BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD1/2022-23/16303-16304)

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

In respect of:

1. **RDB Rasayans Limited (PAN: AABCR2313M)**
   'Bikaner Building', 8/1, Lal Bazar Street
   3rd Floor, Room No.9
   Kolkata - 700 001
2. **Mr Shanti Lal Baid (PAN: AECPB8148Q)**
   Shree Apartment, 138, G.T Road (South), Flat No B-207
   Howrah (PIN) 711 102

In the matter of:

Initial Public Offering (IPO) of RDB Rasayans Ltd.

FACTS OF THE CASE

1. RDB Rasayans Limited (hereinafter referred to as '**RDB' / 'Company'**/ **'Noticee no. 1'**) came out with its Initial Public Offering ('**IPO'**) for the issue of 45,00,000 equity shares of face value of Rs. 10 each during the month of September, 2011. The price band of the IPO of RDB was Rs 72 to Rs 79 per share and the bid period of the IPO was from September 21, 2011 to September 23, 2011. The IPO of RDB was subscribed by 1.45 times and the issue price of the IPO was fixed at Rs. 79 per equity share, aggregating to Rs. 35.55 crore. Pursuant to the IPO, the shares of RDB were listed on the Bombay Stock Exchange (**BSE**) on October 07, 2011. The scrip of RDB

opened at Rs. 85 and closed at Rs. 26.95 on the day of listing i.e. October 07, 2011. Thus, there was wide fluctuations and volatility in the scrip of RDB on the date of the listing of the scrip.

2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted a preliminary investigation into the irregularities observed in the IPO of RDB and also the subsequent trading in the scrip on and around the date of listing of the scrip of RDB on the stock exchange. Based on the findings of the preliminary investigation, vide an *ad interim, ex-parte* Order dated December 28, 2011, WTM - SEBI issued necessary directions u/s 11(1), 11 (4), 11 A and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), wherein 19 persons/entities (including the Merchant Banker and its key personal) were prohibited from buying, selling or dealing in the securities market in any manner and/or taking up fresh assignments in any new issue of capital, whatsoever, till further directions.

3. Pursuant to the preliminary investigation and the aforementioned interim order dated December 28, 2011, SEBI conducted detailed investigation in the matter. It was observed during the course of investigations that RDB along with Mr Shanti Lal Baid, Managing Director of RDB (hereinafter referred to as '**Noticee no. 2'/ 'Baid'/ 'MD**') had violated the provisions of SEBI (Issue of Capital & Disclosure Requirement) Regulations, 2009 (hereinafter referred to as '**ICDR Regulations**'), the relevant provisions of the Companies Act, 1956 (hereinafter referred to as '**Companies Act**'), the relevant provisions of the Listing Agreement, the relevant provisions of Securities Contracts Regulation Act, 1956 ('**SCRA**') and also the relevant provisions of the SEBI Act r/w SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). In the context of the present proceeding, Noticee nos. 1 & 2 are hereinafter also collectively referred to as '**Noticees'**.

4. In view of the above observations, adjudication proceedings have been initiated against Noticee Nos. 1 and 2 under the provisions of sections 15 HB

and 15HA of the SEBI Act and also under section 23 H of the SCRA (in respect of Noticee no. 2).

5. It was observed that, against the aforementioned interim order dated December 28, 2011, both Noticee nos. 1 & 2 had filed a writ petition (Writ Petition no. 1971(W) of 2012) before the Hon'ble Calcutta High Court contending *inter alia* that sections 11(1), 11B and 19 of the SEBI Act are *ultra vires* the Constitution of India and prayed for a stay on the operation of the said *interim order.* By an order dated February 08, 2012, while the Hon'ble Calcutta High Court observed that it did not find any reason to stay the impugned interim order*,* the same shall not prevent SEBI from carrying on further investigation into the matter. Pursuant to the same, the two petitioners i.e Noticee nos. 1 & 2, filed an application before the Ld. Single Judge of the Hon'ble Calcutta High Court seeking modification of the Order dated February 08, 2012 to the extent that RDB be allowed to withdraw an amount of Rs 6.5 crores from the amount deposited in the escrow bank account. Vide an interim order dated July 18, 2012, the Ld. Single Judge allowed RDB to withdraw the said amount. Aggrieved by the said order, SEBI preferred an appeal before the Division Bench of the Hon'ble Calcutta High Court , which vide order dated October 16, 2012, observed that there was no scope for granting any *interim relief* at that stage. Therefore, SEBI filed a SLP before the Hon'ble Supreme Court against the above order of the Division Bench. In the meantime, before the petition came up for hearing before the Hon'ble Supreme Court, the investigation in the matter of IPO of RDB was also completed by SEBI and investigation report ('IR') detailing out the findings/observations of the investigation was also submitted.

6. Thereafter, when the matter came up for hearing before the Hon'ble Supreme Court, the two petitioners i.e Noticee nos. 1 & 2 and SEBI filed a joint application before the Hon'ble SC on September 18, 2014 for passing an order as agreed upon between the parties. The Hon'ble SC, vide order dated September 22, 2014, disposed of the SLP filed by SEBI in terms of the joint

application and while disposing of the SLP, the Hon'ble SC directed the following:-

a. The parties to withdraw their writ petition filed before the Calcutta High Court and the same is therefore dismissed as withdrawn;
b. All interim orders in the aforesaid writ petition filed before the Calcutta High Court to stand vacated and the appeal filed by SEBI dismissed as infructuous.
c. The parties not to transfer/encumber and/or alienate the fixed assets of RDB to the value of Rs 6.5 crores or raise further capital in the market and the monies lying deposited in the escrow account to remain so deposited till further orders are passed by WTM - SEBI.
d. SEBI to pass an order in accordance with law in the matter after consideration of the objections / reply to the SCN already submitted by the parties, within a period of three months.
e. The SLP to stand disposed of accordingly.

7. Subsequently, vide an Order dated December 19, 2014 passed by SEBI u/s 11(1), 11 (4) and 11 B of the SEBI Act (final order), RDB and its Directors (including Noticee no. 2) and certain other persons/entities who were involved/associated with the irregularities observed in the IPO of RDB and also the subsequent trading of the shares of RDB were debarred from accessing the securities market till December 28, 2015. Therefore, in terms of the SEBI Order dated December 19, 2014 and also in terms of the directions of Hon'ble SC, as aforesaid, all the pending proceedings/petitions before the Hon'ble Calcutta HC in the said matter were dismissed, and the present Adjudication Proceedings against Noticee nos. 1 & 2 were continued in terms of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules, 1995**') and also under the provisions of Securities Contracts Regulation (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **'Adjudication Rules, 2005')**.

8. In the context of the present matter, it is pertinent to mention that in respect of the Chairman & other Directors of RDB, a separate adjudication order dated August 06, 2014 imposing penalties on the directors of RDB was passed by the Adjudicating Officer, SEBI. Aggrieved by the said Adjudication Order, the appellants (i.e Chairman & other directors of RDB) filed an appeal before the Hon'ble SAT and in this regard, Hon'ble SAT had also passed an Order dated July 26, 2016, in this regard, details of which are discussed in the subsequent paragraphs of this order. The facts and circumstances including the allegations levelled in the Adjudication Order dated August 6, 2014 are the same as that of the allegations / findings levelled against the Noticees in the context of the present proceedings. As already mentioned, since RDB (Noticee no. 1) & Mr Shanti Lal Baid (Noticee no. 2) had filed a joint Writ Petition before the Hon'ble Calcutta High Court against the interim order dated December 28, 2011 passed by SEBI, details of which have already been discussed above, the present adjudication proceedings against the Noticees have been taken up separately.

9. Further, in the context of the alleged violation of the provisions of clause 49 of the Equity Listing Agreement by Noticee no. 2, a separate adjudication order dated August 27, 2018 has already been passed against Noticee no. 2 under the provisions of section 23 A (a) of SCRA and in terms of the Adjudication Rules, 2005 disposing of the alleged violation of clause 49 of the Equity Listing Agreement levelled against Noticee no. 2 vide SCN dated February 27, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

10. Shri D. Ravi Kumar was initially appointed as the Adjudicating Officer in the matter under section 19 read with section 15-I of the SEBI Act r/w Rule 3 of the Adjudication Rules, 1995 and Adjudication Rules, 2005 to inquire into and adjudge under the provisions of sections 15HA & 15HB of the SEBI Act and also under section 23(A) (a) of the SCRA for the alleged failure on the part of Noticee no. 1 and Noticee no. 2 to comply with the provisions of Regulations 57(1) and (2) read with Schedule VIII Part A (16) and Regulation

60(4) of the ICDR Regulations, Section 12(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (d) and (e) of PFUTP Regulations, Sections 62, 63 and 68 read with Section 55A of the Companies Act, 1956 and also the violation of clause 49 of the Equity Listing Agreement r/w section 21 of SCRA (by Noticee no. 2). Pursuant to the transfer of Shri D Ravikumar, the undersigned has been appointed as the Adjudicating Officer in the above matter, vide communique dated June 22, 2015.

SHOW CAUSE NOTICE, HEARING AND REPLY

11. Show Cause Notices ref. A&E/EAD3/DRK-AKS/4154/2015 dated February 06, 2015 and A & E/EAD 3/DRK-AKS/6372/2015 dated February 27, 2015 (hereinafter referred to as '**SCNs**') were served upon the Noticees in terms of the Adjudication Rules, 1995 and Adjudication Rules 2005 requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on the Noticees under the provisions of sections 15 HA and 15 HB of the SEBI Act & section 23 (A) (a) of the SCRA. The SCNs, *inter alia*, alleged the following:

   - *RDB had passed a resolution in the meeting of its Board of Directors (**BoD**) held on September 12, 2011 to grant some of its surplus funds by way of loans to RDB Reality and Infrastructure Limited (hereinafter referred to as '**RDBRIL**') upto the extent of Rs. 50 Crore for the business purpose, the same being repayable on demand. Since the providing of the said loan to RDBRIL would require approval from the shareholders, the BoD of RDB resolved to give notice for convening the Extra-Ordinary General Meeting of the company on September 28, 2011 (hereinafter referred to as the '**EGM**'). The BoD further resolved to obtain the approval of the members for holding the meeting at less than 21 days' notice as required under Section 171 (2) of the Companies Act. In the EGM, the consent of the shareholders was accorded to the BoD of the company for the same.*

- *It is alleged that the company / BoD had deliberately reduced the notice period for the EGM to 15 days because had the notice period been 21 days, the EGM date would have fallen on October 3, 2011. Hence, the date of EGM would have been after the date of the finalization of the basis of allotment (September 29, 2011) and also after the date of the BoD Meeting of RDB wherein it was resolved to effect delivery of 45 Lakh shares to the respective beneficiary accounts of the successful allottees in the IPO of the company (September 30, 2011). In that case, the company would have had to take approval from the public shareholders through postal ballot.*
- *It was further alleged that the surplus funds to the extent of Rs. 50 Crore which was referred to in the explanatory statement to the EGM notice dated September 12, 2011 was in fact a reference to the IPO proceeds which were to be received by RDB. The proposal and approval for passing on the IPO proceeds in the form of an inter-corporate loan to a group company is a material development relating to the IPO of RDB. However, it was neither disclosed in the Prospectus of the company dated September 26, 2011 which was filed with SEBI nor any advertisement was issued in the newspapers in terms of the ICDR Regulations.*
- *Further, in the Prospectus of RDB, it is mentioned that pending utilization of the issue proceeds, the same would be invested in high quality interest bearing liquid instruments, including money market mutual funds and deposits with banks. Also, in the Prospectus of RDB (page 76), it is mentioned that other than the Related Party Transactions disclosed in the Prospectus, no other transactions are intended. However, it is alleged that the company had transferred the entire IPO proceeds to RDBRIL as interest bearing loan (15% p.a.) repayable on demand.*
- *The annual interest on the loan on an amount of Rs. 31.60 Crore works out to Rs. 4.65 Crore. RDBRIL had made the profit after tax on a standalone basis of Rs. 6.13 Crore during the year ended*

March 31, 2011 (audited) and Rs. 1.14 Crore during the quarter ended June 30, 2011 (unaudited). Also, the cash flow for the company for the year 2010-11 was negative.

