BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BD/NR/2020-21/7648-7649

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,1995

In respect of

1. M V Damania & Co., *(Presently known as DNV & Co.,)* *(PAN: AAEFM 9871H)* Chartered Accountants 14/2, Mahalaxmi Industrial Estate D Shivner Road, Lower Parel Mumbai – 400013.	2. Bharat Jain *(PAN: AACPJ 9026F)* Partner, M V Damania & Co., *(Presently known as DNV & Co.,)* Chartered Accountants 14/2, Mahalaxmi Industrial Estate D Shivner Road, Lower Parel Mumbai – 400013.

In the matter of Paramount Printpackaging Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the matter of Initial Public Offering (IPO) of Paramount Printpackaging Ltd., (hereinafter referred as "PPL"/ "*Company"*) and pursuant to investigation, *inter alia*, it was observed that the Company did not utilize the IPO proceeds of ₹4,225.07 lakhs for the purpose of objects stated in the prospectus, out of which, ₹3,887.46 lakhs were diverted to different entities in the guise of making payments towards the objects stated in the prospectus and ₹337.61 lakhs were spent for other than objects of the issue stated in the prospectus. The focus of investigation was to examine the role of the Statutory Auditor viz., M V Damania & Co., *(presently known as DNV & Co.,) (hereafter referred to as "Statutory Auditor" / "Noticee" / "Noticee 1")* with regard to the due diligence done by it for certifying the expenditure incurred by the Company towards IPO expenses out of the IPO proceeds.

2. PPL came out with came out with an Initial Public Offer ("IPO") of 1,30,94,175 equity shares to the public in the price band of ₹32/- to ₹35/- per equity share of face value of ₹10/- each. The issue opened for subscription from April 20,

2011 to April 25, 2011 and its shares got listed on May 09, 2011. The issue price was ₹35/- per equity share aggregating to ₹4,582.96 Lakhs. The IPO of PPL was graded by ICRA, Credit Rating Agency and assigned IPO Grade 2 indicating *'Below Average Fundamentals'*.

3. As per the Prospectus dated May 2, 2011, issued by PPL, the objects of the Issue along with allocation for each objectives from the fund raised vis-à-vis the amount utilized as certified by the Statutory Auditor viz., M V Damania & Co., are as under:

Objects of the Issue	**Amount proposed to be utilised as stated in the prospectus (₹ in Lacs)**	**Amount utilised as certified by statutory auditor (₹ in lacs)**
Setting up new facility for manufacturing high end duplex board cartons, Shippers and printed corrugated box at Gujarat	3,194.27	3436.20
Augmenting Long Term Working Capital Requirement	495.82	424.02
General Corporate purposes	338.87	-
Issue expenses	554.00	722.74
Total	**4,582.96**	**4,582.96**

4. The break-up of details of utilisation of IPO proceeds certified by the Statutory Auditor under each heads of objects was verified with the documents relied upon for providing this statement in the audit report. Based on the examination of documents relied upon by the Statutory Auditor to issue such a statement, it was observed that the company had incurred only ₹ 676.90 lakhs out of IPO proceeds for objects stated in prospectus as against ₹4582.96 lakhs certified by the Statutory Auditor and the remaining amount of ₹3906.06 lakhs was wrongly certified by the Statutory Auditor as if the amount was utilized by the Company towards objects stated in the Prospectus. Thus, the investigation revealed that the actual utilization of IPO proceeds was significantly different from what is stated in the Audit Report. Therefore, it is alleged that the Statutory Auditor had indulged in fraudulent/unfair trade practice by publishing information which is not true, indulged in misleading advertisement and planted false/ misleading news. In view of the above, the

Statutory Auditor in the audit report dated May 30, 2012 had wrongly stated that the company has utilised the IPO proceeds as per the objects of the issue. The object wise breakup of the same is as under:

Sl. No.	Objects of the issue	Amounts (Actual Utilization)	Amount for which auditor provided documents relied upon (₹ in lacs)	Actual amount for which Statutory Auditors did not provide the documents relied upon (₹ in lacs)	Actual amount for which Statutory Auditors provided the documents relied upon (₹ in lacs) but which are not satisfactory	Amount wrongly certified by the Statutory Auditor (₹ in lacs)
1	**Setting up new facility for manufacturing high end duplex board cartons, shippers and printed corrugated box at Gujarat**					
	Land	200.00		200.00		200.00
	Site Development, Civil Work and Building Construction	1674.21		-	1674.21	1674.21
	Electrical Installation	379.55		17.28	362.27	379.55
	Plant & Machinery and other ancillaries	1182.45		84.01	1182.45	1182.45
	Total (A)	**3,436.21**				**3436.21**
2	**Augmenting Long Term Working Capital Requirements**	**424.02**		**-**	**-**	**424.02**
	Total (B)	**424.02**				**424.02**
4	**Issue Expenses**					
	Advisory Fees	496.35	675.03			-
	IPO Fees (Listing of shares)	29.78				-
	Other expenses related to IPO	148.90				-
	BSE Ltd.,- deposit	45.83				45.83
	Ceremony and listing fees	1.88		1.88		-
	Total (D)	722.73				45.83
	Total (A) + (B) + (C)+ (D)	**4,582.96**				**3906.06**

5. In view of above it is alleged that the certificate issued by the Statutory Auditor, regarding the utilisation of IPO proceeds by the company in line with the objects of the issue, which is also included in the annual report of the company for the year 2011-12, was not true and the same was misleading and contained information in a distorted manner which may influence the

decision of the investors. It is also observed that the certificated dated May 30, 2012, was signed by Bharat Jain (ICAI Membership No. 100583) *(hereinafter referred to as "Noticee 2")* for M.V.Damania & Co *(currently known as DNV & Co.,)* under the seal of the firm as its Partner. Therefore, it is alleged that the Statutory Auditor, M. V. Damania & Co. (Firm Registration Number 102079W) *(currently known as DNV & Co.,)* {Noticee 1} and its partner Bharat Jain {Noticee 2} who had signed the certificate had violated the provisions of Section 12 A(a), (b) and (c) of SEBI Act and Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 *{hereinafter referred to as SEBI (PFUTP)" Regulations}*.

APPOINTMENT OF ADJUDICATING OFFICER

6. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated September 26, 2019 under Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") to inquire into and adjudge under Section 15HA of the SEBI Act for the alleged violation of provisions SEBI Act and SEBI (PFUTP) Regulations, committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A common Show Cause Notice (hereinafter referred to as **"SCN"**) bearing ref. no. EAD-7/BJD/NJMR/33972/2019 dated December 19, 2019 was served on the Noticees under Rule 4 of SEBI Adjudication Rules requiring the Noticees to show cause as to why an inquiry be not held against them in terms of Rule 4 of SEBI Adjudication Rules and penalty be not imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by them.

8. The Noticee 2 vide email dated January 6, 2020 sought for inspection of the entire records and papers in possession of SEBI in the matter and also to

provide copies of the same. In reply, vide email dated January 7, 2020 it was informed to the Noticee that all the documents that were relied upon and referred to in the SCN have already been provided as enclosures along with the aforesaid SCN dated December 19, 2019. For the purpose of carrying out inspection of documents, the Noticee was informed to get in touch with the concerned department of SEBI and to complete the inspection not later than January 20, 2020. I note from the records that the Noticee carried out the inspection on January 13, 2020. Vide email dated January 21, 2020, the Noticees were informed to furnish their reply to the charges alleged in the SCN by January 30, 2020. Pursuant to receipt of a request from the Noticees vide email dated January 31, 2020 seeking extension of time, the Noticees were granted time till February 12, 2020 for submission of reply, which was communicated vide email dated February 3, 2020.

9. The Noticees vide email dated February 10, 2020 submitted their joint reply, which is summarized hereunder.

(a) *At the outset, we submit that the audit was conducted by us way back in the 2012 and there has been a substantial passage of time since then. It is submitted that the inordinate delay in initiation and conduct of the proceedings is detrimental and prejudicial to us. We submit that we are handicapped in comprehensively responding to the Show Cause Notice.*

(b) *It is a trite law, laid down by various fora that a statutory authority ought to conduct proceedings within a reasonable time, even in situations where no period of limitation is prescribed. The Noticees would like to place reliance on the various judgments of Hon'ble Supreme Court and Hon'ble SAT in its defence for the delay in initiation of the instant proceedings.*

(c) *We submit that like any other assignments, our role as an auditor of PPL was Ltd., to audit of financial statements of PPL to reflect a true and fair picture of the financial condition of PPL based on the information provided by the management. We have no control whatsoever over the manner in which PPL employed or utilised the proceeds of the IPO as per the business requirement in the interest of the Company. In the process of audit, our endeavour is to obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion which includes ascertaining* *whether a particular payment/receipt as claimed by the management has gone to the concerned party through proper banking channel*.

