SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/6885-6886]

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.	Noticee / Name of the Entities
01	VCG & Co. (PAN No. AAHFV3312P), Firm Reg. No. 021837N
02	Shri Vishal Chandra Gupta (PAN No. ADPPG6902K), Partner VCG & Co. ICAI membership No. 093908

BACKGROUND OF THE CASE

1. Tarini International Limited (hereinafter referred to as "TIL" or "the Company") came out with a IPO in the SME segment and issued a prospectus dated May 23, 2014 for public issue of 39,78,000 equity shares of face value of Rs. 10 each (face value) at a price of Rs. 41 per share (fixed price), aggregating to Rs. 16,30,98,000. The shares issued by TIL got listed on BSE on June 26, 2014.

2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation to ascertain whether the IPO proceeds received by the Company were diverted/utilized for objects other than the objects mentioned in the prospectus. The investigation *inter-alia* include ascertaining the role of its statutory auditor M/s. VCG & Co. and its partner Mr. Vishal Chandra Gupta (hereinafter referred to as "VCGC" and "VCG", respectively and collectively referred to as "the statutory auditor" or "the Noticees") who had issued an unqualified utilisation certificate dated May 30, 2015, certifying that the company had utilised an amount Rs.1,630.98 lakhs out of the IPO proceeds for the proposed objectives of the IPO.

3. Pursuant to investigation in this regard, SEBI observed and alleged the following:

3.1. On page no 42 of the Annual Report for the financial year 2014-15, the statutory auditor had mentioned that in respect of the matters mentioned on page no. 41, his opinion was not qualified. Further, under Report on Other Legal and Regulatory requirements as required under Section 143 (3) of the Companies Act, the statutory auditor had stated that -

a. It had sought and except for the matters described in the Basis for Qualified Opinion paragraph, obtained all the information and explanations, which to the best of your knowledge and belief were necessary for the purpose of your audit.

b. Except for the possible effects of the matter described in the Basis for Qualified Opinion paragraph, in its opinion, proper books of account as required by law were kept by the Company so far as appears from the examination of those books and proper returns adequate for the purpose of your audit.

c. The Balance Sheet, the Statement of Profit and Loss and the Cash Flow statement dealt with by this report were in agreement with the books of account.

3.2. On page no 41 and page no 60 of the Annual Report, as part of Basis for qualified opinion, the statutory auditor has stated the following:

"We draw attention to note 28/30 of the financial statements whereby the company has raised the money by way of Public issue, during the year. Further, there has been variation in the utilisation of money between the objects of pubic issue contained in the prospectus and actual utilisation, which was needed to be authorised from the members. In view of this, we are unable to comment upon the appropriateness of variation in utilisation of money".

3.3. The date of issuance (May 30, 2015) of unqualified utilisation certificate by the statutory auditor was same as that of the date on which Qualified Audit Report on financial statements of the company for the financial year 2014-15 was issued by the statutory auditor. Vide letter dated October 24, 2016, VCG had provided some of the copies of other documents relied upon by him to issue the utilisation certificate.Thus, on the date of issuing the unqualified Utilisation Certificate, the financial statements of TIL comprising of Balance Sheet, statement of Profit and Loss and Cash Flow statement were already audited.

3.4. The actual utilization of IPO proceeds was significantly different from the certificate issued by VCG and the utilisation certificate did not carry any qualifications in spite of the fact he had access to the bank statements and books of accounts of the company. The details of “object of the issue”, "amount proposed to be utilised by the company as stated in prospectus" and "utilisation of funds" as *certified* by the statutory auditor are mentioned in the table below:

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)**
To Finance long term incremental working capital requirements	1000.00	888.38
Renovation and Interior of Registered office	160.00	159.28
Brand Building	150.00	72.95
General Corporate purposes	250.00	430.00
Issue expenses	70.98	80.37
Total	**1630.98**	**1630.98**

3.5. The analysis on the details of utilisation of IPO proceeds certified by VCG under each heads of objects are as follows:

3.5.1. **To Finance Long Term Incremental Working Capital Requirements:**

The statutory auditor had certified that the company had utilised ₹888.38 lakhs towards financing Long Term Incremental Working Capital Requirements of the company. The breakup of ₹ 888.38 lakh, as provided by the statutory auditor is as under:

Sl. No.	**Particulars**	**Amount (in Rs.)**
1	Tarini Infrastructure Ltd (TinL)	4,00,00,000
2	Tarini Wilderness Innovation Pvt Ltd (TWIL)	65,00,000
3	Venture Infrastructure Ltd (VIL)	1,75,00,000
4	B. Soilmec India Pvt Ltd (BSIL)	45,00,000
5	Banthia Fintrade Pvt Ltd (BFL)	1,00,00,000
6	ICICI Bank Ltd (IBL)	55,38,174
7	Payment of Salaries	48,00,000
	Total	**8,88,38,174**

3.5.1.1. **Payments made to Tarini Infrastructure Ltd (TinL), Tarini Wilderness Innovation Pvt Ltd (TWIL), Venture Infrastructure Ltd (VIL) and B. Soilmec India Pvt Ltd (BSIL):**

i. The entities mentioned at sr. nos. 1 to 4 in the table above were connected to each other and to the company and were having common directors as detailed in the table below:

(Source: Directors details obtained from MCA website: **Annexure-4)**

	Name of the Company				
Name of the director	**Tarini International Ltd. (TIL/Company)**	**Tarini Infrastructure Ltd. (TinL)**	**Tarini Wilderness Innovations Pvt. Ltd. (TWIL)**	**Venture Infrastructure Ltd. (VIL)**	**B. Soilmec India Pvt. Ltd. (BSIL)**
Mrs. Vakamulla Anu Naidu	Director	Director	Director	Director	Director
Mr. Vakamulla Chandrashekhar	Director	Director	Director	Director	Director
Mr. Vellore Subramaniyan Suresh	-	Director	-	-	-
Mr. Tarunkumar Jayantilal Barot	-	Director	-	-	-
Mr. Ponnu Swami Sethu Seshan	Director	Director	-	-	-
Mr. Naresh Kumar	-	Director	-	Director	-
Mr. Simhachalam Gedela	Director	-	-	-	-
Relationship with Tarini International Limited	Self	Associate and promoter group entity	Promoter group entity	Subsidiary and promoter group entity	Promoter group entity

ii. The aforesaid companies as disclosed in the prospectus of TIL were the companies forming part of the promoter group as specified in clause 2 (zb) of the SEBI (ICDR) Regulations, 2009. The statutory auditor had provided the copies of following documents which was relied upon to provide the utilisation certificate:

S. No.	**Name of the entity**	**Supporting documents**
1	Tarini Infrastructure Ltd	Loan agreement for ₹ 4,00,00,000 dated July 30, 2014 entered between TIL and the TinL to fund the working capital requirements of the entity w.r.t its project at Lesotho, South Africa.
2	Tarini Wilderness Innovation Pvt Ltd	Loan agreement for ₹ 65,00,000 dated July 30, 2014 entered between TIL and the TWIL to fund the construction of the Boundary wall for the farm house of the entity situated at Village Dera Mandi, New Delhi

3	Venture Infrastructure Ltd	Loan agreement for ₹1,75,00,000 dated July 30, 2014 entered between TIL and the VIL to fund the Hydro power project of the entity at Kanayatna, Karnataka.
4	B.Soilmec India Private Ltd	Loan agreements for ₹1,65,00,000 dated July 30, 2014 entered between TIL and the BSIL to fund the projects of the entity and acquire the land. (Out of Rs.1,65,00,000 paid to BSIL, the auditor has submitted that ₹45,00,000 was towards working capital requirement and balance ₹1,20,00,000 was towards Renovation and Interior expenses, which is discussed separately)

iii. In this regard, TIL, in its prospectus dated May 23, 2014 at page 44 under the section, details of the objects of the issue, had stated as under:

We are presently engaged in the business of engineering with focus in to power sector. Going forward, we plan to increase our volume of operations. We have been retained for preparation of two Hydro Power Projects in Lesotho, Africa for an estimated value of Rs. 125 Crs. Therefore, our anticipated growth would push up the increase in sales and thereby need of additional long term working capital on account of providing credit period sought by our clients and for payment to manpower's and procurement of materials.

iv. On perusal of the said agreements, it was observed that the amount paid to its group entities were clearly mentioned as loans. The said amounts were repayable in one or more tranches within a period of three years from the date of the agreement. The loan amount carried interest at the rate of PLR+2% on the monthly outstanding balance.