- *Thus, it is clear that the capacity of RDBRIL to pay the annual interest, let alone repay the principal amount is doubtful. RDB had also given Rs. 7.28 Crore as an Inter Corporate loan to RDBRIL in five different instances starting from April 16, 2011 till October 01, 2011 at an interest rate of 15% per annum. However, RDB had received only Rs. 1.18 Crore without any interest component till October 01, 2011. Considering the financial condition of RDBRIL, the loan given to RDBRIL cannot be considered as a high quality interest bearing instrument comparable to money market mutual funds or deposits with the Bank as stated in the Prospectus. Therefore, it is alleged that by giving away the entire IPO proceeds as loan to RDBRIL, RDB has not only violated the statements made in the Prospectus but also mis-utilized the IPO proceeds of RDB.*
- *From the investigation report (IR), it is observed that RDBRIL had taken unsecured loans from various parties to the tune of Rs. 6.5 Crore during the period May 05, 2011 to May 11, 2011 to be repaid in 120 days. The same were repaid by RDBRIL after a delay of 90 days after the period and that too only after RDB had transferred Rs. 7.5 crore out of the IPO proceeds to RDBRIL in their Axis Bank account on October 12, 2011.*
- *It is seen from the minutes of the Board Meeting of RDB held on October 7, 2011 at 05.00 PM that the BoD had decided to provide IPO proceeds as secured loan to its group company(s) after entering into loan agreement with it which will be repayable on demand. However, the company had transferred the funds at 14:37 hours (i.e. before 05:00 pm) to the account of RDBRIL. Thus, the company had utilized the IPO proceeds before obtaining the BoD approval without entering into a loan agreement.*

- *RDB had scheduled an AGM on September 28, 2011 for altering the Articles of Association for which the notice was already sent to the shareholders. A mention of the same meeting was also made in the explanatory statement to the notice of EGM. While the update for the AGM was made on the RoC website on the same date itself. However, the update for the EGM to RoC was made on October 19, 2011. Thus, it is alleged that RDB had deliberately failed to upload the details of the EGM which was scheduled on the same date in an attempt to keep the information about EGM privy to the company only.*
- *RDB had deliberately not informed the book running lead manager, Chartered Capital and Investment Limited (hereinafter referred to as 'CCIL') of its BoD meeting held on September 12, 2011 and the EGM. The same has been accepted by RDB to SEBI in its reply dated December 03, 2011. Further, as per the mail sent by RDB to SEBI, the notice for this BoD Meeting was sent by RDB to its BoD on September 12, 2011 itself. Thus, it is alleged that these events are a clear indication to the fact that RDB had deliberately held a meeting just before the filing of Red Herring Prospectus (herein after referred to as '**RHP**') with RoC on September 13, 2011 without making proper disclosure either in public domain or to the BRLM i.e CCIL.*
- *A part of the IPO proceeds of RDB were paid to Axis Bank for repaying the working capital demand loan (Account number: 911030026045377) despite a negative reply from CCIL on the use of IPO proceeds towards the repayment of loan. This tantamount to false disclosure made in the Prospectus of RDB about the use of IPO proceeds as mentioned in para 7, page xi and page 26 of the RHP and the Prospectus filed with SEBI.*
- *It is observed from para 11 on page xii and page 56 of the RHP dated September 13, 2011 and Prospectus dated September 26, 2011 that as per the terms of the loan agreement entered into by*

RDB with Banks for various credit facilities, RDB was not allowed to "invest by way of share capital in or lend or advance funds to or place deposits with any other concern. Normal trade credit or security deposits in the usual course of business or advance to employees, are, however, not covered by this covenant". A confirmation in this regard was taken from Axis Bank on whether RDB had obtained prior permission from them for giving the loan of Rs. 31.60 Crore to RDBRIL to which Axis Bank replied in negative. Thus, it is alleged that RDB had failed to fulfill the conditions mentioned in the loan agreement and deviated from the disclosures made in the Prospectus of RDB in this regard.

- *In the written submission made to SEBI, in reply to the interim order as well as in the writ petition filed before the Hon'ble High Court of Kolkata by RDB, RDB had stated that, "the situation in Haldia Industrial belt unit where is located is going through turmoil with regard to labour relations for the past few months". In view of this, it is alleged that the ensuing labour problem was a material information. However, RDB had failed to disclose the above material development i.e. specific labour problem which erupted few months before the IPO in the RHP dated September 13, 2011 and in the Prospectus dated September 26, 2011. Thus, it is alleged that, by not disclosing the said material information, RDB had posed a grave risk to the applicants / investors who had applied in the IPO of RDB.*
- *Part of the IPO proceeds of RDB were routed in a circuitous manner by RDB to four trading clients in order to enable them to make payments to their stock broker on time i.e. as per the T+2 settlement mechanism. Thus, it is alleged that the IPO proceeds were misused by the company and were deployed for the purpose of stock market activities.*
- *Further, in addition to above, with respect to Noticee no. 2, it was also alleged in the SCN dated February 27, 2015 that he being the Managing Director of RDB was responsible for all the above*

mentioned alleged violations committed by RDB. It was also alleged that Noticee no. 2 had not complied with the provisions of clause 49 of the Listing Agreement r/w section 21 of SCRA.

12. Vide its letter dated March 20, 2015, Noticee no. 1 made the following submissions, brief details of which are as follows:

    a. *The decision to grant loan to RDBRIL was based on the request of RDBRIL seeking financial assistance from RDB for its business purposes. The grant of loan was contingent on the availability of surplus funds with RDB. Further, as on September 12, 2011, the IPO was yet to open and there was no certainty as to whether the public issue of RDB would also sail through or not. Since the AGM of RDB was already scheduled for September 28, 2011 and the Notices for the same had already been issued by RDB, it was decided to convene the EGM, seeking their approval for grant of loan to RDBRIL, on the same day to avoid inconvenience to the shareholders.*
    b. *Passing of the enabling resolution was not a material development and the same also did not require any disclosures, in the Prospectus or by way of any advertisement in the newspapers.*
    c. *Since the IPO proceeds were not immediately required for utilization by RDB towards the objects of the issue, the said funds were in the nature of surplus funds with RDB as on that date. Therefore, the BoD, based on the recommendations of the Audit Committee, decided to temporarily transfer the surplus funds as demand loan to the group company.*
    d. *The said transfer of IPO proceeds was in consonance with the disclosures made by RDB in the Prospectus, wherein, it had mentioned that:*

       "Pending utilization of Issue proceeds for the purposes described in the objects of the Issue, we intend to invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with the banks for the applicable period"

e. *At the relevant time, the management felt that the markets have been volatile and investments in mutual funds or market linked securities could erode the value of the investments and therefore, RDB had thought it fit to advance the funds to its own group company, which is a listed company and which has sufficient resources to repay the amount. Admittedly, the loan was backed by security of mortgage and deposit of post-dated cheques covering the entire loan amount.*
f. *The Audit Committee had given its recommendation vide its meeting held on 07.10.2011 at 11.00 AM for utilizing the idle funds of RDB by inter alia providing secured loan to its group companies.*
g. *Thereafter, a draft agreement was prepared but due to unavoidable circumstances, the BoD Meeting of RDB could not be held within the Banking hours. To avoid losing interest income on account of holidays, it was decided to disburse some part of the loan to RDBRIL with the condition that in case of any reservations by the BoD, the amount of loan shall be recalled immediately with interest. Consequently, the BoD approved granting loan to RDBRIL.*
h. *The details of the EGM were uploaded well within the time limit prescribed in the Companies Act (i.e. within 30 days from the date of the meeting).*
i. *Since the BoD meeting was a routine affair and the decisions taken therein were in the form of passing the enabling resolutions in the ordinary course of business, therefore, the same were not informed to Chartered Capital and Investment Limited (hereinafter referred to as 'CCIL').*
j. *In the prospectus, it was clearly disclosed that an amount of Rs. 5.01 crores was earmarked for "General Corporate Purpose". In consonance with the said disclosure, the amount was utilized. Therefore, the utilization of the amount for the working Capital purpose cannot be said to be a violation. Therefore, RDB has denied that it had made a false disclosure with regard to use of issue proceeds.*

k. *The alleged breach of certain terms of the agreement with Axis Bank has not affected the Company or its shareholders. Relationship between RDB and Axis Bank is continuing and Axis Bank has not shown any grievance on this.*

l. *Under various risk factors mentioned in the Prospectus (Page ix to xvi of the Prospectus), RDB had disclosed risks regarding the labour problems etc. At Clause 22 it was clearly set out as follows:*

   *"**Failure to effectively manage labour or failure to ensure availability of sufficient labour could affect the business operations of the Company**.*

   There has been a strike in the manufacturing unit for a period from June 23, 2009 to July 28, 2009 for the wage dispute. The sales and profitability of the company was adversely affected for these 36 days. Such sort of labour unrest may also arise in future which may have its effect on the sales and profitability of the company. Also, failure to ensure availability of sufficient labour could affect the business operations of the company."

m. *In so far as the alleged diversion/ routing of IPO proceeds by RDB is concerned, SEBI has no jurisdiction to enquire into or pass any directions in respect of the same. Only Central Government has the powers to enquire into the same.*

n. *The onward transmission of funds by RDBRIL is of no concern to the Noticees and the Noticees had no role to play in the same. Noticees are not aware about the usage of the fund or further transfer by RDBRIL.*

13. Further, Noticee no. 2, vide his letter dated March 20, 2015, adopted the submissions made by Noticee no. 1 and mentioned that he, as well as the Board of Directors of RDB, had acted bonafide and in the best interest of RDB and its shareholders at all points of time.

