BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2022-23/18165-18171]

[ADJUDICATION ORDER NO. Order/MC/RM/2022-23/18172-18187]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 4(1) OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

1. **Austral Coke and Projects Ltd**. **(now known as Greenearth Resources & Projects Ltd.**) (PAN AABCN1393B) having address at Upavan Building 7/106 ,1st Floor, D.N. Nagar, Mumbai, 400053
2. **Rishi Raj Agarwal (PAN AEQPA0755E)** having address at Shiv Parvati CHS Ltd., A Wing, Flat no. 703/704, MAHADA, Near Versova Telephone Exchange Andheri (West), Mumbai - 400053
3. **Ratan Lal Tamakhuwala (PAN ACUPT7280P),** having address at A-703, Shiv Parvati CHS Ltd. SVP Rd, Nr Versova Telephone Exchange Andheri (w), Mumbai -400053
4. **Prem Ranjan Kumar Chaurasia, (PAN APZPKZ1943C**) having address at Sirsia Bazar Bela Block Parihar Sitamarhi, Bihar-843324
5. **Shri Alok Bansal** having address at Old Kiledar Estate Building No. 1, 1st floor, S.V. Road Jogeshwari West, Mumbai- 400102,
6. **Sunil Mandloi (PAN ARQPM8797H)** having address at
   i. Astha Medical, Maksi, Shajapur Madhya Pradesh – 465106
   ii. Madhavanat 402 Madhavanat, CHSL Dr. R P Road, Dombivli, Kalyan, Thane - 421201
7. **M M Damani** having address at Jubilee Mansion, Flat no. 3, Yari Road, Versova, Andheri (West)Mumbai – 400061
8. **Ajit kumar Jindal (PAN AFDPJ4129H)** having address at
   i. 25 Black burn Lane, 3rd Floor, Room no. 308, Kolkata – 700012, and

ii. CB-37, Sector 1, Salt lake, 1st Floor, Kolkata West Bengal – 700064

9. **Chirag Tanna (PAN AFGPT7375A)** having address at 34 Lakdawala Building, 2nd floor 9/11 Bhaskar Lane, Kalbadevi, Mumbai.
10. **Umesh Dhan Singh (PAN BRMPS9721A)** having address at Flat no. 8, 1st Floor, Building no. F Mahada, M.P. Mill Compound, Tardeo, Mumbai - 400034
11. **K.K. Finstock (PAN AAHFK7686F)** having address at 337- Hind Rajasthan Building, Dadasaheb Phalke Road, Dadar(e), Mumbai- 400014.
12. **Arcadia Share and Stock Brokers Pvt Ltd (PAN AAACA4562G)** having address at 328, Ninad Co-op Housing, 1st Floor, Building no. 7, Service Road, Near Bhavishya Nidhi Bhavan, Bandra (East), Mumbai – 400051
13. **Setu Securities Pvt. Ltd. (PAN AAGCS3919K)** having address at B-401, Avirahi Building, Near Simpoli Signal, S.V. Road, Borivali (West), Mumbai – 400092
14. **Chetan Wadhwa (PAN AAUPW9686L)** having address at 41, Vishram Bhavan 4th Floor, Dr. M.B. Velkar Marg, Mumbai- 400002
15. **Narendrabhai Amin (PAN AMPGPA3864Q)** having address at F/63, Shandilya Flats, Rakhiyal, Ahmedabad – 380001
16. **Vijay Yuvraj Nanvare (PAN AFLPN2853G)** having address at 55, New Textile Mill, NiDiwal Gautam Nagar Chhapra Raipur, Ahmedabad- 380001
17. **S.K. Chowdhary (PAN ACQPC6525N)** having address at C-7, First floor, Paschim Marg, Vasant Vihar, Delhi
18. **Rajendra Kumar Khaitan (PAN AGBPK7497A)** having address at 43, Bondel Road, Kolkata - 700019
19. **M. K Sinha, (PAN AABPN8367H)** having address at 1604, Orchid, Vasant Valley Complex, film city road, Mumbai
20. **Allbank Finance Limited (PAN AACCA4014D) (now known as Allahabad Bank)** having address at 1st floor, Allahabad Bank Building, 37, Mumbai Samachar Marg, Fort, Mumbai 400023

In the matter of Austral Coke and Projects Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') initiated adjudication proceedings in the matter of Austral Coke and Projects Ltd. ("**Austral Coke/Company/APCL")** :

   i. Under Section 15HA and 15HB of the SEBI Act, against Austral Coke and Projects Ltd. ("**Noticee 1**"), Ratan Lal Tamakhuwala (**"Tamakhuwala**"/ "**Noticee 3**'), Rishi Raj Agarwal ("**Rishi**"/"**Noticee 2'**), S.K.Chowdhary ("**SK**"/ "**Noticee 17'**), Rajendra Kumar Khaitan ("**Rajendra**"/ "**Noticee 18**") and MK Sinha ("**MK**" / "**Noticee 19**") for the alleged violation of section 12A of the SEBI Act, 1992 and regulation 3(b) to (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"), clause 6.2 of SEBI Disclosure & Investor Protection Guidelines, 2000 (hereinafter referred to as "DIP Guidelines') read with Regulation 57(1) and 111 (2) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "ICDR Regulations').

   ii. Under Section 15HA of the SEBI Act, against **Noticee 1**, **Noticee 2**, **Noticee 3**, Prem Ranjan Kumar Chaurasia ("**Chaurasia**"/**'Noticee 4**"), Alok Bansal ("**Alok**"/ "**Noticee 5**), Sunil Mandloi ("**Sunil**"/"**Noticee 6**"), M M Damani ("**Damani"**/ "**Noticee 7"**) for the alleged 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

   iii. Under Section 15HA of the SEBI Act against Ajit Kumar Jindal (**"Ajit"/"Noticee 8**') for the alleged violation of section 12A of the SEBI Act and regulation 3(b) to (d), 4(1), of PFUTP Regulations

   iv. Under Section 15A(a) and 15HA of the SEBI Act against Chirag Tanna ("**Chirag"/"Noticee 9**") and Umesh Dhan Singh ("**Umesh"/ "Noticee 10**")for the alleged violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations

v. under Section 15HA of the SEBI Act against K.K. Finstock **("Finstock/ "Noticee 11")**, Arcadia Share & Stock Broker Pvt. Ltd. (**"Arcadia"/ "Noticee 12"**) and Setu Securities Pvt. Ltd. (" **Setu"/"Noticee 13**") for the alleged violation of the section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations

vi. Under Section 15HA of the SEBI Act against Chetan Wadhwa ("**Chetan"/Noticee 14"**), Narendrabhai Amin Wadhwa ("**Narendrabhai"/"Noticee 15**") and Vijay Yuvraj Nanvare (**"Nanvare"/"Noticee 16**") for the alleged violation of the section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e) of PFUTP Regulations.

vii. under Section 15HB of the SEBI Act against M/s AIIBank Finance Limited **('AllBank/ Noticee 20")** for the alleged violation of provisions of Clause 5.1, Schedule Ill to the DIP Guidelines read with Regulations 64(1) and 8(2)(b) of ICDR Regulations [read with Regulation 115 of ICDR Regulations] and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule Ill to the SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as 'Merchant Bankers Regulations').

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri D Ravi Kumar was appointed as the Adjudicating Officer vide communique dated September 02, 2013 under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15 HA, 15HB, 15A(a) of the SEBI Act, the aforesaid alleged violations by the Noticees. Subsequently, the matters was transferred to Shri. K Sarvanan vide communique dated November 30, 2017, then to Shri. Parag Basu vide communique dated July 14, 2021. The matter was transferred to undersigned vide communique dated March 11, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notices No. A&E/DRK/CS/9307/2014 dated March 26, 2014, No.A&E/DRK/CS/9542/2014 dated March 26, 2014 and No.SEBI/HO/A&E/EAD/KS/AA/19659/2018 dated July 12, 2018 (hereinafter be referred to as, the "**SCN 1, SCN 2 and SCN 3 respectively**") was served upon the Noticees under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticees under Sections 15 HA, 15HB, 15A(a) of SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

SCN 1

5. SEBI conducted an investigation in the matter of Austral Coke. 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 ACPL were listed on BSE and NSE.

6. 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.

7. Austral Coke, vide letter dated December 8, 2008, 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.

8. It was alleged that Austral Coke had made certain misstatements in its prospectus, which are given 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

9. It was observed that Austral Coke had made misstatements in its prospectus regarding production capacity of the LAM Coke Plant.

10. Noticee 20 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.

11. Noticee 20, 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.

12. Noticee 20 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.

13. 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 (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, 2008	5625	Cheque no. 783991 dated September 2, 2008	August 18, 2008
4.	January 23, 2009	6742	Cash	January 23, 2009

14. 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. Badrapurkar. 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 Badrapurkar stating that facilities were in place in 1st week of July 2008.

15. 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.

16. 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).

17. 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.

18. 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, it was noticed that besides the four chimneys and ovens, there was only a small two story structure and there was no other building at the LAM coke site.

19. In the statement of Shri Gopal Tamakhuwala (Gopal), General Manager of Austral Coke, recorded on September 14 and 15, 2009. 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, no commercial production had commenced from the balance 22 ovens due to technical fault, as on the date of inspection from the 4th chimney.

20. Gopal further submitted the following:
    a) 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.
    b) 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.

c) 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.

d) 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.

21. 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-

22. It was observed that, 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

23. 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. 30, 2008	**Dec. 31, 2008**	**March 31, 2009**
I	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

24. 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.

25. 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.

26. 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.

27. Austral Coke, vide its letter dated February 22, 2012, informed SEBI that:

a The break up for Rs.99.6 crores spent from the IPO proceeds is as follows: Rs.52.15 for plant and machinery and Rs.47.50 crores for prospecting coal mines.

b 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 Rs.99.66 crores and Rs.89.92 crores is due to clerical error in groupings of the expenditure.

c 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 Rs.1.21 crores for prepayment of high cost debt and Rs.37.92 for general corporate purpose which is margin for additional working capital/ purchase of fixed assets.

28. 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.

29. 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.

30. 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:

Sr. No.	Name of the payee	Amount of Debit (Rs.)	Purpose
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/-	
1 1 .	Century Tradelink Pvt. Ltd.	6,54,57,340/-	Fire Bricks
Total		**139,25,63,340/-**	

31. 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.

32. Also 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 (Noticee 8).

33. 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/-
	Total	52,08,47,340/-		29,42,87,000/-

34. 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.

35. In view of the above, it was alleged that Austral Coke has made wrong disclosures regarding the capacity of LAM Coke plant of Austral Coke in its RHP. The company also made wrong disclosure regarding disassociation of its Chairman & MD from Gujarat NRE Coke. The company also 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 were alleged to have violated Section 12A (a), (b) and (c) of SEBI Act, 1 992 read with Regulations 3 (b), (c), (d), 4(1) ,4 (2) (e), (k) and (r) of PFUTP Regulations.

36. It was also alleged that Noticees 1,2,3,17,18 and 19 violated the provisions of 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 PFUTP Regulations and clause 6.2 of DIP Guidelines read with Regulation 57(1) and 1 1 1 (2) of ICDR Regulations, 2009. The texts of the same has reproduced as follows:

SEBI Act:

Section 12 (A) 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 recognised 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 recognized 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;*

PFUTP Regulations:

3.*Prohibition of certain dealings in securities No person shall directly or indirectly—*

(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 thereunder;*

(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 thereunder.*

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

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

(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:—*

(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 and which may influence the decision of the investors;

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

DIP Guidelines read with ICDR Regulations:

6.2 The prospectus shall 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.

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

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;*

37. *The aforesaid alleged violations, if established, make the aforesaid Noticees liable for penalty under section 15 HA & section 15HB of the SEBI Act which reads as under:*

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided

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

SCN 2

38. 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.

39. From the Major corporate announcements (provided as Annexure-2 of the SCN), from September 2008 to September 2009, it was observed that within a span of one month just before the scheduled board meeting to discuss raising of US$200 million through QIP, Austral Coke made four major corporate announcements, while there was no such announcement in almost 11 months after the listing of Austral Coke on September 4, 2008. 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:

	Date of corporate Announcements	**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	5,91,931	5,57,582	6.16
2	6/8/2009	437.45	430.75	1.56	528982	481,588	9.84
3	10/8/2009	47.15	44.9	5.01	4573584	32,41 ,557	41.09
4	26/08/2009	51.65	53.3	-3.10	1532775	18,59,359	-17.56

40. 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.

41. Vide letter dated March 03, 2011, Austral Coke informed that it'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

42. 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 crore)**	**F.Y. 2007-08 in crore)**	**F.Y. 2008-09 in crore)**	**Total in crore)**
Purchases	12.87	145.27	394.83	552.97
Sales	--	100.04	394.71	494.75

43. 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.

44. 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.

45. 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:
   a. 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.

b. 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.

c. 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 .

d. 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 end 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.

e. 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.

f. 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.

g. 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.

46. 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.

47. 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.

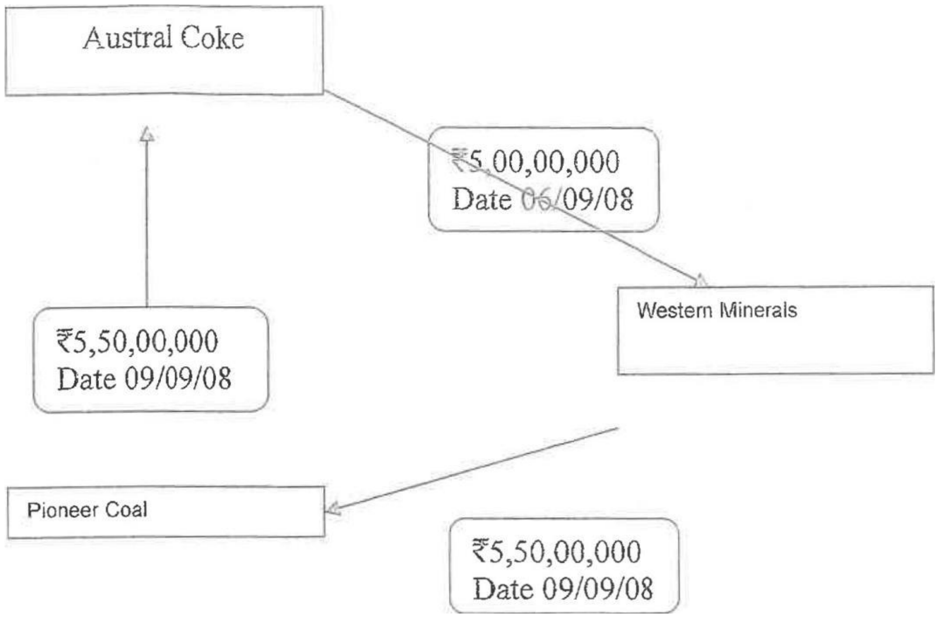
48. Further, it was observed that a list of 12 entities belonging to Noticee 8, who had shown to have supplied raw materials as well as finished goods to Austral Coke, the GST(VAT) No. end CST no. shown by the said entitles either does

not exist or belong to some other entity. The same was attached as Annexure 3 of SCN 2.

49. 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.

50. 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.

51. For example, the following chart shows how the funds were routed back to Austral Coke through the entities of Noticee 8.



52. 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.

53. The statement of Noticee 8 was recorded on April 8, 2011. The major submissions made by Noticee 8 are as follows:
   a. That through Mr. Nikhil Jalan he met Noticee 2 sometime in 2007.
   b. 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-6 of the SCN 2.

54. 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.

55. 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.

<u>Manipulation of the price/ volume of the scrip</u>

56. The price of the scrip increased from closing price of Rs.243.75 on July 13, 2009 to a high of Rs.452 on August 6, 2009. After the stock split on August 7, 2009, the price of scrip reached Rs.57.4 on August 25, 2009 and closed Rs.51.5 on August 31, 2009. As mentioned earlier, this price rise was just prior to the Austral Coke's proposed QIP for US$200 million, whose pricing was dependent

on the scrip's market price. The period from July 13, 2009 to August 31, 2009 was, hence, taken as the investigation period for analysis of trading in the scrip.

57. The trading period in the scrip from July 13 to August 30, 2009 is divided into two periods

   a. Period- 1 (pre-split period) and

   b. Period-2 (post-split period)

Period- (Pre-split Period)

58. On BSE, though the price of the scrip increased from Rs. 243.75 to Rs. 452 during the period July 13, 2009 to August 6, 2009, there was no significant increase in the trading volume in the scrip. The average daily trading volume of the scrip was 19,544 shares. in the three months period prior to this period, i.e. during April 1, 2009 to July 12, 2009, the trading volume in the scrip was comparatively low with total trading volume of 73,11,692 shares and average daily trading volume of 109129 shares. During the said period, the daily trading volume in the scrip was less than 1 lac shares on 45 trading days out of a total of 67 trading days. During the period July 13, 2009 to August 6, 2009, the highest daily trading volume was seen on July 21 & 22, 2009 with trading volume of 5,57,582 shares and 5,91,931 shares respectively. The company made a corporate announcement dated July 21, 2009 regarding fixing of the record date as August 10, 2009 for sub-division of equity shares of Rs.10/- each into 10 equity shares of Re. 1/- each. Just prior to the effective date of the stock split, the scrip also witnessed high trading volume of 3,60,349 shares, 4,81 ,588 shares and 528,982 shares on August 4, 5 and 6, 2009 respectively. After the stock split, there was price rise in the scrip with spurt in trading volume in certain days.

59. Similarly on NSE, though the price of the scrip increased from 242 to 453.9 during the period July 13, 2009 to August 6, 2009, there was no significant increase in the trading volume in the scrip. The average daily trading volume of the scrip was shares. High trading volume was seen on July 21 & 22, 2009 where the trading volume in the scrip of 6,29,879 and 7,36,528 shares respectively. The company made a corporate announcement dated July 21, 2009 regarding fixing of the records date as August 10, 2009 for sub-division of equity shares of Rs. 10/- each into 10 equity shares of Re. 1/- each. Just prior to the effective date of the stock split, the scrip witnessed high trading volume with trading volume of 3,73,098, 4,51,780 and 6,26,817 shares on August 5 and August 6, 2009 respectively.