(d) *The recurring theme of the allegation in the entire Show Cause Notice is two-fold: (i) name of some of the vendors /entities to whom payments were made by PPL did not appear in the prospectus and (ii) there is a gap of few days between the payment to certain vendors and the invoice date.*

(e) *In this regard, we submit that on perusal of the bank statements, it can be noticed that all the payments as certified by us were made by PPL to the respective entities. Further, prospectus itself is replete with references that PPL did not have any definite agreement with particular vendor and as per existing conditions the deployment may vary. Therefore, the investors were well aware of the fact that PPL reserves the right to change the vendors depending on various circumstances as mentioned in the prospectus.*

(f) *Thus, we submit that as far as the deployment of IPO proceeds is concerned, it is the management of the Company that takes a pragmatic decision as per their business strategy. It is the responsibility of the members of Audit Committee and independent directors of the Company who are in-charge of monitoring whether the business decision taken by the management is in line with the overall strategy in the interest of Company.*

(g) *The role of an auditor comes into force only subsequent to the deployment of funds by the management and the audit is based on Ltd., review of bank and underlying documents. Wherever necessary, explanation is sought from the management and underlying documents are verified as per usual auditing standards and audit procedure. In the present case, all the payment made by the company were done through normal banking channels (RTGS/bank transfer) and same were reflected in the bank statements and books of accounts provided by the company at relevant time. At the relevant time, meticulous exercise was undertaken for the same and there was no lapse on our part. Thus, in hindsight, to allege that we did not exercise due diligence is unfair and arbitrary.*

(h) *On the second issue, it is humbly submitted that as a standard industry practise, there is a gap between the payment/invoice date and it is not customary to make the invoice in a particular fashion. In the present case, though there is time gap of few days the fundamental fact remains is that payment was done to same vendor whose services/material was availed.*

(i) Based on the documents and information provided to us by the Company, at the relevant time, we had in the Auditor Report certified that out of the net proceed of issue of Rs. 45,82,96,125/-, the company has utilised Rs. 34,36,20,164/- towards construction of new project, Rs. 4,24,01,890/- towards working capital and balance of Rs. 7,22,74,071/- towards IPO expense. Further, the Company had itself disclosed the end use of the money in note 31 of the Financial Statement for the year ending 2012. This certification was done based on the information and explanation provided to us by management of PPL and on-site verification of documents provided to our audit team.

(j) Being external auditors, we had no control over the bank account and finances of the company (including the funds raised through the IPO), which is within the sole control and responsibility of the management of PPL. Our role as auditor does not include verification or analysis of the current developments or future projection of the project for which the proceeds are raised. We have examined whether the transfer of funds as accounted in the financial statement of the Company has been undertaken in regular course through proper banking channels, amongst various other analysis as per regular audit procedure. It is pertinent to note that the audit conducted for PPL was an "on-site audit" where our role was to attend the office of PPL, physically inspect the records and documentary evidences provided by them and on spot questioning based on our evaluation of documents.

(k) In view of the submissions and documents referred above, we submit that statutory audit was conducted by us in due compliances of all the applicable rules and regulations. Being the auditors, we would not have any knowledge or information in matters, beyond such documents which were obtained during audit to verify the facts regarding the financials of the Company. All the payments made towards various transactions were verified by bank statements and accordingly the certificate was issued by us.

(l) In any case, we submit that it is a trait law that an auditor is not expected to start his audit with a suspicion of detecting a fraud. If basic underlying bank statements/documentary evidence is present, audit exercise can be conducted with diligence. An audit, after all, is persuasive rather than conclusive in nature since it is based on many factors such as use of judgement, the use of testing, the inherent limitation of internal control, etc. In this context, it is pertinent to note the observation of the Bombay High

Court in the case of ***Tri sure India Ltd. Vs. A. F. Ferguson and Co****., [1985 SCC Online Bom 342]:*

> *"an auditor is required to employ reasonable skill and care, but he cannot be required to begin with suspicion and to proceed in the matter trying to detect a fraud or a lie"*

(m) Based on our aforesaid submissions and in light of the observation of Hon'ble Securities Appellate Tribunal in the case of PWC ***vs. SEBI*** *[2019 SCC Online SAT 165], we humbly pray that there is enough material to suggest that there is no violation of any kind on our part. It is, therefore, humbly requested that the Show Cause Notice be dropped without imposing any monetary penalty on us.*

10. The submissions made by the Noticees with regard to certification of utilization of funds mentioned in the objects of issue as per the SCN, are being dealt in the subsequent paragraphs, which are not reproduced here for the sake of repetition.

11. In the interest of natural justice and in terms of Rule 4 (3) of SEBI Adjudication Rules, the Noticees were given an opportunity of personal hearing on March 2, 2020, which was communicated vide email dated February 18, 2020. Pursuant to receipt of a request from the Noticees vide email dated February 22, 2020 seeking adjournment of personal hearing due to non-availability of their Legal Counsel, the hearing was adjourned to March 11, 2020, which was communicated vide email dated February 28, 2020. The Noticees vide letter dated March 2, 2020 authorized Mr. Ravichandra S Hegde, Advocate, Mr. Robin M Shah, Advocate and Mr. Prashant Mehta, Chartered Accountant {*hereinafter referred to as* "Authorized Representatives" (ARs)} to appear before me on their behalf, which was taken on record.

12. The ARs appeared before me on the scheduled date of hearing i.e., March 11, 2020 and reiterated the submissions made by the Noticees vide letter dated February 10, 2020. During the course of personal hearing, the ARs placed reliance on the judgments of Hon'ble SAT in the matters of Almondz

Global Securities Vs SEBI, Keynote Corporate Services Ltd., Vs SEBI and Price Waterhouse and Co., Vs SEBI, Hon'ble WTM, SEBI Order in respect of PNB Investments Services Ltd., and Ld., Adjudicating Officer Order in respect of VCG & Co., and Vishal Chandra Gupta, in defence of the Noticees. Further, the ARs undertook to file additional submissions by March 13, 2020. The Noticees vide letter dated March 13, 2020 filed additional submissions, which are summarized hereunder:

(a) *We submit that the entire proceedings against us including the investigation were conducted because SEBI detected an alleged fraud in IPO of some companies. Appropriate directions were issued against Onelife Capital Advisors Ltd (merchant banker of PPL) which is not concerning the present proceedings. Suffice to state that SEBI initiated the proceedings keeping in mind the alleged fraud committed by the said entities. Therefore, the learned Adjudicating Officer is most humbly requested to consider these submissions without being prejudiced in any manner with the other proceedings which has nothing to do with us. We have done our duty and carried out our task with utmost diligence and as per the standards expected from an auditor.*

(b) *Further, it is important to note that we were the auditors of the Company to certify the veracity of the information provided by the management and our role was not that of a forensic auditor to unearth complex trail of fund movement or an artifice, if any, by the company. We had taken all the due care and handled the assignment with utmost care and diligence like we do in all the cases. There has been no regulatory intervention till date against us except the present proceedings, nor has there been any question raised on any of the audits we have conducted till date.*

(c) *It can be observed in the said Annexure A to the reply that all the payments made towards various transactions were verified from the bank statements which are the primary evidence. In addition to this, we have verified the ledger and documents furnished by the Company like invoices, agreements, statutory compliances (like TDS, VAT, etc.,) and compliance with applicable laws and we have even retained some of the documents which were provided to us.*

(d) *There is no specifically prescribed manner or procedure under any of the SEBI Regulations or for that matter under any other law in force according to which Statutory Auditor is supposed to conduct the audit process. The ICAI prescribes an adaptable procedure which may be followed by an Auditor in the facts and circumstances of a given case.*

(e) In the case of Keynote Corporate Service (decided on February 19, 2014) and Almodz Global Securities (decided on May 13, 2016), the Hon'ble Appellate Tribunal has observed the importance of bank statements while carrying out the diligence and reporting. We submit with humility that similar standards & exercise was industriously and vigorously adopted by us.

(f) Under similar circumstances, while dealing with similar allegation in the matter of PNB Investment Services Ltd., (decided on August 5, 2014), the learned Whole Time Member of SEBI, in exercise of his discretion disposed-off the show cause notice against the Noticee without any further directions and held that there was no breach of due diligence or lack of diligence. In fact, the charge against the PNB Investment Services Ltd., was that in the matter of IPO of Taksheel Solutions Ltd.,, it had failed to peruse the bank statements of the company which amounted to lack of due diligence. Despite this, the learned Member exonerated the Noticee. Whereas in the present case, we had diligently verified the bank statements and underlying documents.

(g) Further, fraud cannot be proved only on alleged gross negligence, carelessness or recklessness as amounting to collusion and connivance on a preponderance of probabilities. The Supreme Court in Kanaiyalal's case has categorically held that the element of "inducement" must exist and should be proved before holding that a person is guilty of fraud. In the instance case, there is no finding that the appellants had induced someone and thereby played a fraud in the securities market. Assuming without admitting that the concept of preponderance of probabilities would also apply in the case of the Noticee, still, it must be proved by cogent evidence that they are guilty of "inducement". In the absence, of any evidence, the charge of fraud is not proved, nor the provisions of Regulation 3 and 4 of PFUTP Regulations applicable.

(h) If there was gross negligence, recklessness in adhering to the AAS in the course of auditing the accounts of PPL, it can and can only point out to professional negligence at max. A finding of guilt cannot be imposed upon the Noticee on the basis of preponderance of probabilities. There must be a specific finding that there was an intention on the part of the engagement partners and/or of the audit firm that they had deliberately with intention and knowledge perpetrated an alleged fraud in collusion with the top management of PPL. The provisions of the SEBI Act cannot be construed to take into its sweep any professional who is remotely connected with the securities market by way of certifying the books of accounts.

