BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2022-23/24239/1-10

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

In respect of:

S. No.	Name of Noticees	PAN/ Regn. No.
1	GCM Securities Ltd.	AABCG1469K
2	Inder Chand Baid	ACXPB4769Q
3	Manish Baid	ADWPB8817D
4	Samir Baid	AEIPB5692K
5	Alok Kumar Das	ADWPD5317L
6	Amitabh Shukla	AIWPS5518B
7	Ashok Bothra	AADPB5818Q
8	Global Capital Market & Infrastructure Ltd.	AAACG9360Q
9	Saroj Baid	AEDPB3177Q
10	Inventure Merchant Banker Services Pvt. Ltd.	INM000012003

In the matter of Inspection of GCM Securities Ltd.,

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), conducted an examination of **GCM Securities Limited.,** (hereinafter referred to as **"Noticee No.1/Company/GCM"**), in order to ascertain the possible violations of provisions relating to public issue as prescribed in the Companies Act, 1956 and Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as '**ICDR Regulations 2009**').

2. During the examination, it was observed that GCM, before its listing of SME issue during April, 2013, had made 7 preferential allotment of 95,70,000 equity shares to 5 promoters

and 246 non-promoters. As the said allotments were made to more than 49 persons, SEBI during the examination had observed certain irregularities which are in violations of various provisions of ICDR Regulations, 2009 by the Noticees. The details are as under;

(a) Regulations 57 and 58 read with Schedule VIII of ICDR Regulations, 2009 by Noticee No. 1 to 9;

(a) Regulation 64 of ICDR Regulations 2009 by Noticee No. 10.

3. Accordingly, based on the Examination Report (hereinafter referred to as **ER**) SEBI decided to initiate Adjudicating Proceedings under Section 15HB of the SEBI Act for the above mentioned violations by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide order dated May 17, 2019, appointed the undersigned as the Adjudicating Officer in the matter, to enquire into and adjudge the aforesaid violations alleged to have been committed by the Noticees, as stated in para 2 above, under Section 15 I (1) of the SEBI Act and Rule 4 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire and adjudge under Section 15HB of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice dated March 30, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of Rule 4 of SEBI Adjudication Rules, calling them to show cause as to why an inquiry should not be held and penalty be not imposed on them under Section 15HB of SEBI Act, for the violations, as applicable, alleged to have been committed by the Noticees. The said SCN was duly delivered to all the Noticees by SPAD/e-mail.

6. Pursuant to the service of the SCN, an opportunity of personal hearing was granted to the Noticees on July 07, 2022, vide hearing notice dated June 23, 2022 which was duly served through SPAD/e-mail. The Authorized Representative (AR) of the Noticees appeared for the hearing and sought for a short adjournment. Accordingly, another opportunity of personal hearing was granted to the Noticees on July 13, 2022 vide e-mail dated July 07, 2022 and the same was duly delivered. The AR of the Noticees attended

the personal hearing scheduled on the said date. During the said hearing the AR had requested for two weeks' time to file the reply in the matter.

7. However, only Noticee No.1 has submitted its reply in the matter, vide e-mail dated 28.07.2022. Thereafter, vide e-mail dated February 14, 2023, the Noticees were requested to make additional submissions, if any, in the matter on or before February 17, 2023 and accordingly, Noticee No. 1, vide e-mail dated 17.02.2023, has submitted its additional submissions. The summary of the aforesaid replies of Noticee No.1 are as under;

   a) The Noticee stated that there is an inordinate delay in issuing the SCN and there is no justifiable reason for the said delay

   b) The Noticee stated that it had sought for inspection of crucial documents, which was not provided to it,

   c) The Noticee stated that since the present proceedings are for the violations that stem from case made by SEBI that Section 67(3) of the Companies Act, 1956 has been violated, the same needs to be established by the WTM in the parallel 11B proceedings in order to further proceed in the matter.