v. In view of above it has been alleged that:

a) Although the statutory auditor had certified that the company had utilised Rs.6,85,00,000 (sum of amounts paid to entities mentioned at sr. nos. 1 to 4 in the table above) to finance long term incremental working capital requirements, from the copies of loan agreements submitted, it is evident that the IPO proceeds were utilized by the company for financing the capital expenditure of its group companies by way of loans at the interest of PLR+2%, which is in the nature of financing activities and same was not forming part of the objects of the issue disclosed in the prospectus.

b) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.1.2. **Payment made to Banthia Fintrade Pvt Limited:**

i. With respect to payment of ₹1,00,00,000 made to Banthia Fintrade Pvt Ltd, the statutory auditor had stated that he had made a qualification in the audit report dated May 30, 2015. The basis for such qualified opinion is mentioned as under:

The company has made certain advances amounting to Rs.100 lakhs for which documents related to such advances given by the company were not available as the documents were impounded by the income tax authorities as mentioned in note no 26 of the financial statements. Further, confirmation from the parties as at the end of the year was not found on records. In view of non-availability of related documents and other alternate audit evidence to corroborate the management's assessment of recoverability of these advances, we are unable to comment on the extent to which these balances are recoverable.

ii. In view of above it has been alleged that:

a) While on the one hand, the statutory auditor had qualified his audit report to state that "*you could not verify whether the company had actually utilised Rs. 100 lakhs*" to meet its long term working capital requirements, on the other hand, contrary to the qualification, the statutory auditor had issued an unqualified utilisation certificate towards this end, which is misleading to state that the company had utilised ₹ 1,00,00,000 to finance long term incremental working capital requirements.

b) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.1.3. **Payment made to ICICI Bank:**

i. With respect to ₹ 55,38,174 paid to ICICI bank, the statutory auditor had provided the copy of ledger of ICICI Bank account number 662705114448 showing negative balance of ₹ 55,38,174 as on April 01, 2014.

ii. In this regard, it is pertinent to note that the issue of TIL was opened for subscription only on May 23, 2014. Further, on perusal of the bank account statement, it was observed that the IPO proceeds of ₹ 16,30,98,000 received in the bank account of TIL-Public Issue (a/c no. 000405105203) was transferred to ICICI bank Account (account number 662705114448) only in June 2014 as below:

Sl. No.	Date of Transfer	From Account	To Account	Amount Credited
1	26-06-2014	M/s.TIL-Public Issue A/c.No. 000405105203 ICICI Bank Current Account	M/s.Tarini International Ltd A/c.No. 662705114448 ICICI Bank Current Account	10,00,00,000
2	27-06-2014			6,30,98,000
Total				16,30,98,000

iii. Since, the ICICI bank had a negative balance of ₹ 55,38,174 as on April 01, 2014 which was before the IPO date, the same has inappropriately been considered as utilisation of IPO proceeds. Further, the negative balance in the current account of the bank turning positive after transferring the amount from public issue account would amount to repayment of existing bank loan and cannot be considered as utilisation of IPO proceeds for meeting long term incremental working capital requirements.

iv. In view of above it has been alleged that:

a) While issuing unqualified certificate dated May 30, 2015, the statutory auditor had certified that the company had utilised ₹ 55,38,174 to finance long term incremental working capital requirements knowing fully well about the negative balance in the account in spite of the fact that he was aware that the prospectus did not mention repayment of bank loan as one of the objects of the issue

b) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.1.4. **Payment of Salaries:**

i. With respect to payment of salaries of ₹ 48,00,000, the auditor did not provide any documentary evidence. However, the copy of Ledger a/c from the books of the company detailing payment made to Mr Chandaluri Hari Krishna out of the issue proceeds in respect of salary along with Form-16 is as under:-

Sl. No.	Date	Payment made to	Amount (Rs.)	Reason or payment
1	27/06/2014	Chandaluri Hari Krishna	9,90,000	Advance against salary
2	01/07/2014	Chandaluri Hari Krishna	5,00,000	Salary
		Total	**14,90,000**	

ii. In view of above it has been alleged that:

a) Out of ₹ 48,00,000 certified by the statutory auditor, expenditure of only ₹14,90,000 could be independently verified by him and the same should have been considered as utilized towards the working capital and the balance amount i.e. ₹ 33,10,000 could not be verified by him.

b) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds to finance long term incremental working capital requirements to the extent of ₹ 33,10,000 (i.e. ₹ 48,00,000 certified by the auditor – ₹ 14,90,000 actually incurred for payments of salary).