14. In the interest of natural justice, the Noticees were provided with opportunities of personal hearing on August 20,2015 and July 18, 2017. The

Authorised Representatives ('ARs') who appeared on behalf of the Noticees on the stipulated date of hearing reiterated the submissions made by them in their replies to the SCNs. Further, the Noticees made the following additional submissions:-

- *No investor complaint has been received by the company and there is no pending complaints against RDB.*
- *RDBRIL is in the business of real estate and construction and at the relevant time, it was, executing projects worth more than thousand crores across India. Its Net worth in the FY-2011 was around Rs 61.7 crores. Further, it had total work of the tune of Rs. 268.50 crores for various real estate construction works across India. Subsequently, RDBRIL has repaid the entire loan amount along with interest @ of 15%.*
- *On the same facts, the adjudication proceedings have already been conducted against the directors of RDB viz Mr. Mahendra Pratap Singh, Mr. Sunder Lai Dugar, Mr. Sandeep Baid and Mr. Sachin Sridhar by AO, by issuing Show Cause Notice dated July 30, 2013. The said Adjudication proceedings have already culminated in the Order dated August 06, 2014.*
- *From the order dated August 06, 2014 passed by the Adjudicating officer, it would be clear that he has dropped the allegations pertaining to whether part of IPO proceeds were paid to Axis Bank for repaying the WCDL and submission with respect to labour unrest in the Haldia Industrial belt.*
- *The said AO Order was challenged before the Hon'ble Securities Appellate Tribunal. The Hon'ble Tribunal, vide its Order dated July 26, 2016, has set aside the allegations pertaining to routing of IPO proceeds in a circuitous manner.*
- *Further, the whole case of SEBI since inception was dominated by the impression/perception that RDB and its directors had routed part of the IPO proceeds in a circuitous manner into the stock markets to enable*

certain traders to trade in the shares of RDB on the date of listing and, therefore, they have indulged in fraudulent and manipulative practices With the said allegation of routing of the IPO proceeds been set aside by the Hon'ble Tribunal, because of which essentially the allegations of fraud and manipulation were levelled, the element of fraud and manipulation earlier attributed to RDB and its directors, has to go. Other allegations like the alleged non-disclosure made in the Prospectus and the alleged mis-utilsation of the IPO proceeds are (if at all) innocuous, technical and venial violations.

CONSIDERATION OF ISSUES AND FINDINGS

15. I have taken into consideration the facts and circumstances of the case, the material on record and the submissions made by the Noticees. The Noticees vide email dated February 08, 2021 mentioned that the submissions already made by them during the course of the proceedings may be taken on record and they don't intend to make any additional submissions and/or avail opportunity of another personal hearing. The issues that arise for consideration and determination in the present matter are as under: -

a) **Whether the Noticees have violated the provisions of Regulations 57 (1) and (2) read with Schedule VIII Part A (16) and Regulation 60 (4) of the ICDR Regulations and Sections 12A (a), (b) and (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) of the PFUTP Regulations ?**

b) **Whether the Noticees have further failed to disclose the material information to the investors and mis-utilised the IPO proceeds contrary to the disclosures made in the prospectus of RDB and in the process, whether the Noticees have violated the provisions of Sections 12A (a) (b) and (c) of SEBI Act read with Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (d) and (e) of PFUTP Regulations, 2003?**

c) **Whether the Noticees have also violated the provisions of Sections 62, 63 and 68 read with Section 55A of the Companies Act?**

d) **Does the violation, if any, on the part of the Noticees attract monetary penalty on the Noticees under the provisions of sections 15HA and 15HB of the SEBI Act, 1992 ?**

e) **If so, what should be the quantum of penalty to be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI?**

16. Before moving forward, the relevant provisions of the ICDR Regulations, PFUTP Regulations, 2003 and the Companies Act, 1956 allegedly violated by the Noticees are mentioned as under:-

ICDR Regulations

Manner of disclosures in the offer document.

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

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

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and
(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

Schedule VIII
Part A
(16) Unsecured loans:

(b) Break-up of the total outstanding unsecured loans taken from the issuer by the promoters, group companies, related parties, material associate companies and others shall be disclosed.

60 (4) *The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:*

(a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *No person shall directly or indirectly—*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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:—

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

…..

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person

any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

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

<u>Companies Act, 1956</u>

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -
(a) in case of listed public companies ;
(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and
(c) in any other case, be administered by the Central Government.

62. Civil liability for misstatements in prospectus.

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,-
(a) every person who is a director of the company at the time of the issue of the prospectus;
(b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
(c) every person who is a promoter of the company; and
(d) every person who has authorised the issue of the prospectus:

Provided that where, under section 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where under sub-section (3) of section

60, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any purporting to be made by him as an expert.
(2) No person shall be liable under sub-section (1), if he proves-
(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent;
(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor; or
(d) that-
(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 58 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of or a correct and fair extract from, the document:

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 58, as a person who has authorised the issue of the prospectus in respect of an untrue statement, purporting to be made by him as an expert.
(3) A person who, apart from this sub-section, would, under sub-section (1), be liable by reason of his having given a consent required of him by section 58 as a person who has authorised the issue of a prospectus in respect of an untrue statement, purporting to be made by him as an expert, shall not be so liable, if he proves-
(a) that, having given his consent under section 58 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration;
(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in

writing and gave reasonable public notice of the withdrawal and of the reason therefor; or

(c) that he was competent to make the statement and that he has reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true.

(4) Where-

(a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under section 58 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who, becomes liable to make any payment by virtue of this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the former person was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section-

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(b) the expression "expert" has the same meaning as in section 58.

63. Criminal liability for mis-statements in prospectus

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [fifty] thousand rupees], or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

68. Penalty for fraudulently inducing persons to invest money.

Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into-

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or

(b) any agreement the purpose or pretended purpose of which is to secure aprofit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures; shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both.

17. The following facts /events pertaining to the case are relevant in the context of the present proceeding:-

- In March 2010, RDB had filed a DRHP with SEBI to raise funds through its IPO for expanding its manufacturing activities at the Haldia plant. At the relevant time of the IPO, RDB Reality & Infrastructure Ltd (hereinafter referred to as '**RDBRIL**') was mentioned in the prospectus/DRHP of RDB as the group company/sister company of the RDB group. RDBRIL, which is a listed company on both BSE and NSE, is engaged in the business of real estate and infrastructure.
- On September 12, 2011, SEBI granted its approval to the DRHP filed by RDB. Accordingly, the IPO of RDB opened for subscription on 21.09.2011 and closed on 23.09.2011. RDB came out with its IPO for issue of 45 lakh shares of Rs 10 each at an issue price of Rs 79 each. The total issue size of the IPO of RDB was Rs 35.55 crore.
- On 5.10.2011, pursuant to the closure of the IPO, the IPO proceeds (funds) to the tune of Rs 34.25 crore was credited to the bank account (escrow account) of RDB.
- On 7.10.2011, the Audit Committee meeting of RDB took place and in the said meeting, the Audit Committee decided to recommend to the Board of Directors ('BOD') of the company to utilize the IPO funds by investing in high quality interest bearing instruments for the profitability of the company. In this regard, the Audit Committee also recommended to the BOD of the company to consider giving secured loans to the group companies of RDB.

- On the same day i.e 7.10.2011, the BOD meeting of RDB was held, whereby the BOD were authorized to invest the unutilized IPO proceeds of RDB in high quality interest bearing instruments. It was further resolved to authorize RDB to enter into loan agreement with RDBRIL and the draft loan agreement was also placed before the BOD of RDB.
- On the same day i.e on 7.10.2011, even before the BOD of RDB approved the transfer of funds from RDB to RDBRIL, an amount to the tune of Rs 31.60 crore out of the IPO proceeds of Rs 34.25 crore were transferred by RDB to the account of RDBRIL.
- On December 28, 2011, an ad-interim ex-parte order was passed by SEBI prohibiting/restraining various individuals/entities, including the Noticees from buying, selling or dealing in securities in any manner until further orders and it was further directed through the aforementioned order to call back the loan amount of Rs 31.60 crores from RDBRIL.
- Aggrieved by the aforementioned ad-interim ex-parte order of SEBI dated December 28, 2011, Noticee nos. 1 & 2 filed a writ petition before the Hon'ble Calcutta High Court wherein partial relief was granted to Noticee nos. 1 & 2. The above order of the Hon'ble Calcutta HC was challenged by SEBI and an Special Leave Petition (SLP) was filed by SEBI before the Hon'ble SC. On September 22, 2014, by way of consent, the SLP was disposed of, whereby, the writ petition filed by Noticee nos. 1 & 2 before the Hon'ble Calcutta HC stood withdrawn and SEBI was directed to pass the final orders in the matter within three months and till then, Noticee nos. 1 & 2 were directed not to alienate the fixed assets upto the value of Rs 6.5 crore and it was directed that the amounts lying in the escrow account shall continue to remain in the escrow account.
- On December 19, 2014, a final order in the matter was passed by SEBI whereby the entities/persons, including Noticee nos. 1 & 2 were debarred from the securities market for a period of four years. It was specifically mentioned/directed through the aforementioned final order that the period of prohibition already undergone by the entities, including Noticee nos. 1 & 2, pursuant to the directions issued to them vide Interim Order dated December 28, 2011, shall be taken into account for the purpose of computing the period of prohibition/debarment imposed on the entities (including Noticee nos. 1 and 2) in the Final Order dated December 19, 2014.

- In the said matter, adjudication proceedings were initiated by SEBI against RDB i.e Noticee no. 1 and its directors (including Noticee no. 2) in terms of sections 15 HA & 15 HB of the SEBI Act and also under section 23 A (a) of SCRA.
- In this regard, Adjudication Order dated August 6, 2014 was passed against the five directors of RDB in the matter under the provisions of sections 15 HA and 15 HB of the SEBI Act. Further, another adjudication order dated August 27, 2018 was also passed against Noticee no. 2 i.e Mr Shantilal Baid disposing of the proceeding initiated against him under the provisions of section 23 (A) (a) of the SCRA .
- As already mentioned in the preceding paragraphs of this order, since RDB (Noticee no. 1) and Mr Shanti Lal Baid (Noticee no. 2) had filed a WP before the Hon'ble Calcutta HC, the Adjudication Order dated August 6, 2014 did not cover the role of Noticee nos. 1 and 2 and the same are now covered through the present Adjudication Order.
- Aggrieved by the above mentioned adjudication order dated August 6, 2014, the five directors vide separate appeals filed before the Hon'ble SAT challenged the adjudication order dated August 6, 2014. As already stated, the facts and circumstances of the case leading to the Adjudication Order dated August 06, 2014 and the charges/allegations levelled against the Noticees in the context of the present proceeding are the same.
- Hon'ble SAT vide Order dated July 26, 2016 while disposing of the appeals filed by the five directors of RDB had also issued necessary directions in the matter, details of which are discussed elaborately in the relevant paragraphs of the present order.