   d) The Noticee has contended that the 7 preferential allotments made by it in the month of February 2013 were all private placements and therefore no prospectus was filed for these issues nor was any merchant banker involved in them as required in the case of a public issue. It also stated that Merchant Banker was appointed only after the said preferential allotment and therefore the question of violation of Regulations 57 and 58 of ICDR Regulations, 2009, does not even arise. Thereafter, Noticee No.1 contented that a reference was made to it during the personal hearing regarding the prospectus filed by the Noticee No.1 during the IPO in April 2013 although the same does not find any mention in the SCN and the authority cannot go beyond the scope of the SCN. Further, in this context the Noticee No.1 stated that SEBI's interpretation of the limit of 50 persons in one financial year is incorrect as there was no cap on the number of offers which could be floated in a particular financial year by a company under the Companies Act, 1956. Noticee No.1 further explained the difference between offer and allotment to establish that the issues in February 2013 were private in addition to stating that assuming that the violation of Section 67(3) of the Companies Act, 1956 stands against it, however, no prejudice has been caused to any investors as on date.

8. As regards Noticee No. 2-10, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, they were granted several opportunities to submit their replies in the matter. It is observed that they have attended the personal hearing through their authorized representative but they have not submitted their replies to the SCN till date.

9. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCN and Hearing Notice were duly served upon Noticee No.2 - 10 and sufficient opportunity was also granted to them to reply to the SCN. Thus, considering the facts and circumstances of this case, I am of the view that in the absence of any response from Noticee No. 2- 10 to the SCN, I presume that they have nothing to submit with regards to the allegations levelled against them in the SCN.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

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

ISSUE I: Whether Noticee Nos. 1-9 have violated provisions of Regulations 57and 58 read with Schedule VIII of ICDR Regulations 2009 and whether Noticee No. 10 has violated the provision of Regulation 64 of ICDR Regulations 2009?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HB of the SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of ICDR Regulations, 2009, which read as under:

CHAPTER V

MANNER OF DISCLOSURES IN THE OFFER DOCUMENTS

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

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

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

(i)the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii)the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

(b)the letter of offer shall contain disclosures as specified in Part E of Schedule VIII113[:]114[Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.]

Abridged prospectus, abridged letter of offer and ASBA.

Regulation 58. *(1) The abridged prospectus shall contain the disclosures as specified in Part D of Schedule VIII.*

(2) The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.

(3) The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document.

(4) Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be.

(5) In all, -

(i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;

(ii)Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only.]

Due diligence

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

(2) The lead merchant bankers shall call upon the issuer, its promoters or directors or in case of an offer for sale, the selling shareholders, to fulfil their obligations as disclosed by them in the offer document and as required in terms of these Regulations.

(3) The post-issue merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the securities certificates, credit to their demat account or refund of application moneys and the listing agreement is entered into by the issuer with the stock exchange and listing/ trading permission is obtained.

(4) The responsibility of the lead merchant banker shall continue even after the completion of issue process.

FINDINGS

12. Considering the facts and circumstances of the case, submission of the Noticee No. 1 and material available on record, I record my findings hereunder.

13. Before proceeding to deal with the merits of the case, I wish to settle the following two preliminary objections raised in this proceeding by Noticee No.1:

    a) there is an inordinate delay in issuing the SCN and there is no justifiable reason for the said delay
    b) Inspection of documents sought was not granted and the same was not communicated by the quasi-judicial authority but has been communicated by the subordinate.

14. With regard to the contention of Noticee No.1 that there is an inordinate delay in issuing the SCN and that there is no justifiable reason for the said delay, it is be noted that, there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. In this regard, I note that SEBI initiated the investigation as soon as information regarding the issue came to its notice. I also note that the examination relating to this case and the parallel 11B

proceeding in this matter are complex and time consuming process, which may require detailed analysis of the case facts. Subsequently, pursuant to the completion of examination, SCN was issued on March 30, 2022. Thereafter, I note that all the relevant information relied on for crystallizing the allegations against the Noticees have been provided to them and there was no delay the way it has been argued by Noticee No.1. Further, Noticee No.1 has also not specified how the delay has caused prejudice to it. In this regard, I rely on the judgment of the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, "*The record would show that all the documents concerning the defence of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

15. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market*".