(i) *Till date no adverse action is taken or Order is passed by SEBI against PPL, its promoter and Directors as well as the members of Audit Committee which composed of competent professionals in their own right and who were monitoring the utilization of the proceeds of the IPO. Our submission here is only to the effect that when SEBI did not find anything amiss in the role of these entities, SEBI ought to have also given the same treatment to us who were assisted by the same members while we conducted the audit.*

(j) *There is no allegation against the Noticee that they were privy to the intention of the issuer Company (PPL) and the conduct of Noticee is undisputedly unimpeachable in this regard.*

(k) *There is no allegation in the entire Show Cause Notice that Noticee connived or colluded with PPL or its promoters/directors in any fraudulent, deceitful and manipulative device, plan, scheme or artifice and therefore the charge of violation of PFUTP Regulation is unsustainable and untenable;*

(l) *Based on our aforesaid submissions and in light of the observation of various Courts, we humbly submit that there is enough material to suggest that there is no violation of any kind on our part. It is, therefore, humbly prayed that the Show Cause Notice be dropped without imposing any monetary penalty on us*

CONSIDERATION OF ISSUES

13. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that the certificate issued by them certifying the utilisation of IPO proceeds by company, which was also included in the annual report of the company, was not true and the same was misleading and contains information in a distorted manner which may influence the decision of the investors, which is in violation of the provisions of Section 12 A (a), (b), (c) of SEBI Act,1992 and Regulations 3 (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations.

After perusal of the material available on record, I have the following issues for consideration, viz.,

ISSUE I: Whether the Noticees have violated the provisions of Section 12 A (a), (b), (c) of SEBI Act and Regulations 3 (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations?

ISSUE II: *Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?*

ISSUE III: *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE I: Whether the Noticees have violated the provisions of Section 12 A (a), (b), (c) of SEBI Act and Regulations 3 (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the SEBI (PFUTP) Regulations?

14. Before moving forward, it is pertinent to refer to the alleged relevant provisions SEBI Act and SEBI (PFUTP) Regulations.

Section 12 (A) (a), (b), (c) of SEBI Act

No person shall directly or indirectly
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Regulation 3 of PFUTP Regulations

3. No person shall directly or indirectly—
(a) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(b) 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;

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

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

Regulation 4 of PFUTP Regulations

(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:

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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

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

15. Before I go into the merits of the case, I would like to first deal with the contentions raised by the Noticees regarding the delay in initiation of the instant Adjudication proceedings.

16. The Noticees in their submissions stated that there is a great delay in issuance of SCN for the alleged violations which is not explained and has caused great prejudice to them. I note that SEBI conducted an investigation in the year 2016 into the company's affairs in relation to the IPO of equity

shares by PPL in the year 2011. I note that soon after conclusion of investigation in August 2019 and approval of proposed action, SCN was issued to the Noticees in December 2019. Accordingly, I find that there is no delay in issuance of SCN.

17. In this connection, I deem it appropriate to refer to the observations made by Hon'ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI vide Order dated March 04, 2016, which reads as follows

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

18. Further, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

19. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Hon'ble Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no

hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Hon'ble Supreme Court in Bhavnagar University v.Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Hon'ble Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

20. In the light of the aforesaid observations of the Hon'ble Supreme Court and Hon'ble SAT and the facts of the case, I am of the view that principles of natural justice have been duly followed in the instant case and no prejudice is caused to the Noticees since there is no delay in initiation of the instant proceedings.

21. The Noticees in their submissions dated March 13, 2020 stated that since no adverse action is taken or Order is passed by SEBI against PPL, its promoter and Directors as well as the members of Audit Committee, SEBI ought to have also given the same treatment to them who were assisted by the same members while we conducted the audit. In this connection, I would like to place on record that the Hon'ble Whole Time Member, SEBI vide Order dated March 16, 2020 issued Directions under Sections 11 (1), 11 (4) and 11B of SEBI Act against the Company (Paramount Printpackaging Ltd.,) and its three Directors restraining them from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 (five) years. In view of the above, the relief sought by the Noticees is not tenable and devoid of any merit.

22. Now, I would like to deal with the violations alleged to have been committed by the Noticees vis-à-vis the replies furnished by them and record my findings hereunder:

23. The objects of the issue and cost of project as estimated by the management as disclosed in the Prospectus were as under (page no 30 of the prospectus) are as under:

Sl. No.	Objects of the issue	Funds required (₹ in lakhs)
1	Setting up new facility for manufacturing high end duplex board cartons, Shippers and printed corrugated box at Gujarat	3,194.27
2	Augmenting Long Term Working Capital Requirement	495.82
3	General Corporate Purpose	338.87
4	Issue expenses	554.00
	Total	**4,582.96**

<u>OBJECT 1:</u> SETTING UP NEW FACILITY FOR MANUFACTURING HIGH END DUPLEX BOARD CARTONS, SHIPPERS AND PRINTED CORRUGATED BOX AT GUJARAT:

24. The Statutory Auditor had certified that the company had utilised ₹34,36,20,164 towards Object 1 as stated in the Prospectus i.e., setting up new facility for manufacturing high end duplex board cartons, shippers and printed corrugated boxes which was one of the objects of the issue utilization for new projects as per the object of the issue. The breakup of ₹ 3436.20 lakhs provided by the Statutory Auditor vide letters dated November 8, 2017 and September 12, 2018 are as under:

Sl. No.	Particulars	Invoice Amount (₹)	Payment (₹)
1	Precise Consulting & Engineering Pvt. Ltd	5,42,46,250	8,03,18,880
2	Precise Consulting & Engineering Pvt. Ltd	3,83,97,255	1,41,49,000
			(75,00,000)
3	Madhuvan Enterprises	1,33,84,189	1,31,34,189
4	Mega Marketing	2,41,31,251	2,41,31,250
5	Forever Sales Corporation	2,30,92,748	2,30,92,748
6	Metro Industries	2,91,99,961	2,91,99,956
7	Apex Ceramics	5,56,82,527	5,56,82,527

8	Swastik Trading Co.	8,25,99,120	7,14,46,560
9	Nirvani Enterprises	1,11,39,671	98,36,670
10	Heidelberg India Private Ltd.,	84,00,925	84,00,925
11	Reality Sales	17,28,000	17,28,000
12	Highway Services Private Ltd.,		2,00,00,000
13	Misc write backs/ bank charges		-541

25. Entity wise payment to each vendor towards setting up of a new facility at Gujarat under each sub- heading out of the IPO proceeds as given by the Statutory Auditor vide letter dated September 12, 2018 is given below:

A	**LAND**			
	Party Name	Payment(INR)	Date of payment	Nature of transaction
	Highway Services Private Ltd.,	2,00,00,000	17.05.2011	Part payment towards purchase of land
	Total (1)	2,00,00,000		
B	**SITE DEVELOPMENT, CIVIL WORK & BUILDING CONSTRUCTION:**			
	Party Name	Payment(INR)	Date of payment	Nature of transaction
	Precise Consulting and Engineering Pvt Ltd.,	4,19,21,625	07.05.2011	Project feasibility study and survey
	Precise Consulting and Engineering Pvt Ltd.,	1,41,49,000	09.05.2011	Project feasibility study and survey
	Precise Consulting and Engineering Pvt Ltd.,	(75,00,000)	(04.06.2011)	Project feasibility study and survey
	Mega Marketing	2,41,31,250	07.05.2011	Factory construction
	Nirvani enterprisses	98,36,670	07.05.2011	Factory construction
	Metro Industries	2,91,99,956	07.05.2011	Factory construction
	Apex Ceramics	5,56,82,527	07.05.2011	Factory construction
	Total (2)	16,74,21,028		
C	**ELECTRICAL INSTALLATION:**			
	Party Name	Payment(INR)	Date of payment	Nature of transaction
	Madhuvan Enterprises	1,31,34,189	07.05.2011	Electrical installation
	Forever sales corporation	2,30,92,748	07.05.2011	Electrical installation
	Reality sales	17,28,000	23.05.2011	Electrical installation
	Total (3)	3,79,54,937		
D	**PLANT & MACHINARIES AND OTHER ANCILLARIES:**			
	Party Name	Payment(INR)	Date of payment	Nature of transaction

	Precise Consulting and Engineering Pvt Ltd.,	3,83,97,255	09.05.2011	Plant and Machinery
	Swastik Tradinf Co.	7,14,46,560	07.05.2011	Plant and Machinery
	Heidelberg India Private Ltd.,	84,00,925	21.06.2011	Plant and Machinery
	Total (4)	11,82,44,740		
5	TOTAL (1)+(2)+(3)+(4)=(5)	34,36,20,705		
6	Misc write backs/ bank charges	-541		
	TOTAL(5)-(6)	34,36,20,164		

26. The break-up of details of utilisation of IPO proceeds certified by Statutory Auditor under each head of objects and entity wise payment to each vendor towards setting up of a new facility at Gujarat, was verified with the documents submitted by the Statutory Auditor that he relied upon for issuing the said statement/certificate and the observations in this regard are furnished hereunder:

(A) Land: Highway Services Private Ltd.,

27. It is observed that though the prospectus mentioned that ₹400 lakhs would be utilised for land related expenses, the Statutory Auditor has in his submissions stated that ₹200 lakhs have been utilized as part payment towards purchase of land. The Statutory Auditor has stated that Highway Services Private Ltd., was paid ₹200 lakhs on May 17, 2011, as part payment for purchase of Land. It was alleged in the SCN that the Statutory Auditor has not provided any supporting document/ copy of agreement evidencing the payment/ requiring the payment to be made to the aforesaid vendor and on which he has relied upon to certify the payment. Accordingly, it was alleged that the Statutory Auditor has failed in carrying out due diligence of the payment made to the vendor and has wrongly certified that the company has utilised ₹ 200 lakhs for part payment of purchase of land.