60. The trading of the top five clients at BSE i.e. Saraswati Vincom (AAECS4656B), Noticee 9 (AFGPT7375A), Noticee 10 (BRMPS9721A), Kanudia Capital (AAACK8091Q) and Noticee 1 1 (AAHFK7686F) among themselves is provided as below:

PAN No.	**AAAC K8C91Q**	**AAECS4656B**	**AAHFK7686F**	**AFGPT7375A**	**BRMPS9721A**	**Grand Total**
AAACK8091Q	--	4-3865	17189	9798	1173	72025
AAECS4656B	9542	5206	4031	10163	24114	53056
AAHFK7686F	9481	3832	3795	22474	16148	55730
AFGPT7375A	5972	23240	17352	5681	--	52245
BRMPS9721A	1480	22682	12681	--	531	37374.
Grand Total	26,475	98,825	55,048	--	41 ,966	2,70,430

61. From the above, it can be seen that the trading of the top five clients among themselves was 2,70,430 shares, which was around 25% of their total trading volume.

62. The top five clients on NSE were the same as that of BSE i.e. Saraswati Vincom (AAECS4656B), Noticee 9 (AFGPT7375A), Noticee 10 (BRMPS9721A), Kanudia Capital (AAACK8091Q) and Noticee 11 (AAHFK7686F). The trading among themselves is provided as below:

PAN No.	**AAACK8091Q**	**AAECS4656B**	**AAHFK7686F**	**AFGPT7375A**	**BRMPS9721A**	**Grand Total**
AAACK8091Q	0	12342	5195	3797	10676	32010
AAECS4656B	591	1000	3195	13860	1741	20387
AAHFK7686F	4648	3253	2926	9660	10784	31.271
'AFGPT7375A	9026	8207	10908	5855	137	34133
BRMPS9721A	17986	9308	11364	71	1804	40533
Total	**32,251**	**34,110**	**33,588**	**33,243**	**25,142**	**1,58,334**

63. From the above, it can be seen that the trading of the top five clients among themselves was 1,58,334 shares, which was around 19% of their toted trading volume.

Period-2 (Post Split period)

64. Sarswati Vincom Limited, Kanudia Capital and Management Services Private Limited, Noticee 9, Chetan Gobindram Wadhwa and DRB Securities Pvt. Ltd were the top five clients, both on the buy and self-side on BSE.

65. Kanudia Capital and Management Services Private Limited, Noticee 9, Sarswati Vincom Limited, Standard Securities & Investment intermediates Ltd,

Narendrabhai Amin were the top five clients, both on the buy and sell side on NSE.

66. It was observed that on certain trading days, there was a sharp rise in the trading volume of the scrip as compared to their previous trading days. The details of the said trading days are as provided below:

	Date	Trading volume	Trading volume on the previous day
1	15/07/2009	2,42,343	86,466
2	21/07/2009	5,57,582	78,534
3	22/07/2009	5,91,931	5,57,582
4	04/08/2009	3,60,349	1,27,184
5	05/08/2009	4,81 ,588	3,60,349
6	06/08/2009	528,982	4,81,588
7	07/08/2009	32,41 ,557	5,28,982 (stock split on the next day)
8	10/08/2009	45,73,584	32,41 ,557
9	19/08/2009	11,75,445	6,05,174
10	24/08/2009	22,06,496	10,43,602

67. It was observed that Noticee 9, Noticee 10, Saraswati Vincom, Kanudia Capital and Noticee 11 were among the top buying clients on most of the days on which the scrip witnessed large trading volume.

Fund flow Analysis

68. Noticee 9 had traded through the broker B.N.Rathi Securities Ltd. ('BNRS f) majorly in the scrip of Austral Coke during the period dune 19, 2009 to August 10, 2009. The major net purchases of Noticee 9 in the scrip of Austral Coke during the period are as given below:

Date	Name of the client	Net Amount (in as per trading in Austral Coke on BSE end NSE

19/06/2009	Notice 9 (Chirag Tanna)	403,032
23/06/2009	Noticee 9	6, 36, 944
25/06/2009	Noticee 9	17,74,472
9/7/2009	Noticee 9	10,23,536
13/07/2009	Noticee 9	2,68,646
20/07/2009	Noticee 9	10,69,736
28/07/2009	Noticee 9	4,40,265
10/8/2009	Noticee 9	16,49,833

69. Analysis of the client ledger of Noticee 9 with the BNRS revealed that a total of Rs.25 lacs was received on May 30, 2009 from his account held with Pratap Co-operative Bank Ltd. The further analysis of the bank account of Noticee 9 revealed that Rs.10 lacs, Rs. 6 lacs and Rs. 9 lacs was debited from his account on May 29, Jun 02 and Jun 02, 2009 respectively, and paid to the stock broker BNRS. As on May 28, 2009, the account balance of Noticee 9 was 2,067. Subsequently, on May 28, 2009, he received an amount of 10 lacs by way of demand draft from Meera Enterprises account held with Pen Co-op Bank, which was paid to the broker on May 29, 2009. Again an amount of Rs.15 lacs was received by way of demand draft from Amrut Enterprises account held with Pen Co-op Bank on Jun 01, 2009, which was paid to the BNRS on June 02, 2009 in lots of 6 lacs and 9 lacs. Further trail of these payments received in the account of Noticee 9 revealed that Pen Bank did not have any records of Meera Enterprises and Amrut Enterprises as per the KYC norms prescribed by RBI. Pen Co-op. Bank vide their letter dated April 11, 2011 informed that the aforesaid demand drafts were issued in favour of Noticee 9, through fake accounts and that police enquiries regarding the fake accounts of Meera Enterprise and Amrut Enterprise are in progress.

70. Noticee 10, had traded through the broker BNRS majorly in the scrip of Austral Coke during the period May 19, 2009 to July 28, 2009. The major net purchases of Noticee 10 in the scrip of Austral Coke during the period are as given below:

Date	Name of the client	Net Amount (in as per trading in Austral Coke on BSE and NSE
19-May-09	Noticee 10 (Umesh Dhan Singh)	370,354
25-May-09	Noticee 10	42, 12,384
25-Jun-09	Noticee 10	15,05,745
10-Jul-09	Noticee 10	8,55,526
1 3-Jul-09	Noticee 10	7,90,171
14-Jul-09	Noticee 10	8,75,697
20-Jul-09	Noticee 10	24,11,447
28-Jul-09	Noticee 10	19,31,754

71. The analysis of the client ledger of Noticee 10 with the BNRS revealed that a total of Rs.10 lacs (in two lots of Rs.5 lacs each) was received on May 15, 2009 and Rs.6.80 lacs and Rs.8 lacs was received on May 30, 2009 from his account held with Pratap Co-operative Bank Ltd. The further analysis of the bank account of Noticee 10 revealed that Rs.10 lacs (in two lots of 5 lacs each), Rs.8 lacs and Rs.6.80 lacs was debited from his account on May 16, Jun 02 and Jun 02, 2009 respectively and paid to the broker BNRS. As on May 14, 2009, Noticee 10 account balance was 11,321. Subsequently, on May 15, 2009, he received an amount of Rs, 10 lacs (Rs.5 lacs in two lots) from one Rajnikant Gulabchand Shah's account held with ICICI Bank Ltd., which was paid to the broker on May 15, 2009. Again an amount of Rs.15 lacs was received by way of demand draft from Amrut Enterprises account held with Pen Co-op Bank on Jun 01, 2009, which was paid to the broker on June 02, 2009 in two lots of Rs.8

lacs and 6.80 lacs. Further trail of these payments received in the account of Noticee 10 revealed that Pen Co-op Bank did not have any records of Amrut Enterprise as per the KYC norms prescribed by RBI. Pen Co-op. Bank vide their letter dated April 11, 2011 informed that the aforesaid demand draft of Rs.15 lacs was issued in favour of Noticee 10, through fake account and that police enquiries regarding the fake account of Amrut Enterprise is in progress.

72. From the same, it was alleged that funds used by Noticee 9 and Noticee 10 for the purpose of their trading came from fake accounts.

LTP Analysis-BSE during the investigation period

73. Analysis of the trading on BSE, revealed that the trades executed by Noticee 10, who had bought 19,94,761 shares had net positive impact of 541. Noticee 11 had bought 6,11,054 shares which had a net positive LTP impact of Rs. 461.7. The details of the trades of entities who had contributed for a positive LTP of more than 20 are provided as below:

	All trades			LTP Diff. > O				LTP Diff. < O		LTP Diff. = 0	
Name	**Sum of LTP diff**	**Sum of Qty**	**No. of trades**	**LTP impact**	**QTY traded**	**No. of trades**	**LTP Impact**	**Qty traded**	**No. of trades**	**QTY traded**	**No. of trades**
Noticee 9	537	1994761	6608	824	495716	2796	-287	349384	142	1149661	2670
Noticee 10	4-61	611054	3201	651	172174	1463	-1 89	88790	533	350090	1205
Sunita C. Patil	46	275	7	48	105	4	-1.95	1	1	169	2

OPG Securities	33	116478	567	55	34308	233	-22.15	7583	64	74587	270
Noticee 12	25	34-6993	1544	107	73772	415	-81.95	55811	342	217410	787

74. The individual trades of the aforesaid five clients with the impact on the price of the scrip were provided at Annexure-9.

LTP Analysis-NSE

75. Analysis of the trading on NSE, revealed that the trades executed by Noticee 10, who had bought 3,59,593 shares, had a net positive impact of 210.25. Similarly, Noticee 9, who bought a total of 16,1 1 ,541 shares had a net positive impact of Rs. 102.10. Noticee 13 who bought 21 ,880 shares had a net positive impact of Rs.67.20. Noticee 11 who bought 171,609 shares had a net positive impact of Rs.56.50. Noticee 12 who bought 3,07,064 shares had a net positive impact of Rs.40.50. The details of the trades of entities, who had contributed for a positive LTP of more than Rs. 20 are provided as below

Name of the Client	All trades			LTP Diff. > O			LTP Diff. < O			LTP Diff.=0	
	Sum of diff	Sum of Qty	No of trades	LTP impact	Qty traded	No. of trades	LTP impact	Qty traded	No. of trade S	Qty traded	No of trade S
Noticee 10	210.25	359593	3625	318.4	52213	746	- 108.15	63725	416	243655	2463
Noticee 9	102.1	161154 1	7934	244.15	25888	1316	- 142.05	19736 2	857	1155299	5761
Noticee 13	67.2	21880	1473	96.55	3419	218	-29.35	1326	73	17135	1182
Noticee 11	56.5	171609	8596	679.65	28533	1299	- 623.15	39161	1367	103915	5930

Noticee 12.	40.5	307064	2481	116.85	43707	408	-76.35	35524	288	227833	1785

76. The individual trades of the aforesaid five clients with the impact on the price of the scrip were provided as Annexure-11 to SCN 2.

77. The trades executed by Noticee 13 had a net positive impact of Rs.67.2. Vide letter dated March 22, 2011, (sent vide e-mail) Noticee 13 had made the following major submission:

a. That orders are placed by different jobbers from various terminals at different point of time without the knowledge of other jobbers. As per technical analysis their jobbers are placing the orders as per market conditions and sometimes the rates placed by jobbers may be higher than the current rate as jobber wants to have stop loss trigger. i.e. jobbers wants to buy at particular price only. This facility itself is provided by both the exchanges i.e. BSE & NSE in their trading terminal.

b. Analysis of their trade file showed that even though trades are executed in small quantities of or 2, the orders placed by them were for bigger quantities. This clearly shows that in fact the opposite parties with whom trades are matched have placed order in smaller quantities.

c. Controlling or manipulating prices in scrips like Austral Coke is not possible for a single trader under any circumstances booking at the volume and trades of the said scrip in the market. In most of the cases, their trading volume in the scrip of Austral Coke was less than 1% of the market volume

d. The net loss for the period from 15.072009 to 31.08.2009 in the said scrip is just 7,230/- and the total volume traded is just 86,020 shares. It is next to impossible to affect the prices and market with such small amount of profit or loss.

78. Noticee 13 was found to be entering orders at prices higher than the then prevailing market prices and thus resulted in a net positive price impact of Rs.67.2 on NSE. Details of such trades with very small trading volume and which were traded at prices of at least Rs. 1 higher than the LTP along with order details are given as below:

Date	Buy Order No	Change in price as comp. to LTP (in Rs.)	Trd. Qty.	Buy Order Qty.	Counterparty Sell Order Qty	Buy order time	Counterparty sell order time	Time diff.
30-Jul-09	2009073068764240	2.8	9	10	250	12:54:25	12:54:25	00:00:00
21-Jul-09	2009072169146578	2	1	1	51	13:22:09	13:22:08	00:00:01
31-Jul-09	2009073167798764	2	2	2	6	10:57:27	10:57:24	00:00:03
20-Jul-09	2009072070212482	1.9	4	4	200	15:22:28	15:22:16	00:00:12
31-Jul-09	2009073169000755	1.55	1	1	170	13:03:51	12:56:11	00:07:40
20-Jul-09	2009072067519606	1.45	1	1	10	10:45:33	10:43:42	00:01:51
30-Jul-09	2009073069349337	1.35	16	16	50	14:07:22	14:03:11	00:04:11
1 7-Jul-09	2009071767237220	1.25	9	9	65	10:23:28	10:19:22	00:04:06
20-Jul-09	2009072068737671	1.15	7	7	10	12:51:28	12:51:18	00:00:10

23-Jul-09	2009072368451154	1.1	16	16	461	12:27:01	12:21:46	00:05:15
4.-Aug-09	2009080468870141	1.05	2	2	49	12:43:47	12:23:44	00:20:03
15-Jul-09	2009071568997762	1	1	11	1	13:44:54	11:06:05	02:38:49
17-Jul-09	2009071767495163	1	1	1	10	10:43:02	10:14:15	00:28:47
20-Jul-09	2009072067148833	1	1	2	1	10:19:12	10:17:33	00:01:39
20-Jul-09	2009072067916496	1	1	2	1	11:22:48	11:17:37	00:05:11
21-Jul-09	2009072167268734	1	1	1	1	10:21:49	10:00:14	00:21:35
21-Jul-09	2009072168376268	1	1	1	5	11:53:35	11:53:21	00:00:14
30-Jul-09	2009073066941301	1	1	2	1	10:05:07	10:02:09	00:02:58
30-Jul-09	2009073068258234	1	1	1	30	11:57:31	09:59:48	01:57:43
03-Aug-09	2009080369656841	1	1	1	1	14:53:23	10:15:12	04:38:11

79. From the above it can be seen that Noticee 13 was putting orders of small quantities at prices higher than the last traded prices. Though, Noticee 13 submitted that though trades are executed in small quantities of 1 or 2, the orders placed by them were for bigger quantities, the aforesaid table shows that in fact the orders at higher prices were entered by Noticee 13 in small quantities. Further, it is seen that in most of the cases, the sell orders remained pending for a long time showing that other buy orders were not available at that price and the buy orders of Noticee 13 matched with the pending sell orders resulting in trades immediately after entry of the buy orders of Noticee 13. Though the traded volume of Noticee 13 is 86,020 shares, the fact remains that the trades executed by Noticee 13 resulted in significant rise in the price of the scrip.

Therefore, Noticee 13 has contributed to the rise in price of the scrip of Austral Coke by such trading.

80. It was further observed on the analysis of the trade log that SIC Stocks & Services Pvt. Ltd. (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 Noticee 14 (client code-C064) where in it bought and sold 6,96,897 shares. Similarly, on NSE SIC has executed self-trades in the name of Noticee 15 (client code-N056), wherein it bought and sold 7,94,790 shares. The time difference between the buy and sell orders entered by SIC on behalf of its client Noticee 14 on BSE was just 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 Noticee 15 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. Details of the trades were provided as Annexure-12 of the SCN 2.

81. Further analysis of the trade log revealed that SIC had executed reversal trade, wherein on August 26, 2009, Noticee 14, first bought shares from Noticee 16 at 14:10:21 and then Noticee 14 sold 99,000 shares back to Noticee 16 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. Noticee 14, placed the buy order for 1 lac shares at 14:10:20 and Noticee 16 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 Noticee 14 placed the sell order for 1 lac shares and Noticee 16, placed the buy order for 1 lac shares at 14:13:14.

82. 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 Noticee 14 and Noticee 17 i.e. at 14.13.14 and the sell orders were entered prior to the order of Noticee 14. The aforesaid trading created artificial volume in the scrip of Austral Coke.

83. 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 shares of Austral Coke, on BSE, on behalf of Noticee

84. Out of the total traded volume of 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 Noticee 14. The self-trades and reversal trades executed by SIC in BSE 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 (no. of shares)**	**% Cont to Market volume**
BSE	8/26/2009	2,97,321	19.39
BSE	8/27/2009	1,99,864	22.80
BSE	8/28/2009	1,99,143	16.47
BSE	8/31/2009	1,99,569	33.17

85. 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 Noticee 15.

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

86. This shows that artificial volumes was created by SIC which accounted for substantial quantity of the total market volume. SIC created artificial volumes in the scrip Austral Coke by executing self-trades / reversal trades in the scrip on behalf of three clients i.e. Noticee 13, Noticee 14 and Noticee 15. The trades executed by Noticee 9, Noticee 10, Noticee 11, Noticee 12 and Noticee 13 contributed to the rise in price of the scrip by executing trades at prices higher than the last traded prices.

87. In view of the foregoing that, it was alleged that Austral Coke along with its directors and promoters (Noticee 2 to 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.

88. Therefore, Noticee 1 to Noticee 7 were alleged to have violated section 12A of the SEBI Act and regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations. 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations reads as follows:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(l) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(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 or misleading appearance of trading in the securities market;

…………………

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

…………

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

……………

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

………..

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

89. Noticee 8, facilitated Austral Coke to manipulate its books of accounts by creating paper companies and allowing Austral Coke, its promoters and directors to use those paper companies to show fake purchase and sales to inflate its turnover. The entities of Noticee 8, were just used to issue fake purchase and sales bills and route funds towards the purchase and sates

transactions of Austral Coke. Therefore, Noticee 8 allegedly violated section 12A of the SEBI Act and regulation 3(b) to (d), 4(1), 4(2)(e) of the PFUTP Regulations. The text has been given in the pre-para mentioned above.

90. Noticee 9, Noticee 10, Noticee 11, Noticee 12 and Noticee 13 contributed to the rise in price of the scrip by executing trades at prices higher than the last traded prices. Therefore, Noticee 9, Noticee 10, Noticee 11, Noticee 12 and Noticee 13 were alleged to have violated section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e) of the PFUTP Regulations.

91. Noticee 14, Noticee 15 and Noticee 16 had executed self trades/ reversal trades in the scrip of Austral Coke and created artificial volume in the scrip of Austral Coke. Therefore, Noticee 14, Noticee 15 and Noticee 16 were alleged to have violated section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2) (a),(e) and (g) of the PFUTP Regulations.