16. In view of the above, and considering the facts and circumstances, I find that the said contention of Noticee No.1 in this regard is without merits.

17. With regard to the other contention of Noticee No. 1 of not providing documents for inspection, I would like to refer to the observation of the Hon'ble SAT in the matter of **Anant R Sathe Vs. SEBI** (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein and held that: "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence*". In this regard, it is noted that all the relevant and relied upon information and records in

respect of all the Noticees including Noticee No.1 were already provided in the SCN, wherein *inter-alia* allegation is made in respect of them. The alleged violations in the present proceeding is that the relevant information on the issuance of 7 preferential allotments of equity shares was not disclosed in the prospectus of the subsequent SME issue which is not in line with the Regulations 57, 58 and 64 of ICDR Regulations 2009, as applicable. Further the Noticee No.1, was also provided an opportunity to attend personal hearing and offer its explanations. During the hearing, the issues raised by the Noticees were adequately clarified. Subsequently, exhaustive reply has also been filed by Noticee No.1 as already detailed in the preceding paragraphs. For the said alleged violation, the required information is the details of the 7 preferential allotment and the subsequent SME issue. From the aforesaid replies, I note that the Noticee has not denied the fact that GCM Securities Ltd. had made preferential allotment of equity shares in February 2013 in 7 allotments adding up to a total of 251 persons. Further, it also not denied the fact that GCM Securities Ltd. had made an SME issue in April 2013, for which it was procedurally required to comply with ICDR Regulations, 2009 while making public issuances and to ensure that the offer documents/ RHP contains the details specified as per Regulations 57 and 58 of ICDR Regulations, 2009, which it failed to do. Further, Noticee No.1 has also not sufficiently demonstrated how the documents sought by it were relevant to the allegation in the present case of not disclosing the fact of 7 preferential allotment in the prospectus of the subsequent SME issue and how this ground of non-availability of information has caused prejudice to it.

18. In view of the above, I note that the principles of natural justice have been complied with and the Noticee No.1's request in this regard are without merits.

19. Now that all the preliminary objections have been dealt with, I am now proceeding with the merits of the case.

ISSUE I. Whether Noticee Nos. 1-9 have violated provisions of Regulations 57 and 58 read with Schedule VIII of ICDR Regulations 2009 and whether Noticee No. 10 has violated the provision of Regulation 64 of ICDR Regulations 2009?

20. It is noted from the ER that GCM, vide its letter dated October 31, 2015, had submitted the details of preferential allotment of equity shares made by it during February 2013 and

also stated that it was not a listed company during the time of the preferential allotment. The details of the issuance of 7 preferential allotments of equity shares are tabulated below: -

Table 1:

Date of Allotment of Equity Shares	No of Equity Shares Allotted	No. of Allotees	Value of Allotment (Face value of Rs.10 + share premium of Rs.10)
05.02.2013	45,60,000	05	9,12,00,000
11.02.2013	7,08,000	30	1,41,60,000
12.02.2013	7,32,000	34	1,46,40,000
13.02.2013	7,38,000	44	1,47,60,000
14.02.2013	7,44,000	40	1,48,80,000
15.02.2013	10,56,000	49	2,11,20,000
16.02.2013	10,32,000	49	2,06,40,000
Total	**95,70,000**	**251**	**Rs.19,14,00,000**

21. From the above table, it is observed that GCM had issued Equity shares in 7 preferential allotments wherein each allotment did not exceed 49 persons and the said allotments were made in the same financial year, adding up to a total of 251 persons which is more than 49, attracting the applicability of Section 67 of the Companies Act, 1956. Since the aforesaid issuance of equity shares through 7 preferential allotment by the GCM would qualify as a public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956, ICDR Regulations, 2009, which required GCM to comply with certain requirements before making the aforesaid SME public issue, as under;

