and Bridge Building Construction Co. Pvt. Ltd. in 9 transactions. However, Deutsche Bank A/c statement reflects that on October 06, 2008, the Company transferred Rs. 329,186,000/- to one entity in a single

transaction. Further, the bank statement does not reflect the name of the entity to whom the funds have been transferred by the Company. In view of the above, I find that the Deutsche Bank A/c statement submitted by the Company cannot be relied upon to prove that funds of Rs. 52.08 Crore out of the IPO proceeds were utilized for setting up the 5<sup>th</sup> LAM coke plant as stated in the RHP.

42. As regards the submission of the Noticee no. 2 and 3 that the 5<sup>th</sup> LAM Coke Plant is fully operational and available at the plant site and the same is built out of the IPO proceeds, I note from page 61 of the RHP that under the head "Schedule of Implementation", the Company has disclosed that the commissioning and production of trial run of the LAM Coke plant will end in March 2009 and commercial production will start in April 2009. I also note from SCN1 and as pointed out by Noticee nos. 2 and 3 in their replies that during SEBI's visit to the plant site on September 14-15, 2009, it was observed that *"two old chimneys with ovens were operational. While majority of the ovens of the third chimney were operational, only a couple of ovens of the fourth chimney were operational"*. From the said observation in SCN1, it is evident that the SEBI officials visiting the plant site in September, 2009 found only four chimneys which were a part of the existing LAM coke plant and that the 5<sup>th</sup> plant and its chimneys were not available at the plant site. Therefore, I find that although the date of completion of the 5<sup>th</sup> LAM Coke Plant and commencement of commercial production was disclosed as April, 2009, the 5<sup>th</sup> LAM Coke Plant was not available at the plant site even in September, 2009. I also note that Noticee no. 2 and 3 have submitted a project completion certificate issued by M/s Riya Carbons (technical advisor of the Company) on June 06, 2017, claiming that the project was constructed by the Company during October 2009 to March 2010. The fact that the Company has obtained a project completion certificate in the year 2017 (post issuance of SCN1) for a project claimed to be completed in March 2010 i.e. 7 years after the claimed date of project completion and the fact that the 5<sup>th</sup> LAM Coke plant is available at the plant site as on date does not prove that the IPO proceeds were utilized by the Company as per the objects of the issue. On the contrary, the above facts give rise to a reasonable inference that the Noticees have obtained the completion certificate at a belated stage after issuance of SCN1 to escape the consequences of any liability arising out of these proceedings.

43. I also note that Noticee no. 2 and 3 has submitted that there is delay in issuance of show cause notice in the present matter. However, the Noticees have not pointed out any particular document or information which they could not retrieve due to delay. I find that Noticee no. 2 and 3 have duly represented their respective case during the hearing before me and also filed detailed replies to the SCN. Thus, I find that no prejudice has been not caused to the Noticees due to delay.
44. In the present matter, the allegation in the SCN is that Rs.52.08 Crore out of the IPO proceeds were transferred to 6 entities controlled by Noticee no. 11 for supply and setting up of LAM Coke Plant, out of which Rs. 29.42 Crores were transferred to Anarcon Resources Pvt. Ltd. which is a promoter group entity of Noticee no. 1. The transfer of Rs. 52.08 Crores of issue proceeds to 6 entities controlled by Noticee no. 11 and transfer of Rs. 29.42 Crores out of these funds to promoter group entity Anarcon has been established based on the bank statement of the public issue account of the Company and the bank statements of the 6 entities controlled by Noticee no. 11. As discussed above, the replying Noticees have not been able to prove that the funds transferred to 6 entities controlled by Noticee no. 11 and subsequent transfer to Anarcon which is a promoter group entity were utilized for the purpose of fulfilling the objects of the issue. Further, although Noticee no. 2 and 3 have submitted that the fund transfer of Rs. 29.42 Crore to Anarcon by the entities controlled by Noticee no. 11 is on account of an unconnected business deal, they have not provided any documentary evidence showing the existence of such a business deal such as a copy of agreement for the deal etc. Therefore, I find that the transfer of Rs. 52.08 Crores of issue proceeds by the Company to 6 entities controlled by Noticee no. 11 and transfer of Rs. 29.42 Crores out of these funds to promoter group entity Anarcon, as evidenced by the bank account statements amounts to misutilisation of IPO proceeds. Further, the fact that Rs.29.42 Crores of proceeds of the IPO were ultimately transferred to Anarcon which is a promoter group entity of the Company establishes that IPO proceeds to this extent were siphoned off. In view of the above, I find that Noticee no. 1 violated Section 12A (b) and (c) of the SEBI Act, 1992, Regulations 3(c) & (d), 4(1) and 4(2)(r)&(k) of PFUTP Regulations.
45. In the present case, the details of directors of Noticee no. 1 as disclosed in the Annual Report of the Company during F.Y. 2008-09 are as follows:

| <b>Sr. No.</b> | <b>Name</b>                     | <b>Category</b>                                               |
|----------------|---------------------------------|---------------------------------------------------------------|
| 1              | Mr. Ratan Lal Tamakhuwala       | Promoter and Executive Director                               |
| 2              | Mr. Rishi Raj Agarwal           | Promoter and Executive Director                               |
| 3              | Mr. Rajendra Kumar Khaitan      | Non- Executive Director                                       |
| 4              | Mr. S.K Chowdhary               | Non- Executive Director                                       |
| 5              | Mr. M.K Sinha                   | Non- Executive Director                                       |
| 6              | Mr. Prem Ranjan Kumar Chaurasia | Executive Director<br>(Appointed w.e.f July 30, 2009)         |
| 7              | Mr. Alok Bansal                 | Non- Executive Director<br>(Appointed w.e.f October 30, 2009) |
| 8              | Mr. Sunil Mandloi               | Non- Executive Director<br>(Appointed w.e.f July 30, 2009)    |