SCN 3

92. As per the RHP for the IPO of Austral Coke, AIIBank was the book running lead manager of the IPO and the co-book running lead managers were PL Capital Markets Private Limited, Saffron Capital Advisors Private Limited and Elara Capital (India) Private Limited. The pre-issue and post issue responsibilities as mentioned in page 42 to 43 of RHP, which was provided as Annexure C of SCN 3. From the said annexure, it is seen that activities at serial number 1 to 10 are pre-issue responsibilities and activities at serial number 11 and 12 are post-issue responsibilities. AIIBank was solely responsible for due diligence for pre-issue as it was solely responsible for activities such as conducting due diligence of Austral Coke's operations/management/business plans/legal, etc., drafting and designing the DRHP/RHP/Prospectus and ensuring compliance with the Guidelines for Disclosure and Investor Protection and other stipulated

requirements. As the IPO of the company was for less than Rs. 500 crore, there was no requirement of a monitoring agency regarding utilization of the proceeds of the issue. Therefore, AIIBank was responsible for the due diligence in the issue.

93. AIIBank informed SEBI, vide letter dated November 4, 2008 (copy enclosed as Annexure E of SCN 3, that due diligence was exercised based on a letter of the company and certificates by an independent chartered engineer with regard to the production capacity. AllBank provided 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. The letter also mentions that as envisaged, the company had since enhanced their production capacity by two lac tons for which trial run was under progress and 2 chimneys and 58 ovens have been set up accordingly. AllBank also provided a copy of the certificate dated August 18, 2008 from Chartered Engineer Kamothi Engg. and Inspection Services, who certified that the company had capacity of 1,75,000 tons per annum (TPA) of LAM coke and has completed setting up of 2 chimneys which can generate maximum output of 2 lac TPA. Vide aforesaid letter dated November 04, 2008, it was also confirmed by AllBank that no visit was made by them to the plant before the public issue to verify, the production capacity and the number of chimneys.

94. SEBI noted that the certificate dated August 18, 2008 from Chartered Engineer Kamothi Engg and Inspection Services was obtained after the public issue of the company, which was during August 7-13, 2008.

95. In view of the above, it was noted by SEBI that AIIBank had failed to exercise due diligence as it had not taken steps to independently verify the installed capacity and number of chimneys of Austral Coke and solely relied on the

certification from the company, Austral Coke. Hence, vide letter dated December 26, 2008 (copy enclosed as Annexure F of the SCN 3), AIIBank was advised by SEBI to independently examine the installed capacity and the number of chimneys of Austral Coke as on the date of RHP, i.e., July 18, 2008 and submit a reply to SEBI along with all documentary evidence.

96. In response, vide letter dated January 2, 2009 (enclosed as Annexure G of SCN 3), AIIBank provided certificates 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. As per the offer document, LAM Coke capacity of 1 Lac MT each was financed by SBI and BOI through loan amounts of Rs. 25 crore each. As per the project completion certificate dated July 18, 2008 of SBI, which was provided by AllBank to SEBI, the unit had commenced production on December 31, 2007 and had completed its projects on November 30, 2007. Similarly, the project completion certificate dated September 12, 2008 issued by BOI stated that the unit had commenced commercial production on 'August 10, 2008' and had completed its projects on June 10, 2008. However, SEBI again noted that the certificate dated September 12, 2008 issued by BOI and relied upon by the Merchant Banker AllBank was issued after the closure of the public issue of Austral Coke. Further, AIIBank vide letter dated February 05, 2009 (enclosed as Annexure H of SCN 3), also provided another certificate issued by Kamo Engg. & Inspection Services dated January 23, 2009 and a certificate dated January 27, 2009 issued by Shri Vilas J. Badrapurkar to confirm that the facilities by way of additional chimneys (2 nos.) and ovens (58 nos.) along with other auxiliaries and expanded capacity of 2,00,000 tonnes were in place at the time of filing of RHP. From the same, SEBI again noted that both certificates were acquired after the closure of the public issue.

97. In view of the foregoing, it was alleged that the Noticee AIIBank had failed to exercise due diligence as the lead Merchant Banker during the IPO of Austral Coke. In view of the same, it was alleged that the Noticee has violated the provisions of Clause 5.1, Schedule Ill to the DIP Guidelines read with Regulation 64(1) and 8(2)(b) of ICDR Regulations [read with Regulation 115 of ICDR Regulations] and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers as specified under Schedule Ill to the Merchant Bankers Regulations. Schedule Ill to the DIP Guidelines is enclosed as Annexure I, while the text of the remaining provisions are reproduced below:

DIP Guidelines

5.1 The lead merchant banker shall exercise due diligence.

ICDR Regulations

Due diligence.

64. (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.

Documents to be submitted before opening of the issue.

8 (2). The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub- regulation (2) of regulation 6 if the Board has not issued observations:

(b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;

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.

Merchant Bankers Regulations

Code of conduct.

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

SCHEDULE Ill

CODE OF CONDUCT FOR MERCHANT BANKERS

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

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

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

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

6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

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

98. The aforesaid alleged violations, if proved, makes the Noticee liable for penalty under Section 15HB of the SEBI Act.

99. In response to respective SCN 1, 2 and 3 Noticees filed their reply, inspected documents and attended personal hearing before undersigned as follows:

Noticee No.	**Filed reply vide letter/Email dated**	**Personal Hearing Date**	**Remarks/Represented by**
1	10.06.2014	26.04.2022	Advocate Ramesh C Mishra
2	22.04.2022	26.04.2022	Advocate Ramesh C Mishra
3	No reply	26.04.2022	Advocate Ramesh C Mishra
4	17.02.2022	25.04.2022	Noticee in person
5	--	26.04.2022	Advocate Ramesh C Mishra

6	26.04.2018	26.04.2022	Advocate Ramesh C Mishra
7	14.03.2022	26.04.2022	Advocate Ramesh C Mishra
8	--	26.07.2022	(did not attend)
9	23.04.2014	26.04.2022	(did not attend)
10	25.04.2014	26.04.2022	(did not attend)
11	25.08.2021, 12.08.2021, 21.04.2018, 24.12.2016, 05.05.2014 & 11.04.2014	26.04.2022 & 13.08.2021	Mr. Bharat Jain (AR)
12	02.05.2022, 10.04.2014, 20.12.2016, 24.04.2018 and 19.04.2022	27.04.2022	Advocate, Kushal Shah
13	17.06.2022, 25.05.2022	03.06.2022	Mr. KRCV Seshachalam, Advocate, Mr. Aayush Kothari, Advocate
14	--	27.04.2022	(did not attend)
15	--	20.04.2022	(did not attend)
16	--	03.06.2022	(did not attend)
17	19.04.2014, 26.04.2018, 20.12.2016, 29.12.2016 and 24.01.20217	21.04.2022	Nandini Sen, Advocate
18	--	26.04.2022	Advocate Ramesh C Mishra
19	26.04.2018	22.04.2022	(did not attend)

20	08.08.2018	24.04.2022	Advocate Ankur Kumar, Ezylaws

100. The SCN and Hearing Notices were served to Noticees through SPAD, email, affixture or by Newspaper Publication in newspapers dated May 04, 2022. Further, in terms of requests made by certain Noticees, relevant excerpts of Investigation report were in the matter were provided to the Noticees vide letters dated April 21, 2022.

101. The submissions of the Noticees are summarized as below:

Noticee 1 – Austral Coke

Misstatement regarding production capacity of the LAM Coke Plant:

102. 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.

103. 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).

104. 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.

105. 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. However, it was not the case that the physical asset has not been created. The only finding was about the operational part of the chimney & they never gave a remark about the non-existence of the assets.

106. 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).

107. 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 by the company. 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, which we can be sure can't be anybody's case.

108. 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.

109. None of the independent professional chartered engineer/ bankers has denied the issuance/genuineness of the completion certificate issued by them.

110. 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.

111. 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.

112. 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.

113. 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.

114. Therefore Noticee submit that the company and the promoters have never made any misstatement regarding production capacity of the LAM Coke Plant.

115. Misstatement regarding the disassociation of the Chairman and MD of the company from Gujarat NRE Coke : 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.

116. 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.

117. 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. A copy of the minutes of the said meeting is enclosed and it can be observed that nowhere it is mentioned that the directors were forcibly removed.

118. 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.

119. 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.

120. 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.

121. 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.

122. In conclusion Noticee pray 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.

123. Misstatement regarding utilization of IPO proceeds as disclosed under clause 43A of the listing Agreement: The Board of Directors of the company in its meeting held on 101h 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.

124. 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 bought 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.

125. 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.

126. 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 I non receipt of regulatory I 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.

127. As regards mis-utiization of /PO proceed 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
Total		**13925.63**

128. Whatever stated herein above, after the IPO as per the projection and plans and in line with the object of the IPO six more new ovens had been erected, installed and commissioned at Lunva Kutch (Gujarat).

129. During the period under review the government policy for high quality coal became costly and the existing plants were not in a position to cope with locally available inferior quality coke. The company explored the alternative and made a major fixed assets investment for stamp charging technology so that the coke raw material having 45% impurity can be processed and finished product fetches 30% higher price in the market over the existing product. For this reason the company also constructed one large oven refractory to suitably meet the technology.

130. 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.

131. The aforesaid expenses of Rs. 69.04 Cr.(FY 2008-09) and Rs. 34.06 Cr.(FY 2009-10), total amounted to Rs.103.10 Cr. were incurred for fixed capital assets and met by the company out of the IPO proceeds and duly reflected in the Audited Balance sheet of the relevant financial year.

Particulars	**As on 31.03.2008**	**Additions during the year 2008-09**	**As at 31.03.2009**	**Additions during the year 2009-10**
Land	2,89,83,121	1,29,97,503	4,19,80,624	24,09,925
Plant & Machinery	2,38,57,63,403	53,5601,255	2,92,13,64,658	20,52,574
Capital W.I.P.	18,53,14,227	14,1880,502	32,71,94,729	33,61,39,573
Total		**69,049,260**		**34,06,35,072**

132. 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.

133. Further to this our 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 as the total acquired area is approx. 12,63,000 acres and expected to contain reserves up to 3.5 billion tons of bauxite spread over 2950 sq. kilometres under six

licenses,1.8 billion tonnes of iron ore spread over 1455 sq.km under these licenses and 53 million tons of manganese reserves spread over 710 sq.km under seven licenses. Thus in toto company has six prospective mining licenses in Mozambique and sixteen prospective mining licenses in Guinea for mining activities.

134. 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 placed on records).

135. 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. The balance sheet of subsidiary, Global Astra Pte Ltd, also shows that the said company had made payment of USD 3,58,99,000 to Best Site Chemical Pte Ltd, A Company registered in British Virgin Island, out of the money invested by Austral Coke Ltd and the transaction was duly recorded in the books of the subsidiary company. Further the transaction with the company registered in tax heaven, was of the appellant's subsidiary company based at Singapore. The appellant company itself has not made any payment to Best Site Chemical Pte Ltd, hence no adverse inference can be drawn in case of appellant company and that too without evidence and material on record. He further added that I am of the opinion that merely for the reason that appellants •subsidiary company has made certain payment to tax heaven company or department was not able to gather more information from the Govt. of British Virgin Island, about the investment made by the Singapore company, no adverse inference can be drawn in the case of M/s Austral Coke Ltd".

136. 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.

137. 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.

138. Regarding the query for Rs 39.67cr disbursed between 1st week of September 2008 to 31st 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.

139. 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 advanced the said amount of to various entities as listed in SCN for supply of raw material required in setting up the LAM coke plant . it is pertinent to note here that M/s Austral Coke Ltd has entered into an agreement dated 02nd Day of September,2008 with one Mr.Ajit Jindal & others, who is herein after referred to as Producer/Trader /Agent/Accumulator/Collection Agent of the entities as listed in SCN, to whom the advances were made for procurement of materials and setting up of Coke Plant.

140. As it was very difficult for the Company to procure the necessary materials from different suppliers for setting up of the coke plant by itself, the company appointed Mr.Ajit Jindal & others to act as an agent for facilitating the set-up of new coke plant. Mr Ajit Jindal & Associates has specialized in setting up of Coke Plants & dealing /negotiating with the unorganized suppliers of materials required for setting up of the plant across the country and has developed its

capability in dealing with the unorganized material suppliers over the years. It was mutually agreed between the parties to the agreement that 95% of the contract price shall be payable in advance and the remaining amount of 5% shall be paid only after successful commissioning and after taking successful trial run of the plant and accordingly the payment was advanced to the various parties. The company have already provided the details of these parties along with their proforma invoices and copies of bank statements to the SEBI.

141. However the vendors to whom the money was advanced failed to deliver the materials required for setting up of plant within the stipulated period as consented by both parties in terms of the supply agreement. The company tried its best to negotiate with Mr.Ajit Jindal & Associates and pursue them to supply the materials in time however the same was of no use. Despite several reminders and letters issued by the company to the suppliers, they failed to supply the materials and wilfully failed and neglected to supply the desired materials within the stipulated time. (Copy of suit No.195 placed on records).

142. Due to lethargic and non co-operative approach of the suppliers in meeting the demand of the company for materials required for setting up of its new plant and looking to the fact that very purpose of the IPO had frustrated because of the failure on the part of suppliers of material. The company was left with no other alternative except to extend the capacity of its existing coke plant for which the company had to arrange the required funds from the other sources as the investor and shareholders were not willing to give any further time for setting up of coke plant.

143. After when all efforts of the company in recovering the amount advanced to the suppliers / receiving the desired materials from them,gone in vain, the company was left with no other alternative except to take legal actions & file the recovery

suit against Mr.Ajit Jindal & Associates in order to recover the amount advanced to them and accordingly a civil recovery suit was filed by the company against Mr.Ajit Jindal & Associates in the High Court at Calcutta vide C.S.N0.195 of 2012 on 17 May,2012. The matter is pending in Calcutta High Court for hearing and the outcome is still awaited.

144. Transfer of IPO fund to Group Company M/s Anarcon Resources Pvt Ltd.: 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.

145. 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.

146. In conclusion Noticee submit that there was no mis-utilization of funds by advancing the same to the vendors for supply of desired raw materials and machinery for setting up of the Coke Plant. Since the company has filed civil recovery suit against the Vendors for recovery of the amount advanced to them for failure on their part to supply the desired material/ refund of the amount advanced to them, the company is hope full of getting favourable judgment from the Hon'ble High Court, Kolkata. However it is worth noting that in order to avoid any losses to investors or delay in implementation of the projects as envisaged in the prospectus, promoters and promoters group companies have brought in substantial amount by way of unsecured loans in the company and thus it is submitted that no loss has been caused to the investors. Further the promoters are also taking arbitration route with Ajit Jindal & Associates to settle the outstanding amount advanced to them apart from filing of legal civil suit against these entities.

147. **Announcements before QIP**:Noticee came up with the announcements when there were any developments and the board of directors felt that their shareholders should be duly informed about these developments concerning the state of affairs of the company and also to comply with the listing agreement clause with the stock exchanges. The company was in process of raising additional funds through QIP in order to meet its expansion plans and that is why these announcements were made which were very genuine and were duly supported with the substantial documents (Land Documents and various other documents) in order to substantiate its validity.

148. Announcement dated July 22, 2009: Stock Split announcement dated July 22, 2009 was announced in the normal course of business and in accordance with the Companies Act, 1956 and read with listing agreement to create adequate stock liquidity. This type of announcements are basically to inform the

shareholders that a probable book closure/record date is eminent to give corporate action of the stock split. It is not any kind of financial communication of the financial state of affairs of the company. Any sort of increase/decrease in price/volume of the scrip is a normal market phenomena and it has got nothing to do with the promoters of the company. The Board of directors of the company decided to make the stock affordable to common investor and make it more investor friendly, came up with this announcement and it cannot be in any case be viewed as any sort of manipulation/fraudulent practice by the company or their promoters.

149. Announcement dated August 06, 2009: The company acquired 182000 square meters of land at Vizaq, Andhra Pradesh to set up a Lam Coke Manufacturing plant with the capacity of 6 Lac Ton per annum. The relevant documents of acquiring of land and Techno Economic and Feasibility Report by Mott Macdonald has been placed on records. The announcement made was genuine and created value for the company.

150. Announcement dated August 10, 2009: Austral Coke & Projects Ltd informed BS E regarding a Press Release titled " Austral Coke & Projects Ltd acquires mining assets worldwide". The company through its step down subsidiary ASTRA ENERGY LTD had acquired 16 prospective mining licenses for rich iron ore, bauxite and manganese ore blocks totally admeasuring 12,63,000 acres in Guinea, Western Africa.

151. However, because the malafide & wrong complaints made by M/ s Gujarat NRE Coke Limited and its present management against the company with respect to family dispute which led to lot of misinformation and damaging the reputation of the company. This in tum 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 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 SFIO 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 implemented. As a result the company could not implement work program for geological and geo-physical exploration of the mine acquisition which led to cancellation of the said prospecting license and loss to the company for the amount already paid. (Copies of the said licenses both for acquisition as well as cancellation of mining rights have already been submitted to you.)

152. In fact Noticee would like to bring to your notice that the Income tax Department has also been accepted the veracity of the payment made for acquisition of these mining rights as given in the announcements. Appellate order dated 31.08.2012 for AY 2009-10, The Commissioner of Income Tax (A) Central-IT, 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 were 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 for 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.*"

153. Therefore this itself proves that the transaction was genuine and was in agreement with the disclosures made in the prospectus. The announcements to public and Stock Exchanges and genuineness of the transaction is well established by the Income Tax Department being a statutory body of Government of India.

154. Announcement Dated August 24, 2009: In regard to, announcement w.r.t. Austral Coke Board to consider Interim Dividend & Bonus Issue, it is submitted that the company declared interim dividend and paid the same to the shareholders. The bonus was considered but not recommended by the board for the approval of the members.

155. Since there were various adverse issues raising funds through QIP mainly on account of pricing and adverse national and international market conditions the board dropped raising the fund threw QIP vis-a-vis increase in authorized capital.

156. The aforesaid information were very much relevant to the members to take appropriate decision in respect of their shares. Further it is also to be noted that there were no price fluctuations and manipulation as the price of the script during that time was as steady trend.

157. Announcement Dated August 25, 2009: In regard to, announcement w.r.t setting up 2 plants of Coke, each having capacity of 1.5 Lac MT/ Annum totalling to 3 Lac MT/annum, and 8 MW waste heat Generated power plant at Gadhinglaj, Kolhapur through SPV (Special purpose vehicle) Company. The company had acquired 250 Acre of land at Gadhinglaj by MIDC at Kolhapur in its Sister Company M/s Gremach Infrastructure Equipments & Projects Limited for setting up of additional coke plant for its expansion in Maharashtra but due

to negative publicity company could not manage funds for setting up the project. The copy of the land documents are placed on records.