c) The company had incurred only ₹ 14,90,000 to finance long term incremental working capital requirements as against ₹ 8,88,38,174 certified by the statutory auditor in the unqualified utilisation certificate. Thus, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds to finance long term incremental working capital requirements to the extent of ₹8,73,48,174 (i.e. ₹ 8,88,38,174 - ₹ 14,90,000).

d) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.2. **Renovation and Interior of Registered office:**

The statutory auditor had certified that the company had utilised ₹159.28 lakhs towards Renovation and Interior of its registered office. The breakup of ₹159.28 lakhs provided by the statutory auditor is as under**:**

Sl. No.	Particulars	Amount (in ₹)
1	Arvee Sales	2,69,650
2	Vibha Interior and Infracon India Pvt Ltd	6,58,280
3	B.Soilmec India Pvt ltd	1,20,00,000
4	Maple Destination & Dreambuild Pvt ltd	30,00,000
	Total	**1,59,27,930**

3.5.2.1. **Vibha Interior and Infracon India Pvt Ltd (VIIL):**

i. With respect to payments made to VIIL, the statutory auditor had provided the copy of bill dated March 31, 2014 for an amount of ₹ 7,07,365 and had also provided the copy of letter dated February 15, 2014 from VIIL to Tarini Infrastructure Limited (TinL) accepting the proposal for providing and installing Modular Furniture and Chairs. From the documents provided, it was observed that the bill was in the name of TinL, which was a subsidiary of TIL. Further, the proposal was accepted by the vendor and the bill was issued before the issue open date i.e. May 23, 2014**.**

ii. In view of above it has been alleged that:

a) The payment made to VIIL was not for the services availed by the company but was meant for its subsidiary company.

b) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised ₹ 6,58,280 for renovation and interior of its registered office

c) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.2.2. **Payment made to B. Soilmec India Pvt Ltd. (BSIL):**

i. In support of payment of ₹ 1,20,00,000 made to BSIL for renovation and interior of registered office of the company, the statutory auditor had provided the copy of loan agreement dated July 30, 2014 entered between the TIL and BSIL for ₹ 1,65,00,000 (Out of ₹ 1,65,00,000 paid to BSIL, ₹ 1,20,00,000 was towards renovation and interior expenses and balance ₹ 45,00,000 was towards working capital requirement).

ii. In view of above it has been alleged that:

a) As seen from the loan agreement, TIL had advanced the loan for the purpose of funding the preparation of detailed project report and survey investigation and to acquire the land for the project. Thus, the amount of ₹1,20,00,000 was not spent by company for renovation and interior of its registered office.

b) The statutory auditor had wrongly certified that the company has utilised ₹1,20,00,000 for renovation and interior of the registered office.

3.5.2.3. **Payment made to Maple Destination & Dreambuild Pvt Ltd (MDDL):**

i. With respect to payment of ₹ 30,00,000 made to MDDL, it is observed that the contract of ₹160 lakhs was given to MDDL by the company, for office renovation/rebuilding works before the start of its IPO and the contract was terminated after executing works for about ₹ 30 lakhs. Further, from the analysis of bank statements of the company, the flow of funds from IPO proceeds to MDDL was not noticed except for the payment of ₹ 25,00,000 on March 28, 2014 (prior to IPO date) which was the payment towards partial work executed by MDDL.

ii. In view of above it has been alleged that:

a) TIL had not made any payment to MDDL from the IPO proceeds.

b) The statutory auditor had wrongly certified that the company had utilised ₹30,00,000 for renovation and interior of registered office.

c) TIL had incurred expenses of ₹ 2,69,650 only for renovation and interior of its registered office as against ₹1,59,27,930, certified by the statutory auditor.

d) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds for renovation and interior of its registered office to the extent of ₹ 1,56,58,280 (i.e. ₹ 1,59,27,930 - ₹ 2,69,650).