46. I further note that the details of board of directors and composition of audit committee is disclosed as follows in the RHP:

“Our Board of Directors comprise of the following members:

| <b>Name</b>                | <b>Designation</b> | <b>Status</b>                      |
|----------------------------|--------------------|------------------------------------|
| Mr. Ratan Lal Tamakhuwala  | Chariman           | Executive Chariman                 |
| Mr. Rishi Raj Agarwal      | Managing Director  | Managing Director                  |
| Mr. Rajendra Kumar Khaitan | Directors          | Independent Non-Executive Director |
| Mr. S.K Chowdhary          | Directors          | Independent Non-Executive Director |
| Mr. M.K Sinha              | Directors          | Independent Non-Executive Director |

The following committees have been formed in compliance with the Corporate Governance norms:

**Audit Committee**

.....

Name of the directors who are members of the Committee are as under:-

| <b>Sr no.</b> | <b>Name of the Director</b> | <b>Status</b> | <b>Nature of Directorship</b> |
|---------------|-----------------------------|---------------|-------------------------------|
|---------------|-----------------------------|---------------|-------------------------------|

|    |                            |          |                                    |
|----|----------------------------|----------|------------------------------------|
| 1. | Dr. M.K Sinha              | Chairman | Independent Non-Executive Director |
| 2. | Mr. Rajendra Kumar Khaitan | Member   | Independent Non-Executive Director |
| 3. | Mr. S.K Chowdhary          | Member   | Independent Non-Executive Director |

.....”

47. I note that Noticee no. 2 has submitted that he was a technical person guiding on functioning of the coke plant and he and his son i.e. Noticee no. 3 played no role in the financial affairs of the Company. Noticee no. 2 has also submitted that he played an advisory role in the financial affairs of the Company while the decisions were taken by various committees formed for taking the decision on the financial matters and projects of the Company. Further, I note that Noticee no. 3 has also submitted that he is not involved in day to day management of the affairs of the Company due to this personal difficulty.
48. In this regard, I note that a Company is a juristic person and it cannot act on its own. A Company can act only through its Directors and in terms of Section 291 (Section 179 of Companies Act, 2013) of the Companies Act, 1956 (since repealed), the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. The directors of a Company are expected to exercise their power on behalf of the company with utmost care, skill and diligence. Therefore, the Board of Directors being responsible for the conduct of the business of a company and are liable for any non-compliance of law and such liability shall be upon the individual directors also. The Hon'ble Supreme Court of India, while describing what is the duty of a Director of a company, held in *N. Narayanan vs. Adjudicating Officer, SEBI (2013) 12 SCC 152*, wherein it was held that:

*“ 33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v .P.A. Tendolkar (1973)1SCC602 that a Director maybe shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”*

49. Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company. In the present case, I note that Noticee no. 2 was not only Executive Director and Chairman of the board of directors of the Company, he was also one of the two individual promoters of the Company holding 4.47% shares of the Company. I further note that Noticee no. 3 was the Managing Director of the Company and the promoter of the Company holding 19.52% of shares of the Company. I also note that Noticee no. 3 was holding majority shares in the non-individual promoters of the Company i.e. Shri Hanuman Investments Pvt. Ltd. and Anarcon Resources Private Ltd. Moreover, Noticee no. 3 was also a director in both these promoter entities and Noticee no. 2 was a director in Anarcon Resources Pvt. Ltd. Having regard to the position of Noticee no. 2 (Chairman, Executive Director) and his son Noticee no. 3 (Managing Director) who were also the promoters of the Company holding controlling stake in the Company, it would not be correct to infer that they were not aware of the acts of the Company which constituted the violations alleged. In view of the above, I find that Mr. Ratan Lal Tamakhuwala (Noticee no. 2) and Rishi Raj Agarwal (Noticee no. 3) were liable for the acts of the Company. Therefore, I find that Noticee no. 2, 3 and 4 violated Section 12A (b) and (c) of the SEBI Act, Regulations 3(c) & (d), 4(1) and 4(2)(r)&(k) of PFUTP Regulations.
50. As regards, Shri S.K Chowdhary (Noticee no. 4), Noticee no. 5 (Rajendra Kumar Khaitan) and Noticee no. 6 (M.K Sinha), I note that these Noticees were Independent Non-Executive Directors of the Company. The Audit Committee of the Company comprised of these three Noticees only. In this regard, I note that in terms of Clause 49 II D (5A) of the Listing Agreement (since rescinded), the Audit Committee has to review, with the management, the statement of uses / application of funds raised through public issue, the statement of funds utilized for purposes other than those stated in the RHP and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and make appropriate recommendations to the Board to take up steps in this matter. In view of the same, I note that the Audit Committee has grossly failed in their duty by not raising any concern while reviewing the statement of uses / application of funds raised through IPO. Such gross failure would not have happened without the active involvement of Audit Committee in the violations alleged. Therefore, I find that Noticee no. 4, 5 and

6 violated Section 12A (b) and (c) of the SEBI Act, Regulations 3(c) & (d), 4(1) and 4(2)(r)&(k) of PFUTP Regulations.