158. Therefore at the outset Noticee submit that whatever the announcements were made by the company to public and the respective Stock Exchanges were very much genuine and were in line with the disclosures made by the company in its RHP and are duly supported by the requisite documentary evidences in this regard. Therefore merely on presumption and without any substantial evidence being brought on the record by the SEBI that these announcements by the company.

159. **Allegation in regard to manipulation in the books of accounts with regard to purchases/sales to/from the entities controlled by Mr.Ajit Jindal:** There is a great misconception about Noticee's role in the transaction entered by it with Mr.Ajit Jindal & Associates and an inference is being drawn that the whole transaction is fake and bogus without considering the facts and nature of the transaction.

160. Noticee entered into an agreement dated 28th Day of December, 2007 with Mr.Ajit Jindal & others, who were Producer/Trader/Agent/ Accumulator/Collection Agent of the entities for procurement of coking coal (raw materials) and sale of coke (finished goods). As it was very difficult for the Company to procure the necessary materials from different suppliers by itself, the company appointed Mr.Ajit Jindal & others to act as an agent for facilitating the purchase / sale of coal & coke. It was mutually agreed between the parties to adhere to the terms and conditions set forth herein the agreement.

161. In this regard we are hereby contending that its entire transactions of purchases/sales and purchases of capital goods is genuine on the following grounds:-

a. The payment/receipts of entire purchases/sales has been made through banking system and there has been no purchase/sale in cash found to be recorded in the books during the investigation period.

b. The entire sales/ purchases and capitalization of fixed assets has been duly assessed by the statutory auditors of the company.

c. At the time of purchases/sales and purchases of capital goods the company's concern was only to acquire the good quality raw materials on time and with the best of its price and our company is not the investigating agency and was not in the position at that time to inquire the whereabouts of all of its supplies and customers. The main concern of company was to run its plant with the capacity available to avoid any losses.

d. The conclusion merely on the ground of wrong GST/CST numbers of the suppliers and on the basis of statement given by Mr. Ajit Jindal is not true. The bankers has released the payment after due verification and necessary check and Mr. Ajit Jindal has given their wrong statement to avoid the burden of direct and indirect tax liabilities.

e. Also in coke oven business Noticee is a merchant converter and 70% of merchant coke oven operates on job/conversion basis. Tata Steel is getting most of the requirement on job/conversion basis. The arrangement with Ajit Jindal was similar to a conversion agreement but for larger transparency all purchases and sales were duly reflected in the books. Since Greenearth was a converter so Ajit Jindal & its associates sold coal from his 8 to 10 entities & purchased them back in his 8 to 10 entities, this is a normal practice in industry as he wanted us not to gain access to the supplier and purchasers. It is also happen in some cases where the company has made advance payment towards supply of goods to Mr. Ajit Jindal & its associates and the same is returned to the company by Mr. Ajit Jindal & its associates against the earlier sales made to complete the transaction in full.

162. Regarding the allegation that the payment made by Austral Coke & Projects Ltd to Ajit Jindal and Associates were again routed back to Austral Coke and Projects limited; it is clarified the fact that Mr. Ajit Jindal & its associates were acting in both the capacity of purchase of Coke (finished goods) and suppliers of Coal (Raw material) on behalf of the Company.

163. It is also worthwhile to mention that the transaction with Mr. Ajit Jindal & its associates were since 2006-07 i.e. around two years before the initial public offer of the company. It is also pertinent to be noted that company has manufactured LAMC (Finished Goods) out of the coal (Raw Material) purchases from Mr. Ajit Jindal & its Associates and also sold the same to various well known corporates / entities like, Jayaswal Neco Limited, Jindal Saw Limited, Simplex casting Limited, SAL Steel Limited, Electrotherm (India) Limited, DCW Limited, Nirma Limited, Ajanta Mineral Corporation, Tata Chemical Limited, Bhakti Exports Private Limited, Saurashtra Foundry associated etc.

164. It is also substantiated from the study of expenses incurred on labour as well as consumption of electricity which arose only when the plant is in full swing of production.

165. **Manipulation of the price/volume of the scrip:** As far as the allegation concerning manipulation in price/volume of scrip by the entities as envisage in the SCN, Noticee has no concern or role at all in the transaction and neither know these entities nor have any sort of relation of whatsoever nature with these entities. They have traded in the scrip in their personal capacity and out of their own finances, for their personal profit/loss and the company or its promoters have got nothing to do with the trading by these entities in their personal capacity.

Noticee 2 – Rishi Raj Agarwal

166. Noticee joined the company as Director on 22.04.1994 and MD on 05.04.2006. Noticee continued with the company up to 17.08.2010. Noticee along with his father named as the promoter of the Company during the time of the public issue. Upon his father and Chairman of the company Mr. Ratan Tamakhuwala, Noticee joined the company because the bankers who had financed projects and extended credit facilities to the company were not comfortable with the growing age of Noticee's father who had turned 65 years of age at that time and bankers forced him to get Noticee personal guarantee and Noticee appointment on the Board of the company in order to get further credit/loan facilities. Noticee's father requested Noticee to join the board and Noticee consented the same only out of love and affection.

167. Due to personal family & medical problems of Noticee's wife who is a cancer patient, Noticee was not able to devote much time in day-to-day business / management of affairs of the company.

168. During the period up to July 2008 (herein after referred to as the pre-IPO period) the company was buying coal and converting the Coal into Coke at the Plant

located at Bachau, Gujarat and was also engaged in trading of coal and coke. In the year 2007-08 the company decided to come out with an IPO. It is further submitted that in the page no. 112 of DRHP filed by the company the organizational chart in the form of management organization structure was given, clearly depicting the management hierarchy and the various divisional heads along with their role in the functioning of the day to day affairs of the organization. The divisional heads were submitting reports to the board on a quarterly basis. Based on this report, the board used to determine the targets and future strategies.

169. The company with the help of Bank and from the financial strength of the company and personal guarantee of the promoter and promoter group companies successfully set up the four manufacturing units mainly consist of 4-Chimneys and 138 ovens apart from shed and other storage space prior to the IPO.

170. This big & highly technology driven plant was run with the help of professional & compatible team who were completely responsible for the successful operation and management of routine day to day affairs of the company.

171. The company as mandated by the financial institutions and bank allowed all the officers of the Bank and 3rd Parties to take inspection of the plant or visit the plant to satisfy the deployment of Bank finance and setting up of the Oven and Chimneys. The Bank officials periodically visited the Plant before any disbursement and also verified the deployment of funds. There were no single instance wherein the Bank or any other 3rd Party associated with the Bank or any authority including Income Tax alleged that the company has diverted or siphoned out any fund as financed to set up of the projects. It means based on

the project finance and T&C of the Loan and advance the company deployed the funds in the project.

172. Alleged violation of Regulation said to have occurred in the Financial Year 2008 precisely around August 2008; SEBI was aware of the same in August 2008 itself. The Issue opened on 8th August 2008 and closed on August 13, 2008. The Shares were listed at BSE and NSE. Further, SEBI vide its ad interim ex-party order dated September 1, 2009 prohibited Austral Coke from raising any further capital in any manner directly or Indirectly, whatsoever till further order, and the Order is still continuing.

173. Show Cause Notice was issued on March 26, 2014; and the timeline itself shows gross delay and inaction by the SEBI before the issuance of SCN. The matter was relating to IPO of August 2008 and the alleged misstatement in the IPO which had been brought to the notice of SEBI prior to the issue being closed in and around 13th August 2008. SEBI didn't took any action then but now, after a gap of more than 14-years why SEBI is now proceeding with the matter wherein there were no sanctity or logic. There is no document or specific details supplied to justify the delay of 6 years in issuing the SCN or any complaint that SEBI is having from any Investor or regulator or MCA relating to the alleged misstatement in the prospectus;

174. In para 3 of SCN, SEBI has produced the major corporate announcements made by the company during the period 13.07.2009 to 31.08.2009 just before scheduled board meeting to discuss raising USD 200 Million through QIP.

175. With reference to Para 4 of the above SCN, Noticee noted SEBI observations about the announcements resulting in fluctuations in price / volume of the scrip in the market. Noticee have no personal knowledge of the same. Noticee have

noted the reference of the QIP at that time. During the relevant time Noticee hardly had any knowledge about movement in the price/volume of the script in the market. As during that time Noticee was not part of any market buy and sell and even there were no iota of information or allegation as to how Noticee or any member of the company is concerned.

176. With Reference to para 4 of the above SCN, It is a fact on record that there was an accident while transferring the documents to Kolkata where the registered office of the company was situated. After this SCN Noticee have cross checked with the public site of the Stock Exchange and noted few corporate announcements therein.

177. With Reference to para 7 of SCN, SEBI from Banks for 23 entities had sought KYC copies and noted that the authorized signatory was Noticee No.8. Also cross check address which also belongs to Noticee No.8.Noticee noted the same. With reference to Para 8 of SCN, Noticee noted that SEBI collected certain papers from the IT office at Ahmedabad. SEBI collected sample copies of sales and purchase bills connected with the transaction of the Company.

178. With Reference to para 9 of the above SCN, Noticee noted that SEBI has carried out investigation, relating to Addresses of the Suppliers of the companies which belongs to Noticee No. 8.

179. Noticee hereby submit that it was not part of the Investigation. SEBI has investigated the addresses of the suppliers. Not a single documents or person ever been offered to Noticee during investigation for conformation or for ascertaining the nature of transaction. Hence it is not valid for the transactions under scrutiny.

180. Noticee further state that bill wise discrepancies, if any, and delivery of goods at site also not verified by SEBI with the company. Noticee further state that there were no single statement recorded by SEBI, of the officers of the company or any Board members about sale and purchase bills connected with the alleged transaction.

181. Noticee further state that 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.

182. 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.

183. Note that the Noticee no. 8 in his statement before SEBI admitted that all the sale and purchase transactions were through proper banking channels. Payment can only be completed on receipt of the goods or the delivery of goods. It is further submitted that transactions carried out by the company with Ajit Jindal & Associates up to the period 2007-08 were irrelevant in the context of present allegation as at that time the company was not listed.

184. The total transactions alleged to be under scrutiny were provided in SCN and as under:-

Particulars	**F.Y.**	**F.Y.**	**F.Y.**	**F.Y.**	**TOTAL**

	2005-06	2006-07	2007-08	2008-09	
Purchases	22.12	12.88	145.39	414.34	594.73
Sales	0	0	100.04	394.71	494.75

185. This is further submitted that 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.

186. Since 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. It is further submitted that during the financial year 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.

187. It is further submitted that during the financial year 2007-08, the company has purchased raw-materials from Ajit Jindal & Associates. There were sales during this financial year but the sale of Coke is less than the purchase of coal. In the Balance Sheet for the year ended 31st March 2008 the company after purchase of raw material i.e. coal, sold the finished i.e. coke to persons other than Ajit Jindal which according to SEBI and others is a genuine commercial transaction.

188. Noticee hereunder submits that these purchases are more than the sales to Ajit Jindal & Associates, hence no way inflated the financial of the company by showing any rosy pictures as the same is an expense in excess of income in the books of the company.

189. If purchases are more than sale as shown in the table above, it means that if sales is not done to Ajit Jindal then it is considered genuine, that indicates the fact that all purchases are bogus is wrong contention and if coal is actual, than only coke can be made.

190. The agencies has not considered the sales/purchases to/with other entities not related with Jindal which includes the most reputed corporates of India like Tata Chemical, Norma, DCW, Hidalgo 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 repute and that is why on the approved suppliers of the reputed corporates. This itself negate the allegation of bogus sale / purchases. If the coal bill supplied by Ajit Jindal is fictitious, then how can it generate finished coke which are consumed by AAA clients like TATA, HINDALCO, and NIRMA etc. Also at the time of raid the presence of 300 crores (appx) worth of finished coke and coal justify that the coal supplied by Ajit Jindal from unorganized sector was physically present.

191. 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.

192. 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 and the same sales tax recovery have 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 Noticee 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.

193. 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.

194. Obtaining GST No./ Service Tax No. or providing the details of the address or vehicle numbers lies with the Suppliers. The Bills verified solely belongs to the entities controlled by Ajit Jindal. The company always provided its correct address. Arrangement of transport lies with him not on Noticee or the company. If there were any falsifications of documents than proceed against Noticee No 8 not Noticee.

195. With reference to para 17 Noticee would like to submit that a copy of the Banking Transaction were given to Noticee. But if one read the narration, then can come to conclusion that the transactions were of two types. One for purchase of raw material of Coal and after process of the same, the sales of finished product that is Coke. In conversion process of coal to coke, there is appx 30% loss of coal input as raw material for preparation of Coke.

196. With reference to para 16 of the SCN ,Noticee would like place on record that in the chart the Ajit Jindal group company paid money for purchase of Coke. The company paid for purchase of coal. In the said transaction Ajit Jindal paid more money than what it received. Had it been a mere entry transaction, than the transaction could be other way round.

197. The Bank entries shown in the chart does not establishes any wrong doings by the company of any of its Board members. Just because the addresses were not as per the need of the SEBI does not establish the transaction is bogus.

198. With reference to para 6 of the SCN, Noticee hereby submit that the inference of SEBI is only based on miscalculation. In the FY 2008-09, if the Purchase was of Rs. 394.83 and sale is Rs. 394.71 the net difference of these two is the net transaction i.e. of Rs. 0.12 Lacs. From this data of SEBI it establishes that Ajit Jindal Group got only Rs. 0.12 lacs from the company. The other transactions were prior to the public issue.

199. 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.

200. The Profit of the company was duly recorded and the company never re-casted the same. SEBI has to explain in details how the transactions of Ajit Jindal is prejudicial to interest of any Investor or regulator.

201. It is further submitted that 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 SEBI is not genuine, then it's not Noticee fault or in his scope to carry out the due diligence of banker who gave credit report of Ajit Jindal and in that case SEBI may catch hold of those bankers for any sort of lapses in the system.

202. It is further submitted that, the entire capitalization of fixed assets has been duly assessed by the statutory auditors of the company. The company submits to this context the Income Tax Department in its appraisal report had mentioned that during the search operation they found unaccounted stock of finished goods and other materials to the tune of Rs.88.20 crores (Ref: para76, page 118-120 of the appraisal report) if it is taken into consideration, this itself is sufficient proof to justify that the sale / purchases shown in the books of accounts are genuine and so the sales/purchases from Ito Ajit Jindal & Associates are justified and further the annual audited accounts also reflect the stock of Rs.79 crores during (F.Y.2008-09) Sale of Rs.441 Crores as against previous FY stock of Rs.59 Cr and sales of Rs.229 Cr. The said figures it self-justify the genuineness of the transaction with Ajit Jindal & Associates.

203. It has been observed & noticed that 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.

204. I hereby submit that based on the above submission and documents on record, SEBI may set aside the above allegations.

205. Noticee hereby submit that why SEBI has totally relied on whatever is stated by Ajit Jindal without any document to substantiate the statement. In absence of any document the statement recorded has no meaning. Further despite requests Noticee was not given opportunity to cross examination Ajit Jindal. The submission of Ajit Jindal is self-contradictory and changed by him to suit his comfort and situation.

206. It is further submitted that documents seized by the Income Tax Department during their raid on Ajit Jindal residence and office premises, found various ledgers, bills, rubber stamps and a lot of documents of Noticee company and its group companies in his possession and the papers relating to detailed business transaction pertaining to sale and purchase of coal and coke with company & its group companies, which clearly shows that Mr. Ajit Jindal was very well aware and also was in control of all the alleged sale / purchase transactions carried out by him /his entities with Noticee company.

207. It is further submitted that in the affidavit dated 13.07.2009 filed by Mr. Ajit Jindal with the Dy. Director of Income Tax-(lnv), Ahmedabad on 12.10.2009 have affirmed that the statement taken by the Income Tax Authorities was under pressure, threats, mental imbalance and without presence of mind, therefore the said statement is neither valid nor true.

208. The statement of Ajit Jindal dated April 8, 2011 confirms that all the transactions were carried through the Banking Account mode. There were not even single admission of any other mode of transfer of funds. It is also admitted by Mr. Jindal that he opened the accounts and is the sole signatory. In his statement before SEBI, he has claimed that he handed over the signed cheques to the Company. Is there any proof that SEBI has in this regard including any recovery of Blank cheque from the Company or any of its Board members to substantiate its reliance on Ajit Jindal statement and in alleging the Noticees with serious charges and dare consequences.

209. Mere reliance on the statement of Mr. Ajit Jindal, who have retracted his statement as stated above, is very prejudicial on the part of the investigating agencies to allege that the sales/purchase transactions are not genuine and are mere paper transactions. It is hereby submitted that the said allegations are not justified and levied without following the principals of natural justice, which is illegal and bad in law.

210. It is further submitted that Noticee, along with his family members have not purchased any property in personal capacity since the year of IPO or have created any wealth for Noticee family or Noticee self and have not taken any undue financial advantage from the company. On other hand Noticee and family sold stake in the company to repay and discharge the liabilities of the company

and personally induced own financial resources in company to save its assets for the betterment of its stakeholders, creditors, lenders and public in general.

211. The charges of manipulation in books of accounts of the company gets automatically discharged as matter regards to rotating of money and diversion of money is not established by the SFIO and SFIO failed to bring on record sufficient material evidence to justify the said allegations. The attention 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*". Further the said acceptance itself makes the whole SCN null & void on manipulation of books of accounts by SEBI.

212. It is further submitted that the investigating agencies only selected specific transactions of the company with Ajit Jindal and his entities but failed to quantify and compare the other multiple layer of transactions almost several thousand entries reflected in the books of Ajit Jindal which could have implicated that Ajit Jindal was operating this bank account and if so, then those multiple layer of transactions simultaneously happening in the accounts if happen then the entire pretext of Ajit Jindal is defeated whereby which he is claiming to be just a mere entry operator who is not even controlling the cheque books because there are numerous other entries in favour of Ajit Jindal related and controlled parties, thereby establishing that the entire claim of Ajit Jindal is wrong in nature and just created to insure that they do not have to pay back the legitimate dues of Austral Coke. If all entries were false as per SEBI on the basis of Ajit Jindal allegation then how Rs. 300 crores (appx) worth of coke were present on site

at the time of IT raid and also during SEBI visit, huge quantity of coke was observed by SEBI officials.

213. In light of the above acceptance/confession by the SFIO, it is humbly submitted that the whole investigation carried out by the IT/SFIO and similar methodology followed by SEBI is faulty, incomplete, and unreliable against the Noticees as they have totally failed in establishing the charges against the Noticees. As half partial investigation makes the whole SCN null & Void and needs to be dropped.