Table – 2:

Sl. No.	Relevant ICDR Regulation	Requirements
1	Regulation 57	To ensure that the offer document/RHP contains the details specified in that regard.
2	Regulation 58	To ensure that information as is material and appropriate to enable the investors to make an informed decision shall be disclosed in the abridged prospectus refrain from offering any incentive to any person making application for allotment of specified securities

22. Further, I note that during the examination, it was also observed that Noticee No. 1 (GCM) filed its final offer documents with RoC on March 07, 2013 for an SME issue which came in April 2013 wherein they had to state if they have a prior public issue as explained above, which it failed to do.

23. In terms of Regulation 57 of ICDR Regulations, 2009, Noticee No.1 was required to disclose the relevant information such as all the material disclosures which are true and adequate and also in terms of Regulation 58 of ICDR Regulations, 2009, it was required to disclose all details specified in Part D and Part F of schedule VIII, in the prospectus of the SME issue. I note that Noticee No. 1 failed to make the aforesaid disclosure and accordingly was alleged to have violated the aforesaid Regulations 57 and 58 of ICDR Regulations, 2009.

24. Further, I note that as per Section 62 of the Companies Act, 1956, Noticee No. 2 to 7 being directors of the Noticee No.1 and Noticee No. 8 & 9 being promoters of the Noticee No.1, during the period when GCM had made the offer and allotted aforementioned SME issue, are responsible for the aforesaid failure of Noticee No.1 and accordingly were alleged to have violated the said Regulations 57 and 58 of ICDR Regulations, 2009.

25. Further, Regulation 64 of ICDR Regulations, 2009 requires the Lead Merchant Banker to exercise due diligence and satisfy itself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. Noticee No.10, being the lead merchant banker to the aforementioned SME issue by Noticee No.1, has failed to exercise due diligence under aforesaid regulation and accordingly was alleged to have violated the Regulation 64 of ICDR Regulations, 2009.

26. In respect of the above, I note that Noticee No.1 contented that since the present proceedings are for the violations that stem from case made by SEBI that Section 67(3) of the Companies Act, 1956 has been violated, the same needs to be established by the WTM in the parallel 11B proceedings in order to further proceed in the matter. In this regard, it is noted from the facts of the case that GCM issued preferential allotment to more than 49 people which is deemed to be public issue and the disclosure of the same

was not made in the prospectus of the subsequent SME issue. As desired by the Noticee, the same fact was also established by the Hon'ble WTM vide order No. WTM/AB/ERO/ERO/19717/2022-23 dated September 27, 2022 establishing that the 7 preferential allotment of equity shares by the Company i.e. GCM Securities Ltd. during the issue period falls within the first proviso of Section 67(3) of Companies Act, 1956. Further, the WTM also stated that the offer of equity shares is deemed to be public issues and GCM was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956 and ICDR Regulations, 2009.

27. Further, Noticee No.1 has also contended that the 7 preferential allotments made by it in the month of February 2013 were all private placements and therefore no prospectus was filed for these issues nor was any merchant banker involved in them as required in the case of a public issue. It also stated that Merchant Banker was appointed only after the said preferential allotment and therefore the question of violation of Regulations 57 and 58 of ICDR Regulations, 2009, does not even arise. Thereafter, Noticee No.1 contented that a reference was made to it during the personal hearing regarding the prospectus filed by the Noticee during the IPO in April 2013 although the same does not find any mention in the SCN and the authority cannot go beyond the scope of the SCN. Further, in this context Noticee No.1 stated that SEBI's interpretation of the limit of 50 persons in one financial year is incorrect as there was no cap on the number of offers which could be floated in a particular financial year by a company under the Companies Act, 1956. The Noticee further also stated that, no prejudice has been caused to any investors as on date.