51. I note that in response to the personal hearing Notice issued to Mr. M.K Sinha, his daughter has informed that Mr. M.K Sinha has passed away on February 02, 2020. Death Certificate dated February 15, 2020 issued by sub-registrar (Birth and Death), Municipal Corporation of Greater Mumbai E Ward has been submitted by the daughter of Mr. M.K Sinha. In view of the same, the proceeding against Mr. M.K Sinha (Noticee no. 6) abates.
52. I note that SCN1 alleges violations of the provisions of DIP Guidelines, 2000 which has been repealed by ICDR Regulations, 2009 (since repealed) which have also been repealed by SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as '**ICDR Regulations, 2018**'). In this regard, I note that Regulation 115 of ICDR Regulations, 2009 provided as follows:

**"Repeal and Savings.**

115. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.

(2) Notwithstanding such rescission:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

53. Repeal and Savings of ICDR Regulations, 2018 provides as follows:

**"Repeal and Savings**

301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

54. I also note that in SCN1 there are allegation of violation of provisions of equity listing agreement and all circulars stipulating or modifying the provisions of the listing agreement have been rescinded by Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations, 2015**”). I note that Regulation 103 of LODR Regulations, 2015 provides as follows:

**“Repeal and Savings**

103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations”

55. In Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1, Hon'ble Supreme Court held that:

“103. Repeal and Saving Clause under ICDR 2009 would clearly indicate that the violation under DIP Guidelines was a continuing one. Regulation 111 of ICDR reads as follows:

“Repeal and Savings 111. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded. (2) Notwithstanding such rescission; (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or

taken under the corresponding provisions of these regulations; (b) any offer documents, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

104. Regulation 111(1) of ICDR 2009 rescinded the DIP Guidelines from 26.8.2009 and clause (2) of Regulation 111 contains the saving clause. The expression “anything done” or “any action taken” under Regulation 111(1) are of wide import and would take anything done by the company omitted to be done which they legally ought to have done. Non-performance of statutory obligations purposely or otherwise may also fall within the above mentioned expressions. Failure to take any action by SEBI under DIP Guidelines, in spite of the fact that Saharas did not discharge their statutory obligation, would not be a ground to contend that 2009 Regulations would not apply as also the saving clause. 2009 Regulations, in my view, will apply to all companies whether listed or unlisted. Further, in the instant case, SEBI was not informed of the issuance of securities by the Saharas while the DIP Guidelines were in force and Saharas continued to mobilize funds from the public which was nothing but continued violation which started when the DIP Guidelines were in force and also when they were replaced by 2009 Regulations. Further, it may also be recalled that any solicitation for subscription from public can be regulated only after complying with the requirements stipulated by SEBI, in fact, an amendment was made to Schedule II of the Companies Act vide notification No. GSR 650(3) dated 17.9.2002 by inserting a declaration which has to be signed by the directors of the company filing the prospectus, which reads as under:

“That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the securities and Exchange Board of India Act, 1992 or rules made there-under or guidelines issued, as the case may be.”

56. I find that ratio of the aforesaid judgment of Hon'ble Supreme Court in Sahara case (supra) with respect to interpretation of repeal and saving clause of ICDR Regulations, 2009 squarely applies to the repeal and saving clauses in ICDR Regulations, 2009, ICDR Regulations, 2018 and LODR Regulations, 2015. Therefore, violation of DIP Guidelines, 2000 and equity listing agreement can be

pursued under the corresponding provisions of ICDR Regulations, 2018 and LODR Regulations, 2015.

#### **Part D**

#### **Manipulation in the books of accounts of the company with regard to purchase and sales**

57. I note that SCN2 has alleged that the purchases and sales figures shown in the books of accounts of the Company have been inflated by passing fictitious purchase/sales entries from/to the entities belonging to Noticee no. 11, which were paper companies without any real business. The allegation in SCN2 is based on the statement of Noticee no. 11 that all of the entities belonging to him were paper entities with no real business and there was no purchase/sale of raw materials or finished goods to Noticee no. 11 and its controlled entities to the Company. Noticee no. 11 also submitted that all the bills and invoices were prepared by the Company officials and he used to get commission for the bank account transfers through accounts in his name. In view of the same, the SCN2 has alleged that the invoices for transactions of the Company with entities belonging to Noticee no. 11 are bogus. As per SCN2, the Company has shown to have sold finished goods and purchased raw materials from/to the entities belonging to Noticee no. 11 and the VAT TIN and the CST TIN shown by these entities either does not exist or belong to some other entity. SCN2 also observes that during a physical visit made to four entities belonging to Noticee no. 11, namely, Bridge & Building Co. Pvt. Ltd., AIS International, Western Mineral and Imperial Refractories, these entities were not found on the address shown on the bills/invoices issued by the entities and the phone number mentioned on the invoices belonged to some other entities. In view of the above, SCN2 alleges that during the financial year 2008-09 funds to the tune of `94.18 crore, which were transferred by the Company to the entities of Noticee no. 11 for the fake purchases from them, were similarly received back by the Company, after routing the funds through a few of the entities controlled by Noticee no. 11.
58. In response to the above allegation, the Noticee no. 2 and 3 *inter alia* submitted the following:

- i. SEBI has investigated the addresses of the suppliers. Not a single documents or person ever been offered to us during investigation for conformation or for ascertaining the nature of transaction.
- ii. SEBI admitted that the Bills issued by the company connected with sale of coke is also not in question. It is also admitted fact from SEBI that after verifying the Books of accounts of the company bill wise and Bank statement wise, the sale of Coke was duly matched and there were no discrepancies. The Purchaser paid the purchase consideration of the goods through proper Banking Channels and also admitted that the said amount duly paid to the company from the very Bank accounts operated by them.
- iii. Statements recorded by the officer of SEBI of the said persons referred in the para is of no evidential values in this legal proceedings as the opportunity of cross confrontation/examination was not offered by SEBI.
- iv. Transactions carried out by the company with Ajit Jindal & Associates upto the period 2007-08 were irrelevant in the context of present allegation as at that time the company was not listed.
- v. During the financial year 2005-06 & 2006-07 the company has only purchased raw-materials from Ajit Jindal & Associates. However the SEBI did not provided the bills, vouchers of the above sales / purchases for verification or cross examination by way of an affidavit / annexure.
- vi. There were no sales to Ajit Jindal & Associates during FY 2005-06, these purchases have in no way inflated the financial of the company by showing any rosy pictures as the same is an expenses in the books of the company.
- vii. The agencies has not considered the sales/purchases to/with other entities not related with Jindal which includes the most aeputed corporate s of India like Tata Chemical, Nirma, DCW, Hindalco and others with whom the company has made sales running in crores of rupees during the said period of investigation. Say for example supplies to Tata Chemicals under single invoice were for value of 17.50 crores and they are on the records of IT & SFIO. This itself proves beyond doubt that the noticee company was of reput and that is why on the approved suppliers of the reputed corporates. This itself negate the allegation of bogus sale / purchases been illegally pocketed by him for his own personal benefit and that was the major windfall gain for him arising out of such transactions with the noticee company. The noticee company how ever had no benefit at any point of time as the notice company

was under the tax holiday. The entire investigation could have been concluded if both SFIO/IT had verified the sales tax return filed by the noticee company. The Noticee company, if were involved in any such act would have not filed any return for sales tax/ vat if they knew that the same are bogus. Mere filing of the return before the IT raid proves beyond doubt the innocence of Noticee company and its management and also put to rest all doubts of entering into bogus sale /purchase transaction.

- viii. It is further submitted that the Statutory Auditors of the company never gave any dis-qualification / negative remark as regards purchase/sale or about overall financial affairs of the company and also there has been no complaints either from shareholders, creditors, bankers or investors and stakeholders as regards the state of affairs of the company.
- ix. Obtaining GST NO./ Service Tax No. or providing the details of the address or vehicle numbers lies with the Suppliers. The Bills verified is solely belongs to the entities controlled by Ajit Jindal.
- x. That the noticee submits that Ajit Jindal was the major beneficiary for the purchase/sale transactions that he had entered with the notice company by not paying the sales tax on those transaction.
- xi. The entire sales/purchases and capitalization of fixed assets has been duly assessed by the statutory auditors of the company and no adverse remark or qualification has been attempted by the auditors in their Audit Report.
- xii. The Company had been entering various commercial transactions of sale and purchase of coal and coke. It is worthwhile to mention herein that the aforesaid sale and purchase transactions has no bearing on the IPO proceeds as this was the routine commercial transactions entered into by the company during its normal course of business of coal & coke and the same has got no relevance with the utilization of IPO proceed at all.
- xiii. All the sales / purchases were well recorded in accounting system as per the applicable accounting norms and against the valid invoices of sales/purchase. Payment / receipt have been made through banking channels only after compliance and verification of all the KYC norms by the banking channels. Large portion of the purchases were made through Letter of Credits which require substantial credit report from the banker of the suppliers i.e. from the noticee no.8. So these purchases could only had been possible if proper credit report were received at the end of opening banker of the Letter of credit.

So Ajit Jindal's bankers were equally responsible for discounting of LC and receiving the LC by giving credit and due diligence report of Ajit Jindal, which indicates that various private bankers through which Ajit Jindal operated these accounts have followed the proper KYC as well as financial due diligence of Ajit Jindal, which as per you is not genuine, then its not our fault or our scope to carry out the due diligence of banker who gave credit report of Ajit Jindal and in that case you catch hold of those bankers for any sort of lapses in the system.