28. In response to the aforesaid allegation, the Noticee in its reply attached a copy of duly registered and stamped sale deed dated October 7, 2011 acknowledging advance payment of ₹200 lakhs vide cheque dated May 16, 2011 bearing no. 456200 drawn on State Bank of India along with a copy of bank statement of the Company evidencing debit of ₹200 lakhs. Having

perused the documentary evidences submitted by the Noticee, I am inclined to take into consideration the submissions made by the Noticee and hold that the Noticee has carried out proper due diligence of the payment made to the vendor for purchase of land and accordingly the charge of wrong certification of utilization of ₹200 lakhs does not stand established.

(B) SITE DEVELOPMENT, CIVIL WORK & BUILDING CONSTRUCTION

29. Entity wise payment made to each vendor towards Site development, Civil Work and Building Construction out of the IPO proceeds as given by the Statutory Auditor vide letter dated November 8, 2017and September 12, 2018 is given below:

Sl. No.	Particulars	Invoice Amount (₹)	Payment (₹)	Date of Payment/ (Receipt)
1	Precise Consulting & Engineering Pvt. Ltd	5,42,46,250	8,03,18,880	07.05.2011
2	Precise Consulting & Engineering Pvt. Ltd	3,83,97,255	1,41,49,000	09.05.2011
3	Precise Consulting & Engineering Pvt. Ltd		(75,00,000)	04.06.2011
4	Mega Marketing	2,41,31,251	2,41,31,250	07.05.2011
5	Nirvani Enterprises	1,11,39,671	98,36,670	07.05.2011
6	Metro Industries	2,91,99,961	2,91,99,956	07.05.2011
7	Apex Ceramics	5,56,82,527	5,56,82,527	07.05.2011
	Total		16,74,21,028	

30. Upon perusal of the documents submitted by the Statutory Auditor w.r.t. Site development, Civil Work and Building Construction, the observations in this regard are given below:

   i. *With regard to the payments made to entities mentioned at Sl. No. 1 to 3 of the above table viz., Precise Consulting & Engineering Pvt. Ltd (w.r.t. Site development, Civil Work and Building Construction as well as Plant & Machineries and Other Ancillaries):*

      The company in its prospectus stated the following:

      "We intend to build a factory shed at the estimated cost of ₹315.0 lacs. We have obtained quotations dated September 20, 2010 from Precise Consulting & Engineering Private Ltd.,, A602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the factory shed.

*We have obtained quotations dated 20th September, 2010 from Precise Engineering and Consultancy Private Ltd.,******, A 602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the electrical installations."*

B (1) to (3) – Payments made to Precise Consulting and Engineering Pvt., Ltd.,

31. As per the submissions of the Statutory Auditor vide letter dated November 8, 2017 the total payment made to Precise Consulting and Engineering Pvt Ltd., was ₹8,69,67,880. However, on perusal of the documents submitted by the Statutory Auditor, the following was noted:

    i. *The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹ 8,03,18,880 dated May 7, 2011.*
    ii. *The Statutory Auditor stated that the payment of ₹8,69,67,880 was made by the company. However, the RTGS fund transfer document shows ₹8,03,18,880 was transferred by the Company. It was observed that no fund transfer evidence for the differential amount of ₹66,49,000 had been submitted by the auditor.*
    iii. *The two bills provided by the Statutory Auditor raised by Precise Consulting and Engineering Pvt Ltd., on the company are dated May 25, 2011 of ₹ 5,42,46, 250 and ₹ 3,83,97,255.*
    iv. *It was also observed that though the bills were raised by Precise Consulting and Engineering Pvt Ltd., post receipt of money from PPL, the same was not even reflecting (as advance/ amount received) in the two bills raised by Precise Consulting and Engineering Pvt., Ltd., dated May 25, 2011.*
    v. *It was observed that the payment made to Precise Consulting and Engineering Pvt Ltd., vide RTGS (through the Current ac/ held with HDFC Bank) was much before the bills were raised by it on the Company. Hence the payment made by the company on May 7, 2011 was before the date of the bills (i.e., May 25, 2011) raised by Precise Consulting and Engineering Pvt Ltd.,.*

32. Since the RTGS fund transfer document showed a payment of ₹8,03,18,880 to Precise Consulting and Engineering Pvt Ltd., and the auditor had stated that a payment of ₹8,69,67,880 was made to it, a clarification was sought by the Investigating Authority from the auditor vide Summons dated August 13, 2018. Vide letter dated September 12, 2018 the Statutory Auditor stated that

two RTGS payments were made to Precise Consulting and Engineering Pvt Ltd., for an amount of ₹ 8,03,18,880 (on 07/05/2011) and ₹ 1,41,49,000 (on 09/05/2011) which was verified by them with respective RTGS forms and other requisite documents during the audit process. The auditor also provided the bank statement reflecting both these payments

33. It was also stated by the Statutory Auditor, vide the same letter that ₹75,00,000 was received back from Precise Consulting and Engineering Pvt Ltd., (on 04/06/2011) by PPL being excess payment made and account of Precise Consulting and Engineering Pvt Ltd., was settled as the payment had not deducted TDS earlier. From the auditor's submissions vide letter dated September 12, 2018, it was observed that the net amount paid (post deduction of the amount refunded) to Precise Consulting and Engineering Pvt Ltd., was ₹8,69,67,880, which matches with the amount stated by the Statutory Auditor vide his letter dated November 8, 2017.

34. Though the Statutory Auditor has provided the RTGS form of HDFC Bank evidencing transfer of money of ₹8,03,18,880 from the account of the company as well as bank statement of the company evidencing transfer of money of ₹8,03,18,880 as well as ₹1,41,49,000 , from the account of the company to the account of Precise Engineering and Consultancy Private Ltd.,, it was alleged that the Noticee has not taken into account the difference in the amount transferred to the vendor (net amount of ₹8,69,67,880) and the amount for which the bill has been raised by him. Since the dates of the bill raised by Precise Consulting and Engineering Pvt Ltd.,, are subsequent to the date of the fund transfer it is not clear whether the company had transferred the funds to Precise Consulting and Engineering Pvt Ltd., in order to utilise the funds for the objects of the issue and how the auditor certified such a payment. The date of the bills that the auditor has provided (May 25, 2011) is after the date on which money had been transferred (May 7, 2011) to Precise Consulting and Engineering Pvt Ltd.,.

35. In view of above it was alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹ 8,69,67,880 (sum of amounts paid to entities at Sl. No. 1 to 3 mentioned in Para 28 above) (including an amount of ₹ 3,83,97,255) to pay Precise Consulting and Engineering Pvt Ltd., towards Site development, Civil Work and Building Construction as well as Plant & Machineries and Other Ancillaries out of the IPO proceeds.

36. The Noticee in its reply submitted that the name of the aforementioned vendor appears in the prospectus and in view of the tally of the total amount billed post deduction of TDS and the amount paid to the vendor, they were satisfied that payment has been made to Precise Consulting and Engineering Pvt., Ltd., The Noticee in its submissions admitted that as against the two invoices dated May 25, 2011 for an amount of ₹5,42,46,250 and ₹3,83,97,255, fund transfer of ₹8,03,18,880 and ₹1,41,49,000 through RTGS was done on May 7, 2011 and May 9, 2011 respectively totalling a sum of ₹9,44,67,880 and to this effect the Noticee submitted bank statement evidencing payment of the aforesaid sum. Further, the Noticee submitted a credit of ₹75,00,000 was received from the vendor on June 4, 2011 in the bank account of the Company being refund of excess payment made to the vendor. The Noticee further claimed that pursuant to deduction of TDS @ 10% on the invoiced amount of ₹5,42,46,250, which was ₹54,24,625 and against the refund of ₹75,00,00, the actual amount paid to the vendor was ₹8,69,67,880 which was properly certified by it. However, it is pertinent to note that the payments to the aforesaid vendor was made on May 7 & 9, 2011, whereas the vendor raised an invoice on May 25, 2011 i.e., the payments were made to the vendor before receipt of bills by the Company. Even in the invoices raised by the vendor, there was no mention whether the billed amount was towards advance / full payment. Against this backdrop, it is not clear whether the Company had transferred the funds to Precise Consulting and Engineering Pvt Ltd., in order to utilise the funds for the objects of the issue. In view of the above, it is concluded that the Noticee did not exercise due care and diligence with respect to the audit of books of

account of the company and has wrongly certified that the company has utilised that ₹8,69,67,880 being payment made to Precise Consulting and Engineering Pvt Ltd., towards Site development, Civil Work and Building Construction as well as Plant & Machineries and Other Ancillaries out of the IPO proceeds.