18. Therefore, in this backdrop, I will now proceed to deal in detail with the issue-wise appraisal of the evidence, as grouped and mentioned in the preceding paragraphs and record my observations /findings against the Noticees as under: -

a. **Whether the Noticees have violated the provisions of Regulations 57 (1) and (2) read with Schedule VIII Part A (16) and Regulation 60 (4) of the ICDR Regulations and Sections 12 A (a), (b) and (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) of the PFUTP Regulations?**

b. **Whether the Noticees have further failed to disclose material information to the investors and mis-utilised the IPO proceeds contrary to the disclosures made in the prospectus of RDB and in the process, whether the Noticees have**

violated the provisions of Sections 12A (a), (b) and (c) of SEBI Act read with Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (d) and (e) of PFUTP Regulations, 2003?

c. **Whether the Noticees have also violated the provisions of Sections 62, 63 and 68 read with Section 55A of the Companies Act?**

d. Whether Noticees had further violated Section 12A (a) (b) and (c) of SEBI Act read with Regulation 3 (a), (b), (c), (d), 4(1), 4(2) (a), (d) and (e) of PFUTP Regulations, 2003 by routing the IPO proceeds for the purpose of trading in the shares of RDB on the listing date?

Allegations w.r.t non-disclosure of material facts/material information /material development in the prospectus of RDB

A. The first charge/allegation levelled against the Noticees pertain to failure on the part of RDB i.e Noticee no. 1 to disclose in its prospectus regarding the material facts/information/developments pertaining to the proposal and approval for passing on the IPO proceeds of RDB in the form of an inter-corporate loan to another group company i.e RDBRIL. It is observed that the said proposal was not among the 'objects of the issue' as mentioned under the head 'objects of the issue' in the prospectus of RDB. In terms of Regulations 57(1), 57 (2) and 60 (4) of the ICDR Regulations, RDB was under obligation to make the disclosures of all the material developments / material information pertaining to its business which may have a significant impact on it by issuing public notices in all the newspapers in which it had issued the pre-issue advertisements.

B. From the investigation report ('IR'), it is observed that RDB had passed an enabling resolution in its Board of Directors (BOD) Meeting held on September 12, 2011 to grant some of its surplus funds by way of loans to RDBRIL, a group company, which is also a listed company (listed on BSE & NSE) to the extent of Rs 50 Crores for its business purpose, the same being repayable on demand. Since the providing of the said loan to RDBRIL required approval from the shareholders of the company, the BOD of RDB resolved to give notice for convening the Extra-Ordinary General Meeting of RDB on September 28, 2011 (hereinafter referred to as the 'EGM'). The Noticees have contended that the resolution passed by the BOD of RDB to grant the surplus funds was an enabling resolution and the same was with the *bona fide* belief that the passing of the said enabling resolution was in the ordinary course of business to grant loans to its group company out of the surplus funds over a period of time. The Noticees have contended that the same did not warrant any explicit disclosures to be made in the prospectus of RDB. It was further mentioned by Noticee no. 1 i.e RDB that since the IPO proceeds were not immediately required for the purpose of utilization by the company towards the objects of the issue, as stated in the prospectus of RDB, these funds were in the nature of surplus funds which were available with the company and in order to not keep the funds idle and also in light of the request received from its group company i.e RDBRIL for inter corporate loan, based on the recommendations made by the Audit Committee of RDB, it was mentioned by Noticee no. 1 i.e RDB that a decision was taken to transfer the surplus funds out of the IPO proceeds to its group company i.e RDBRIL.

C. In the aforementioned matter, the SCN has further alleged that the BOD of RDB had resolved to obtain the approval of its members (shareholders) for holding the meeting (i.e the EGM) at less than 21 days' notice as required under Section 171 (2) of the Companies Act, 1956. In the EGM, the consent of the shareholders to transfer the surplus funds out of the IPO proceeds of RDB to RDBRIL was accorded to the BOD of the company. From the IR, it is observed that the company / BOD of the company had taken the decision to deliberately reduce the notice period of the said EGM to 15 days (instead of the statutory time period of 21 days) because, had the notice period been 21 days as stipulated under Section 171 (1) of the Companies Act, the EGM date would have fallen on October 3, 2011. Hence, the date of EGM would have been after the date of the finalization of the basis of allotment of RDB (which was on September 29, 2011) and also after the date of the Board of Directors meeting of RDB wherein it was resolved to effect the delivery of 45 lakh shares to the respective beneficiaries accounts (BO accounts) of the successful allottees in the IPO of RDB (which was on September 30, 2011). In such a scenario, RDB would need to obtain the approval from all its public shareholders through postal ballot whereas, as per the pre-IPO shareholders list of the company, as mentioned in the Prospectus of RDB, the total number of members (shareholders) of RDB were only 10. From the IR, it is observed that, in the EGM of RDB which was held on 28.09.2011, the consent of the shareholders to transfer the surplus funds out of the IPO proceeds of RDB to RDBRIL was accorded to the BOD of the company and only 5 members (shareholders) attended the said EGM.

D. The contentions of the Noticees that the time period of 21 days was reduced so as to avoid inconvenience to its shareholders is a weak argument as in the given facts and circumstances of the case, the shareholders of the company were allowed to cast their vote through postal ballot and therefore the question of inconvenience caused to the shareholders of the company, as contended by it, did not arise. In the facts of the present case and in my assessment, in case the statutory time period of 21 days was followed by RDB, the shares post finalization of the basis of allotment of the IPO of RDB would have been credited into the beneficiary accounts (BO accounts) of the shareholders of RDB before the said EGM date and in these circumstances, it would have been very difficult for RDB to get the approval from its shareholders for the decision to transfer almost 90% of the issue proceeds (IPO proceeds) to its group company i.e RDBRIL as a large section of the public shareholders would have voted against the decision of RDB to transfer the funds to RDBRIL, as the said decision was against the objects of the issue of RDB, as mentioned in the prospectus of the company. In other words, RDB had failed to disclose in its prospectus that the issue proceeds post-IPO would be substantially utilized to give loan to its group company and as a result, it would have been very difficult for RDB to push forward the decision to transfer the IPO proceeds to its group company viz. RDBRIL after getting the approval from all its shareholders. Therefore, in the facts and circumstances of the case, it is observed that Noticee no 1 i.e RDB and its directors (including Noticee no 2) deliberately chose to suppress the Resolution dated September 12, 2011 and call for the EGM by curtailing the notice period to 15 days instead of the statutory requirement of 21 days. As a result of the above, RDB was in a position to obtain the approval from few of its pre- IPO shareholders to give effect to the decision to transfer the IPO proceeds to the tune of Rs 31.6 crores as loan to RDBRIL.

E. In this context, it is noted that Hon'ble SAT in its Order dated July 26, 2016, in the matter of an appeal filed by the directors of RDB against the Adjudication Order dated August 6, 2014 had held that the failure to disclose the material information to the investors about the transfer of substantial funds from the IPO proceeds of RDB to RDBRIL and mis-utilization of the IPO funds contrary to the statements made by RDB in its prospectus was with a manipulative and deceitful intention and the same is evident from the fact that as soon as the approval of SEBI was obtained by RDB in respect of its IPO, RDB chose to invest the surplus funds by way of loan to RDBRIL upto the extent of Rs 50 crores in one or more tranches, even though no such funds were available with the company at the relevant time.

F. As per the findings of the investigation report (IR), it is observed that the amount of inter-corporate loan given to RDBRIL by RDB was three times the net worth of RDB (Rs 17.8 crore). Moreover, 90% of the IPO proceeds, i.e., an amount of Rs 31.6 crores (the IPO size was Rs 35.55 crore) were transferred to RDBRIL by RDB by way of inter-corporate loan. Therefore, the surplus funds to an extent of Rs 50 crores which was referred to in the EGM notice dated September 12, 2011 could have only been coming out of the IPO proceeds. Thus, the decision to transfer the IPO proceeds in the form of inter corporate loan to a group company and the notice for the EGM to seek the approval of the shareholders of the company to this effect was indeed a material development /material information relating to the IPO of RDB and the same ought to have been disclosed by RDB in its prospectus/DRHP. It is however observed that the aforementioned disclosures were neither made in the Prospectus/ DRHP of RDB dated September 26, 2011 filed with SEBI nor was it disclosed in the form of any pre-issue advertisement that was issued in the newspapers to that effect as required under regulations 57(1) and 57(2) read with Schedule VIII Part A and regulation 60(4) of the ICDR Regulations, 2009. The fact that the issue proceeds of RDB would be substantially transferred to its group company was, in fact, a material disclosure which was required to be made to the investors by RDB through the prospectus. Clearly, the Noticees withheld/failed to make the material disclosures in the prospectus regarding the proposal and approval for passing on/granting the IPO proceeds in the form of inter corporate loan to RDBRIL. Thus, the investing public were deprived of the vital information that their money, instead of being used for the purpose of the objects of issue, as stated in the prospectus, was being transferred to a group company. The above clearly amounts to failure on the part of the Noticees i.e RDB and Noticee no. 2 (Managing Director of RDB) to inform to the investors regarding the material facts/events/developments in the prospectus/offer document as required under the aforementioned provisions of the ICDR Regulations.

G. From the IR, it is also observed that the Registrar of Companies (hereinafter referred to as – 'RoC') filings made by RDB for convening the AGM on 28.09.2011 was done on the same date whereas, the RoC filing by RDB for the EGM held on the same date (28.09.2011) for giving the consent of the shareholders to give the surplus funds of the company in the form of loan to RDBRIL was done on 19.10.2011. No plausible reason/explanation for filing of the same forms on different dates (within a gap of 3 weeks) for the meetings held on the same date has been given by the Noticees except submitting that the details of EGM were uploaded well within the time limit prescribed under the provisions of the Companies Act. It is also observed from the IR that RDB had not informed the Book Running Lead Manager (BRLM), Chartered Capital and Investment Ltd (BRLM of the IPO of RDB) about the Board meeting held on September

12, 2011 and the EGM held on 28.09.2011. The above clearly shows an attempt on the part of RDB to keep the material information about the EGM privy to the company and within the knowledge of its pre-IPO shareholders/ members only.