- xiv. Almost 89000 MT (appx) of coke was lying in the plant at the time of IT raid having the then market value of Rs.300 (appx) crores and if by any chance the transactions with Ajit Jindal & Ass. were bogus, then such large quantity of finished goods quantifying almost 7 months of sales figure could not have been physically been present at the time of the I.T. raid. Even this fact was also not being brought on record by the IT/SEBI while framing the charges of Bogus Sales / purchases.
- xv. The attention of the Hon'ble WTM is drawn to para (3) of Page 358 of SFIO main report under executive summary it has been accepted by the SFIO as under:-

"The relevant transactions pertaining to 2008-09 and 2009-10 could not be verified. In view of the above mentioned reasons, the allegation of rotation/diversion of funds could not be established."

The said acceptance itself makes the whole SCN null & void on manipulation of books of accounts by SEBI.

- 59. From the trail of funds mentioned in the Annexure referred in SCN2, I note that the said trail of funds does not shown that the exact amount of funds initially transferred from the Company to the entities controlled by Noticee no. 11 have been returned to the Company. The fund trail shows that Rs. 94,18,41,831/- has been transferred to 7 entities controlled by Noticee no. 11 and Rs. 100,19,37,713/- were transferred back to Austral Coke through a different set of 6 entities. The summary of transactions as mentioned in the Annexure referred in the SCN are as follows:

| Sn | Name of the entities to whom Rs. 94,18,41,831/- were transferred by Austral Coke | Name of the entities from whom Rs. 100,19,37,713/- were received by Austral Coke. |
|----|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1  | Western Minerals: 50000000                                                       | United Coal Suppliers: 241500000                                                  |

|   |                      |              |                            |               |
|---|----------------------|--------------|----------------------------|---------------|
| 2 | Pragati Coal:        | 461469665    | Coal Supply Agency:        | 177500000     |
| 3 | Excell Engineering:  | 61500000     | Balaji Energy Coal:        | 160000000     |
| 4 | Jitesh Coal:         | 132059854    | Industrial Coal Suppliers: | 131437713     |
| 5 | Imperial Refractory: | 52500000     | Coal & Mineral Traders:    | 101000000     |
| 6 | Navratan Marketing:  | 86438062     | Westline Trading India:    | 140000000     |
| 7 | Allright Dealers:    | 97874250     | Pioneer Coal:              | 50500000      |
|   | Total:               | 94,18,41,831 | Total:                     | 100,19,37,713 |

60. I note the statement of Noticee no. 11 is relied upon in SCN2 for alleging the purchase/sales entries from/to the entities belonging to Noticee no. 11 in the books and accounts of the Company are bogus. It is noted that the Noticee no. 1, 2 and 3 had sought cross-examination of Noticee no. 11. However, cross-examination of Noticee no. 11 could not be conducted as he did not appear for cross examination despite notice. Further, Noticee no. 11 has neither given any reply to the SCN2 nor appeared for hearing. Moreover, the statement of Noticee no. 11, as relied upon in the SCN, is bereft of any evidence in support of facts narrated therein. In view of the aforesaid facts, the statement of Noticee no. 11 cannot be relied upon.
61. I note that Noticee no. 2 and 3 have submitted that SEBI has not provided the bills, vouchers of the sales / purchases mentioned relied upon in the SCN2. In this regard, I note that the bills/invoices relied upon by SEBI in SCN2 for alleging that the Company along with its directors and promoters (Noticee no. 2, 3, 7, 8, 9 10, and 11) manipulated its books of accounts are not available on record before me and were also not provided to the Noticees along with SCN2. I note that Annexure referred in SCN2 only provides the result of verification of VAT TIN, CST TIN and GST number by the Investigating Authority through the website/investigation report of Income Tax and Commercial Tax authorities. In view of the above, I find that the allegations made in the SCN2 on the basis of such bills/ invoices to the effect that the transaction of the Company with entities belonging to Noticee no. 11 were bogus and that entities belonging to Noticee no. 11 were paper entities without any real business, cannot be sustained. As regards, the fact that some of the entities belonging to Noticee no. 11 were not found on the addresses mentioned on the bills issued by these entities to the Company, I find that the same is not sufficient to prove

that the transactions of the Company with these entities were bogus, as another possible inference from these facts is that these entities might have changed their address. Moreover, although SCN2 observes that 4 entities belonging to Noticee no. 11 including Western Mineral and Imperial Refractory to whom funds were transferred by the Company were not found on the address mentioned on the invoices/ issued by these entities to the Company, no such observation is made with respect to remaining 5 entities namely Pragati Coal, Jitesh Coal, Excel Engineering, Navratan Marketing, Allright Dealers to whom funds were transferred by the Company as mentioned at para 59 above.

62. I note from the submission of the Noticee no. 2 that the Company was a merchant converter and that 70% of merchant coke oven operates on job/conversion basis. The arrangement with Mr. Ajit Jindal & its associates was similar to a conversion agreement but for larger transparency all purchasers and sales were reflected in the books of accounts of the Company. I also note that Noticee no. 2 and 3 have submitted that all the transactions have been made through banking channels and large portion of the purchases were made by the Company through Letter of Credits which require substantial credit report from the banker of the suppliers i.e. entities controlled by Noticee no. 11. Replying noticees have also submitted that almost 89000 MT (appx) of coke was lying in the plant at the time of IT raid having market value of approximately Rs. 300 crores and if by any chance the transactions with the entities controlled by Noticee no. 11 were bogus, then such large quantity of finished goods quantifying almost 7 months of sales figure could not have been physically been present at the time of the I.T. raid.
63. I note that the replying noticees have submitted that entities belonging to Noticee no. 11 were both suppliers of raw materials (coal) to the Company and purchasers of finished goods (LAM Coke) from the Company. As discussed at para 61 above, the material available on record is not sufficient to prove that the transactions of the Company with entities belonging to Noticee no. 11 were bogus and that the entities belonging to Noticee no. 11 were paper entities without any real business. With respect to the allegation of rotation of funds by the Company, I note that SCN2 has alleged rotation of funds on the basis of transfer and receipt of funds by the Company to/from entities belonging to Noticee no. 11. From the fund trail mentioned in the Annexure referred in SCN2, I note that the fund trail shows that the Company