B (4) – Payment made to Mega Marketing

37. It was observed that against the bill raised by Mega Marketing dated May 16, 2011, the company made the payment of ₹2,41,31,250 to the aforementioned entity on May 7, 2011. Although the bill was raised post transfer of funds to the entity, the bill raised by the vendor did not acknowledge the receipt of funds by it. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹2,41,31,250 to Mega Marketing.

38. Since the name of the vendor was not stated in the Prospectus it was alleged that no quotations were obtained from this vendor. In view of the aforesaid and in the absence of any quotation/ bill, the basis on which the company made a payment of ₹ 2,41,31,250 to the aforementioned entity on May 7, 2011 and how the auditor certified such a payment, is not clear. Thus, it was alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹ 2,41,31,251 to pay Mega Marketing towards Site development, Civil Work and Building Construction out of the IPO proceeds.

39. The Noticee in its reply submitted that that it is not customary or an industry practice to make the invoice in particular fashion. We request you to appreciate that we have considered the fundamental fact that the amount mentioned in the invoice matched with the payment made to said vendor. Further with regards, the name of Mega Marketing not appearing in the Prospectus, we reiterate our submission made at para 9 above.

B (5) – Payment made to Nirvani Enterprises

40. It was observed that the against the bill raised by Nirvani Enterprises dated May 4, 2011, the company made the payment of ₹ 98,36,670 to the aforementioned entity on May 7,2011. Although the bill was raised (May 4, 2011) before transfer of funds to the entity (on May 7, 2011), it was stated that an advance payment of ₹ 98,36,670 was received by it. The amount stated on the bill raised by Nirvani Enterprises was ₹1,11,39,671, whereas a payment of ₹ 98,36,670 was only made by the company. It is observed that no proof of balance payment of ₹13,03,601 has been submitted. Hence, it is not clear as to why and how an amount of ₹ 98,36,670 only had been derived and paid to the vendor.. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹98,36,670 to Nirvani Enterprises.

41. Hence, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised an amount of ₹ 98,36,670 to pay Nirvani Enterprises towards Site development, Civil Work and Building Construction out of the IPO proceeds.

42. The Noticee in its reply submitted that *vide* our letter dated September 12, 2018, we had expressly clarified that the difference of ₹13,03,601 is the amount due and the same is expressly evident from invoice dated May 4, 2011. Vide the said letter we had also clarified to SEBI that there exists a typographical error on part of the vendor in mentioning the date in the invoice. In addition to the above, it also submitted that the certification is not done with respect to the amount of invoice but with respect to payments made out of the proceeds of IPO. However, I note that since the name of this vendor was not stated in the prospectus of the company dated May 2, 2011 and since the amount paid by the company did not tally with the amount raised by the vendor, the statutory auditor should have raised questions to the company on the instant fund transfer out of the IPO proceeds to this

vendor. I note that there is no such document/ information has been provided by the Statutory Auditor w.r.t. questioning the company on payment to this vendor. Hence, it is concluded that the statutory auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised ₹98,36,670 to pay Nirvani Enterprises towards Site development, Civil Work and Building Construction out of the IPO proceeds.

B (6) – Payment made to Metro Industries

43. In respect of the bill raised by Metro Industries which was dated May 11, 2011, the company made the payment of ₹ 2,91,99,956 to the aforementioned entity on May 7, 2011. Although the bill was raised post transfer of funds to the entity, the bill raised by the company did not acknowledge the receipt of funds by it. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹ 2,91,99,956 to Metro Industries.

44. From the above, it is observed that since the name of the vendor was not stated in the Prospectus, it is concluded that no quotations were obtained from this vendor. In view of the aforesaid and in the absence of any quotation, the basis on which the company made a payment of ₹ 2,91,99,956 to the aforementioned entity and how the auditor certified such a payment, is not clear.

45. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹ 2,91,99,956 to pay Metro Industries towards Site development, Civil Work and Building Construction out of the IPO proceeds.

46. The Noticee in its reply submitted that considering the amount raised in the invoice matches with the payment made, there were valid reasons to believe that ₹ 2,91,99,956 was utilised for the object as mentioned in the prospectus.

Further with regards, the name of Metro Industries not appearing in the Prospectus and difference in the date of invoice vis-a-vis the date of payment we reiterate our submission made at para 9 above.

B (7) – Payment made to Apex Ceramics

47. It is observed that a bill raised by Apex Ceramics did not bear any date and the company made the payment of ₹ 5,56,82,527 to the aforementioned entity on May 7, 2011. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹ 5,56,82,527 to Apex Ceramics.

48. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹5,56,82,527 to pay Apex Ceramics towards Site development, Civil Work and Building Construction out of the IPO proceeds.

49. The Noticee in its reply submitted that considering the amount raised in the invoice matches with the payment made, there were valid reasons to believe that Rs. 5,56,82,527/- was utilised for the object as mentioned in the prospectus. Further with regards, the name of Apex Ceramics not appearing in the Prospectus, we reiterate our submission made at para 9 above.

50. I note from the alleged payment made to Apex Ceramics vis-à-vis reply received from the Noticee that since the date is not stated on the bill, the date on which the bill is raised is ambiguous. In the absence of the date on the bill, it is not clear as to whether the IPO proceeds had been used to pay them. In view of the aforesaid, the basis on which the company made a payment of ₹ 5,56,82,527 to the aforementioned entity and how the auditor certified such a payment, is not clear. Therefore, I conclude that the Noticee did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has

utilised that ₹5,56,82,527 to pay Apex Ceramics towards Site development, Civil Work and Building Construction out of the IPO proceeds.

(C) ELECTRICAL INSTALLATIONS

51. In the prospectus of the company, the following was stated by the Company:

"We have obtained quotations dated 20th September, 2010 from Precise Engineering and Consultancy Private Ltd.,, A 602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the electrical installations."

52. Entity wise payment to each vendor towards electrical installations out of the IPO proceeds as given by the Statutory Auditor is given below:

Sl. No.	Particulars	Invoice Amount (₹)	Payment (₹)	Date of Payment/ (Receipt)
1	Madhuvan Enterprises	1,33,84,189	1,31,34,189	07.05.2011
2	Forever Sales Corporation	2,30,92,748	2,30,92,748	07.05.2011
3	Reality Sales	17,28,000	17,28,000	23.05.2011
	Total		16,74,21,028	

53. The observations on perusal of the documents submitted by the Statutory Auditor w.r.t. electrical installations are given below

C (1) – Payment made to Madhuvan Enterprises

54. As against the bill raised by Madhuvan Enterprises dated May 16, 2011, the company made the payment of ₹1,31,34,189 to the aforementioned entity on May 7, 2011. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹1,31,34,189 to Madhuvan Enterprises. The bill was raised post transfer of funds to the entity and the bill reflected that an amount of ₹1,31,34,189 was received by the entity/ vendor

55. From the above, it is observed that since the name of the vendor was not stated in the Prospectus, it is concluded that no quotations were obtained

from this vendor. In view of the aforesaid and in the absence of any quotation/ bill, the basis on which the company made a payment of ₹ 1,31,34,189 to the aforementioned entity and how the auditor certified it, is not clear. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹1,31,34,189 to pay Madhuvan Enterprises towards Electrical Installation out of the IPO proceeds.

56. It was also observed that the amount paid to Madhuvan Enterprises did not match with the amount for which the bill had been raised. The amount stated on the bill raised by Madhuvan Enterprises was ₹1,33,84,189, however a payment of ₹1,31,34,189 was only made by the company. It is observed that no proof of balance payment of ₹2,50,000, has been submitted. Hence, it is unclear as to why and how an amount of ₹1,31,34,189 had been derived and paid to the vendor.

57. The Noticee in its reply submitted that *vide* our letter dated September 12, 2018, we had clarified that the difference amount of ₹2,50,000 is the amount due and the same is expressly evident from invoice dated May 16, 2011. In addition to the above, it also submitted that the certification is not done with respect to the amount of invoice but with respect to payments made out of the proceeds of IPO. Further with regards, the name of Madhuvan Enterprise not appearing in the Prospectus and difference in the date of invoice vis-a-vis the date of payment, we reiterate our submission made at para 9 above.

58. I note from the invoice copy that an amount of ₹2,50,000 with the narration NET AMOUNT was shown and there was no such remark as to due from the Company mentioned therein. It appears to me from the reply submitted by the Noticee that it is only a convenient interpretation by the Noticee in the absence of amount due/payable. I note that there is nothing on record to establish that the Noticee had sought any clarification from the Company in this regard.

59. In view of the above, I conclude that the Noticee did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹1,31,34,189 to pay Madhuvan Enterprises towards Electrical Installation out of the IPO proceeds.

C (2) – Payment made to Forever Sales Corporation

60. As against the bill raised by Forever Sales Corporation dated May 15, 2011, the company made the payment of ₹ 2,30,92,748 to the aforementioned entity on May 7, 2011. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹ 2,30,92,748 to Forever Sales Corporation.