3.5.3. **Brand Building:**

The statutory auditor had certified that the company had utilised ₹ 72.95 lakhs for brand building of the company. The breakup of ₹ 72.95 lakhs provided by the statutory auditor is as under**:**

Sl. No	**Particulars**	**Amount (in Rs.)**
1	Adnak Advertising	39,40,982
2	Guiness Securities Ltd	6,74,160
3	TV18 broadcast Limited	7,86,520
4	Salary cost of senior & Middle management	11,90,000
5	Air, Rail ticket and taxi Charges	2,28,682
6	Raka Adversting & marketing private limited	2,00,047
7	Prana PR Private Limited	2,74,707
	Total	**72,95,098**

3.5.3.1. **Salary cost of Senior & Middle management and Air, Rail ticket and taxi Charges**:

i. With respect to the payments made towards salary cost of senior & middle management and Air, Rail ticket and taxi Charges, the statutory auditor had neither provided the copies of invoices nor the ledger account for these payments and the same could not be independently verified from bank statements as well.

ii. In view of above, it has been alleged that in the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company has utilised ₹ 14,18,682 for Brand Building (i.e. Salary cost of Senior & Middle management - ₹11,90,000 + Air, Rail ticket and taxi Charges - ₹ 2,28,682).

3.5.3.2. **Raka Adversting & Marketing Pvt Ltd. and Prana PR Private Limited:**

i. With respect to payments of ₹ 2,00,047 to Raka Adversting & Marketing Private limited and ₹ 2,74,707 to Prana PR Private Limited, the statutory auditor had provided only the copies of ledger of the said vendors in the books of the company. From the said ledgers it was observed that the company had debited the said payments to the public issue expenses account.

ii. In view of above, it has been alleged that:

a) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company has utilised ₹4,74,754 for Brand Building.

b) The company has incurred only ₹ 54,01,662 for brand building as against ₹ 72,95,098 certified by the statutory auditor.

c) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds for renovation and interior of registered office of the company to the extent of ₹18,93,436 (i.e. ₹ 72,95,098 – ₹ 54,01,662).

3.5.4. **General Corporate purposes:**

i. The statutory auditor had certified that the company had utilised ₹ 430 lakhs for its general corporate purposes. The breakup of ₹430 lakhs provided by the statutory auditor is as under**:**

Sl. No	**Particulars**	**Amount (in Rs.)**
1	Tarini Sugars & Distilleries Ltd(TSDL)	4,30,00,000

ii. From the copy of loan agreements dated July 30, 2014 entered between the company and TSDL, it was observed that TIL had advanced the loan of ₹ 430 lakhs for the purpose of purchase of land and setting up of sugar factory by TSDL at Parbhani, Maharashtra and did not relate to it.

iii. In view of above, it has been alleged that:

a) Although the statutory auditor was in possession the loan documents, in the unqualified utilisation certificate, he had misleadingly certified that the company had utilised ₹4,30,00,000 for its general corporate purposes**.**

b) Therefore, the statutory auditor had provided misleading and fraudulent statement even though he was in possession and aware of the aforesaid information.

3.5.5. **Issue expenses:**

The statutory auditor had certified that the company had utilised ₹ 80.37 lakhs for its issue expenses. The breakup of ₹ 80.37 lakhs provided by the statutory auditor is as under**:**

Sl. No.	Particulars	Amount (in ₹)
1	Guiness Corporate Advisors Ltd (Merchant Banker)	56,18,000
2	IPO-ASBA Commission	54,353
3	BSE limited	16,59,070
4	NSDL Fee	10,853
5	CSDL Fee	77,641
6	ROC fee for increase in authorised share capital	5,84,900
7	Seaman International Inc	32,608
	Total	**80,37,425**

3.5.5.1. **Payment made to Seaman International Inc:**

i. With respect to payments made to Seaman International Inc, the statutory auditor had neither provided the copies of invoices nor stated the nature of goods bought/services availed from the vendor.

ii. In view of the above, it has been alleged that:

a) In the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised ₹ 32,608 for issue expenses.

b) TIL had incurred only ₹ 80,04,817 for issue expenses as against ₹ 80,37,425 certified by the statutory auditor.

4. As recorded in the preceding paragraphs, 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 him for issuing the said certificate. Based on the examination of documents relied upon by him to issue unqualified utilisation certificate, it was observed that the company had incurred only ₹ 151.66 lakhs out of IPO proceeds for objects stated in the prospectus as against ₹ 1630.98 lakhs certified by VCG. In view of the same, it has been alleged that in the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds for public issue expenses to the extent of ₹ 1479.32 lakhs (i.e. ₹1,630.98 lakhs – ₹151.66 lakhs). The object wise breakup of the same is as under:

Objects of the Issue	**Amount certified by Statutory Auditors in certificate dated May 30, 2015 (Rs. in lacs)**	**Actual amount for which statutory auditors provided the documents relied upon (Rs. in lacs)**	**Amount wrongly certified (Rs. In lacs)**
To Finance long term incremental working capital requirements	888.38	14.90	873.48
Renovation and Interior of Registered office	159.28	2.70	156.58
Brand Building	72.95	54.02	18.93
General Corporate purposes	430	-	430.00
Issue expenses	80.37	80.05	0.32
Total	**1630.98**	**151.66**	**1,479.32**

5. In view of the above mentioned facts, it has been alleged that the unqualified utilization certificate issued by the statutory auditor which is also included in the annual report of the company is not true and the same is misleading and contains information in a distorted manner which may influence the decision of the investors. It has been further alleged that even though the statutory auditor was in possession and aware of the information, but had provided misleading and fraudulent statement leading to violation of the provisions of Sections 12 A (a),(b) and (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the securities market) Regulations, 2003 (hereinafter referred to as “the PFUTP Regulations”).

APPOINTMENT OF ADJUDICATING OFFICER

6. Vide Order dated May 18, 2017, Mr. Jeevan Sonparote was appointed as Adjudicating Officer in the present matter by the Competent Authority at SEBI under section 15-I of the SEBI Act, 1992 (hereinafter referred to as 'the Act') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the aforesaid alleged violations against the Noticee under section 15HA of the Act.
7. Pursuant to the transfer of the erstwhile Adjudicating Officer, the undersigned has been appointed as the Adjudicating Officer in the present matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. Common Show Cause Notice ("SCN") dated October 24, 2017 was issued to the Noticees to show cause as to why an enquiry should not be held against them in terms of Rule 4 of the Adjudication Rules read with section 15-I of the Act and as to why a penalty should not be imposed under section 15 HA of Act for the aforementioned alleged violations.

9. In response to the same, Noticees, vide letter dated October 28, 2017 sought extension of time till November 30, 2017 to file their reply. Acceding to the request for extension, vide email dated November 6, 2017, Noticees were called upon to file theirs reply within 14 days i.e. by November 20, 2017. Subsequently, vide letter dated November 20, 2017, Noticees again sought an extension of two weeks to file their reply to the SCN.

10. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on December 22, 2017 vide notice dated December 6, 2017. During the personal hearing, the Noticees submitted their reply vide letter dated December 22, 2017 and requested time till January 5, 2018, to submit post

hearing additional submissions. Thereafter, vide its letter dated January 4, 2018, the Noticees submitted their additional written submissions.

11. Subsequently, the Noticees were granted another opportunity of hearing on June 14, 2019. During the hearing, they reiterated the submissions made vide letter dated December 22, 2017 and January 4, 2018. The Noticees further requested time to submit additional submissions till June 21, 2019.

12. The replies / submissions of the VCG on behalf of the Noticees made vide letter dated December 22, 2017 and January 4, 2018 are summarised as follows:

a) VCG is the partner of the Firm VCGC and he has carried out the audit of the company and he is authorised to file the reply on behalf of the firm and himself.

b) The firm i.e. VCGC should not be party to the adjudication proceedings, if any, as the Firm does not exist without the Partners. Further, the other partners are not liable for the act done by one partner.

c) The certificate starts with the phrase *“We have examined the Audited Accounts of the company----”* which comprises the Auditors’ report and Audited Financials. The Audit report contains the qualification on the matter of utilisation of funds. Therefore, the Utilisation certificate may be read in conjunction with the audited accounts not as standalone.

d) The Noticees have drawn attention to paragraph 2.2 of the ‘Guidance note on Audit reports and certificate for special purposes” issued by the Institute of Chartered Accountants of India (ICAI) wherein the distinction between ‘a Certificate’ and ‘a Report’ has been clarified as follows:

“A reporting auditor should appreciate the difference between the terms ‘certificate’ and ‘report’. <u>A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor’s opinion thereon</u>. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill”.

e) Since this is an issue of the certificate of the utilisation of IPO funds dated May 30, 2015, in which it is certified the factual accuracy of the amounts utilised as indicated in the certificate under various items/ heads and the variation with the proposed utilisation as per prospectus were very clearly highlighted in the certificate. In this case, opinion neither was called for and nor had been given. The factual correct position stated in the certificate is required as per the above referred guidance note issued by ICAI, therefore the question of qualified or unqualified certificate is not relevant.