H. In this context, it is relevant to mention that Hon'ble SAT ('**SAT'**) while deciding on the respective appeals filed by the directors of RDB in the matter of appeals filed by them against the Adjudication Order dated August 06, 2014 on the same facts/allegations as alleged against the Noticees had held that utilizing the IPO proceeds for purposes other than the purpose specified in the prospectus of RDB w.r.t its IPO is a material information and the same ought to have been disclosed in the prospectus of RDB as contemplated under the provisions of the ICDR Regulations and failure to do so, constitutes violation of the provisions of the ICDR Regulations. In this regard, the relevant observations/conclusions drawn by Hon'ble SAT in its Order dated July 26, 2016 are as under: -

"..*We see no merit in the above contentions. Admittedly, the reserves and surplus funds of RDB for the financial year ending on March 2010 and March 2011 were ` 2.8 crore and ` 4.6 crore respectively. Although SEBI had approved the IPO of RDB on 12.09.2011, in view of the labour unrest at Haldia, it was known that RDB would not be in a position to utilize the IPO proceeds for the purpose specified in the IPO and thus the IPO proceeds would be rendered surplus. There is nothing on record to suggest that on 12.09.2011 when RDB passed the resolution to give loan of ` 50 crore in one or more tranches, apart from receiving the IPO funds, there were no other funds to be received by RDB which could be treated as surplus. Therefore, on 12.09.2011 when RDB passed a resolution to give loan up to ` 50 crore to RDBRIL after receiving the SEBI approval, it is apparent that the resolution to give loan was with reference to the IPO proceeds to be received by RDB".*

I. Further, the Hon'ble SAT vide Order dated July 26, 2016 had also held the following: -

"Above conclusion is corroborated from the fact that on 12.09.2011 itself RDB decided to call Extra Ordinary General Meeting (EOGM) on 28.09.2011 by curtailing the notice period of 21 days so as to seek approval for giving loan to

RDBRIL from the pre- IPO shareholders. In the EOGM held on 28.09.2011 (after the IPO closed on 23.09.2011 and before allotment of shares) the pre IPO shareholders approved giving loan up to ` 50 crore to RDBRIL. Even on 28.09.2011, apart from the IPO proceeds there were no other funds that could be treated as surplus and transferred to RDBRIL by way of loan. It is relevant to note that on 05.10.2011 IPO funds of ` 34.25 crore was credited to the RDB's bank account and on 07.10.2011 at 11.00 A.M. the Audit Committee of RDB recommended to the Board that the unutilized IPO funds should be invested in high quality interest bearing instruments and further recommended giving loan to the RDB group companies which would be repayable on demand. However, before the Board of RDB could consider the above recommendation of the Audit Committee at 5.00 P.M. on 07.10.2011 and approve the draft loan agreement, RDB transferred ` 31.60 crore to RDBRIL at 2.37 P.M. on 07.10.2011. Thus, the conduct of RDB in transferring ` 31.60 crore out of the IPO proceeds amounting to ` 34.25 crore to RDBRIL even before the Board of RDB authorized giving loan to RDBRIL and even before the draft loan agreement was approved at 5.00 P.M. on 07.10.2011, clearly shows that the resolution passed on 12.09.2011 to give loan up to ` 50 crore to RDBRIL was with reference to the IPO proceeds. Utilizing the IPO proceeds for a purpose other than the purpose specified in the IPO being a material information ought to have been disclosed as contemplated under the ICDR Regulations. Failure to do so, constitutes violations of ICDR Regulations."

J. Further, it is observed from the IR that prior to its IPO, RDB had a paid up share capital of Rs 13.21 crore and reserves of Rs 4.66 crore as per its annual audited balance sheet as on March 31, 2011. The profits of RDB during the past 5 years were in the range of Rs 78 lakh and Rs 1.8 crore only. The amount of loan proposed to be given to RDBRIL was three times the net worth of RDB (Rs 17.8 crore). Thus, it is clear that the surplus funds to an extent of Rs 50 crores which was referred to in the explanatory statement to the EGM notice dated September 12, 2011 was in fact an indirect reference to the IPO proceeds which were to be received by RDB. The submissions made by the Noticees that the grant of loan was contingent on the availability of surplus funds with RDB is not sound as the Noticees have failed to explain the source of the surplus funds given the fact that the amount of reserves and surplus of RDB for the financial years ending March 2010 and 2011 were Rs 2.8 crore and Rs 4.6 crores, respectively.

K. Thus, from the above observations, it can be concluded that the Noticees have suppressed / withheld / failed to make material disclosure in the Prospectus of RDB regarding the proposal and approval for passing on / granting the IPO proceeds in the form of inter-corporate loan to its group entity i.e RDBRIL. Further, the investing public was deprived of this very important disclosure / information while arriving at the decision whether or not to invest in the IPO of RDB. In view of the same, I hold that Noticees have violated the provisions of Regulations 57(1), 57 (2) and 60 (4) of ICDR Regulations.

<u>Allegations made in the SCN w.r.t mis-utilisation of IPO proceeds</u>

L. The next allegation levelled in the SCN against RDB (Noticee no. 1) and its Managing Director (Noticee no. 2) is that RDB has not only violated the provisions of ICDR Regulations by failing to make the material disclosures in its prospectus but have also mis-utilized the IPO proceeds by giving away the entire IPO proceeds as loan to RDBRIL, which was against the 'objects of the issue', as mentioned in the prospectus of RDB. It is further alleged that since the same was not part of the 'objects of the issue' of RDB, as mentioned in its prospectus, the Noticees have suppressed the vital information/ material disclosure in the prospectus of RDB. Upon perusal of the prospectus of RDB, it is observed that an observation/disclosure has been made in the prospectus of RDB that pending utilization of the IPO proceeds for the purpose stated in the objects of the issue, the issue proceeds of RDB would be invested in high quality interest bearing liquid instruments, including money market mutual funds and deposits with banks. It is also noted from the prospectus that disclosure has been made that other than the Related Party Transactions disclosed in the Prospectus, no other transactions are intended. However, from the IR, it is observed that RDB had transferred almost 90% of its IPO proceeds to RDBRIL as interest bearing loan (15% p.a) repayable on demand. From the submissions made by the Noticees, it has been mentioned that RDBRIL is a financially sound and solvent company and had not defaulted in the repayment of any loan in the past.

M. In order to determine whether the withholding of the information/ non-disclosure of information by the Noticees was deliberate and amounted to making a mis-statement in the prospectus, I have perused the prospectus of RDB and it is observed that the prospectus has stated that pending utilization of the IPO proceeds for the purpose of the 'objects of issue', the issue proceeds would be invested in high quality interest bearing liquid instruments, including money market mutual funds and deposits with the banks. In this regard, I find that, as per the agreement entered into between RDB and RDBRIL, the annual interest on the loan amount given by RDB to RDBRIL to the extent of Rs 31.60 crores works out to Rs 4.65 crore. Further, as per the Register of Inter Corporate Loans maintained by RDB under section 372A of the Companies Act, 1956, it is observed that RDB had given a total of Rs 7.28 crore as an Inter Corporate loan to RDBRIL on five different instances starting from April 16, 2011 till October 01, 2011 at an interest rate of 15% per annum. However, RDB received back only Rs 1.18 crore without any interest component till October 01, 2011 from RDBRIL. Moreover, RDBRIL had taken unsecured loans from various other parties to the tune of Rs 6.5 crore during the period May 05, 2011 to May 11, 2011, none of which it could repay by the due date of 120 days and further requested the lenders in the last week of August 2011, to further extend the repayment period by 90 days. The details of some of the loans are as under:-

(a) Rs 1 crore from Swarnpushpa Vanijya Pvt. Ltd. @ 12% p.a. for 120 days dated May 07, 2011.

(b) Rs 50 lacs from Ritesh Projects Pvt. Ltd. @ 12% p.a. for 120 days dated May 10, 2011.

(c) Rs 1 crore from Sweety Trade and Agency Pvt. Ltd. @ 13% p.a. for 120 days dated May 6, 2011.

(d) Rs 1.25 crore from Kamlesh Mercantile Credit Pvt. Ltd. @ 12% p.a. for 120 days dated May 05, 2011.

(e) Rs 1 crore from MKJ Enterprises Pvt. Ltd. @ 12% p.a. for 120 days dated May 05, 2011. Further, ₹1.5 crore @ 12% p.a. dated May 10, 2011.

(f) Rs 25 lakh from Jagrani Leasing and Finance Company Pvt. Ltd. @ 12% p.a. for 120 days dated May 09, 2011.

N. From the above facts /observations, it is clear that RDBRIL was not in a sound financial condition and yet RDB had transferred substantial portion of its IPO proceeds to the account of RDBRIL in the guise of granting inter corporate loan to its group company instead of investing the IPO proceeds in high quality interest bearing liquid instruments and money market mutual funds, which has been disclosed in the prospectus of RDB. Further, upon perusal of the Balance Sheet of RDBRIL during the year ended March 31, 2011, the profit after tax on standalone basis (PAT) was shown as of Rs 6.13 crore (audited) and during the quarter ended June 30, 2011, the profit after tax (i.e standalone) was Rs1.14 crore (unaudited). It is also observed that the cash flow of RDBRIL was negative. Therefore, it is evident from the above that RDBRIL's financial condition was not very sound and considering the poor financial condition of RDBRIL, as discussed above, the loan amount given to RDBRIL by RDB from its IPO proceeds cannot be considered as a high quality interest bearing instrument when compared to other financial instruments viz. money market mutual funds and deposits with the banks. The submission of the Noticees that the loan was backed by security of mortgage and deposit of post-dated cheques covering the entire loan amount is not acceptable since they do not classify as liquid instruments. A liquid instrument is generally one which can be converted into cash quickly and with minimal impact on the final price. The inter corporate loan given to RDBRIL by RDB cannot be considered as a safe and liquid instrument by any stretch of imagination.

O. Therefore, from the facts and observations made above, it is amply clear that RDB and its Noticee directors (including Noticee no. 2) knowingly utilized the issue proceeds of RDB in a manner other than what has been stated in the prospectus of RDB, which tantamount to mis-utilization of the IPO proceeds. In this context, reference is drawn to the order of the Hon'ble SC in the matter of *N. Parthasarathy, Etc. vs Controller of Capital Issues and Anr.* [1991 SCC (3) 153] which has quoted Palmer's Company Law (24th Edition) by C.M. Schmitthoff under the caption "The golden rule" as to framing prospectuses at page 332-333 which states as follows:

> *"Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares."*

P. In the instant matter and in the context of the above finding/observation relating to mis-utilisation of the IPO proceeds, Hon'ble SAT in its Order dated July 26, 2016 against the respective appeals filed by the directors of RDB (Adjudication Order dated August 6, 2014) had held that when a statement had been made in the prospectus of RDB that the IPO proceeds would be invested in high quality interest bearing liquid instruments, utilizing the IPO proceeds of RDB by giving loans to RDBRIL amounts to mis-utilization of the IPO funds and the same is in violation of the ICDR Regulations. In this context, the relevant text of the Order dated August 6, 2014 of Hon'ble SAT and the observations/conclusions drawn by Hon'ble SAT in the said matter are as under:

"*Argument of the appellants that the disclosure made in the prospectus that 'pending utilization of the proceeds of the issue, we intend to invest such proceeds in high quality interest bearing liquid instruments' entitled RDB to utilize IPO proceeds by giving loan to RDBRIL is without any merit. Investing surplus funds in high quality liquid instruments cannot be equated with giving loan to a group company. Investment in liquid instruments is done without any security as it involves minimum risk and can be accessed easily. However, giving loan involves maximum risk and hence loan is ordinarily given subject to security. In the present case, RDB has utilized the IPO proceeds to give loan to RDBRIL instead of investing the IPO proceeds in high quality interest bearing liquid instruments by obtaining security of valuable assets and post-dated cheques. Fact that IPO proceeds have been utilized by giving loan with security, cannot be construed to mean that IPO proceeds have been invested in liquid funds. Hence, decision of the AO that instead of investing the IPO proceeds in liquid instruments RDB misutilized the IPO proceeds by giving loan to RDBRIL cannot be faulted.*"