61. From the above, it is observed that since the name of the vendor was not stated in the Prospectus, it is concluded that no quotations were obtained from this vendor. In view of the aforesaid and in the absence of any quotation/ bill, the basis on which the company made a payment of ₹2,30,92,748 to the aforementioned entity and how the auditor certified it, is not clear. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹2,30,92,748 to pay Forever Sales Corporation towards Electrical Installation out of the IPO proceeds.

62. The Noticee in its reply submitted that Considering the amount raised in the invoice matches with the payment made, there were valid reasons to believe that ₹2,30,92,748 was utilised for the object as mentioned in the prospectus. Further with regards, the name of Forever Sales Corporation not appearing in the Prospectus and difference in the date of invoice vis-a-vis the date of payment, we reiterate our submission made at para 9 above.

C (3) – Payment made to Reality Sales

63. It is observed that am amount of ₹17,28,000 was made by the Company and the Statutory Auditor has not submitted any proof of payment to this vendor. It is observed that no invoice/ document was provided by the Statutory Auditor for verifying/ requiring payments to the vendor. Also, the name of this vendor was not stated in the Prospectus of the company dated May 2, 2011.

64. Since the name of the vendor was not stated in the Prospectus it is concluded that no quotations were obtained from this vendor. In view of the aforesaid and in the absence of any quotation/ bill, it is unclear as to how the auditor certified that the company made a payment of. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹17,28,000 to pay Reality Sales towards Electrical Installation out of the IPO proceeds.

65. The Noticee in its submission stated that the documents such as quotations cannot held to be reliable source of payment and therefore, certifications are given based on payments as evidenced in bank statements and verification of transaction as per usual audit process. Further with regard to the name of Realty Sales not appearing in the Prospectus, the Noticee reiterated the submissions made at para 9 above.

66. I note from the reply submitted by the Noticee that it had certified the payment of ₹17,28,000 to Reality Sales towards Electrical Installation out of the IPO proceeds without any invoice/document and it is furthermore a serious lapse when the name of the vendor was not stated in the Prospectus. Therefore, it is concluded that the statutory auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹17,28,000 to pay Reality Sales towards Electrical Installation out of the IPO proceeds

(D) PLANT & MACHINERIES AND OTHER ANCILLARIES:

67. Entity wise payment to each vendor towards Plant & Machineries and Other Ancillaries out of the IPO proceeds as given by the Statutory Auditor as well observations on perusal of the documents submitted are given below:

Sl. No.	Particulars	Invoice Amount (₹)	Payment (₹)	Date of Payment/ (Receipt)
1	Precise Consulting & Engineering Pvt. Ltd	3,83,97,255	3,83,97,255	07.05.2011
2	Swastik Trading Co.	8,25,99,120	7,14,46,560	07.05.2011
3	Heidelberg India Private Ltd.,	84,00,925	84,00,925	21.06.2011
	Total		11,82,44,740	

D (1) – Payment made to Precise Consulting & Engineering Pvt. Ltd.,

68. The Statutory Auditor vide letter dated September 12, 2018 and email dated June 18,2019, has stated that ₹ 3,83,97,255 was paid to this vendor on 07.05.2011. The detailed observations in this regard pertaining to this entity have been covered at Para 30 to 36 above.

D (2) – Payment made to Swastik Trading Co.,

69. As against the bill raised by Swastik Trading Co., dated May 20, 2011. the company made the payment of ₹7,14,46,560 to the aforementioned entity on May 7, 2011. The name of this vendor was not stated in the Prospectus of the company dated May 2, 2011. The Statutory Auditor relied on the RTGS Fund Transfer Application Form of HDFC Bank showing a fund transfer of ₹7,14,46,560 to Swastik Trading Co., The bill was raised post transfer of funds to the entity and the bill stated that an amount of ₹1,40,56,000 was the net due to the entity/ vendor.

70. It was also observed that the amount paid to Swastik Trading Co did not match with the amount for which the bill had been raised. The amount stated on the bill raised by Swastik Trading Co totalled to ₹ 8,55,02,560 (sum of total, VAT & Add Tax), however a payment of ₹7,14,46,560 was only made by the company. No proof of balance payment of ₹1,40,56,000, has been submitted. Hence, it is unclear as to why and how an amount of ₹7,14,46,560 had been derived and paid to the vendor.

71. A clarification w.r.t. the bill raised by Swastik Trading Co which showed a grand total amount of ₹ 1,40,56,000 and the RTGS Fund transfer form, which showed a payment of₹7,14,46,560 to Swastik Trading co., as well as the invoice amount of ₹ 8,25,99,120, stated by the Statutory Auditor vide his letter dated November 8, 2017 was sought from the Statutory Auditor. The auditor, inter alia, stated that they wrongly mentioned an amount of ₹ 8,25,99,120 against the actual amount of ₹8,55,02,560. They also stated that invoice of Swastik trading Co. was for ₹ 8,55,02,560 against which payment of ₹ 7,14,46,560 was made and balance of ₹ 1,40,56,000 is net amount due to them as per invoice.

72. However, since the name of the vendor was not stated in the Prospectus it is concluded that no quotations were obtained from this vendor. In view of the aforesaid and in the absence of any quotation/ bill, the basis on which the company made a payment of ₹ 7,14,46,560 to the aforementioned entity and how the auditor certified the same, is not clear. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised ₹7,14,46,560 to pay Swastik Trading Co towards Plant & Machineries and Other Ancillaries out of the IPO proceeds.

73. The Noticee in its reply submitted that that *vide* our letter dated September 12, 2018, we had expressly clarified the difference amount of ₹ 1,40,56,000 is the amount due and the same is evident from invoice dated May 20, 2011. In addition to the above, it also submitted that the certification is not done with respect to the amount of invoice but with respect to payments made out of the proceeds of IPO. Further with regard to the name of Swastik Trading not appearing in the Prospectus and difference in the date of invoice vis-a-vis the date of payment, we reiterate our submission made at para 9 above.

D (2) – Payment made to Heidelberg India Private Ltd.,

74. The Statutory Auditor vide his letter dated September 12, 2018 has stated that an amount of ₹ 84,00,925 was paid to the entity/ vendor Heidelberg

India Private Ltd.,, towards Plant & Machineries and Other Ancillaries out of the IPO Proceeds on June 21, 2011. However, it is observed that no payment proof/document/ invoice evidencing/ requiring payment to Heidelberg India Private Ltd., has been submitted by the auditor. It is unclear as to how the auditor has certified that the payment was made to Heidelberg India Private Ltd., without any document/ invoice. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹84,00,925 to pay Heidelberg India Private Ltd.,, towards Plant & Machineries and Other Ancillaries out of the IPO Proceeds

75. The Noticee in its reply admitted that it had wrongly certified the utilisation of ₹84,00,925/- since no documents were provided.

OTHERS

76. It was also observed that the Statutory Auditor issued a certificate dated March 25, 2011 (which was stated on page 35 of the Prospectus of Paramount Print Packaging Ltd., dated May 02, 2011) giving details of funds deployed up to March 25, 2011 and the sources of funds which showed that an amount of ₹34.68 lakhs had been deployed for plant & machinery and other ancillaries and an amount of ₹62.90 lakhs had been deployed for meeting the issue expenditure.

77. However, it is observed that no bank statement/ bill/ document evidencing/ requiring the payment by the company to Heidelberg India Private Ltd., has been provided by the Statutory Auditor based on which the fund had been transferred to Heidelberg India Private Ltd., or upon which he relied to certify the payment. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has deployed funds of ₹ 34.68 lakhs towards Plant & Machineries and Other Ancillaries as well as an amount of ₹ 62.90 lakhs for meeting the issue expenditure out of the IPO Proceeds.

78. The Noticee in its reply submitted that the Prospectus itself records payment of ₹34.68 lakhs as an advance towards plant and machinery. Considering that the transaction pertains to March 2011, the bank statements evidencing the aforesaid payment are not handily available. However, we crave leave to refer to and rely upon the same during the course of the proceedings. It is pertinent to mention that the majority of the payments under this head pertain to payment towards government agencies and authorities such as SEBI, BSE/NSE, ROC, NSDL/CDSL, Registrar, Rating agencies and merchant bankers and therefore if at all required, SEBI having wide and unfettered powers can summon these agencies to enquire on the receipt of the payments made to them.

79. From the aforesaid findings from Paragraphs 29 to 77 above, I note that in most of the instances the payment was made to the vendors prior to receipt of bills by the Company. There is no evidence on record showing that an explanation had been sought by the auditor from the company with regard to the basis on which the amount had been transferred to the vendors without any quotation/ invoice by the company. Most of the invoices raised by the vendors, as stated above, do not even acknowledge the receipt of advance payments. The payments made to certain vendors; do not even correspond to the amount mentioned in invoices raised by them, as already discussed above. The payments made to vendors/entities through the banking channel, do not absolve an auditor of his responsibilities of verifying the basis of payment to the vendors or does not signal utilization of IPO proceeds as per the objects of the issue. Although the auditors do not have any control over utilization of proceeds by the company, I am of the view that certifying whether the payments have actually been or not been utilised as per the objects of the issue is definitely the prerogative of the auditor. Since in the instant case, bills raised by many vendors are post-dated, no quotations received from them have been provided, neither have their names been mentioned in the prospectus nor have the amounts been received by most of the vendors been acknowledged as advance received in the bills raised by them, the auditor should have raised questions to the company instead of certifying that the payments have been made as per objects of the issue. If

an auditor is not convinced with the manner in which the funds have been utilised, he can seek clarifications till he is convinced, raise observations or qualify reports but he does not necessarily need to certify wrong utilization of IPO proceeds as being as per objects of the issue. In the instant case, I see that there has been no record to establish that the Noticee had carried out proper due diligence as mentioned above.