f) As far the qualification in the Auditor's Report on the Financial Statements of TIL for the year ended March 31, 2015 referred in the Show Cause Notice (SCN) dated October 24, 2017, these qualifications were in relation to the financial statements as a whole where an auditor has to express an opinion on the true and fair view of the affairs of the company whereas in case of utilisation certificate, the auditor is required to confirm the accuracy stated therein and accordingly, while issuing certificate, actual utilisation amount was presented in tabular form against the proposed utilisation as per prospectus. Hence the certificate, in their view, was correct.

g) Utilisation certificate issued by him contains the actual utilisation of IPO proceeds which was in variation with the amount proposed to be utilised as per the prospectus which clearly discloses the amount of variation itself. Therefore the observation that the actual utilization of IPO proceeds was significantly different from the amounts mentioned in the certificate issued by him is not correct.

h) Since the actual amount of utilisation of the IPO proceeds has been mentioned in the certificate, which is self-explanatory and clearly discloses the variation between Amount proposed to be utilised and Amount actually utilised in each head. This disclosure of IPO proceeds utilised is given in tabular form, which emphasizes itself a qualification rather than the mention of qualification in words. Accordingly, the certificate is qualified by way of quantification of amount of variation and which, in his view, is more informative.

Allegation with regard to financing of Long Term Incremental Working Capital requirement

i) As regards this allegation, according to the Prospectus, the amount was to be utilised for the purpose of *"To Finance Long Term Incremental Working Capital Requirement"* in the projects undertaken by the issuer company's subsidiary / associate company for two Hydro Projects in Lesotho Africa for an estimated value of Rs. 125 Crores or other projects.

j) The Company was to execute the projects through special purpose vehicle companies. As per the Infrastructure industry's practice, such kind of projects are executed through the special purpose vehicle companies (SPVs) which may be in the nature of Subsidiary or Associated group companies. The name of the projects has been mentioned in the Prospectus. Accordingly, the Issuer Company has made the payments to its SPV's for the purpose of executing the projects.

k) As per the information and explanation provided to him by TIL, the amounts have been paid to these respective companies as Loans and advances for working capital requirement of the Project executed through the SPV. Accordingly, he has relied upon the information and documents furnished and considered the utilisation for mentioned objects as per the prospectus.

l) The management of TIL had drawn his attention on the following paras mentioned on in Prospectus:-

"The main objects of our Memorandum of Association permit us to undertake our existing activities and activities for which the funds are being raised by us, through the present issue. The fund requirement and deployment is based on internal management estimates and has not been appraised by any bank or financial institution.

Our funding requirements are dependent on a number of factors which may not be in the control of our management, changes in our financial conditions or current commercial conditions. Such factors may entail rescheduling and/or revising the planned expenditure and funding requirement and increasing or decreasing the expenditure for a particular purpose from the planned expenditure."

m) Above underlines phrase / sentences gives an authority to the management of TIL to utilize the IPO funds in accordance with the estimates made by the management which is duly approved.

n) With regard to entering into loan agreement, the management of issuer company contended that according to the Black's Law Dictionary, Loan means *"a grant of something for temporary use"* and Advances means *"the furnishing of money or goods before any consideration is received in return"* and the issuer company did not have any intention to get anything in return rather it had the intention to give the money for temporary use. The company has accordingly, charged the interest on such loans.

o) The management further argued that Banking industry usually assess the Working capital requirement of an entity but while releasing the payment, they treat it as "Loan". The management of TIL also informed him that the advances are more prone to non-recovery because of inherent nature of risk associated with it therefore, the company has put a word "Loan" in a clause to ascertain the smooth recovery in future along with interest clause, in case there is any adverse position in future, so as to protect the interest of the investors.

p) The above facts clearly shows that the IPO proceeds have been appropriately utilised as mentioned in the certificate issued.