received back more funds than the funds initially transferred by the Company to 7 entities controlled by Noticee no. 11. As per the fund trail, the Company transferred only Rs. 94,18,41,831/- and received back Rs. 100,19,37,713/- i.e. Rs. 6,00,95,882/- more than the funds initially transferred to 7 entities controlled by Noticee no. 11 as mentioned at para 59 above. If the transfer and receipt of funds by the Company to/from entities belonging to Noticee no. 11 was merely rotation of funds by the Company, it does not appeal to logic as to why the Company received more funds back as compared to the funds initially transferred by the Company.

64. The replying noticees have submitted that even SFIO has failed to bring on record sufficient material evidence to justify the allegation of rotation of funds and that the statutory auditors made no adverse remarks on the books of accounts of the Company. In view of the above, I find that from the material available on record, it is not established that purchase/sales entries in the books of accounts of the Company from/to the entities belonging to Noticee no. 11 were fictitious and that these entities, were paper companies without any real business. Further, from the material available on record it is not established that the funds transferred by the Company to entities controlled by Noticee no. 11 were rotated and transferred back to the Company. In view of the above, I find that the allegation that the Company along with its directors and promoters (Noticee no. 2, 3, 7, 8, 9 10, and 11) manipulated its books of accounts in violation of Section 12A of the SEBI Act and Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations, is not established. Accordingly, allegation that Noticee no. 11 violated Section 12A of the SEBI Act and Regulation 3(b) to (d), 4(1), 4(2)(e) of the PFUTP Regulations is also not established.

### **Part E**

#### **Fictitious trades executed through SIC Stock & Services Pvt. Ltd. (Noticee no. 12)**

65. SCN2 alleged that SIC created artificial volumes in the scrip Austral Coke by executing self-trades / reversal trades in the scrip on behalf of three clients namely, Chetan Wadhwa, Vijay Yuvraj Nanvare, Narendrabhai Amin.
66. On BSE, SIC executed the fictitious trades in the name of Shri Chetan Wadhwa (client code-C064) wherein it bought and sold 6,96,897 shares. Similarly, on NSE SIC has executed self-trades in the name of Narendrabhai Amin (client code-N056), wherein

it bought and sold 7,94,790 shares. The time difference between the buy and sell orders of Shri Chetan Wadhwa on BSE was just 4 seconds for all the trades. On NSE, the time difference between the buy and sell orders of Narendrabhai Amin was 2 seconds to 1.56 minutes.

67. SIC also executed reversal trade for two of his clients, wherein on August 26, 2009, Chetan Wadhwa, first bought shares from Vijay Yuvraj Nanvare at 14:10:21 and then Chetan Wadhwa sold 99,000 shares back to Vijay Yuvraj Nanvare within 3 minutes at 14:13:14 on the same day and the time difference between sell and buy orders was 4 and 6 seconds respectively. Chetan Wadhwa placed the buy order for 1 lac shares at 14:10:20 and Vijay Yuvraj Nanvare placed the sell order for 1 lac shares at 14:10:14. The trade between the two was executed at 14.10.21 for 1 lac shares. Again Chetan Wadhwa placed the sell order for 1 lac shares and Vijay Yuvraj Nanvare placed the buy order for 1 lac shares at 14:13:14. The trade between the two was executed at 14.13.14 for 99,000 shares and balance 1,000 shares matched in two trades with two clients. The said two trades were also executed at the same time as that of the trade between Chetan Wadhwa and Vijay Yuvraj Nanvare i.e. at 14.13.14 and the sell orders were entered prior to the buy orders.
68. The self-trades and reversal trades executed on BSE on August 26, 27, 28 and 31, 2009 is provided as below:

Self-trades at BSE

| Client Name   | Date      | Self trade volume (no. of shares) | No. of trades |
|---------------|-----------|-----------------------------------|---------------|
| Chetan Wadhwa | 8/26/2009 | 98321                             | 1             |
| Chetan Wadhwa | 8/27/2009 | 1,99,864                          | 1             |
| Chetan Wadhwa | 8/28/2009 | 1,99,143                          | 1             |
| Chetan Wadhwa | 8/31/2009 | 1,99,569                          | 1             |
| Total         |           | 6,96,897                          | 4             |