80. From the auditor's submissions it is understood that the auditor has concluded that any payment to a vendor, which has been made through the banking channel, is a legitimate payment. It is reiterated that payment to an entity through the banking channel, does not absolve an auditor of his responsibilities of verifying the basis of payment to the vendors or does not signal utilization of IPO proceeds as per the objects of the issue. In view of the above, the aforementioned explanations given by the auditor are not accepted. Therefore, it is reasonably concluded that the statutory auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised the IPO proceedings amounting to (a) ₹1674.21 lakhs towards payment made for Site development, (b) Civil Work and Building Construction, ₹379.55 lakhs towards Electrical Installation and (c) ₹1182.45 lakhs towards Plant & Machinery and other ancillaries (totalling an amount of ₹3,236.21 lakhs), as per the objects of the issue.

<u>OBJECT 2:</u> AUGMENTING LONG TERM WORKING CAPITAL REQUIREMENTS

81. The Statutory Auditor in his submissions has stated that a sum of ₹ 4,24,01,890 is used by the Company for Long term and short term working capital requirement of the company as referred in the object of the IPO. However, the auditor has not provided any evidence/ document for the same. Thus, it is concluded that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised that ₹

4,24,01,890, towards Long term working capital requirements out of the IPO Proceeds

82. The Noticee in its reply submitted that working capital is the funds available to the entity to finance regular operations, i.e. day to day business activities, effectively. Working Capital indicates the liquidity levels of companies for managing day-to-day expenses and covers inventory, cash, accounts payable, accounts receivable and short-term debt that is due. The working capital is a net figure that is arrived at by a company that is needed to run its daily operations. We state, declare and assert that at the relevant time as per regular audit procedure we had verified that the requisite amount was utilised by PPL to meet its working capital requirement. As evident from the books of accounts made available to us by PPL at relevant point of time, the said amount is utilized for payment to vendors, statutory dues like PF, PSIC, TDS, professions tax, etc., and funding the day to day operation of the Company.

83. In support of the aforesaid contention, the Noticee submitted bank statement as an evidence towards utilization of funds towards long term working capital requirements. The Noticee itself took a defence in its submissions that the utilisation being towards funding working capital requirements, one to one co relation with specific expenses / payments and entries as done for specific project related payment is not possible. The submissions made by the Noticee in this regard are not convincing as there is no specific instance of actual utilization of funds towards long term working capital requirements. In view thereof, I am not inclined to accept the submissions made by the Noticee and hold that the Statutory Auditor had wrongly certified that an amount of ₹4,24,01,890 was utilized by the Company towards Long term working capital requirements out of the IPO Proceeds

OBJECT 4: ISSUE EXPENSES

84. The Statutory Auditor vide letter dated November 8, 2017 stated that issue related expenses of ₹ 7,22,74,071 had been incurred by the company, details of which are as follows:

Party Name	Bill amount (₹)	Payment (₹)
Onelife Capital Advisors Ltd.,	5,51,50,000	
Onelife Capital Advisors Ltd.,	1,65,45,000	
Onelife Capital Advisors Ltd.,	33,09,000	6,75,03,600
Bombay Stock Exchange- deposit	45,82,961	
Bombay Stock Exchange- Ceremony fees	99,270	
Bombay Stock Exchange- Yearly listing fees	88,240	

85. However, vide letter dated September 12, 2018, the Statutory Auditor stated the following issue related expenses:

Issue Expenses		
Objects of the issue	**Amounts as per prospectus (₹ Lakhs)**	**Amounts (Actual Utilization) (₹ Lakhs)**
Advisory Fees	438.50	496.35
IPO Fees (Listing of shares)	34.00	29.78
Other expenses related to IPO	81.50	148.90
BSE Ltd.,- deposit	-	45.83
Ceremony and listing fees	-	1.88
Total	554	722.73

86. Since there seemed to be discrepancies in the information submitted by the Auditor vide letters dated November 8, 2 and September 12, 2018 vide email dated June 14, 2019, the Auditor was advised to clarify the same and provide entity-wise breakup of the issue related expenses provided as above.

87. Vide email dated June 18, 2019, the Statutory Auditor, inter alia, stated that the two submissions had different headings although they had the same values, the categorisation was different. They provided a revised table given below along with details of the expenses which are the same:

Objects of the issue	Amounts (in ₹ lakhs)	Amounts (in ₹ lakhs)	Party Name	Nature of transaction	Amount (in ₹ lakhs)

	As per Prospectus	Actual utilisation			
Advisory fees	438.50	496.35	Onelife Capital Advisors Ltd.,	Issue related expenses	675.03
IPO Fees (Listing of shares)	34.00	29.78			
Other expenses	81.50	148.90			
Bombay stock exchange-deposit	-	45.83	Bombay Stock Exchange	Deposit	45.83
Ceremony and listing fees	-	1.88	Bombay Stock Exchange	Ceremony Fees	0.99
			Bombay Stock Exchange	Listing Fees	0.88
Total	554.00	722.73			

88. It is observed from the above tables that, the Statutory Auditor vide letter dated November 8, 2017 and email dated June 18, 2019, stated that the company paid a total of ₹6,75,03,600 to Onelife Capital Advisors Ltd., (OCAL), the merchant banker for the issue. The auditor has submitted two bills raised by Onelife Capital Advisors Ltd., to the company dated May 5, 2011 and one bill dated May 9, 2011. The bills provided by the Statutory Auditor were cross checked and the total amount raised by OCAL in its two bills dated May 5, 2011 and another bill dated May 9, 2011 was ₹7,50,04,000. The Statutory Auditor has also provided the RTGS Fund Transfer Application form for ₹ 6,75,03,600 evidencing payment made by the company to the merchant banker on May 7, 2019. However, the auditor has not provided any proof evidencing the remaining payment of ₹ 75,00,400. Since the amount paid by the company did not tally with the amount raised by OCAL, as a good practice the Statutory Auditor should have raised questions to the company on the instant fund transfer out of the IPO proceeds to OCAL. It is observed that no such document/ information has been provided by the Statutory Auditor w.r.t. questioning the company on payment to OCAL.

89. The Statutory Auditor has also stated that payments were made to BSE towards deposit, ceremony fees and yearly listing fees totalling to ₹ 47,70,471. However, the Statutory Auditor has not provided any evidence relied upon for these submissions. It is also observed that the Statutory Auditor has stated that ₹ 45,82,961 was paid to BSE towards security

deposit. Security deposit is required to be paid by the company in accordance with clause 42 of the listing agreement and the same cannot be considered as issue expenses as the same is refundable and such deposit is a condition precedent for issuance of new securities.

90. In view of the above, the basis on which the company derived a lesser sum than what was stated to be paid to OCAL as well as how a refundable security deposit has been considered as issue expense, is not clear. Thus, it is alleged that the Statutory Auditor did not exercise due care and diligence with respect to the audit of books of account of the company and has wrongly certified that the company has utilised ₹ 45,82,961 as issue expense out of the IPO Proceeds.

91. The Noticee in its reply submitted that as per RTGS fund transfer and bank statement evidencing payment of ₹6,75,03,600 the difference of ₹75,00,400 is the deduction towards TDS which is evident from a bare perusal of the figures as summarized hereunder:

Sl. No.	*Invoice date*	*Amount in ₹*	*Payment Proof*
1.	May 5, 2011	5,51,50,000/-	RTGS fund transfer statement and Bank Statement evidencing payment of ₹6,75,03,600/-
2.	May 5, 2011	1,65,45,000/-	
3.	May 9, 2011	33,09,000/-	
TOTAL **Deduction of TDS @ 10%**		**7,50,04,000/-** **75,00,400/-)**	**₹6,75,03,600/-**
		6,75,03,600/-	**₹6,75,03,600/-**

92. I note from the above table that as compared with the RTGS fund transfer statement and bank statement furnished by the Noticee, I am inclined to take into consideration that the Company had paid an amount of ₹ 6,75,03,600 after deducting TDS of ₹ 75,00,400 and I find that there is no infirmity in the submissions made by the Noticee.