Q. Hon'ble SAT vide its Order dated July 26, 2016 further held the following: -

"*Argument of the appellants that giving loan by RDB to RDBRIL would amount to placing surplus funds from one pocket to another cannot be accepted, because, RDB and RDBRIL are two separate and distinct legal entities. Moreover, an investor who wants to invest funds in the IPO of RDB may not prefer to invest in the IPO of RDB if informed that IPO funds are being transferred as loan to RDBRIL. In para 24 of the impugned order the AO has recorded a finding that prior to the IPO, RDBRIL had taken ` 7.28 crore from RDB as inter corporate loan at an interest rate of 15% per annum and since RDBRIL could not repay the said loan within the stipulated time RDBRIL had sought extension of time in the last week of August 2011 and accordingly RDB had granted 90 days* *time to RDBRIL for repayment of loan. With these facts on record, it is not open to the appellants to contend that giving loan to RDBRIL amounts to placing IPO funds from one pocket to another. Thus, in the facts of present case, resolution passed on 12.09.2011 to give loan up to ` 50 crore to RDBRIL being a resolution relating utilization of IPO proceeds was a material information which ought to have been disclosed. Apart from the above, when statement was made in the offer documents that the IPO proceeds would be invested in high quality interest bearing liquid instruments, utilizing the IPO proceeds by giving loan to RDBRIL amounts to misutilizing the IPO funds in violation of ICDR Regulations."*

R. Thus, from the above observations/findings, there is no credibility in the statement made by the Noticees that RDBRIL was a financially sound company. From the above observations, it is clear that the capacity of RDBRIL to pay the annual interest, let alone the obligation to repay the principal amount was doubtful. The submissions made by the Noticees that the loan amount given to RDBRIL was backed by the security of mortgage and deposit of post-dated cheques covering the entire loan amount is not acceptable as they do not classify as liquid instruments. Examples of liquid instruments include cash and cash equivalents like deposits in the bank, investments made in highly liquid scrips and also money market mutual funds. From the prospectus of RDB (at page 26), I note that RDB has disclosed that "Pending utilization of the Issue proceeds for the purposes described above, we intend to invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with the banks for the applicable period."

S. Hence, from the above discussions, it can be concluded that the loan given to RDBRIL cannot be considered as a high quality interest bearing instrument which can be compared with money market mutual funds and deposits with the Banks, as was disclosed to the public through the Prospectus of RDB. Thus, the Noticees have misled the investing public as their investments made in the IPO were on the basis of information/disclosures made in the prospectus. Further, it is observed from the IR that the company i.e RDB had transferred the funds / utilized the IPO proceeds even before obtaining the approval from its BOD and also even before entering into a valid loan agreement with RDBRIL (the borrower).

T. From the above observations/discussions, it can also be concluded that RDB (Noticee no. 1) had made false declaration in the Prospectus wherein it has stated that other than the Related Party Transactions disclosed in the Prospectus, no other transactions are intended whereas, as discussed above, RDB had transferred Rs 7.28 crore as an Inter-Corporate loan to RDBRIL in five different instances starting from April 16, 2011 till October 01, 2011. Therefore, I conclude that Noticee no. 1 i.e RDB not only violated the provisions of law by making mis-statements in the Prospectus but also mis-utilized the IPO proceeds.

Allegations regarding failure on the part of RDB to comply with the terms of the loan agreement entered into with the banks – non-disclosure of the information in the prospectus of RDB

U. From the prospectus of RDB, it is seen that as per the terms of the loan agreement entered into by RDB with the Banks for availing various credit facilities, a pre-condition was laid down whereby RDB was not allowed to "invest by way of share capital in or lend or advance funds to or place deposits with any other concern. Normal trade credit or security deposits in the usual course of business or advance to employees, are, however, not covered by this covenant". From the IR, it is observed that a confirmation in this regard was taken from Axis Bank on whether RDB had obtained prior permission from them for giving loan of Rs 31.60 crore to RDBRIL. In response, Axis Bank vide its email dated March 20, 2012, informed SEBI that "as confirmed by our Corporate Banking Branch, Kolkata, we have not issued any confirmation / NOC -RDB Rasayans Ltd. for giving inter corporate loan". Thus, RDB had failed to fulfill the conditions mentioned in loan agreement entered into by it with the banks and to that extent, RDB i.e Noticee no 1 has deviated from the disclosures made in its prospectus.

Allegation regarding IPO proceeds utilized to repay the working capital demand loan (WCDL) to Axis Bank- non-disclosure of the information in the prospectus of RDB

V. The SCN has alleged that a part of the IPO proceeds of RDB were utilized to repay the WCDL to Axis Bank by the Noticees. In this context, I find that the Noticees have submitted a letter dated 15.03.2014 from Axis Bank Ltd., Kolkata wherein it was inter alia mentioned by Axis bank that “company has not used the IPO proceeds to pay the

WCDL limit rather WCDL outstanding was paid by curving out of the CC limit". In view of the same, the above allegation levelled against the Noticees is not sustainable.

Allegation regarding non-disclosure of political unrest in the Haldia Industrial plant in the prospectus of RDB

W. In the SCN, it is alleged that the political unrest in the Haldia industrial plant has not been specifically mentioned in the prospectus of RDB but as seen from page xiv of the Prospectus of RDB under the heading — risk factors, past labour unrest in the Haldia Industrial belt of the company has not been specifically mentioned but the same has been mentioned under the head 'risk factors' in the prospectus wherein past labour unrest in the company has not only been highlighted but it also mentions about the possibility of the future occurrence of labour unrest in the company. In this regard, the prospectus also categorically informed the investors about the impact of such developments on the business of the company, its financials and results of operations. Further, I note that SEBI's affidavit-in-opposition dated June 15, 2012 filed in the writ petition with Hon'ble High Court of Calcutta states that:

> "… I only say that political situation and labour problem at Haldia have no bearing in this case. I deny that there has been any significant change of labour problem in Haldia. The Allegations regarding labour problem and political situation are all vague….."

In view of the above observations, the allegation levelled in the SCN w.r.t non-disclosure of the labour problem/unrest at the Haldia plant of the company in the prospectus of RDB is without any basis and cannot be sustained.

Allegations levelled against Mr Shanti Lal Baid, Managing Director of RDB

X. It is alleged in the SCN that Mr Shanti Lal Baid, the Managing Director ('MD') of RDB i.e Noticee no. 2 in the context of the present proceeding was entrusted with substantial powers of the management and the affairs of RDB and he was expected to display a high level of accountability and knowledge in the overall functioning and management of the company. As the MD of RDB, Noticee no. 2 was expected to act responsibly in ensuring that the Board of Directors of RDB (including Noticee no. 2) as a whole plays a full and constructive part in the overall conduct of the business and management of the company and the role, responsibility and duty of the Board of Directors (BOD) of RDB, including Noticee no. 2 (as the MD of RDB) were expected to be of the highest order. From the submissions made by Noticee no.2 to the SCN, I find that Noticee no 2 has adopted the reply which has been furnished by Noticee no. 1 i.e RDB in the context of the present proceeding. As the MD of the company, Noticee no. 2 was expected to act responsibly in ensuring that the BOD of RDB as a whole plays a full and constructive part in the development and determination of the company's strategy and the overall commercial objectives of the company. As the MD of RDB, Noticee no 2 is responsible for all the acts and omissions of the company.

Y. It is observed that all the directors of RDB (including Noticee no. 2) were signatories to the prospectus of RDB, which contained non-disclosure of the material events/information about the transfer of the IPO proceeds from RDB to RDBRIL and also contained other misstatements made in the prospectus etc. The same has already been discussed in the previous paragraphs of the instant order and are not repeated for the sake of brevity. Further, the manner in which RDB transferred Rs 31.6 crores out of the IPO proceeds amounting to Rs 34.25 crores to RDBRIL even before the BOD of RDB had authorized and approved the above decision to grant loan to RDBRIL and before a formal loan agreement was entered into by the parties to the agreement in this regard shows that the above decisions were taken with the complete knowledge and concurrence of the directors of RDB, including Noticee no. 2. As the MD of RDB, Noticee no. 2 was entrusted with "*substantial powers of management of the affairs of the company"* and he cannot feign ignorance in the matter.

Z. Further, the manner in which the Notice period of the EGM of RDB was curtailed so that approval to release the IPO proceeds as loan to RDBRIL is obtained from the pre-issue shareholders of the company and not from the post-issue shareholders showed that the directors, including Noticee no. 2 were part of the deceitful and manipulative method followed by RDB to grant loan to its group entity i.e RDBRIL from the IPO proceeds. It is also on record that the above material information/details were also suppressed in the prospectus of RDB wherein Noticee no. 2 was a signatory. Further, it is seen from the Board minutes dated 12.09.2011 of RDB that all the 3 Directors of the company (including Noticee no.2) had attended / were present when the decision to grant the inter corporate loan upto the extent of Rs 50 crore to RDBRIL was taken. Therefore, as the MD of RDB, Noticee no. 2 had the complete knowledge about the developments and was aware of the decisions taken in the BOD meeting of RDB in this regard. Further, the directors of RDB, including Noticee no. 2 have not shown / submitted any documentary proof to establish that they have exercised due diligence to prevent the suppression / omission of the material fact/ material information from the Prospectus of RDB.

AA. In the context of the present matter, it is also important to note that on October 7, 2011, the Audit Committee of RDB was chaired by a Whole Time Director of RDB instead of Independent Director as mandated under the provisions of clause 49 of the Listing Agreement. The said Audit Committee of RDB which was chaired by the Whole Time Director was in violation of clause 49 of the Listing Agreement and had recommended to the Board of RDB to give the loan to RDBRIL. It was also noted that even before the BOD meeting of RDB at 5 PM on October 7, 2011 to approve the giving of the loan to RDBRIL and approve the loan agreement was made, Noticee no. 1 had transferred the IPO proceeds amounting to Rs 31.60 crores to RDBRIL at 2.47 PM on October 7, 2011. In view of the above, the very act and conduct of the directors of RDB, including that of Noticee no. 2 is questionable.

BB. Further, Noticee no. 2 being the Managing Director of RDB is *prima facie* deemed to be in charge and responsible for the conduct of business and management of the company and his duty and responsibility was expected to be of high order. He is responsible for all the acts and omissions of the company. Since the role of Managing Director is to manage the company on full time basis. I would like to quote the order of Hon'ble Securities Appellate Tribunal in *Shri N. Narayanan* Vs*. SEBI* decided on 05.10.2012 wherein it was held that: -

> *"...The role of a whole time director is very significant and material in running day to day affairs of a company. His role and responsibility are equivalent to that of a managing director in as much as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company..."*

CC. In this context, I would like to quote the order of Hon'ble Securities Appellate Tribunal in Shri N. Narayanan Vs. SEBI decided on 05.10.2012 wherein it was held that:

"...The role of a whole time director is very significant and material in running day to day affairs of a company. <u>His role and responsibility are equivalent to that of a managing director in as much as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company</u>..."