214. It is admitted fact in context of above para that the SFIO grossly failed in establishing the chain and ultimate beneficiary in relation to rotation/diversion of funds with Ajit Jindal Group as they failed to locate several multiple layer of banking transactions among entities which were owned/controlled by Ajit Jindal Group and also have mentioning in the bank statements of Ajit Jindal.

215. Further this Noticee also brings on record that these so called companies were not floated / formed by the Noticee and Noticee was also not the beneficiary of these companies. It was the duty of the Investigating Agencies to carry out the proper investigation and bring on record material evidences to establish the charges of rotation/diversion of funds against the Noticees. So these allegations are totally devoid of merits without sufficient proof/ material evidences being brought on record by the investigating agencies and also against the principles of natural justice and therefore this allegation is liable to be quashed /dismissed on this ground alone.

216. It is further submitted that vide para 2.2.4 of the executive summary it is once again admitted by the SFIO that "it can therefore be inferred that these companies have been used for the purpose of rotation/diversion of funds by the promoters Jindal Group to whom there was regular fund flow from GRE&PL or

its sister concerns as reported in the main report. However in view of non-availability of documents like vouchers/journals and in absence of statement of directors regarding source of funds, it is not possible to establish complete chain of rotation of funds through these companies. The investigation was thus constrained by the circumstances as mentioned above ".

217. It is further submitted that from the above para it is crystal clear that the so called investment/shell companies were not floated /formed by the noticee's company or any of its answering directors and they were also not connected to these entities in any way whatsoever. Further the SFIO itself have admitted that these entities were used for the purpose of rotation/diversion of funds by the promoters Jindal Group. Therefore this phrase itself is sufficient enough to prove the innocence of the directors of the noticee company.

218. The allegation of manipulation of books of accounts through passing of bogus sale / purchase entries through entities owned / controlled by Ajit Jindal. Noticee once again submit that the said allegation is baseless and is merely based on surmises in light of the fact that Income Tax Department had found 89000 MT of coal & coke stock at the time of their raid at the factory premises worth appx 300 crore value. Contention is that if the purchases and sales through Ajit Jindal group were bogus as alleged then how come such a huge quantity of coal and coke stocks were available at factory site. We are enclosing here with the purchase, sale and production data for FY 2007-08, 2008-09 & for Quarter Ended 30th June, 2009 which has already been submitted to Stock Exchanges as a matter of compliance of LODR.

YEAR	**2007-08**	**2008-09**	**30.06.2009**
Turnover (Rs. In cr.)	229.66	441 .49	89.7
Production (MT)	171050	104178	81857

Closing stock : coal/coke (MT)	47599	85405	90178

219. From the above table it is clearly established that there were availability of Approx. 89000 MT of coal and coke stock which were there at the factory premises during IT Raid Panchnama during June, 2009 and it establishes the contention that every single entry of sales / purchase of coal and coke was genuine and it also proves beyond doubt that all the purchases and sales of coal and coke to/from Ajit Jindal Group was genuine.

220. As regards the allegation concerning manipulation of the price/ volume of the scrip vide para (21 to para 48) by the entities as envisaged in the SCN, it is submitted that Noticee has no concern or role at all in the transaction and neither Noticee know these entities nor do have any sort of relation of whatsoever nature with these entities.

221. They have traded in the scrip in their personal capacity and based on their own market intelligence out of their own financial resources, for their own profit/loss and the company or its promoters have got nothing to do with the trading by these entities in their personal capacity. Neither the promoters / promoters group nor its designated persons have carried out trading in the scrip during the investigation period and we do not have any sort of relation or otherwise with the entities mentioned in the SCN and absolutely have no role to play in the so called alleged manipulation of the price / volume of the scrip and we are not even aware of any such sort of alleged price/ volume manipulation in the scrip of the company and as such there is no allegation against us as regards the manipulation in price / volume of the scrip in the SCN.

222. Further, in the SCN SEBI has not given any specific connection and trades for which Noticee was responsible, and the role in the price rise also not there.

Noticee 4 - Prem Ranjan Kumar Chaurasia

223. Noticee was not serving the Austral Coke as a Qualified/Genuine Director. Noticee has been appointed as a Mining Engineer with “Gremach Infrastructure Equipments & Projects Ltd” - interviewed on 04 July 2008 & confirmed appointment to join on 18 Jul 2008. (CV having remarks and note by Mr. M.M.Damani & also by HOD Mining – placed on records).

224. During an annual general meeting of the Austral coke in O2 Hotel at Kolkata on 26 Dec 2009 where Mr. Rishi Raj Agarwal introduced/announced Noticee there as a Director. They took some documents signed by Noticee.

225. Noticee was not involved into any decision making activities by the company or in their account sections. Noticee was wrongly involved by Austral Coke to mis-use his name as director fraudulently.

226. Once, Austral Coke applied for Noticee’s DIN fraudulently then it was rejected (placed on records).

227. Noticee is completely unable to answer properly those figures mentioned in the SCN, being unaware of those things.

Noticee 7- M M Damani

228. On the Invitation of Board of the company, Noticee was appointed initially as an additional Director category Independent Director to the Board. The Members at their meeting appointed Noticee as a Regular Independent Director.

229. Prior to joining the board of the company, Noticee was working in the company as manager (marketing) and mainly responsible for the marketing, administration and acted some time as PA to the MD, man power recruitment and by virtue of this position Noticee, on a daily basis kept on meeting with all the KMP of the company including the board members for further business and for day to day activities. The board and the senior management of the company mainly consist of professionals and the company was purely a professionally managed company.

230. Noticee no.2 was the chairman and working director of the company and mainly involved with running the business of the company with the aid and help of professionals drawn from various sectors of the company.

231. Noticee no.3 was the MD of the company but because of health related problem of his wife was at home not able to participate in day-to-day affairs of the company. Since the role of MD was very important and many people wanted to interact with Noticee-3 but he was hardly available at office and he was most of the time not reachable. Noticee do confirm that most of the signed cheque books, letter heads and stamp papers used to lie with Noticee as both Noticee-2 & Noticee-3 had complete trust. However being a simple person Noticee had always parted the cheque and letter heads for the smooth functioning of the company based on Johnny Fernandez and other divisional head's instructions.

232. Since anyone who had to contact the MD had to reach Noticee first and Noticee used to filter majority of the calls and as such people started referring Noticee PA to MD. In fact Noticee’s major work was of Marketing & HRD.

233. Noticee was head of HRD of the company and was responsible for appointment of several professional heads who controlled the entire operation of the

company including sales/purchase, finance and accounts etc. The company was managed professionally and the promoters had no role on the day-today management of the company. Noticee do confirm that the promoters visited the plants only 2-3 times a year and also Mr Ratanlal Tamakhuwala was under the belief that the company should be self-- sustainable.

234. One Mr. Johnny Fernandez, was mainly responsible for the day to day sales and marketing activities including purchase of raw material/coal & sale of finished goods i.e. coke and also looking after purchase of capital goods.

235. Considering the professional work and ethics the board requested Noticee to join the board as a professional director which Noticee accepted. Noticee further submits that beside the professional board as mentioned herein above the signing of cheque authority was given to Noticee to meet with the logjam of the day to day activities of the company.

236. Noticee further submits that the period of investigation relating to accounts and accounts related activities including all allegations stated in the SCN were outside the purview of date of appointment as a director.

237. It is further submitted that the Noticee is not holding any shares in the company and continued in the company for the monthly compensation of Approx. Rs.30000/-

238. 1t is further submitted that during Noticee's course as marketing cum HR manager starting from 2007, the company regularly traded with various entities of Ajit Jindal through a well-defined professionally headed team of sales and marketing and Ajit Jindal was regularly trading with various parties located in and around the coke plant located at Bachau, Gujarat and have offices at

Ahmedabad. It is further submitted that along with Mr.Johnny Fernandez, AJIT JINDAL often visited the plant of the company to verify the quality of coal and finished goods i.e. coke.

239. Mr. Ajit Jindal was a very calculated person and he had ultimate aim of not disclosing names and identity of ultimate suppliers of coking coal to his entities and also buyer of coke sold through the company. Thus in order to cover, he used send payments to company from his 8-10 entities and receive coal in his only 18-20 entities in order to hide the name of actual consumer of coke. Generally it is practice to pay advance money for purchase of coking coal and where we come to know that Ajit Jindal was also enjoying credit facility, we used to telephone him regularly to pay the money against sale of coke. Thus if any advance send to Ajit Jindal towards purchase of raw material and if he was getting any credit on those coal supplied to us, he used to use those money and reimburse our company against his previous purchases of coke. Please note that Mr Ajit Jindal & his entities were doing conversion arrangement using his own companies which was a fact very well known to our entire organization as we were treating all his supplying entities as same group entity and purchase of coke also as same group entity.

240. As per IT panchnama almost 90000 MT of coke having a market value of 300 crores was present at our plant at the time of IT raid which Noticee had also seen from Noticee’s own eyes as Noticee had visited the factory site the very next day after the IT raid.

241. Also Noticee witnessed more than 10 lakh high quality fire bricks worth 40 crores and also confirmed by IT panchnama report has been lying inside the factory premises which were purchased to complete plant no.5 and IPO proceed was fully used as per the object of the issue.

242. Being marketing in-charge reporting to Mr.Johnny Fernandez, Noticee do certify that every tonne of coal purchased is genuine and every tonne of coke sales is genuine. Noticee also confirm that Noticee have met Ajit Jindal several times on account of sales of coke, for recovery of payments.

243. Noticee also confirm that none of the promoters i.e. Noticee-2 & 3 have ever met Ajit Jindal in person as the company was under full professional management where sale and purchase, accounts and finance were decentralized and were under the control of divisional heads who had heavy sales targets and final salaries were drawn on the basis of targets achieved .

244. Noticee No.2 was a technical director and was always available for the technical up keeping of the plant and Noticee No.3 was not at all involved in any operation of the company including financial, sales, purchase etc. Since 40 crores worth of fire brick were present at site as per IT Panchnama, which is almost 80% of raw material required to build the 5th Plant which was under capital work- in-progress. Also the 5th plant was commissioned shortly.

245. Hence there is no diversion of any IPO fund and this SCN should be set aside. Also Noticee request SEBI people to visit the plant and see the 5th plant which is the very first chimney on the left hand side as you enter the coke plant. Noticee once again request to drop the charges levied against us on the complaint of our arch rival Gujarat NRE Coke Ltd.

Noticee 8 – Ajit Kumar Jindal

246. Noticee's did not submit any reply on merit but stated that his health condition is not good due to heart disease, kidney problem diabetic disorder and other serious ailments and Noticee is undergoing treatment and bed-rest.

247. Noticee repeatedly sought extension of time for making submissions vide his letters dated 25.04.2022, 09.07.2022 and 26.07.2022 when final opportunity was given for submission of reply.

Noticee 9- Chirag Tanna

248. Noticee is not connected or related to Noticee 1 or its promoters, directors and employees, or any other Noticee in any manner whatsoever.

249. Trades carried out by Noticee were carried out in ordinary course of his share trading activity.

250. The trades placed by Noticee were on the basis of best available buy and sell order rate on trading terminal during trading hours.

251. There were several other large number of market participants who executed at price higher than LTP, however Noticee has been isolatedly picked up.

252. There is no investor complaint specific to Noticee's execution of transactions in Noticee 1 scrip.

Noticee 10- Umesh Dhan Singh

253. Noticee was unable to recollect records which are 5 years old. He is not linked to Austral Coke and directors.

Noticee 11- K K Finstock

254. Noticee has been carrying out transactions in shares and securities through PRAMODKUMAR JAIN SEC PVT LTD, a share and stock broker and member of Bombay Stock Exchange and through VIBRANT SEC PVT LTD, a share and stock broker and member of National Stock Exchange of India Ltd. since 2006.

255. Noticee are mainly into arbitrage business. Noticee maintain a close watch on movement of prices and volume in the scrips listed on both the Exchanges. If Noticee notice movement in any scrip Noticee start carrying out transactions in such scrip. Noticee continue transactions in such scrips till Noticee find positive results. Noticee's BSE-NSE turnover for the period 2009-10 was Rs. 988.2cr appx.

256. Noticee noticed spurt in the price of the scrip in question, therefore with effect from 13th July 2009 Noticee started carrying out transactions in the scrip in question. Up till 3rd August 2009 Noticee were making profits in the scrip in question, however, with effect from 4th August 2009, Noticee suffered losses in the scrip in question, therefore, gradually Noticee stopped carrying out transactions in the scrip in question. After 11th August 2009, Noticee carried out transactions on 17th August 2009 and also on 21st August 2009, however, thereafter Noticee discontinued out transactions in the scrip in question.

257. During the period of investigation, viz. July 2009 and August 2009, Noticee carried out transactions in various other scripts also. During the said period Noticee's total turnover was Rs.230.62cr app, whereas turnover in the scrip in question was Rs 21.2cr app. Script wise turnover for the period of investigation is placed on records.

258. Noticee in no way connected either to the said Austral Coke, or any of the entity related thereto, either directly or indirectly. Noticee has not received any funds from the said Austral Coke, either directly or indirectly. Noticee is not part of alleged manipulations, allegedly carried out by the company.

259. With reference to paragraphs 26 to 32, 35 and 36, Noticee repeat and reiterate that Noticee was carrying out “arbitrage transactions” in the ordinary and regular course of Noticee business. The transactions carried out by Noticee are genuine transactions carried out in a bonafide manner. Noticee neither know nor Noticee have any relationship with any of the entity mentioned in the paragraphs under reply. It is pertinent to note that neither in the paragraphs under reply, nor else in the notice under reply it is alleged that Noticee have any relationship with other entities set out in the paragraph under reply. It is further pertinent to note that there is no allegation that the trades were circular trades or synchronized trades.

260. With reference to paragraphs 38 and 39, Noticee submit that:

a. it is alleged in paragraph 38 that Noticee transactions of alleged purchase of 611054 shares on Bombay Stock Exchange had a net positive impact of Rs.461.7. However, Noticee are unable to understand how the said impact of Rs.461.7 has been calculated, therefore Noticee are unable to deal with the said allegation.

b. In any event the table reproduced under paragraph 38 does not reflect Noticee name, however, the quantity of 611054 as reflected against us in the paragraph 38, is reflected against Noticee no.10, i.e. Umesh Dhan Singh, in the Table as well as in Annexure “8”.

c. In the said Annexure “8”, as against Noticee PAN – AAHFK7686F, the “sum of quantity” at the Bombay Stock Exchange reflects only 177607 and “sum of LTP” reflects “-290.2”.

Therefore, there is an obvious oversight in making mention of “Noticee 11”, i.e. ourselves, in paragraph 38.

261. Noticee have gone through Annexure “10” and “11”. Upon perusal of the said Annexure, it is evident that out of the said purchase transactions of 171609 shares, with respect to transactions for purchase of 103915 shares, there is no difference in “Last Traded Price”. In any event every trade carried out on the Exchange has some impact on the prices of the scraps traded, either positive or negative.

262. Merely because some of Noticee trades resulted into rise in price, the same cannot and does not amount to any violation, much less the violations as alleged in the notice under reply.

263. With reference to paragraph 51, Noticee vehemently deny that Noticee has violated section 12A of the SEBI Act and/or regulation 3(a) to (d), 4(1), 4(2)(3) of the PFUTP Regulations. Noticee repeat and reiterate that mere contribution to the rise in price of the scrip by executing trades at prices higher than the last traded prices cannot and does not amount to alleged violations. More so when the trades executed by Noticee were arbitrage transactions carried out in the ordinary and regular course of Noticee business in a bonfide manner, and in absence of Noticee involvement in the alleged manipulations, allegedly carried out by the said Company and/or its Promoters, Directors and Associates, as alleged in the notice under reply.

264. With regard to alleged violations of Section 12(A) – The notice under reply does not contain any allegation against Noticee to the effect that:

a. Noticee have used or employed any manipulative or deceptive device or contrivance in contravention of the provisions of the SEBI Act or rules or regulations made there under, while purchasing or selling the securities; or that

b. Noticee have employed any device or scheme or artifice to defraud in connection with Noticee dealings in the said scrip; or that

c. Noticee have engaged in any act or practice or course of business which operated as fraud or deceit upon any person, or in connection with Noticee dealings in the scrip in question, in contravention of the provisions of SEBI Act, or the rules or regulations made there under.

265. In absence of any such allegation, and in view of the facts narrated in the notice under reply, the charge with regard to violation of Section 12(A) of SEBI Act does not hold good.

266. Neither the facts narrated in the notice under reply, or the findings rendered therein, support the charges of alleged violations of Section 12(A) of SEBI Act and/or PFUTP Regulations. The only finding rendered in the notice under reply that Noticee have contributed to the rise in price of the scrip by executing trades at prices higher than the last traded prices, cannot and does not substantiate any of the charge leveled against Noticee.

267. With reference to paragraphs 53 and 54, Noticee vehemently deny that Noticee have committed any of the violation as alleged in the notice under reply. Further, the notice under reply also does not establish any of the charge leveled against us, which would render Noticee liable for monetary penalty under Sections 15A(a) and/or 15HA of the SEBI Act, and the inquiry proceeding as sought to be held against in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with section 15-I of SEBI Act, deserves to be quashed and/or recalled.

268. Further following documents along with relevant data in support of Noticee claim is placed on records :

1) Illustrative Bills for trade dates 15.07.2009, 17.07.2009, 21.07.2009 and 23.07.2009 issued by M/s Pramod Kumar Jain Securities P. Ltd. (Member – BSE) for transactions entered into by M/s K K Finstock for the relevant period;
2) Illustrative Bills issued by M/s Vibrant Securities P. Ltd. (Member – NSE) for transactions entered into by M/s K K Finstock for the relevant period (for the same trade dates as per bills at S.No. 1 above);
3) Chart showing the date-wise transactions entered into by M/s K K Finstock in respect of M/s Austral Coke & Projects Ltd. on BSE for the relevant period
4) Chart showing the date-wise transactions entered into by M/s K K Finstock in respect of M/s Austral Coke & Projects Ltd. on NSE for the relevant period
5) Collated data date-wise, with the total quantum of shares entered into on both the exchanges, on a given date, by M/s K K Finstock in respect of M/s Austral Coke & Projects Ltd. for the relevant period i.e. from 13.7.2009 to 31.08.2009 clearly indicating that trading on a particular date in the said scrip was for arbitrage purpose.

269. As per the above data, it is evident that Noticee are in the business of arbitrage of shares and Noticee transactions in M/s Austral Coke & Projects Ltd. was only for the purpose of gains via arbitrage, i.e. capturing the difference in price of shares on both the exchanges. It may kindly be seen from the bills submitted, that, during the relevant period, Noticee have traded in 75-100 scrips on a particular day for the purpose of arbitrage and M/s Austral Coke & Projects Ltd. was only one of them. Noticee total gross profit in respect of M/s Austral Coke & Projects Ltd. for the said period was minimal and Noticee had no malafide intention at the time of trading in the said scrip.