93. As regards the charge of non-exercise of due diligence in certifying the utilisation of the amount of ₹47,70,471, the Noticee submitted the bank statements evidencing the said payments. In addition to this with regards the deposit of ₹45,82,961 to Bombay Stock Exchange being refundable, it is submitted at the time of conducting the audit, it was found that the IPO proceed was utilised for payment of the said deposit and therefore accordingly the same was certified by us. We humbly submit that our responsibility as auditor was to verify the accounts till date of issuance of certificate. A comprehensive chart detailing the basis of certification is reproduced herein below:

Sl. No.	*Invoice date*	*Amount in ₹*	*Payment Proof*
1.	Bombay Stock Exchange-Deposit	₹ 45,82,961/- (being 1% of the total size of issue)	Bank statement evidencing payment of ₹ 45,82,961/-
2.	Bombay Stock Exchange-Ceremony Fee	₹99,270/-	Bank statement evidencing payment of ₹99,270/-
3.	Bombay Stock Exchange-Yearly listing Fee	₹88,240/-	Bank statement evidencing payment of ₹88,240
TOTAL		**₹47,70,471/-**	

94. I note that Security deposit is required to be paid by the issuer company in accordance with clause 42 of the listing agreement and the same cannot be considered as issue expenses as the same is refundable and such deposit is a condition precedent for issuance of new securities. Also, for the other issue related expenses pertaining to payment to BSE as ceremony fees/ yearly listing fees, since the Noticee had furnished documentary proof of payments, I am inclined to take into considerations the submissions made by the Noticee.

95. From the aforesaid findings and to summarize on the utilization of funds by the Company as certified by the Statutory Auditor, I conclude that the Noticee had wrongly certified that the Company had utilized the IPO proceeds of ₹3,660.34 lakhs (₹3236.21 lakhs towards Object 1 and ₹424.02 lakhs towards Object 2 of the issue) as if the amount was utilized by the Company towards objects stated in the Prospectus. Thus, it is established that the actual utilization of IPO proceeds was significantly different from what is stated in the Audit Report.

96. I note that statutory audit is done with the objective as to whether the accounts are prepared in compliance with the applicable laws and to represent a true and fair view/presentation along with a duty to disclose fraud. It is implied that auditors are fiduciaries of shareholders, and not of the management of a company.

97. I note that an entity having raised capital from the public is required to perform diligently and every person associated with the performance of a company is accountable to the investors for all significant and material information disseminated, which is likely to impact the decision making of investors at large. The audited annual accounts of a listed Company is the most vital document and most awaited information for the shareholders of the Company who substantially depend on such document along with other material information required to be disseminated by the Company from time to time, for taking informed decisions about their investment in the company. If the audited annual accounts of a listed company contain any specious reporting about the financial performance of the company and result in fake and fabricated disclosures so as to mislead the shareholders and investors, it will grossly amount to a commitment of a fraudulent act on the shareholders and investors.

98. I note that the definition of “fraud” in regulation 2(1) (c) of the SEBI (PFUTP) Regulations is an inclusive one. It is inclusive with respect to act, expression, omission or concealment committed by any person whether in deceitful manner or not, while dealing in securities in order to induce another person.

The definition is also inclusive with respect to knowing misrepresentation, concealment of material fact, suggestion to an untrue fact, active concealment of fact with knowledge, promise without intention to perform, reckless and careless representations, deceptive behaviour, false statement, etc., as listed in points (1) to (8) of regulation 2(1) (c). I, therefore, find that false and misleading information to investors in connection with the issue of shares would be covered within the scope of section 12A of the SEBI Act and Regulation 3 and 4 of the SEBI (PFUTP) Regulations.

99. In this context it will be relevant to refer the views observed by the Hon'ble SAT in the matter of HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI, SAT Appeal No. 99 of 2007, wherein the Hon'ble SAT has observed that *"an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator".*

100. The Noticee in its submission contended that If there was gross negligence, recklessness in adhering to the AAS in the course of auditing the accounts of PPL, it can and can only point out to professional negligence at max. A finding of guilt cannot be imposed upon the Noticee on the basis of preponderance of probabilities.

101. In this connection, it is relevant to note that the Noticee being an expert in the field of accounting and finance had failed to seek an explanation from the Company as to how advance payment was made to the vendors without receipt of bills, without any corresponding bill in some instances and the basis on which the amount had been transferred to the vendors without any quotation/ invoice by the company. The Noticee's reliance on payment of amounts as per the bank statements does not absolve his responsibilities as an Auditor in verifying the basis of payment to the vendors or does not signal utilization of IPO proceeds as per the objects of the issue. I find that the Statutory Auditor has not taken reasonable care to ascertain that the funds

collected from the public through IPO were utilized for the objects as stated in the prospectus. Since public at large including several organisations / financial institutions both Government and private, rely on the report / certificate of the Auditor, in such circumstances, the duty and obligation of being absolutely diligent is multiplied manifold and the auditor cannot take such an obligation casually. Such certification of Annual Reports by the Noticee 2 has resulted in not only the shareholders but also the public being misled about the financial health of the company which undoubtedly amounts to gross negligence.

102. At this juncture, I would like to quote the observations of Hon'ble High Court of Andhra Pradesh in the matter of The Institute of Chartered Accountants of India Vs. Shri Mukesh Gang, Chartered decided on September 26, 2016 wherein the Court observed as follows:

"The Chartered Accountant is a professional whose expertise in accountancy is acknowledged. He is a member of an expert body and of a premier institute in India. The certificate issued by an Auditor has its own impact on the public at large, as it is largely on the basis of this certificate that the general public subscribe to the shares of the company. Reckless certification by an Auditor, which has resulted in the public being misled into subscribing to the shares of the company in the public issue, would undoubtedly amount to gross negligence. Large sections of society rely on the certification by the Chartered Accountants for taking many vital decisions. It is imperative that utmost care and caution is exercised in issuing such certificates, and the objectivity, integrity, reliability and credibility of the information therein is ensured. Of late, several instances have come to light where, due to the erroneous/ambiguous advice tendered by Chartered Accountants, borrowal accounts have had to face quick mortality resulting in huge losses for banks and financial institutions. To ensure public faith and protect gullible small investors from being cheated of their life savings, the Institute should ensure that its members possess competence of a high order, their character is above board, and their integrity beyond reproach. Chartered Accountants are responsible to the public for their actions, as heavy reliance is placed on

their credibility by the general public consisting of investors, banks, financial institutions, governments etc. The Chartered Accountants duty is not merely to his client, but extends to various segments of society, more particularly in the commercial field, on whose expertise, integrity and impartiality they rely on in taking various decisions."

103. The Noticee in its defence placed reliance on the various judgments of Hon'ble Supreme Court and Hon'ble SAT with regard to due diligence in similar matters. Having perused the judgments I note that most of the Orders of the Hon'ble Apex Court and Hon'ble SAT pertains to Merchant Banker to an Issue with regard to due diligence and I find that there is no parlance can be drawn to the instant case.

104. Based on various finding mentioned in above paras, I conclude that the certificate issued by the Statutory Auditor, regarding the utilisation of IPO proceeds by company in line with the objects of the issue, which is also included in the annual report of the company, was not true and the same was misleading and contained information in a distorted manner which may influence the decision of the investors. It is also observed that the certificate dated May 30, 2012, was signed by Shri Bharat Jain (ICAI Membership No. 100583) for M.V.Damania & Co *(currently known as DNV & Co.,)* under the seal of the firm. Therefore, I conclude that the Auditor, M. V. Damania & Co. (Firm Registration Number 102079W) *(currently known as DNV & Co.,)* {Noticee 1} and its partner Shri Bharat Jain {Noticee 2} by wrongly certifying that the company has utilised the IPO proceeds as per the objects of the issue, had indulged in fraudulent/unfair trade practice by publishing such information which is not true, indulged in misleading advertisement and planted false/ misleading news,. Therefore, I conclude that the Noticees had violated the provisions of Section 12 A (a), (b), (c) of SEBI Act and Regulations 3 (a) (b) (c) (d) read with Regulation 4 (1), 4 (2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

ISSUE II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?

105. I note from the above findings that the alleged violation of the provisions of Section 12 A (a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(1), 4 (2)(f), 4(2)(k) and 4(2)(r) of the SEBI (PFUTP) Regulations, 2003 stand established against the Noticees and accordingly the Noticees are liable for monetary penalty under Section 15HA of the SEBI Act, the provisions of which are reproduced under:

Penalty for fraudulent and unfair trade practices

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

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

106. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

107. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default.

108. The financial results of a listed company do form the basis for the investing public to take informed decisions. Any false information or false accounts depicting a distorted picture of financial health of the company is indeed a very serious wrong and has a direct impact on the securities market and the investors. A basic premise on which the foundation of securities market is laid upon, is that the persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. The false and misleading disclosures as found in this case are not only detrimental to the interests of investors but also endanger integrity of the securities markets. This is also a fit case where SEBI needs to send a stern message to professionals who associate themselves with securities market so as to prevent them from indulging in such acts of omissions and commissions as found in this case. Therefore, I am of the view that people, who indulge in fraudulent/unfair trade practice, should be suitably penalized for such acts of omissions and commissions.

ORDER

109. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakh only) on the Noticees jointly and severally viz., M V Damania & Co., *(presently known as DNV & Co.,)*. and Bharat Jain, under Section 15HA of the SEBI Act, for the violation of the provisions of section 12 A (a), (b) and (c) of the SEBI Act, 1992 and

Regulations 3 (a), (b), (c), (d), 4(1), 4 (2)(f), 4(2)(k) and 4(2)(r) of the SEBI (PFUTP) Regulations.

110. The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

111. The Noticees shall remit / pay the said amount of penalty within 45 days from May 3, 2020 or service of this Order, whichever is later, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

112. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-III, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

113. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Para 66 of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

114. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: 30 April 2020 **B J DILIP**
Place: Mumbai **Adjudicating Officer**