Reversal trade volume at BSE

| TRADE DATE | QTY | CLIENT NAME | CP CLIENT NAME | TRADE TIME | Time Diif Bet. Buy and sell |
|------------|-----|-------------|----------------|------------|-----------------------------|
|------------|-----|-------------|----------------|------------|-----------------------------|

|            |          |                      |                      |          |              |
|------------|----------|----------------------|----------------------|----------|--------------|
|            |          |                      |                      |          | <b>Order</b> |
| 26/08/2009 | 1,00,000 | Chetan Wadhwa        | Vijay Yuvraj Nanvare | 14.10.21 | 0:00:06      |
| 26/08/2009 | 99,000   | Vijay Yuvraj Nanvare | Chetan Wadhwa        | 14.13.14 | 0:00:04      |
| Total      | 1,99,000 |                      |                      |          |              |

#### Self-trades at NSE

| Client Name       | Date      | Self trade volume (no. of shares)           | No. of trades |
|-------------------|-----------|---------------------------------------------|---------------|
| Narendrabhai Amin | 8/26/2009 | 1,99,220                                    | 2             |
| Narendrabhai Amin | 8/27/2009 | 1,99,172                                    | 2             |
| Narendrabhai Amin | 8/28/2009 | 1,85,200 (mentioned as 1,99,800 in the SCN) | 3             |
| Narendrabhai Amin | 8/31/2009 | 1,96,598                                    | 3             |
| Total             |           | 7,80,190                                    | 10            |

69. I note that Noticee no. 12, SIC is alleged to have created artificial volumes in the scrip on account of executing self-trades and reversal trades in the scrip of Austral Coke just prior to the proposed Board Meeting to be held on September 03, 2009 to inter alia discuss raising of funds up to 200 Million USD through QIP.
70. As regards the allegation of executing self-trades, SEBI vide circular dated May 16, 2017 has laid down the policy to deal with ongoing cases involving allegation of self-trade. The policy states that intention is a sine quo non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under PFUTP Regulations, 2003. Accordingly, mere occurrence of self-trades should not be considered as per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud as is done in cases of synchronised trades. Therefore, in all matters of self-trades, an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting

evidence and the manipulation caused by indulging in self-trades should be clearly brought out. The policy also provides that the quasi-judicial authority may assess on the basis of SCN/ investigation report whether any manipulation is arising out of self-trade or any intention to enter into self-trade is evident from the material on record. If the manipulation or intent can be established the same may be proceeded with as approved. However, if no intention or manipulation is evident from the case and the only charge is mere occurrence of self-trades, then the entity may be exonerated by the quasi-judicial authority. Further, while assessing the manipulative intent, the volume transacted may also be considered in addition to the other factors.

71. In the present case, the volume of self-trades executed by SIC is as follows:

| <b>Sno.</b> | <b>Exchange</b> | <b>Volume of Self trades (A)</b> | <b>Total Market Volume on 26/08/2009, 27/08/2009, 28/08, 2009, 31/08/2009 (B)</b> |
|-------------|-----------------|----------------------------------|-----------------------------------------------------------------------------------|
| 1           | BSE             | 696897                           | 4219718                                                                           |
| 2           | NSE             | 780190                           | 11432264                                                                          |
| 3           | Total (1+2)     | 1477087                          | 15651982                                                                          |

The total percentage of self-trades to the total market volume would be the total quantity of self-trades divided by the total market volume i.e.  $1477087/15651982 \times 100 = 9.43\%$  of self-trades to the total market volume.

The volume of reversal trades executed by SIC is as follows:

| <b>TRADE DATE</b> | <b>Volume of reversal trades (A)</b> | <b>Total Market Volume on 26/08/2009 (B)</b> |
|-------------------|--------------------------------------|----------------------------------------------|
| 26/08/2009        | 199000                               | 3867989                                      |

The total percentage of reversal trades to the total market would be the total quantity of reversal trades divided by the total market volume i.e.  $199000/3867989 \times 100 = 5.14\%$  of self-trades to the total market volume.

72. SIC has *inter alia* submitted the following via reply dated August 01, 2017-

With regard to analysis of major trading days at Para 43, it is submitted that SIC has not traded on behalf of the clients on any of the days listed in the said para. Hence, there is no allegation of being part of scheme, artifice or device for sharp rise in trading volume or generating interest in the scrip when the volume in the scrip had declined. We, therefore, submit that the allegation of creating artificial volume by trading on behalf of the clients and no allegation of trading on a day when there is a sharp rise in volume as compared to previous day appears to be contradictory. This itself shows that we did not connive with our clients to create artificial volume but only executed orders on the basis of instructions given by them. In view of the same, we deny that we have entered into alleged fictitious trades, self trades, synchronized trades etc. and created artificial volume.

With regard to LTP analysis at BSE & NSE provided in Para 44 & 45 of the SCN, we submit that none of our clients' trades carried out have impacted the price of the scrip and there is no allegation against us for having executed these trades.

With regard to observations contained at Para 46, in so far as the allegations of fictitious trades carried out by SIC on behalf of Mr Chetan is concerned, it is submitted as under:-

SIC has merely executed the transactions on behalf of its constituents as a broker on the electronic, faceless trading platform of the stock exchanges wherein the counter party is not known. The issuing authority has failed to consider that:-

- in the electronic order matching mechanism, a broker does not have any control over the counter party of the orders on behalf of clients entered into by us. We religiously enter the orders into the system on the basis of instructions received from the client and inform him about the trades getting executed.

- broker only facilitates and executes the transactions on behalf of the clients and on that basis alone a broker cannot by stretch of imagination be connected to a client.