Noticee 12 - Arcadia

270. At the relevant time, Noticee was a SEBI registered Stock Broker and apart from the activities of a registered stock Broker Noticee was also involved in the activities of arbitrage and jobbing. Noticee had more than 200 arbitragers/jobbers at that point of time. An arbitrage/Jobbing transaction is normally carried out to take benefit of the intraday price fluctuations that happen in the scrips in the same exchange or price difference in the same script across exchanges.

271. Trading in the scrip Austral Coke and Projects Ltd. (ACPL):

(a) It is humbly submitted that Noticee have traded in the scrip of ACPL in Noticee's own Trading account (Prop Trading) and also on behalf of the client during the Investigation period in BSE as well as NSE. Pertinently, the trades executed on behalf of the clients were as per their own instructions.

(b) Noticee reiterate that at the relevant time, Noticee had more than 200 arbitragers/jobbers and the trades in Pro Account were in normal course of jobbing activity.

(c) During the Investing Period of 13.07.2009 to 31.08.2009, summary of Noticee's total Buy and sell in the scrip of ACPL is mentioned herein below:

Particulars	**Buy**		**Sale**	
	Quantity	Value	Quantity	Value
NSE	3,07,064	Rs. 3,13,84,066	3,03,870	Rs.3,63,65,124
BSE	3,46,993	Rs. 3,75,48,281	4,42,140	Rs.3,71,63,936

The majority of the trades were intraday trades carried out for arbitrage/ jobbing transactions. Copies of Noticee's date wise buy and sell of the scrip of ACPL on NSE and BSE is placed on records.

(d) The aforesaid transactions in the scrip of ACPL are minuscule in comparison with Noticee's total turnover in various scrips during the Investigation Period. Noticee's total Turnover during the Investigation Period in Cash Segment is mentioned herein below:

(In Crores)

Period	Exchange	
	BSE (Cash Segment)	NSE (Cash Segment)
13.07.2009 – 31.08.2009	Rs 1018.95	Rs 5479.44

(e) Further, as Noticee are involved in jobbing/arbitrage related apart from ACPL Noticee have dealt in numerous scrips. Noticee's total scrips traded during the Investigation Period in Cash Segment is mentioned herein below:

Period	Exchange	
	BSE (Cash Segment)	**NSE (Cash Segment)**
13.07.2009 – 31.08.2009	1111 scrips	658 scrips

(f) The Buy Turnover in scrip of ACPL is merely 0.36% in BSE and 0.05% in NSE in comparison of Noticee's Total Turnover during the Investigation Period. A gist of the same is mentioned herein below:

(In Crores of Rs)

Particulars	Exchange	
	BSE (Cash Segment)	**NSE (Cash Segment)**
Buy Turnover in scrip of ACPL	Rs 3.75	Rs 3.13
Total Turnover in Investigation Period	Rs 1018.95	Rs 5479.44
% of Turnover in ACPL to Total Turnover	0.36%	0.05%

In view of the aforesaid, Noticee have traded in the scrip of ACPL in normal course of Noticee's business activity and nothing adverse in this regard can be alleged against Noticee.

(g) Further, details of comparison of date wise turnover of Noticee in the scrip of ACPL viz-a-viz market turnover during the Investigation Period in NSE and BSE is placed on records.

272. <u>Submission on the alleged Charge of Positive Contribution to the Last Traded Price "LTP".:</u>

i. It is pertinent to mention that during the Investigation Period there is no adverse inference drawn against us w.r.t Noticee's Sale of shares. They are inter – alia stated to be within the preview of Law.

ii. In the SCN it is alleged that on NSE out of Noticee's total buy of 3,07,064 shares of ACPL 43,707 shares are alleged to have contributed positively to LTP and 35,524 shares have contributed negatively to LTP. It is pertinent to note that 2,27,833 shares are traded at LTP. However, the allegation in the SCN only pertains to net positive contribution to LTP of Rs 40.5 (116.85-76.35) at the NSE. Thus, out of total shares bought by us at NSE, only 14.23 % of shares are alleged to be above LTP, 11.56 % of shares are alleged to be below LTP and 74.19 % shares are at LTP. Further, the total no. of shares i.e. 43,707 shares allegedly contributing negatively to LTP, becomes even more negligible if compared to overall shares traded during the whole investigation period. A copy of Day wise Buy trades of ACPL along with the LTP contribution at BSE is placed on records.

iii. Further, it is alleged that on BSE out of Noticee's total buy of 3,46,993 shares of ACPL, 73,772 shares are alleged to have contributed positively to LTP and 55,811 shares have contributed negatively to LTP. It is pertinent to note that 2,17,410 shares are traded at LTP. However, the allegation in the SCN only pertains to net positive contribution to LTP of

Rs 25 (107-81.95) at the BSE. Thus, out of total shares bought by Noticee at NSE, only 21.26% of shares are alleged to be above LTP, 16.08 % of shares are alleged to be below LTP and 62.65% shares are at LTP. Further, the total no. of shares i.e. 73,772 shares allegedly contributing negatively to LTP, becomes even more negligible if compared to overall shares traded during the whole investigation period. A copy of Day wise Buy trades of ACPL along with the LTP contribution at BSE is placed on records.

iv. On perusal of the analysis of the data in NSE Noticee it is submitted that only on 11 days the contribution to positive LTP is more than Rs 1. In Case of BSE only on 8 days the contribution to positive LTP is more than Rs 1.

v. Further, on perusal of Noticee's net position on any given day of the Investigation period viz –a – viz Impact on LTP, Noticee humbly submit that the contribution to LTP is minuscule to have any impact on the price of the market. In the present case, it is Noticee's arbitrager who trades by buying quote depending upon selling quote in the same exchange or other exchange. Hence, no adverse inference ought to be drawn against us in this regards. A copy of date wise Net Trade Position viz – viz. contribution to LTP is placed on records. In fact, there Noticee have no relation with the counter party of Noticee's buy trades and nothing in this regards has been alleged in the SCN. Further, on perusal of P/v chart of ACPL during the investigation period, it is humbly submitted that the trades were executed at the then available marked price and were miniscule in comparison with the marked volume. A copy of P/V chart as downloaded from the NSE and BSE Website during the Investigation Period is placed on records.

vi. In fact on perusal of Day wise Buy trades of ACPL along with the LTP contribution at NSE and BSE, it is submitted that on several days there only is negative contribution to LTP. Details of the same are mentioned herein below:

(a) At BSE

Date	LTP	Quantity
25.08.2009	-0.10	13,502
26.08.2009	-0.20	21,866
19.08.2009	-0.25	9,564
27.08.2009	-0.25	9,614
31.08.2009	-0.25	3,235
27.07.2009	-0.35	1,696
13.08.2009	-0.35	3,209
17.08.2009	-0.40	4,569
20.07.2009	-0.45	743
21.08.2009	-0.45	9,952
20.08.2009	-0.90	10,918
03.08.2009	-1.25	1,028
30.07.2009	-1.90	1,120
22.07.2009	-2.00	10,301
04.08.2009	-2.05	5,205
24.08.2009	-2.20	41,711
11.08.2009	-2.50	82,344

(b) At NSE

Date	LTP	Quantity
14.08.2009	-0.10	600
27.08.2009	-0.15	7,273
18.08.2009	-0.20	9,297
21.08.2009	-0.25	8,950
06.08.2009	-0.40	3,383
19.08.2009	-0.65	11,883

13.08.2009	-0.70	2,536
28.08.2009	-0.70	18,071
03.08.2009	-0.75	2,093
26.08.2009	-0.90	20,926
07.08.2009	-1.05	22,534
16.07.2009	-1.15	441
24.08.2009	-1.85	46,942
14.07.2009	-4.00	475

Hence, it is humbly submitted that there is no fraudulent aspect w.r.t Noticee's trading in the scrip of ACPL.

vii. Further, Noticee humbly submit that on perusal of Table referred under Para 38 on Page No. 21 and 22 of the SCN, details of contribution of Net Positive LTP of Rs 46 by Ms. Sunita C Patil and of Rs 33 by OPG Securities are given. However, it is surprising to note that they have not been made party to the SCN.

273. It is pertinent to mention that Noticee do not have any relation with ACPL its Promoters, Director and/or Key Managerial Personnel and nothing in this regard is alleged in the SCN. In fact, there is no allegation of any fund transfer/relation from any other Co- Noticee in any manner whatsoever.

274. <u>Orders by SEBI in similar matters</u>

(i) We would like to draw your kind attention to following Orders of SEBI wherein the direction imposed on entities w.r.t similar allegation of 'LTP contribution' was revoked:

Sr. No.	**Date of Order**	**Particulars of Order**

i.	06.09.2017	SEBI's Order in respect of Shyam Vyas, Bharat Bagri and Sumitra Devi Agrawal in matter of First Financial Services Ltd. (Ref: WTM/SR/SEBI/EFD-DRA3/71/09/ 2017)
ii.	19.09.2017	SEBI's Order in respect of J M S Financial Services Ltd and Sanjay Shah in matter of Pine Animation Ltd. (Ref: SEBI/WTM/MPB/EFD-1-DRA-III/28/ 09/2017)
iii.	21.09.2017	SEBI's Order in respect of Bharat Bagri HUF and Anr in matter of Kailash Auto Finance Ltd. (Ref: SEBI/WTM/MPB/EFD-DRA-I/31/ 2017)
iv.	05.10.2017	SEBI's Order in respect of Shyam Vyas in matter of Mishka Finance and Trading Ltd. (Ref: SEBI/WTM/MPB/EFD-1-DRA-III/50 / 2017)

275. Noticee vehemently deny alleged violation of provisions of Section 12A of SEBI Act, 1992 and Regulation 3 (a),(b),(c),(d), Regulations 4(1), 4 (2) (a) and (e) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulation, 2003 and submit as under:

(i) Noticee has not employed any manipulative or deceptive device with respect to Noticee's purchase of shares of ACPL or neither has Noticee acted in contravention to the provisions of SEBI Act or the rules or the regulations made thereunder. In fact, Noticee has not employed any device, scheme or artifice to defraud anyone while dealing in ACPL shares. Further, While dealing in scrip of ACPL, Noticee has not engaged in any act, practice, course of business which operates as fraud or deceit upon any person (Ref Section 12A of SEBI Act, 1992)

(ii) Noticee did not buy, sell or otherwise deal in ACPL scrip in fraudulent manner. Noticee had placed order in shares of ACPL scrip in normal and ordinary course of Noticee's share trading activity which was in due compliance of all rules and regulation prescribed by regulator from time to time *(Ref Regulation 3 (a) of PFUTP Regulations);*

(iii) While dealing in scrip of ACPL, Noticee has not employed any manipulative or deceptive device or acted in contravention of the provisions of SEBI Act and Rules/Regulations made thereunder *(Ref Regulation 3 (b) of PFUTP Regulations);*

(iv) While dealing in scrip of ACPL, Noticee has not employed any device, scheme or artifice to defraud anyone. Noticee's buy and sell orders were meant in normal course of Noticee's share trading activity which dihors any manipulative or fraudulent intent on Noticee's part *(Ref Regulation 3 (c) of PFUTP Regulations);*

(v) Noticee has not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in or issue of shares of ACPL. None of Noticee's trades were in contravention to the provisions of Rules/Regulations made thereunder *(Ref Regulation 3 (d) of PFUTP Regulations);*

(vi) As aforesaid, Noticee repeat and reiterate that Noticee have not bought, sold or otherwise dealt in shares of ACPL in fraudulent manner at all *(Ref Regulation 4 (1) of PFUTP Regulations);*

(vii) Noticee has not indulged in any act which created false or misleading appearance of trading in scrip of ACPL. All Noticee's sale transactions were carried out on the trading terminals of the stock exchange in the normal and ordinary course of Noticee's trading activities and the same were within the parameters/guidelines of stock exchange (*Ref Regulation 4 (2) (a) of PFUTP Regulations)*

(viii) Noticee has not done any act or omission in the scrip of ACPL that amounts to manipulation of price of a security *(Ref Regulation 4 (2) (e) of PFUTP Regulations);*

276. Further, Noticee has relied on following judgments

a. <u>Proceedings after long efflux of time is meaningless:</u> The present matter of the captioned SCN pertains to a period which is more than 5 years old from the date of transactions i.e. 2009. In fact, presently around 14 years have elapsed from the date of transaction. Hence, there is an inordinate delay w.r.t. initiation and providing an opportunity for personal hearing in the present proceedings by SEBI. In this regard, Noticee would like to draw your kind attention to the following Orders:

(a) Order dated 22.08.2019 passed by Hon'ble Securities Appellate Tribunal in the matter of ***Ashok Shivlal Rupani & Anr. vs. SEBI*** (Appeal No. 417 of 2018).

(b) *O*rder dated 27.05.2019 passed by Hon'ble Securities Appellate Tribunal in the matter of ***Mr. Rakesh Kathotia vs. SEBI*** (Appeal No. 07 of 2016). etc.

b. <u>Strict Proof required for a serious charge of 'fraud':</u>

It is wholly untenable for any authority to arrive at a finding of *'fraud'* solely on the basis that Noticee dealt in scrip of ACPL. Noticee would like to draw attention to following cases:

(a) The matter of **R. K. Global v/s SEBI** (Appeal no. 158/2008 decided on 16.09.2010), Hon'ble Securities Appellate Tribunal

(b) The matter of **Narendra Ganatra v/s SEBI** (Appeal No 47 of 2011 decided on 29.07.2011), Hon'ble Securities Appellate Tribunal

(c) **Videocon International v/s SEBI** (2002) 4 CLJ 402 (SAT)

(d) In the matter of **Parsoli Corporation v/s SEBI** (Appeal No 146/2011 decided on 12.08.2011); Hon'ble Securities Appellate Tribunal

(i) <u>**Compelling evidence required to charge someone of fraud**</u>

It is well-settled law that the taint of fraud cannot be charged merely on basis of preponderance of probability. In fact, compelling evidence should be brought on record by quasi-judicial entity for charging an entity for *'fraud'*. Noticee submit that charge of SEBI (PFUTP) Regulation is serious charge and has to be backed by cogent evidence which is completely missing in present case. In this regard, Noticee would like to draw your attention to the following cases:

(i) In the case of **Ram Sharan Yadav vs. Thakur Muneshwar Nath Singh** (AIR 1985 SC 24) wherein the HHJ S M Fazalali of Hon'ble Supreme Court

(ii) In the case of **Bishundeo Narain & Anr vs. Seogeni Rai & Anr** decided on 04.05.1951 (1951 AIR 280), the Hon'ble Supreme Court

(iii) In **Nandkishore Prasad vs. State of Bihar** decided on 19.04.1978 [(1978) AIR 1277], Hon'ble Supreme Court

Noticee 13 – Setu Securities Private Limited

277. The alleged transaction has taken place in 2009 and the investigation was conducted in 2011. Subsequently, the SEBI issued a SCN on March 26, 2014 i.e. almost 5 years after the alleged transactions and a Notice of hearing was issued in 2022 i.e. more than 13 years after the alleged transaction. Thus, the Noticee submitted that the proceedings under the present SCN withdrawn on the grounds of delay, alone.

278. The Noticee has placed reliance upon several judgments of the Hon'ble Securities Appellate Tribunal. It is well settled principle of law that the proceedings must be concluded within reasonable amount of time. It was submitted that, 13 years cannot possibly be reasonable time and therefore the proceedings must be withdrawn on this ground alone.

279. It has been alleged in the Show Cause Notice that the present Noticee had allegedly made positive contribution to the LTP of the scrip to the extent of Rs. 67.20 and is therefore alleged to have violated SEBI Act, 1992 read with SEBI (PFUTP) Regulation, 2003.

280. Noticee has been trading in the market for more than 20 years. It submitted that the Noticee is in business of buying, selling, and trading of securities including jobbing. The Noticee submits that it has more than 40 jobbers, who undertake trades on behalf of the Noticee. They are instructed to buy a particular stock, which is selected upon considering various factors like liquidity, momentum, news, research reports of various broking houses. It is submitted that ACPL fitted into these criteria and therefore the Noticee had traded in this stock during the relevant time.

281. The Noticee submits that ACPL was not a standalone stock. The Noticee, through its jobbers, have executed similar trades in other scrip like Bhushan Steel Limited, Arvind Mills Limited, Aurobindo Pharma Limited, Apollo Tyres Limited and so on. A comparative study between ACPL and these scrip would show that the trades in ACPL were in the normal course of business and there was nothing amiss in the trading pattern adopted by the Noticee.

282. The Noticee denied these allegations and stated that upon comparing with the other Noticees, the trade executed by the Noticee is extremely miniscule and

cannot possibly impact the market. In light of the above, the Noticee submits that relatively it has bought extremely miniscule amount of shares i.e. 21, 880. During the course of the hearing, the Noticee submitted that the Table (at Pg. 23 of the SCN) clearly indicates that merely 218 trades (3,419 shares out of 21, 880 shares) had alleged positive contribution to the LTP. Therefore, the Noticee submits that are extremely miniscule and are incapable of any manipulation, as alleged in the SCN.

283. It was further submitted that the Noticee had no reason to allegedly manipulate the scrip. It was submitted that the Noticee suffered a net loss of approximately Rs. 7,230. Further, it is not even alleged in the captioned SCN that the present Noticee is connected with any other Noticees.

284. During the course of the hearing, Noticee was called upon to provide the exchange-wise end of the day data in order to ascertain whether the trades executed by the Noticee were carried forward or not. The exchange wise data for the trades executed in ACPL is placed on records. Noticee was also asked, whether any of the trades executed in ACPL were carried forward or were those squared off on the same day. Data placed on records confirms that most of the times, Noticee had squared off its position, except in seldom instances when a minuscule amount of quantity was being carried over.

285. It was submitted that the alleged trades executed by the Noticee were through the jobbers employed by the present Noticee. It was submitted that these jobbers have been instructed to buy particular scrip; which is selected after being filtered through various criteria's.

286. Further, the Noticee submits that upon comparing Noticee's volume with the total volume traded on the exchange on respective dates, two things are amply

clear. First, the trades executed by the Noticee are extremely miniscule upon comparing it with the total trades on the exchange. Second, ACPL was a highly liquid counter and cannot possibly be manipulated with such less number of trades executed by the Noticee.

287. The Noticee also submits that there is no allegation in the captioned SCN that the present Noticee has 'acted in concert' with the other Noticees. In fact, the present Noticee has no connection with the other Noticees. Thus, it cannot possibly be alleged that the present Noticee has violated SEBI (PFUTP) Regulation, 2003.