28. With regards to the contention of Noticee No.1, that it was not in violation of Regulation 57 and 58 of ICDR Regulations, 2009, I note that it is an established fact that the aforesaid 7 preferential allotment are deemed public issues which is also confirmed vide the aforesaid Hon'ble WTM order dated September 27, 2022 and the same should have been disclosed in the prospectus of the subsequent SME issue which was not done by Noticee No.1.

29. With regards to the contention of Noticee No.1 that a reference was made to it during the personal hearing regarding the prospectus filed by GCM during the IPO in April 2013

although the same does not find any mention in the SCN and the authority cannot go beyond the scope of the SCN, it is to be noted that para 3 of the SCN clearly states that "GCM has made 7 preferential allotment, *before its listing"*. Here, *before its listing'* clearly indicates the SME issue i.e. IPO in April 2013 of GCM. Therefore, I do not agree with the contention of Noticee No. 1 in this regard as it is devoid of any merit.

30. With regards to the contention of Noticee No.1, stating that the SEBI's interpretation of the limit of 50 persons in one financial year is incorrect, I note that issue regarding the limit of 50 persons has been dealt in the aforesaid Hon'ble WTM order. I also rely the decision of the Hon'ble Supreme Court held in **Sahara India Real Estate Corporation Limited & Ors. v. SEBI** (2013) 1 SCC 1, that even the issue which satisfies the requirements of sections 67(3)(a) and (b) would be treated as an issue to the public if it is made to fifty or more persons. The following observations of the Hon'ble Supreme Court made in the Sahara Order in this regard are noteworthy;

".... after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

31. In view of the above, I do not agree with the contentions of Noticee No.1 in this regard.

32. Lastly, as regards the contention of Noticee No.1, that no investors have been prejudiced, I note that irrespective of whether prejudice has been caused to any investors, the law requires a company to comply with 'public issue' norms as prescribed under the Companies Act, 1956 and ICDR Regulations, 2009 in case of a public issue. Since it is sufficiently proved above that the 7 preferential allotment of equity shares by the company was in fact a public issue, GCM is mandated to ensure that the offer

document/RHP should contain the details specified in that regard as per Regulation 57 of the ICDR Regulations, 2009. Further, GCM was also required to ensure that information as is material and appropriate, to enable the investors to make an informed decision, shall be disclosed in the abridged prospectus and refrain from offering any incentive to any person making application for allotment of specified securities as per Regulation 58 of the ICDR Regulations, 2009. However, as admitted by Noticee No.1, it had not done the same. Therefore, I find that it is in violation of Regulations 57 and 58 of ICDR Regulations, 2009.

33. Thereafter, with regards to Noticee No. 2-7, I note that Noticee No. 1, though a legal entity, cannot act by itself. It can act only through its directors, who are responsible for managing the day to-day affairs and business of the company and have been vested with the said power under the Companies Act, 1956. I also note that being a director implies a high level of accountability and knowledge of the overall functioning of the company. They are not only expected to be aware of the working of Company but are mandated by law to be accountable for the mis-management in the affairs of Company.

34. I further note that the Hon'ble Supreme Court, in the matter of **N Narayanan v. Adjudicating Officer**, SEBI (Civil Appeals No. 4112-4113 of 2013) has observed as under:

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

35. It is further noted that they have also signed the relevant prospectus in March 2013. In view of the aforesaid and since Noticee No. 2 to 7 were directors of Noticee No. 1 during the period when Noticee No. 1 had made the SME issue and allotted aforementioned equity shares, consequently, I find that they are also liable for violation of Regulations 57 and 58 of ICDR Regulations, 2009.