DD. Further, Hon'ble Supreme Court of India in the matter of Shri N. Narayanan Vs. SEBI decided on 26.04.2013 had held the following :

"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially....

A word of caution:

SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country‟s economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India‟s securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and „market security‟ is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors‟ contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market‟s integrity..."

EE. Therefore, from the above observations/discussions/findings, I am convinced that Noticee no 2 as the director of RDB (Noticee no 1) along with other directors of RDB have collectively failed to ensure that all the material disclosures/material developments in the prospectus of RDB are made for the benefit of investors and further as directors of RDB, they were also responsible for mis-utilization of the IPO proceeds of RDB.

FF. In view of the above, I hold that the Noticees (Noticee nos 1 and 2) have failed to ensure that all the material disclosures/material developments in the prospectus of RDB are made for the benefit of investors and also responsible for mis-utilization of the IPO proceeds of RDB. Therefore, I hold that Noticees have violated the provisions of Regulations 57 (1) and (2) read with Schedule VIII Part A (16) (b) and 60 (4) of ICDR Regulations.

<u>Allegation w.r.t violation of the provisions of sections 62, 63 and 68 read with section 55A of the Companies Act , 1956 by the Noticees</u>

GG. As regards the allegation made in the SCN w.r.t violation of the various sections of the Companies Act, 1956 by the Noticees, as aforesaid, it is relevant to mention the order of the Hon'ble Supreme Court of India's decision in the matter of *Sahara India Real Estate Corporation Ltd. & Others* Vs. *SEBI* decided on 31.08.2012 wherein the Hon'ble SC had held as follows:

> *"..The main part of Section 55A confers jurisdiction on SEBI with regard to three categories i.e. issue of securities, transfer of securities and non-payment of dividend. The expression "all other matters" mentioned in the explanation would refer to powers other than the above mentioned categories. Further, it may also be remembered that the explanation does not take away the powers conferred on SEBI by other sections of the Companies Act. At the same time, matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares be exercised by the Central Government, Tribunal, Company Law Board, Registrars of Companies, as the case may be……*
>
> *….We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India. In any other case, i.e. rest of the matters, that is excluding matters relating to issue and transfer of securities and non-payment of dividend be administered by the Central Government in the case of listed public companies and those companies which intend to get their securities listed on any recognized stock exchange in India. Explanation to that section further clarifies the position so as to remove doubts, saying all powers relating to other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares, should be exercised by the Central Government, Tribunal or the Registrar of Companies, as the case may be. Section 55A, therefore, makes it clear that SEBI has the power to administer the above mentioned select provisions of the Companies Act relating to matters specified therein.."*

HH. In view of the above, the violations of the provisions of sections 62, 63 and 68 read with section 55A of the Companies Act by the Noticees would not be applicable in the instant matter against the Noticees as it is under the domain of the Central Government. Further, the violation of Regulation 57(2)(b) is also not applicable as it relates to a listed issuer making a rights issue. The provisions of schedule VIII Part A (16) (a) and (c) are also not applicable as it relates to unsecured loans taken by the issuer. Thus, the alleged violations of sections 62, 63 and 68 read with section 55A of the Companies Act is not applicable in the facts and circumstances of the present matter against the Noticees.

Alleged violation of the provisions of the SEBI Act (section 12 A (a) to (c)) and PFUTP Regulations (Regulations 3 & 4) by mis-utilisation of the issue proceeds of RDB and also failure to disclose the material information / material development in the prospectus of RDB

II. As already stated, Noticees have mis-utilised the IPO proceeds of RDB by extending inter-corporate loan Rs 31.60 crores from the IPO proceeds of RDB to its group entity i.e RDBRIL, even before the BOD of RDB had approved the above decision and also even before the BOD of RDB had approved the loan agreement. Further, it is observed that Noticees chose to suppress the resolution dated September 12, 2011 and call for the EGM by curtailing the notice period to 15 days instead of the statutory time period of 21 days so that approval to give the IPO proceeds as loan to RDBRIL is obtained only from the pre- IPO shareholders and not taken from the post-IPO shareholders. In view of the same, it is observed that Noticees had adopted manipulative and deceptive device to suppress the material facts from the investors in its prospectus, which apart from resulting in the violation of the provisions of ICDR Regulations, as discussed above, have also resulted in the violation of the provisions of section 12 A (a) to (c) of the SEBI Act and the relevant provisions of the PFUTP Regulations (Regulations 3 & 4) . In this regard, Hon'ble SAT vide its Order dated July 26, 2016 in the matter of the IPO of RDB had held that RDB and its directors resorted to manipulative and deceitful method to suppress the material information of the above facts/observations in its prospectus which is in violation of the provisions of PFUTP Regulations. In this context, Hon'ble SAT in its Order dated July 26, 2016 had held the following:-

Violation of PFUTP Regulations.

"..Failure to disclose aforesaid material information to the investors and misutilizing the IPO funds contrary to the statement made in the offer document was with a manipulative and deceitful intention is evident from the fact that as soon as SEBI approval for the IPO was received, RDB chose to invest surplus fund by way of loan to RDBRIL up to the

extent of ` 50 crore in one or more tranches, even though no such funds were available. Very fact that on 12.09.2011 itself RDB resolved that along with the Annual General Meeting ("AGM" for short) scheduled on 28.09.2011, Extra Ordinary General Meeting ("EOGM" for short) of RDB shall also be called on 28.09.2011 to seek approval from the pre IPO shareholders of RDB to grant loan to RDBRIL by curtailing the notice period from 21 days to 15 days by invoking Section 171(2) of the Companies Act, 1956, clearly shows that RDB and its directors were in great hurry to seek approval from pre IPO shareholders to give loan up to ` 50 crore even though there were no funds for giving the loan. Obviously the hurry was on account of the fact that IPO was commence with effect from 21.09.2011 and if 21 days notice for EOGM was adhered to, then post IPO shareholders would step in and therefore to avoid seeking approval from post IPO shareholders, RDB and its directors chose to suppress resolution dated 12.09.2011 and call EOGM by curtailing the notice period so that approval to give IPO proceeds as loan to RDBRIL is obtained from pre IPO shareholders and not from post IPO shareholders".

"It is contended on behalf of the appellants that the resolution passed on 12.09.2011 to give loan up to ` 50 crore to RDBRIL in one or more tranches did not envisage transferring IPO proceeds as loan to RDBRIL. There is no merit in the above contention because, as on 12.09.2011 apart from receiving IPO funds between 21.09.2011 to 23.09.2011 there was no other source from whether RDB could get funds which could be given as loan to RDBRIL. Although the resolution dated 12.09.2011 does not refer to giving IPO proceeds as loan to RDBRIL, very fact that the said resolution was passed immediately on receiving approval from SEBI for the IPO, very fact that RDB chose to curtail the notice period from 21 days to 15 days so as to seek approval of the pre IPO shareholders to give loan up to ` 50 crore to RDBRIL and fact that on 07.10.2011 more than 90% of the IPO proceeds were transferred as loan to RDBRIL, even before giving of loan and loan agreement was approved by the Board of RDB, clearly establish that the object of passing the resolution on 12.09.2011 was to transfer IPO funds as loan to RDBRIL and by curtailing the notice period from 21 days to 15 days, RDB chose to seek approval from the pre IPO shareholders for giving IPO proceeds as loan to RDBRIL. Thus, RDB and its directors resorted to manipulative and deceitful method to suppress material information from the offer documents which in violation of PFUTP Regulations".

“It is also relevant to note that on 28.09.2011 the AGM and EOGM of RDB were held and filing in relation to AGM was made before the Registrar of the Companies (“ROC” for short) on 28.09.2011 itself, whereas, filing in relation to EOGM dated 28.09.2011 was made before the ROC on 19.10.2011 i.e. much after the allotment of shares to the IPO subscribers. Since the EOGM resolution dated 28.09.2011 related to the approval given by the pre IPO shareholders to give loan up to ` 50 crore, inference drawn by the AO that the filing relating to EOGM resolution dated 28.09.2011 was withheld till 19.10.2011 with a view to suppress vital information from the investors till the shares were allotted to the IPO subscribers cannot be faulted”.

“It is contended on behalf of the appellants that Section 171(2) of Companies Act, 1956 empowers a company to give shorter period of notice to the shareholders and Section 192 of the Companies Act permits filing of the resolution up to 30 days and therefore, no fault can be found with RDB in invoking shorter period of notice and filing the resolution within 30 days. In the impugned order it is not held that RDB and its directors have violated Section 171(2) and Section 192 of the Companies Act, 1956. What is held in the impugned order is that the motive in curtailing the notice period for calling EOGM from 21 days to 15 days by invoking Section 171(2) was with a view to avoid taking consent of post IPO shareholders to give loan up to ` 50 crore to RDBRIL. Similarly, it is held that filing of EOGM resolution dated 28.09.2011 was delayed till 19.10.2011, so that during the interregnum allotment of IPO shares are made and once the shares are allotted the question of withdrawing from the offer does not arise even if the subscriber intends to withdraw from the offer on account of RDB giving loan up to ` 50 crore to RDBRIL. Fact that apart from IPO proceeds, RDB did not have any other surplus funds to give as loan to RDBRIL and the fact that immediately on receiving IPO proceeds amounting to ` 34.25 crore, RDB transferred IPO proceeds to the extent of `31.60 crore to RDBRIL, even before the Board of RDB approved giving such loan and even before the Board of RDB approved the draft loan agreement, leaves no manner of doubt that RDB and its directors adopted manipulative and deceptive devices to suppress material facts from the investors which is gross violation of Section 12A of SEBI Act and regulation 3 & 4 of PFUTP Regulations”.

JJ. Therefore, in view of the above conclusions drawn by Hon'ble SAT vide Order dated July 26, 2016, I hold that Noticees by suppressing the material information / material developments in the prospectus, by mis-utilizing the IPO proceeds of RDB and by employing manipulative and deceptive devices to suppress the material information in the prospectus of RDB, the Noticees apart from violating the provisions of ICDR Regulations have also violated the provisions of sections 12 A (a) to (c) of the SEBI Act and also the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a), (d) and (e) of the PFUTP Regulations.