288. The Noticee places its reliance upon the order passed by the Hon'ble SAT in Jagruti Securities Limited vs. SEBI etc.

Noticee 17 – S K Chowdhary

289. Noticee never had any real connection with Austral Coke and Projects Ltd. except having consented to lend his name as a non-executive, non-functional honorary Director way back in the year 2006. Though Noticee resigned from such non-functional non-executive kind of Directorship of the Company concerned in the year 2009 ,and his post having remained vacant by default during even those three years on account of his never having attended any meeting of Board of Directors, not once, and by application of Sec 283(g) of the Companies Act 1956.

290. The Noticee has explained how remote and thin connection Noticee had with the company Austral Coke, Noticee had consented to Mr. Rishi Agarwal to become a non-Executive Director of the delinquent company without having known then, or without having felt any suspicion about the activities of the

company concerned or that of it's the then Directors on Board or that the persons/ directors concerned of such Company could ever indulge in any activity that would turn not only dangerous but bring such infamy as to make the Noticee suffer without having committed a single act of illegality or one likely to cause disgrace of any kind in his life. Noticee was never given any Director Identification Number.

291. Noticee had never attended any meeting of the Board of Directors of this Company. Noticee was never given any notice of the meeting of the Board of Directors. Noticee had never advised the company on any of its affairs. Noticee had no connection with the company during the time his name remained as a Director or otherwise.

292. The Noticee is imputed on the basis of the documents citing the name of the Noticee showing his presence in Board meetings, which is signed only by the Chairman of the Company, without making any investigation worth its name, regarding the trueness of the document.

293. There was no investigation to the effect that Noticee attended meetings of the Board, for had there been any, it would have been found that no notice, no invitation, to attend a meeting was ever sent to him by the company, nor was there any arrangement made by the company arranging his travel to Mumbai or Kolkata from Delhi.

294. By not sending any notice to the Noticee as a Director the Company was liable for mandatory provision of section 286 of the companies Act 1956. Not attending any meeting of the Board of Directors amounted to the office of such Director as his falling vacant automatically under section 283(g) of 'the

Companies Act 1956 as well as section 167 (1) (b) of the Companies Act 2013. Section 283 (1) (g) of the Companies Act 1956 reads as under:

Section 283. Vacation of office by directors.—(l) The office of a director shall become vacant if ………….

(a)…

.

.

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board.

295. Noticee clarifies that to his knowledge Noticee never received any Director Identification Number. The Noticee never gave his consent to be an Independent Director of the company Austral Coke and Projects Limited. In support of the premise the Noticee has placed on records the following documents:

a. His resignation letter dated 30th March 2009
b. Letter dated 08.03. 2016 of the Greenearth Resources and Projects Limited, the Company secretary clarified that the Noticee was appointed as Non-Executive Director of their company on 20.03.2006 and resigned as Non-Executive Director on 30.03.2009 further clarifying that the company confirmed that his resignation was already filed to the ROC Kolkata in the year 2009.
c. The letter of the Noticee dated 26.03.2016 addressed to the Company secretary Greenearth Resources and Projects Ltd. for confirmation of the fact that Noticee never attended any meeting of the Board of Directors of the company, to which however Noticee did not receive any reply.

296. The Noticee honored and cooperated with every authority who questioned him and made investigation regarding his connection with the Company, Noticee submitted his Bank statements, his income statements, information regarding his property, his foreign visits, and every detail and information that Noticee was asked to provide.

Noticee 20 – All Bank

297. The Company has since been amalgamated with Allahabad Bank w.e.f 14.032018 vide Regional Director (ER), Ministry of Corporate Affairs order dated 14.03.2018.

298. Without prejudice to anything else hereinafter stated, Noticee state and submit as follows:

a. That the IPO of Austral was in August, 2008 and now after a period of -10- years, the AO is initiating the adjudication proceedings by issuance of said notice, hence said Notice is barred by Limitation.

b. The said Notice is very ambiguous and the observations/allegations were already suitably explained and responded by the company

c. The alleged non compliances of SEBI Regulations have not been properly specified in the said Notice

d. In view of the above, Noticee are unable to comprehend the complete scope of the Notice. However, Noticee have strived to provide inclusive reply to the allegations made against it.

299. The contents of the para 8&9 are a matter of record, however, Noticee wish to submit that pursuant to directives/observations from SEBI, the Company had submitted project completion certificates dated July 18, 2008 issued by State

Bank of India i.e. before the opening of the Issue confirming that project was completed on November 30, 2007 and Unit has commenced production on December 31, 2007. Similarly, project completion certificates dated September 12, 2008 issued by Bank of India confirmed that project was completed on June 10, 2008 and Unit has commenced production on August 10, 2008. However, SEBI conveniently ignoring the pre IPO letter issued by State Bank of India reiterated/ mentions only about the letter issued by Bank of India is post IPO.

300. Thereafter, in order to prove its bonafide, company vide its letter dated February 5, 2009 submitted two more certificates from M/S Kamothi Engg. & Inspection services dated January 23, 2009 and Certificate dated January 27, 2009 from Sri Vilas J. Badrapurkar to confirm that the facilities by way of additional chimneys (2 nos) and ovens (58 nos) along with other auxiliaries and expanded capacity of 200,000 tonnes were in place at the time of RHP. However, SEBI again without confirming or acknowledging or rejecting the correct nos. of chimneys, ovens and expanded capacity, simply noted that both certificates were acquired post Issue.

301. It is submitted that based on complaints arising from family dispute / by rival company in respect of IPO of Austral , SEBI sought various information's and clarifications from the Noticee from time to time and the Noticee has diligently provided all such information's and explanation to SEBI.

302. Thus, the Noticee has conducted the due diligence of Austral for the purpose of IPO as per accepted standards and comply with the Code of Conduct and the said Notice do not allege any other instance of non-compliance by Noticee expect the issue regarding nos. of chimneys, ovens and expanded capacity, which has been the matter of dispute too (arising from complaints by rival company) and for which the Company has obtained the necessary declarations

from Promoters of Austral, had discussed with promoters in various meetings, obtained necessary certificates issued by Banks and independent Engineers, confirming the facts stated by Promoters .

303. It is also to be noted that, there is no allegation that there was any collusion of the company with the Austral or Company has obtain any undue benefit. In fact the shares of Austral were listed on BSE & NSE post IPO and apart from various issues/ litigation of promoters, for which Company has no locus standi, the shares of Austral are still listed on BSE & NSE.

304. In respect of the due diligence to be exercised, Noticee has referred judgments of Hon'ble SAT in the matter of Almondz Global Securities Ltd. v SEBI , Hon'ble Supreme Court in the case of Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC and has denied the allegation that Company has not complied with clause 5.1 Schedule Ill of the SEBI (disclosure and Investor Protection Guidelines, 2000 read with Regulations 64(1) and 8(2) (b) and 115 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and Regulation 13 read with Clauses 1,2,3,4,6,7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule Ill to the SEBI (Merchant Bankers) Regulations, 1992 is denied in toto.

305. The contents of the para 10 and 11 are false, misleading and are completely denied in view of the submission made in para 3 to 9 above. Further, the Company has not failed to carry out proper due diligence as the lead Manager Banker during the IPO of Austral and has not been in non- compliance of clause 5.1 Schedule Ill of the SEBI (disclosure and Investor Protection Guidelines, 2000 read with Regulations 64(1) and 8(2) (b) and 115 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and Regulation 13 read with Clauses 1,2,3,4,6,7 and 21 of the Code of Conduct for Merchant Bankers

specified under Schedule Ill to the SEBI (Merchant Bankers) Regulations, 1992 . SEBI is put to strict proof thereof.

306. In view of the above, Noticee submit that the said Notice has failed to establish any intent on Company's part or non-compliance of relevant SEBI Regulation.

307. Further, as also mentioned hereinabove, the Company has since been amalgamated with Allahabad Bank and the company has surrendered the merchant banking, license to SEBI. SEBI Letter conveying the cancellation of MB License to the company is placed on records.

308. Noticees 14, 15, 16 did not appear for hearing nor submitted any reply to SCN. Noticee 8 and 10 did not file any reply on merits and did not appear for hearing. As adequate opportunity was provided to these Noticees to submit reply and appear for hearing, which they failed to avail, the proceedings against them are being undertaken ex-parte.

309. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

310. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticees have violated the following provisions:

i. Whether Noticees 1,2,3,17,18 and 19 are in violation of 12A of the SEBI Act, 1992 and regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations, clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations;

ii. whether Noticee 1, 2, 3, 4, 5, 6, 7 are 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;

iii. whether Noticee 8 is in violation of section 12A of the SEBI Act and regulation 3(b) to (d), 4(1), of PFUTP Regulations;

iv. whether Noticee 9, 10 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations;

v. whether Noticee 11, 12, 13 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations;

vi. whether Noticee 14, 15, 16 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations; and

vii. whether Noticee 20 is in violation of provisions of Clause 5.1, Schedule Ill to the DIP Guidelines read with Regulations 64(1) and 8(2)(b) of ICDR Regulations [read with Regulation 115 of ICDR Regulations] and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule Ill Merchant Bankers Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA, 15HB, 15A (a) of SEBI Act, 1992? And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I Whether the Noticees have violated the following provisions:

i. Whether Noticees 1,2,3,17,18 and 19 are in violation of 12A of the SEBI Act, 1992 and regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations, clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations;

311. Before proceeding with the consideration of issues, there is need to address the preliminary issue raised by the Noticees that there was inordinate delay in initiation of proceedings and prejudice has been caused to the entity. In this regard, I note that SEBI received reference from Income Tax Department and complaints from investors in the year 2009, pursuant to which an ex-parte interim order was passed against Austral Coke on 01.09.2009 prohibiting it from raising any further capital in any manner, directly or indirectly. The interim directions continue till date. SEBI also initiated investigation in the matter on 31.08.2009. The investigation was concluded on 31.05.2013 after which two SCNs were issued on 26.03.2014 and third SCN was issued on 12.07.2018. I take note of the time of almost 4 years taken to complete the investigation after the interim order was passed. I also note that while two SCNs were issued within a year of completion of investigation, third SCN was issued 5 years after completion of investigation. Further, 8 years have elapsed since first two SCNs were issued and 4 years have elapsed since third SCN was issued.

312. I take note of the aforementioned time elapsed in the proceedings subsequent to passing of interim order. I also note that no limitation has been prescribed in SEBI Act for initiating proceedings for violation of securities laws.

313. It is alleged in SCN 1 that the Noticee 1 made wrong disclosures regarding the production capacity of its LAM Coke Plant at Gujarat in the RHP, by claiming that it had existing 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. It was alleged that the claimed capacity of 3,75,000 TPA of the plant as stated in RHP was supported by the certificates issued by banks, Chartered Engineers who either did not visit the plant or visited it after the closure of the public issue i.e. August 13, 2008 or issued it on the basis of information received from Noticee 1. Further, during investigation, from the statements of chartered engineers and site visit by SEBI officials, it was also alleged that there were certain mismatches observed at the plant vis a vis the details available in project completion report. The documents requested by SEBI from Noticee 1 in support of construction of 2 new chimneys at the plant were also not responded to. In view of the above, it was alleged that the Noticee 1 did not have the claimed capacity and gave wrong disclosures in the RHP.

314. In this regard, Noticee has contended that Capacity expansion completion was certified by more than one outside & independent professional organization/people. In fact 3 of these organizations were SBI, BOI and Noticee 20 which are PSUs with direct control of the Government of India. The certificates confirmed that there were four (4) chimneys and 158 ovens ready at the plant site and SEBI team had observed that in the fourth chimney only couple of ovens were operational. Further, 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. The non-operation of full capacity depends on large number of Technical /Commercial factors which are dynamic and keeps on changing periodically. None of the independent professional chartered engineer/ bankers has denied the issuance/genuineness of the completion certificate issued by them.

315. In this regard, I note that there is no report/certificate available on records from professionally competent expert certifying that the Noticee 1’s plant did not have the maximum capacity of 3,75,000 TPA at the time of issuance of RHP or public

issue or thereafter. Further, none of the professional chartered engineers/bankers asserted lack of 3,75,000 TPA capacity of the plant in their statements or submissions to SEBI. The only inference that could be drawn from the records is that the person issuing the certificates either did not visit the plant at the time of issuing of certificates; or, visits made to the plant and consequent certificate issuance were after public issue closure date. There are observations regarding mismatch at Plant site and project completion report but nowhere it is concluded that these mismatches confirm absence of claimed maximum production capacity of 3,75,000 TPA.

316. I note that the estimation of production capacity of a LAM Coke Plant requires relevant technical domain expertise, and in depth onsite inspection. To reject the certificates issued by Banks/Certified Engineers (basis which banks also sanctioned/disbursed loans), there needs to be a report by competent professional certifying that the maximum production capacity of the plant was less than 3,75,000 TPA.

317. In view of the above, I find that ***there is insufficient material available on records, to establish that there was misstament in the RHP of the public issue by Noticee 1 regarding production capacity of the LAM Coke Plant.***

318. It is also alleged in SCN1 that Noticee 2 and Noticee 3 made misstatement by saying that they have disassociated themselves from Gujarat NRE Coke Ltd. due to family dispute, whereas as per minutes of the EGM of Gujarat NRE Coke Ltd held on December 4, 1997, Noticee 3 and Noticee 2 were removed from the office of the director of the company.

319. In this regard Noticee 1 has contended that 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, and under the provisions of the Companies Act, 1956 Noticee 2 and 3 were and continue to be eligible for appointment as director. Further, in regard to the word "disassociate" in RHP in connection with Gujarat NRE Coke the Oxford English Dictionary meaning of the word "association" i.e. affiliation, alliance, companionship, fellowship, friendship, partnership may be referred. In view of the same, as Noticee 2 and 3 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.

320. In this regard I note from the minutes of the EGM of Gujarat NRE Coke Ltd held on December 4, 1997 that, as per the agenda 1 and 2 of the meeting, it was resolved to remove Noticee 2 and 3, which was voted favourably by the members. Whereas in the RHP it was mentioned that due to family dispute Noticee 2 and 3 have disassociated themself from Gujarat NRE Coke Limited effective from 1997. Further, though the word disassociate essentially means not being connected and the word ‘removed’ also refers to being not connected to Gujarat NRE Coke Ltd., the statement in RHP by Noticee 2 and 3 gives an impression as if such disassociation was voluntary on account of family dispute, whereas it was a removal by voting in the EGM which led to such disassociation.

321. Further, the Noticee has contended that the company in its RHP (Page no. 165 to 176) had 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, and there was no intent on the part of the promoters/directors to misstate anything in the RHP. In this regard, I note that such disclosure did not essentially inform

investors about the removal of the Noticee 2 and 3 from Board of Director of Gujarat NRE Coke Ltd. by voting in the EGM. In view of the above, aforesaid contentions of the Noticees are not accepted.

322. In view of the above, **it is established that there was misstatement by Noticee 1 in the RHP regarding the reason for the disassociation of Noticee 2 and 3 from Gujarat NRE Coke.**

323. It is also alleged in the SCN1 that Noticee made misstatements regarding utilization of IPO proceeds and part of the amount has been siphoned off by the promoters. As per RHP of the public issue, the funds raised 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 1 spent Rs. 99.66 Crores from the IPO proceeds at the new plant site.

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

S.No.	**Transferred to (spent on)**	**Amount (Rs. in Crores)**
1	Noticee 1 (General corporate expenses and pre-payment of high cost debt)	39.14 (36.60+2.54)
2	To 3 entities for Issue Expense	0.53

3	Noticee 1 (for the purpose of acquisition of coal mines through their subsidiary Global Astra Pte. Ltd.)	47.50
4	6 Entities controlled by Noticee 8 (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
	Total	**139.25**

325. It was observed that aforesaid Rs.52.08 Cr were transferred to 6 entities controlled by Noticee 8 for supply and setting up LAM Coke Plant, out of which Rs.29.42 Crores were transferred to Anarcon Resources Pvt. Ltd. a Noticee 1 promoter entity. Further, there were already 4 chimneys at the Lunva Plant Site, and no additional chimneys were added at the site, and no proof that any capacity expansion was carried out at the plant site after public issue. In view of the same, it was alleged that there was no capacity expansion in plant after public issue, hence Noticee 1 has made misstatements regarding of utilization of IPO Proceeds and some amount appears to be siphoned off,.

326. In this regard, Noticee 1 has contended that the plant location was shifted from Sidhudurg to Lunva because it was not getting the environmental clearances, and at Lunva it had an already running LAM Coke Plant, and in 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. It is noted that Noticee 1 has not submitted any proof in regard to its inability to get the environmental clearance, but given that in the RHP it did inform about the

possibility of relocation of proposed plant location in case of certain contingencies, the shifting of location of by Noticee 1 cannot be termed as misstatement in utilization of IPO proceeds.

327. 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, which were though later canceled, were in agreement and conformity with the objects of the IPO. In this regard I note that there is no adverse findings in investigation report and nothing adverse on records in regard to payment of Noticee 1 towards acquisition of prospecting mining licenses. Further, the Noticee has also placed on records the cancellation letter. It is noted from the objects of the issue that issue proceeds were intended to be used for acquisition of prospecting mining licenses, hence in this regard, no misstatement regarding utilization of issue proceeds can be concluded.

328. Further, the Noticee 1 has contended that Rs. 2.54 Cr was utilized towards repayment of its high cost debt with State Bank of Indore, Rs. 0.52 Cr was utilized towards meeting the Public Issue Expenses and Rs.36.60 Cr was utilized for other general corporate purposes as per the object of the issue as disclosed in the RHP. In this regard I note from the objects of the issue that issue proceeds were intended to be used for General Corporate Expenses and Issue Expenses, hence, in this regard, no misstatement regarding utilization of issue proceeds can be concluded.

329. In regard to the payment of Rs.52.08 Cr to entities controlled by Noticee 8, Noticee has contended that the payments were advance to the entities for supply of raw material, plant and machinery required in setting up the additional LAM Coke Plant, however the entities failed to provide the raw material and

accordingly to recover the said amount the Noticee 1 filed Suit No.195 of 2012 before High Court of Kolkata, against Ajit Jindal and its controlled entities for recovering the advance from Ajit Jindal and its controlled entities. Further, Noticee has stated that the Rs. 29.42 Crores transferred to M/s. Anarcon Resources Pvt. Ltd. (Anarcon) is in connection with some other business deals between Anarcon and Noticee 8 controlled entities.