36. With regards to Noticee No. 8 & 9, I observe that they were the promoters of Noticee No.1 during the period when Noticee No.1 had made the SME issue and allotted aforementioned equity shares. In this regard, I note that the phrase “promoter” was not defined in the Companies Act, 1956, however, has been defined in Section 2(69) of Companies Act, 2013. Section 2(69) of the Companies Act, 2013, states that promoter is a person whose name has been mentioned in the prospectus of the company or is identified in the annual returns of the company, or any person who has direct or indirect control over the affairs of the company, whether as a stakeholder or as a director, or on whose direction the Board of Directors act. It is an established principle of common law that a promoter stands in a fiduciary relation (i.e. a relationship that requires confidence or trust) with the company he promotes. He is neither an agent nor an employee of the company and therefore, has to fulfil certain duties towards the company that do not resemble that of any agency or employee-employer relationship.

37. Further, the Companies Act, 2013, places certain liabilities and gives certain rights to the promoters which are as follows:

Sl. No.	Section	Provision
1.	Sub-section (6) of section 7	Liability for furnishing false or incorrect information for incorporation of the company
2.	Sub-section (8) of section 13 and sub-section (2) of section 27	Obligation to give exit opportunity to the dissenting shareholders
3.	Sub-section (1) of section 35	Liability to pay compensation for misstatement or omission in prospectus
4.	Sub-section (10) of section 42	Penalty for accepting money in contravention of provisions of section 42
5.	Sub-section (4) of section 102	Liability to compensate for gain resulting from non-disclosure or insufficient disclosure of information in explanatory statement

6.	Sub-section (3) of section 167	Power to appoint directors in case of vacation of office of all directors
7.	Sub-section (3) of section 168	Power to appoint directors in case of resignation by all directors
8.	Sub-section (3) of section 257	Appearance before the meeting of committee of creditors upon instruction of interim administrator
9.	Sub-section (1) of section 284	Duty to extend full co-operation to Company Liquidator
10	Sub-section (1) of section 300	Liability to be examined before Tribunal upon report of Company Liquidator

38. I further note that Section 2(60) of the Companies Act, 2013 mentions the following class of persons as "officer who is in default":

i. whole-time director;

ii. key managerial personnel;

iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

v. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

vi. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

39. It is therefore important to observe from the above, that the role of promoters as envisaged in the applicable statutory provisions does not include managing the daily affairs of a company. The elaborate provisions for Directorship and the Board of Directors cover the day to day management of a company.

40. On the question of which class of persons are responsible for the conduct of a company, it was held by the Hon'ble Supreme Court in **K.K. Ahuja v. V.K. Vora & Anr**. [(2009) 10 SCC 48] [cited in various judgments including the judgment of the Hon'ble Delhi High Court in **Sai Girdhar Raj Kumar vs Arun Kapoor & Ors**, decided on 4 May, 2020], as reproduced herein under: -

> *21. A combined reading of Sections 5 and 291 of the Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:*
> *(a) the Managing Director(s);*
> *(b) the whole-time Director(s);*
> *(c) the manager;*
> *(d) the secretary;*
> *(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;*
> *(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and*
> *(g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors. It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company.* [emphasis supplied].

41. From the above, it is therefore clearly established that promoters of a company per se cannot be held to responsible for the day to day affairs of a company (either under the Companies Act, 1956 or under the Companies Act, 2013) unless they (or any of them) fall in any of the categories as mentioned above. Further, there is no material available on record which suggests that the Noticee No. 8 and 9 who were the promoters of GCM at the relevant period of time were falling within any of the categories mentioned either under Section 5 of the Companies Act, 1956 or under Section 2(60) of the Companies Act, 2013. There is also no such observation/ allegation against the said Noticees in the findings of the investigation. Therefore, I hold that Noticee No. 8 and 9 cannot be held

responsible for the violation of Regulations 57 and 58 of ICDR Regulations, 2009 by Noticee No.1.