Allegations levelled against the Noticees in the SCN regarding diversion/ Routing of the IPO Proceeds of RDB for the purpose of trading in the scrip of RDB on the listing day

KK. It is alleged that the money transferred to the account of RDBRIL by RDB from its IPO proceeds were in turn circuitously routed through web of entities and from there to the ultimate trading clients (four trading clients) for the purpose of trading in the scrip of RDB on the first day of the listing of the scrip on BSE. It is alleged that the funds were ultimately transferred to four trading clients viz. Prakashbhai, Dave, BMD and Shreyashnath , which enabled them to trade in the scrip of RDB on the listing date i.e on October 7, 2011. The details of the flow of funds that have taken place during the relevant period and as mentioned in the IR is mentioned as under:

a) Upon perusal of bank accounts/statements of RDB, it is observed that RDB had transferred Rs 24.1 crore (₹ 19.5 and ₹ 4.6 crore) in two tranches from their Oriental Bank Of Commerce account to the account of RDBRIL maintained with Oriental Bank Of Commerce (account no. 10491131001009) on October 07, 2011.
b) On October 12, 2011, Rs 7.5 crore was transferred in two tranches from the Axis bank account no. 005010300020837 of RDB to the account of RDBRIL held with Axis Bank (account no. 153010300000851).
c) On October 7, 2011, RDBRIL transferred 9.15 crore from their Oriental Bank of Commerce account to the account of Namokar Duplicating Pvt. Ltd ("Namokar") held with UCO Bank (account no. 13390200001286).

d) On the same day, i.e., October 07, 2011, Namokar transferred ₹ 8.4 crore to the account of Mercury Fund Management Company Pvt. Ltd. ("Mercury") (account with Bank of Maharashtra having account no. 60047104985). Kishore Jhunjhunwala, Kamal Singh Nahata and Kundan Mal Banthia are the Directors of Mercury.

e) On October 8, 2011, Mercury transferred ₹ 5.5 crore to the account of Deesha Tie Up Pvt. Ltd. ("Deesha") held with Development Credit Bank (account no. 03622400999999), (Directors of Deesha - Sanjay Shah, Ajay Kumar Shah, Kiritkumar Mohanlal Patel, Jayeshkumar Ambalal Patel).

f) On October 10, 2011, Deesha transferred ₹ 4 crore to the account of Dharamnath Shares and Services Pvt. Ltd ("Dharamnath") held with Indus Ind Bank (account no. 0009-M67085-060).

g) Dharamnath later on transferred Rs 4.5 crore to the account of Subodhsagar Shares and Service Pvt. Ltd ("Subodhsagar") held with Axis Bank (account no. 728010200001366), (Directors of Subodhsagar - Kiritkumar Mohanlal Patel, Jayeshkumar Ambalal Patel).

h) Subodhsagar then transferred ₹ 4 crore to the account of Sardhav Investment and Finance Pvt. Ltd. ("Sardhav") held with AXIS Bank (account no. 910020018160486), (Directors of Sardhav- Dineshkumar Manilal Patel, Sumankumar Natvarlal Patel).

i) Sardhav transferred the money received from Subodhsagar to four major loss making trading clients who had dealt in RDB shares on the listing day of its IPO, i.e., October 7, 2011, namely, Prakashbhai (ING Vysya account no. 670011000640), Dave (Kotak Mahindra Bank account no. 08122090002092), BMD (Royal Bank of Scotland account no. 1645730) and Shreyanshnath (Axis Bank account no. 728010200001380).

LL. From the above observations, it is observed that a portion of the funds raised by RDB through its IPO has moved through various layer of entities and from there to the ultimate four trading clients. These entities (4 trading clients) had traded in the scrip of RDB on the listing day and had incurred losses. The entities through which the money reached these trading clients were mostly connected entities of RDB. In this context, it is pertinent to draw reference to the conclusions drawn by Hon'ble SAT while deciding on the appeals filed by the directors of RDB against the Adjudication Order dated August 06, 2014 wherein it was held by Hon'ble SAT (vide its Order dated July 26, 2016) that it cannot be held by the AO of SEBI on one hand that the IPO proceeds were transferred as loan to RDBRIL and on the other hand hold that the IPO proceeds were circuitously routed to the four trading clients through RDBRIL. It was further observed by Hon'ble SAT that by March 31, 2012, the entire loan amount along with interest has been received by RDB from RDBRIL and with these details on record, Hon'ble SAT had observed that it is not open for SEBI on one hand to contend that RDB gave the IPO proceeds as loan to RDBRIL in violation of the ICDR Regulations/PFUTP Regulations and on the other hand contend that the IPO proceeds have been transferred in a circuitous manner by RDBRIL so as to fund the ultimate four trading clients to trade in the scrip of RDB on the first day of listing of the scrip of RDB. In this regard, the relevant conclusions/observations made by Hon'ble SAT vide its order dated July 26, 2016 in the matter of routing/diversion of IPO proceeds for the purpose of trading in the scrip of RDB is reproduced as under:

"*as rightly contended by the counsel for appellants, in the impugned order no link or connection is established between RDB / its Directors and the four trading clients to whom the funds are allegedly held to have been transferred by RDB through RDBRIL and various other entities. Moreover, the appellants had tendered a ledger statement of RDBRIL to show that the funds transferred by RDBRIL to Namokar Duplicating Pvt. Ltd. ("Namokar" for short) was by way of refunding the amount already received by RDBRIL from Namokar. In the impugned order, the ledger statement furnished by RDBRIL is disbelieved on ground that the said ledger statement is not certified and there is no other evidence furnished by the appellants. In our opinion, there was no reason to disbelieve the ledger statement of RDBRIL especially when RDBRIL is a listed company. Moreover, the appellants have annexed to the Memo of Appeal a certificate issued by S.M. Daga & Co., Chartered Accountants which clearly certifies that the amount paid by RDBRIL to Namokar was in fact refund of the amount already received by RDBRIL from Namokar. Sanctity of the said certificate is not doubted by SEBI. In such a case, it is apparent that the amount paid by RDBRIL to Namokar was by way of refunding the amount already received by RDBRIL*"

MM. Further, Hon'ble SAT has held that "*firstly, SEBI has not disbelieved the case of the appellants that transfer of IPO proceeds by RDB to RDBRIL was by way of loan. AO cannot hold on one hand that IPO proceeds were transferred as loan to RDBRIL and on the other hand hold that IPO proceeds were circuitously routed to four clients through RDBRIL. Secondly, by 31.03.2012, entire loan amount with interest has been received back by RDB from RDBRIL. With these facts on record it is not open to SEBI on one hand to contend that RDB gave IPO proceeds as loan to RDBRIL in violation of ICDR Regulations/ PFUTP Regulations and on the other hand contend that the IPO proceeds have been transferred in a circuitous manner so to fund four trading clients who had traded in the shares of RDB on the first day of listing.*"

NN. Therefore, in view of above facts and observations and the conclusions drawn by Hon'ble SAT in its order dated July 26, 2016, as discussed above, I am of the view that the allegations of circuitous transfer of money by the Noticees i.e routing of IPO proceeds from RDB to RDBRIL and from RDBRIL to the 4 trading clients for the purpose of trading in the scrip of RDB on the listing day and consequent allegations levelled against the Noticees w.r.t violation of the provisions of sections 12 A (a) to (c) of the SEBI Act and Regulations 3 & 4 of the PFUTP Regulations cannot be sustained.

Whether the Noticees have violated the provisions of ICDR Regulations and PFUTP Regulations w.r.t mis-utilisization of the IPO proceeds and also failure to disclose the material information / developments in the prospectus of RDB and whether the violation on the part of the Noticees attract monetary penalty on the Noticees under the provisions of sections 15HA and 15HB of the SEBI Act, 1992?

OO. In view of the above observations and the overall assessment of facts, I hold that Noticees have violated the provisions of Regulations 57 (1) and 57 (2) read with Schedule VIII Part A (16) and Regulation 60 (4) of the ICDR Regulations (for non-disclosure of material information in the prospectus of RDB and also mis-utilisation of the IPO proceeds of RDB) and Noticees have also violated the provisions of sections 12 A (a) to (c) of the SEBI Act and Regulations 3 & 4 of the PFUTP

Regulations (for non-disclosure and suppression of material information in the prospectus of RDB and mis-utilisation of the IPO proceeds of the IPO of RDB).

19. In the present matter, I note that on the same facts and circumstances and also the alleged violation of the same provisions of law by the Noticees in the case of irregularities in the IPO of RDB, separate adjudication proceedings have already been initiated against the directors of RDB vide an Order dated August 06, 2014 and a penalty of Rs 3 crores was imposed on the directors of RDB under the provisions of sections 15 HA & 15 HB of the SEBI Act, vide Adjudication Order dated August 06, 2014. The said Adjudication Order had culminated into an appeal filed by the directors of RDB before the Hon'ble SAT. It is noted that, vide an Order dated July 26, 2016, Hon'ble SAT while upholding the findings on the mis-utilisation of the IPO proceeds and non-disclosure of the material information in the prospectus of RDB, had reduced the penalty amount from Rs 3 crores to Rs 2 crores under the provisions of sections 15 HB and 15 HA of the SEBI Act. Further, in the instant matter, it is on record that the Noticees along with the other directors of RDB have already undergone debarment for a period of four years from accessing the securities market, directly or indirectly, in any manner, whatsoever, vide WTM - SEBI Order dated December 19, 2014, which was passed under the provisions of sections 11,11 A & 11 B of the SEBI Act. It is also observed that in the context of the alleged violation of the provisions of clause 49 of the Equity Listing Agreement by Noticee no. 2 i.e Mr Shanti Lal Baid, a separate adjudication order dated August 27, 2018 has already been passed against Noticee no. 2 under the provisions of section 23 A (a) of SCRA in terms of the Adjudication Rules, 2005 disposing of the alleged violation of the provisions of clause 49 of the Equity Listing Agreement levelled against Noticee no. 2, vide SCN dated February 27, 2015. Further, in the said matter, the crux of the proceeding revolves around the transfer of Rs 31.6 crores from the IPO proceeds of RDB to the account of RDBRIL as inter- corporate loan and non-disclosure of the said material information/developments in the prospectus of RDB. In this regard, from the order of Hon'ble SAT (Order dated July 26, 2016) it is observed that Hon'ble SAT had observed/held that, as on March 31, 2012, the entire loan amount along with interest has been received back by RDB from RDBRIL. The relevant observations made by Hon'ble SAT in this regard are already mentioned above (at para 18 (MM)). Thus, in the instant matter and from the aforementioned

observations, I am of the considered view that adequate penalty (both in terms of monetary penalty and debarment) has already been imposed on the Noticees for the alleged violations/lapses of the provisions of law committed by them. In my view, no further penalty is required to be imposed on the Noticees in the facts and circumstances of the case.

ORDER

20. After taking into consideration the facts and circumstances of the case, material available on record and also the submissions made by the Noticees, I, in exercise of the powers conferred upon me under the provisions of section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, dispose of the SCNs dated February 06, 2015 and February 27, 2015 issued to the Noticees.
21. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to Noticee no. 1 i.e RDB Rasayans Ltd and Noticee no. 2 i.e Mr Shanti Lal Baid and also to Securities and Exchange Board of India.

Date: April 29, 2022	**SURESH B MENON**
PLACE: MUMBAI	**ADJUDICATING OFFICER**