330. In this regard I note that there is no supporting documents provided by Noticee 1 to substantiate its contention that Rs. 29.42 Crores transferred by Noticee 8 controlled entities to Anarcon was in connection with some other business deal between them. Further, Noticee 8 during investigation in his statement has submitted that all of the entities controlled by him were actually just on paper entities with no real address, telephone no, GST (VAT) No., and there was no purchase/sale of coke by Notice 8 and its controlled entities to Noticee 1. Noticee 8 also submitted that all the bills and challans were prepared by Noticee 1 officials and he just used to sign and get commission for the bank account transfers through accounts in his name. From the same, it was inferred that Noticee 1 inflated purchase/sale figures by passing fictitious purchase/sale entries from/to entities belonging to Noticee 8. I find that while SCN states that the bills given by Noticee 8 controlled entities were fictitious, it is not the established that Noticee 1 had a role to play in generating the fictitious bills. The statements of Noticee 8 that the bills and challans were not prepared and printed by him, but by officials of Noticee 1 is not substantiated or backed by documentary evidence. I also note that Noticee 8 has neither given any reply on merit to the SCN nor appeared for hearing. I also note that Noticee 1 has not been provided with the opportunity to cross examine the Noticee 8 (on account of Noticee 8 not being available). Therefore, the statement and submission of Noticee 8 cannot be relied upon for establishing that entire transfer of Rs.52.08

Crs was on account of fictitious sale/purchase between Noticee 1 and 8 and its controlled entities.

331. However, in case of Rs. 29.42 Crores transferred to Anarcon by the Noticee, the statement by Notice 8 is corroborative evidence and the bank account transfers as evidenced by the bank account statements establish that the issue proceeds were transferred to entity related to Noticee 1 in conflict to the object of the issue. In view of the same, it is established that **Rs.29.42 Crores of Issue proceeds were transferred back to Noticee 1 promoter controlled entity and to this extent, Issue proceeds were misutilised by routing back to a promoter controlled entity**.

332. Hence it is established that on account of misstatement by Noticee 1 in the RHP regarding the reason for the disassociation of Noticee 2 and 3 from Gujarat NRE Coke Noticee 2 and 3 in the RHP regarding the reason for their disassociation from Gujarat NRE Coke and misutilisation of issue proceeds by routing back Rs.29.42 crores to promoter controlled entity, Noticees 1 violated Section 12A(b) and (c) of the SEBI Act, 1992, Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations, and clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations. Noticee 2 and 3 being Chairman and MD of Noticee 1 also violated Section 12A of the SEBI Act, 1992, Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations.

333. Noticees 17, 18 and 19 were independent non-executive directors as per the RHP and not in charge of day to day functioning. Material on record does not bring out their role in the aforesaid violations. Hence, the aforesaid violations are not established against them.

ii. whether Noticee 1, 2, 3, 4, 5, 6, 7 are 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,

iii. whether Noticee 8 is in violation of section 12A of the SEBI Act and regulation 3(b) to (d), 4(1), of PFUTP Regulations;

334. It is alleged in SCN2 that Noticee 1 made 4 major positive corporate announcements in 1 month just prior to a proposed board meeting to be held to discuss raising of USD 200 Million by QIP, to raise the market price of the scrip, which were beneficial to Noticee 1 as price of QIP was to be determined on the basis of market price of the scrip. It was also noted that 3 out 4 occasions lead to such increase in price and volume increase in the Scrip.

335. In regard to the 4 announcements made before QIP, I note that the Noticee 1 has submitted the supporting documents to indicate that the announcements that were made by the Company were genuine and were required to be made in compliance of the securities law. I have perused through the documents (Land handing Over/allotment letters, land and Techno Economic and Feasibility Report by Mott Macdonald etc.) placed on records and find that there is sufficient proof and reasons supplied by the Noticee 1 to make such announcements. I also note that not in all 4 cases after the public announcements, scrip price and scrip volume traded increased, since after announcement dated August 26, 2009 the price and volume of the scrip decreased. I note that the SCN itself states that it could not be ascertained whether the announcements made by the company were genuine or not. In view of the above, I find that there is no reason to conclude that Corporate announcements made by Noticee 1 were non-genuine.

336. It is alleged in SCN2 that Noticee 1 along with its directors and promoters (Noticee 2 to Noticee 7) manipulated its books of accounts and showed fake purchases and sales to entities owned / controlled by Noticee 8 and Noticee 8 facilitated Noticee 1 to manipulate its books of accounts (through his controlled entities). In this regard, I note that the Noticee 8 has made a statements that all of the entities controlled by him were actually just on paper entities with no real address, telephone no, GST (VAT) No., and there was no purchase/sale of coke by Notice 8 and its controlled entities to Noticee 1. Noticee 8 also submitted that all the bills and challans were prepared by Noticee 1 officials and he just used to sign and get commission for the bank account transfers through accounts in his name. From the same, it was inferred that Noticee 1 inflated purchase/sale figures by passing fictitious purchase/sale entries from/to entities belonging to Noticee 8 and manipulated books of accounts of the company.

337. Further, I note that during investigation it was found that the GST (VAT) No., Telephone No., Addresses of the Noticee 8 controlled entities were nonexistent or belonged to some other entity. In this regard, Noticee 8 during his statement recording accepted the findings and stated that entities controlled by him were on paper entities, and did not exist, and he or his controlled entities never purchased/sold coke or plant & machinery to Noticee 1.

338. With regard to aforesaid statements by Noticee 8, I note that while it was found during investigation that the bills given by Noticee 8 controlled entities were fictitious, it is not alleged or established by any corroborative evidence that Noticee 1 had a role to play in generating the fictitious bills. The statements of Noticee 8 that the bills and challans were not prepared and printed by him, but by officials of Noticee 1 is not substantiated or backed by documentary evidence. I note that Noticee 8 has neither given any reply on merit to the SCN nor appeared for hearing. I also note that Noticee 1 has not been provided with

the opportunity to cross examine the Noticee 8 (on account of Noticee 8 not being available). Therefore, the statement and submission of Noticee 8 cannot be relied upon for establishing manipulation of books of account by Noticee 1.

339. I take note of the submissions by Noticee 1 that sales/ purchases and capitalization of fixed assets has been duly assessed by the statutory auditors of the company and that the Statutory Auditors never gave any dis-qualification/negative remark as regards purchase/sale or about overall financial affairs of the company. Noticee 1 has also submitted that it was a merchant converter and 70% of merchant coke oven operates on job/conversion basis and that Mr. Ajit Jindal & its associates were acting in both the capacity of purchase of Coke (finished goods) and suppliers of Coal (Raw material) on behalf of the Company. Noticee 1 has submitted that 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. It has also been submitted that 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.

340. I also take note of the submission by Noticee 3 that matter with regards to rotating of money and diversion of money is not established by the SFIO and SFIO failed to bring on record sufficient material evidence to justify the said allegations. The attention 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*".

341. It is evident from the SCN as well as submissions of the Noticees that there were debit and credit transactions between Noticee 1 and Noticee 8 controlled entities through banking channels. However, in view of contradictory statements by both sides, the absence of documentary evidence to substantiate the claims made by Noticee 8 regarding fictitious transactions, absence of evidence to establish that Noticee 1 was responsible for the fictitious bills, observations by SFIO and the fact that no adverse remarks were made by statutory auditors it is not possible to conclude based on material on record that the books of accounts of Noticee 1 were manipulated. Hence, I find that the allegation that Noticee 1 to Noticee 7 violated 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. Consequently, allegation that Noticee 8 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.

iv. whether Noticee 9, 10 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations;

v. whether Noticee 11, 12, 13 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations;

vi. whether Noticee 14, 15, 16 are in violation of section 12A of the SEBI Act and regulation 3(a) to (d), 4(1), 4(2)(e), of PFUTP Regulations;

342. It is alleged that the Noticee 9, Noticee 10, Noticee 11, Noticee 12 and Noticee 13 contributed to the rise in price of the scrip by executing trades at prices higher

than the last traded prices. It is also alleged in SCN 2 that the Noticee 13,14 and 15 carried out self trades/ reversal trades in the scrip of Austral Coke and created artificial volume in the scrip of Austral Coke.

343. It is alleged in the SCN that Noticee 9, Noticee 10, Saraswati Vincom, Kanudia Capital and Noticee 11 were among the top buying clients on most of the days on which the scrip witnessed large trading volume. It is further alleged that that funds used by Noticee 9 and Noticee 10 for the purpose of their trading came from fake accounts.

344. I note from the SCN and submissions of the Noticees that there is no connection established between any of the Noticees. The allegations against the Noticees are based on the fact that they were amongst the top 10 buyers in the scrip during the investigation period. Noticees 11, 12 and 13 have made detailed submissions that they were doing arbitrage in the stock across BSE and NSE. This was just one of stocks in which they did arbitrage. Noticees have also submitted that they were both buying and selling and that their net position in the stock at the end of day was negligible. I note from submissions that the SCN does not include the impact of sell trades of Noticees. In case of traders doing arbitrage, the impact of trades needs to be seen by considering both the buy and sell sides. Hence, I accept the submissions of Noticees 11, 12 and 13 that their trading was in the normal course and inference of causing price rise based on LTP contribution is erroneous.

345. With regard to trades by Noticees 9 and 10, I note from the SCN that they were amongst the top 5 trades at BSE and NSE. However, the SCN does not include their sell side trades. Based on the fund flow analysis in the SCN, the net payable amounts by Noticees 9 and 10 at BSE and NSE together were in the range of Rs.4.03 lakh to Rs.17.74 lakhs for Noticee 9 and Rs.3.70 lakh to

Rs.42.12 lakhs. Considering the large volume of shares bought by Noticee 9 and 10 as shown in the SCN at BSE and NSE and as given below, when seen against the small amount of net funds payable by the Noticees at BSE and NSE together, it is evident that Noticees 9 and 10 were also doing arbitrage, and were not buyers.

Buy Quantity as per SCN	BSE	NSE
CHIRAG SHASHIKANT TANNA (Noticee 9)	1994761	1611541
UMESH DHAN SINGH (Noticee 10)	611054	359593

346. In view of the above, and in the absence of any connection of the Noticees 9 and 10 with any other entity, I am unable to conclude that the LTP contribution by the Noticees was manipulative in nature. The fact that the funds received by them were from fake accounts as stated in the SCN does not connect them with any other entity or point towards manipulation in the stock.

347. It is alleged in SCN 2 that Noticees 14, 15 and 16 engaged in reversal trades and self trades which were fictitious in nature.

348. On BSE, Noticee 14 bought and sold 6,96,897 shares. Similarly, Noticee 15 executed self trades wherein it bought and sold 7,94,790 shares. The time difference between the buy and sell orders of Noticee 14 on BSE was just 4 seconds for all the trades. On NSE, the time difference between the buy and sell orders of Noticee 15 was 2 seconds to 1.56 minutes. Therefore all the aforesaid trades except two were synchronized. These trades did not result in change in beneficial ownership and resulted in creation of artificial volume in the scrip of Austral Coke.

349. Out of the total traded volume of shares, self trade and reversal trade volume was for 8,95,897 shares, which was 99.53% of the total trading done by Noticee

14. The self trades and reversal trades executed on BSE 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:

BSE	Date	Self trade volume (no. of shares)	% Cont to Market volume
Noticee 14	8/26/2009	2,97,321	19.39
Noticee 14	8/27/2009	1,99,864	22.80
Noticee 14	8/28/2009	1,99,143	16.47
Noticee 14	8/31/2009	1,99,569	33.17

Reversal trade volume at BSE

TRADE DATE	QTY	CLIENT NAME	CP CLIENT NAME	TRADE TIME	Time Diif Bet. Buy and sell Order
26/08/2009	100000	Noticee 14	Noticee 16	14.10.21	0:00:06
26/08/2009	99000	Noticee 16	Noticee 14	14.13.14	0:00:04

350. Similarly on NSE, on four trading days i.e. August 26, 27, 28 and 31, 2009 and Noticee 15 executed self trades for 7,94,790 shares as given below:

NSE	Date	Self trade volume (no. of shares)	% Cont. to Market Volume
Noticee 15	8/26/2009	1,99,220	8.53
Noticee 15	8/27/2009	1,99,172	19.19
Noticee 15	8/28/2009	1,99,800	12.33
Noticee 15	8/31/2009	1,96,598	23.51

351. I note that Noticee 14, 15 and 16 have not submitted any reply to the SCN. I find from the above data that their trades resulted in creation of artificial volumes

without change of beneficial ownership, which is in violation of section 12A (a) of the SEBI Act and regulation 4(2) (a) and (g) of the PFUTP Regulations.

viii. ***whether Noticee 20 is in violation of provisions of Clause 5.1, Schedule Ill to the DIP Guidelines read with Regulations 64(1) and 8(2)(b) of ICDR Regulations [read with Regulation 115 of ICDR Regulations] and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule Ill Merchant Bankers Regulations***

352. It is alleged in SCN 3 that Noticee 20 had failed to exercise due diligence as Lead Bank Manager during the IPO as it had not taken steps to independently verify the installed capacity and number of chimneys of Austral Coke and solely relied on the certification from the company, Austral Coke.

353. In this regard, Noticee has contended that SEBI ignored that the Company had submitted project completion certificates dated July 18, 2008 issued by State Bank of India i.e. before the opening of the Issue confirming that project was completed on November 30, 2007 and Unit has commenced production on December 31, 2007. Further, Noticee did exercise the due diligence of Notice 1 for the purpose of IPO as per accepted standards and complied with the Code of Conduct and the SCN does not allege any other instance of non-compliance by Noticee expect the issue regarding nos. of chimneys, ovens and expanded capacity, which has been the matter of dispute too (arising from complaints by rival company) and for which the Company has obtained the necessary declarations from Promoters of Austral, had discussed with promoters in various meetings, obtained necessary certificates issued by Banks and independent Engineers, confirming the facts stated by Promoters .

354. In this regard, I have perused the project completion certificate dated July 18, 2008 (issued prior to public issue) from SBI confirming that the unit commenced commercial production on December 31, 2007 and completed its projects on November 30, 2007. However, there is no further detail regarding the production capacity, number of chimneys, ovens etc. in the certificate. Further, I also note that "due diligence" in law means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. In view of the same, I find that as an book running lead manager as per ICDR Regulations, Noticee 2 was bound to exercise due diligence and satisfy himself about veracity and adequacy of the disclosure in the offer documents, however there is no prescription of activities to be carried out to ascertain the veracity and adequacy of the disclosure, conducting which will confirm that the Lead Merchant Banker has exercised with due diligence. In view of the same, I find that the activities conducted by Noticee 20 were reasonable as per its own assessment to confirm adequacy and veracity of disclosure, and should be deemed exercise of due diligence. I note that the Lead Banker relied on technical reports from Bankers and certified Engineers to accept the production capacity of the Noticee 1 as per the disclosure. I also note that there is nothing on record which establishes that the maximum production capacity of the Noticee 1 was lesser than disclosed in the RHP.

355. In view of the aforesaid, I find that there is insufficient material on records, to establish that the Noticee 20 did not exercise due diligence as per the Lead Manager banker of the IPO of Noticee 1. Hence, violation of provisions of Clause 5.1, Schedule Ill to the DIP Guidelines read with Regulations 64(1) and 8(2)(b) of ICDR Regulations [read with Regulation 115 of ICDR Regulations] and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of

Conduct for Merchant Bankers specified under Schedule Ill Merchant Bankers Regulations by Noticee 20 is not established.

Issue No. II **If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA & HB of SEBI Act,1992 and Section 23H of SCRA, 1956? And**

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCR(A)read with Rule 5(2) of the Adjudication Rules and Rule 5(2) of SCR Adjudication Rules?**

356. As it is established that Noticees 1, 2 and 3 violated provisions of Section 12A(b) and (c) of the SEBI Act, 1992, Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations, and clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations, they are liable for penalty under Section 15HA and 15 HB of SEBI Act.

357. As it is established that Noticee 14, 15 and 16 have violated provisions of section 12A (a) of the SEBI Act and regulation 4(2) (a) and (g) of the PFUTP Regulations, they are liable for penalty under Section 15HA of SEBI Act. The provisions of section 15HA and 15 HB are reproduced below:

<u>SEBI Act:</u>

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh* *rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.
15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

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358. While determining the quantum of penalty under Section HA and 15HB of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

Factors to be taken into account by the adjudicating officer
15J.*While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*
a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

359. The material on record does not bring out the quantum of disproportionate gain made or loss caused to investors by the actions of Noticees or any repetitive nature of violation by them. I take note of the fact that the matter pertains to 2009. I also note that ad-interim ex-parte directions passed against Noticee 1 on 01.09.2009 prohibiting it from raising any further capital in any manner, directly or indirectly continue till date. Taking into consideration the lapse of time

since violations took place and the directions in force against Noticee 1, I am of the view that a penalty of Rs. 10 lakhs against Noticees 1, 2 and 3 jointly and severally under Section 15HA of SEBI Act for violation of provisions of Section 12A(b) and (c) of the SEBI Act, 1992, Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations and penalty of Rs.1 lakh on against Noticees 1, 2 and 3 jointly and severally under Section 15HB of SEBI Act for violation of clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations will be commensurate with the violations committed. A penalty of Rs. 1 lakh each on Noticees 14, 15 and 16 under Section 15HA of SEBI Act for violation of provisions of Section 12A(b) of the SEBI Act, 1992, Regulation 4(2)(a) and (g) of PFUTP Regulations will be commensurate with the violations committed.

ORDER

360. After taking into consideration all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees as below:

Sl. No.	**Name of the Noticee**	**Penalty**
1.	Austral Coke and Projects Ltd. (now known as Greenearth Resources & Projects Ltd.) **(Noticee 1**), Rishi Raj Agarwal **(Noticee 2)** and Ratan Lal Tamakhuwala **(Noticee 3)**	Rs. 10,00,000 (Rupees Ten Lakh only) under Section 15HA of the SEBI Act for violation of Section 12A(b) and (c) of the SEBI Act, 1992, Regulation 3(b) to (d), 4(1), 4(2)(e), (k) and (r) of PFUTP Regulations (payable jointly and severally); and Rs. 1,00,000 (Rupees One Lakh only) under Section 15HB of the SEBI Act for

		violation of clause 6.2 of DIP Guidelines read with Regulation 57(1) and 111 (2) of ICDR Regulations (payable jointly and severally)
2	Chetan Wadhwa (**Notice 14**) Narendrabhai Amin (**Noticee 15**) Vijay Yuvraj Nanvare (**Noticee 16**)	Rs. 1,00,000 (Rupees One Lakh only) each under Section 15HA of the SEBI Act for violation of Section 12A(b) of the SEBI Act, 1992, Regulation 4(2)(a) and (g) of PFUTP Regulations

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

362. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

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

363. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules and Rule 6 of SCR(A) Rules.

DATE: July 29, 2022	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**