42. Further, Noticee No.10 was the Lead Merchant Banker to the SME issue of equity shares by Noticee No.1 in April 2013. I note that the ICDR Regulations, mandates a Lead Merchant Banker to exercise due diligence and satisfy itself about all aspects of the issue including the veracity and adequacy of draft offer documents. In this regard I am of the view that a Merchant Banker plays a critical role in bridging the gap between investors and the company as investors rely on information mentioned as base for their investment decision. Therefore, there is regulatory requirement cast on Merchant Banker to exercise great care and diligence before including any information in the letter of offer so as to provide true and adequate information. The expression "*Due Diligence*" has been interpreted by Hon'ble Supreme Court of India, in the matter of **Chander Kanta Bansal V. Rajinder Singh Anand** (2008) 5 SCC 117. The relevant extract of the judgment reads as : "*… According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's law Dictionary (18th Edn), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Pharses by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs…..*"

43. Bearing in mind these principles governing '*due diligence*', the merchant banker is expected not to passively or mechanically disclose whatever is given to it by the issuer but to exercise reasonable diligence to ensure adequate, true and fair disclosures in the RHP/Prospectus. In this case, I note that Noticee No.10 was required to exercise due diligence and satisfy itself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents about the previous issue of 7 preferential allotment of equity shares, as per Regulation 64 of ICDR Regulations, 2009, which it failed to do. Also, Noticee No. 10 has neither denied any of the allegations against it nor

denied knowing about the previous issue of 7 preferential allotment of equity shares. Therefore, owing to the negligence on the part of Noticee No.10, as the Lead Merchant Banker of CGM, at the relevant point in time, I find that it has violated Regulation 64 of ICDR Regulations, 2009.

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HB of the SEBI Act?

44. The provisions of Section 15HB of the SEBI Act read as under:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

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

45. I further note that, the Hon'ble Supreme Court of India in the matter of **Chairman, SEBI Vs Shriram Mutual Fund** {[2006]5 SCC 361} has held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..............."

46. I am therefore of the view that it is a fit case for imposition of penalty.

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

47. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, which reads as under:

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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

48. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee No.1-7 & 10 and the loss, if any, and suffered by the investors as a result of their failure. I also note that the prospective shareholders can know the issue price at which allotments were made by GCM Securities, vis-`a-vis issue price for the public issue of shares through SME IPO. They can also ascertain whether the preferential allotments were related to the promoters of the company and also the reasons for such preferential allotments. Further, I note that this is a material information which could have impacted the decision of the investors, had it been disclosed in the prospectus. By not disclosing the same, I note that the whole purpose of requirement of such disclosures in the prospectus is defeated. However, it is noted that no prior default of the above Noticees are available on record and also the case pertains to 2013 i.e. 9 years old, which I consider as the mitigating factors while imposing penalty on the above mentioned Noticees.

ORDER

49. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee No.1 and also the factors mentioned in Section 15J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules, hereby impose penalty on Noticee No.1-7 &10 as under;

S. No.	Name of the Noticee	Violation	Penalty amount
1.	GCM Securities Ltd.	Regulations 57 and 58 of ICDR Regulations, 2009	Rs.2,00,000/- (Rupees Two Lakh Only/-) against Noticee

			No.1, under Section 15HB of SEBI Act, 1992.
2.	Inder Chand Baid	Regulations 57 and 58 of ICDR Regulations, 2009	Rs.3,00,000/- (Rupees Three Lakh Only/-) under Section 15HB of SEBI Act, 1992 against Noticee No 2-7 to be paid jointly and severally
3.	Manish Baid		
4.	Samir Baid		
5.	Alok Kumar Das		
6.	Amitabh Shukla		
7.	Ashok Bothra		
8.	Inventure Merchant Banker Services Pvt. Ltd.	Regulation 64 of ICDR Regulations, 2009	Rs.1,00,000/- (Rupees One Lakh Only/-) against Noticee No.10, under Section 15HB of SEBI Act, 1992.

50. Noticee No. 1-7 & 10 shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee No. 1-7 & 10, may contact the support at portalhelp@sebi.gov.in.

51. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - 3, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee No. 1-7 & 10.

53. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **G. RAMAR**
Date: February 28, 2023 **ADJUDICATING OFFICER**