At the relevant time, the Noticee had executed alleged trades on behalf of the constituents as per their instructions as to price, time and quantity in normal course of business and in good faith on screen based trading system. The Noticee had no role whatsoever in determining the price, quantity or timing of the transactions which all were decided and instructed by the constituents.

In view of the above, we deny that we have executed fictitious trades in the name of Mr Chetan.

.....

Through off line examination of the trading activity of the client, SIC carried out certain due diligence at that time and immediately stopped trading for the clients after four days and did not trade for them thereafter in this scrip and any other scrip in this manner. Considering the trading pattern in this case and their overall trading pattern, we have stopped trading for all the three clients in June 2010 & July 2010 i.e we have not carried out any trade for them for the last seven years.

In so far as the allegation of time difference of 4 seconds, it is submitted that there is nothing unusual for a client to square off his position at any time. The clients who are carrying out jobbing/ arbitrage transactions at the exchange follow this phenomenon in the ordinary course of business.”

73. I note that the percentage of self-trades to the total market volume being around 9.43% is substantial. The time difference between buy and sell orders entered by SIC on behalf of its client Shri Chetan Wadhwa on BSE was 4 seconds for all the trades. On NSE, the time difference between buy and sell orders entered by SIC on behalf of its client Narendrabhai Amin was 2 seconds to 1.56 seconds. In the present case SIC has contended that SIC has executed trades as per the instructions of its

clients and in the electronic order matching mechanism, a broker does not have any control over the counter party of the orders. SIC also submitted that the orders were entered into the system on the basis of instructions received from the clients and informed them about the trades getting executed. In this regard, I note that the fact that SIC executed trades through an electronic order matching mechanism does not prove that while executing the trades for its clients SIC did not have any manipulative intent. Further, it is not the case of SIC that it executed trades from different terminals or locations or were not carried out automatically without any human intervention. The case of SIC is that it has executed these trades on the instruction of its clients without any intention to manipulate. As mentioned above, the time difference of executing buy and sell orders resulting in self-trades for the client was 4 seconds at BSE and 2 seconds to 1.56 seconds at NSE which along with the large volume of trade quantity clearly displays the intention of SIC to create artificial volumes in the scrip of Austral Coke. In this regard, I find that the frequency, timing, number of self-trades i.e. 14 self-trades and the substantial volume of self-trades i.e. percentage of self-trades to the total market volume being around 9.43%, constitute manipulative intention of SIC to create artificial volumes in the scrip of Austral coke. Such large volume of trades created an impression that the scrip was doing well in terms of volume and / or price thereby influencing the investors to deal in the scrip. In view of the above, I find that SIC by executing substantial volume of self-trades on behalf of its clients violated Regulations 3(d), 4(1) and 4(2)(a) of PFUTP Regulations.

74. Having regard to the fact that Noticee no. 12 is a registered intermediary who are generally required to be proceeded for disciplinary proceedings under SEBI (Intermediaries) Regulations, 2008 for the violation of securities laws, and in view of Hon'ble SAT's order dated September 02, 2022 passed in the matter of SIC Stock & Services Pvt. Ltd. vs. SEBI, I find that directions under Section 11B(1) of SEBI Act, 1992 (for which SCN2 has been issued to Noticee no. 12) are not warranted against Noticee no. 12.
75. I note that by virtue of ad-interim ex-parte order dated September 01, 2009, Noticee no. 1 i.e. Austral Coke Projects Limited was prohibited from raising any further capital in any manner, directly or indirectly, whatsoever till further orders.

**Directions:**

76. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(4),11B(1) of SEBI Act, 1992 read with Section 19 of SEBI Act, 1992, direct as under:
- i. Noticee no. 1 is hereby directed, to undertake the measures to bring back or recover Rs. 29.42 Crore of the proceeds of IPO within a period of one year. The present directors of Noticee no. 1, shall take appropriate steps for the compliance of this direction by Noticee no. 1 and the Audit Committee of Noticee no. 1 shall report the progress of the same to the Board of Directors of Noticee no. 1.
  - ii. The Noticees no. 1, 2, 3, 4 and 5 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months from the date of this order or till the direction of bringing back or recovering Rs. 29.42 Crore of the proceeds of IPO, as given in para 76(i) above, is complied with.
  - iii. The proceedings with respect to Noticee no. 6 stands abated, as discussed in paragraph 51 above.
  - iv. The proceedings with respect to Noticee nos. 7-11, are disposed of in view of the discussion at paragraph 64 above.
  - v. The proceedings with respect to Noticee no. 12, are disposed of in view of the discussion at paragraph 74 above.
77. During the period of restraint, as directed in para 76 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.

78. The obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
79. In terms of Company Auditor's Report Order, 2000 (CARO), the Statutory Auditors of the Company are required to report on the utilisation of funds raised by the Company through IPO. Although, the said Order is applicable for statutory audits commencing on or after the 1st April, 2021 and the funds in the present case were raised by the Company in the year 2008, the statutory auditors may consider incorporating the status of recovery of IPO proceeds as directed in para 76 above in their report.
80. This Order comes into force with immediate effect.
81. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Sd-

**Place: Mumbai**

**Date: December 05, 2022**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**