Allegation with regard to Payment made to Banthia Fintrade Pvt Limited

q) The Audit report contains the qualification on the referred matter for suspicion about recoverability of the amount though the management has mentioned the utilisation of the IPO proceeds for the purpose of Working capital. Therefore, the Utilisation certificate may be read in conjunction with the audited accounts.

r) The issuer company has produced the table of IPO proceeds' deployment disclosing the payment of Rs. 100 Lakhs to M/s Banthia Fintrade Pvt. Limited with ledger in which the purpose of the payment has been mentioned. On his enquiry, TIL had informed that the certain documents have been impounded by the Income tax Authorities during the search conducted in the month of September 2014 and unable to produce the agreement.

s) He relied upon the information and considered the said amount under his qualification in Audit report. In the certificate, since he has started with the phrase *"We have examined the Audited Accounts of the company----"*, he was of the view that qualification in the audit report on this issue to make user aware of the facts and to comply with the guidance prescribed by ICAI.

t) The amount paid to Banthia Fintrade Pvt Limited has been verified from the accounts and bank statement with reference to the narration in ledger. Therefore, the amount has been considered for "To Finance Long Term Incremental Working Capital Requirement" on the basis of explanation and information provided.

u) Since, the agreement entered between TIL and the vendor was not made available on records, therefore, to express the opinion on the audited financials, the appropriate qualification has been given in the Auditor's report. The certificate, being *a written confirmation of the accuracy of the facts stated therein and not an opinion over truth and fairness*, no further qualification was required in the certificate.

Allegation with regard to Payment made to ICICI Bank

v) According to the Prospectus, the amount was to be utilised for the purpose of *"To Finance Long Term Incremental Working Capital Requirement"* in which the Issuer Company has mentioned and assessed the working capital requirement and disclosed the intention to utilize Rs.1000 Lacs towards the total working capital requirement in paragraphs for the purpose of Hydro Projects in Lesotho, Africa and Dropdown overdraft facility. Since both disclosures about Lesotho Projects and Dropdown working facility in the prospectus are made under the object of *"To finance long term incremental working capital"*, it is understood that the company may utilise the IPO proceeds to reduce the Overdraft facility. The negative balance in account stands as overdraft facility as extended by the bank to issuer company.

Allegation with regard to Payment of salaries

w) The details of salary payment disclosing the amounts paid of Rs. 49.24 Lakhs for the month of June, July and August are provided.

x) Considering the facts stated above, it clearly show that the IPO proceeds have been appropriately utilised as mentioned in the certificate issued which is in line with the information mentioned in the prospectus which is duly approved.

Allegation with regard to Renovation and Interior of Registered office - Payment made to VIIL

y) Payment of the bill has been made by the issuer company. As per the information provided by the management of TIL, the vendor has inadvertently put the name of the Tarini Infrastructure Limited (Tinl) on the invoice. However, the work has been done by the vendor for the issuer company. The copy of ledger account and relevant Form 16A issued by TIL for the deduction of tax at source to the vendor are provided.

Payment made to BSIL

z) TIL has made the payment for renovation and interior expenses of its registered office. On the basis of BOQ for renovation work and confirmation of advance for the purpose of renovation from the contractor company, the said payment has been included against the object of Renovation. Accordingly, he has considered the amount so paid under the head of Renovation and Interior expenses.

aa) With regard to mismatch in name observed in respect of the payment made to VIIL by TIL under the head of Renovation and Interior of Registered office, it is submitted that the name of TIL was wrongly mentioned by the vendor. However, the payment has been made by the issuer company for the services availed after deduction of tax at source as per the provisions of chapter XVII of Income Tax Act, 1961 at the time of the credit or payment made to VIIL. Therefore, he has considered the same as utilisation of IPO funds. The copy of relevant TDS certificate and ledger account in the books of TIL has already provided.

bb) With regard to other observation that the payment was made before the date of issue of IPO, the attention is drawn upon the fact that the issuer company has made on account payment to the vendor to initiate and mobilise the work, therefore it require be treated as utilisation against the IPO proceeds.

Payment made to MDDL

cc) In view of the fact that invoice received from the party was for Rs. 30 Lakhs and tax deducted at source thereupon by the issuer company on the said amount. Accordingly, he has considered the amount so paid under the head of Renovation and Interior expenses.

Allegation with regard to Brand Building - Salary cost of Senior & Middle management and Air, Rail ticket and taxi Charges

dd) The details of salary of Rs. 49.24 Lakhs as provided consists of the salary paid to Harikrishna for Rs. 14.90 Lakhs. The copy of bills and relevant details are provided.

Payment made to Raka Adversting & Marketing Pvt Ltd. and Prana PR Private Limited

ee) Copy of ledger account and relevant invoices are provided.

Allegation with regard to General Corporate purposes

ff) The attention is drawn upon the fact that there is no definition of General Corporate Purposes in none of the statute except sub clause (na) of clause 2 of the SEBI (ICDR) Regulations, 2009 which states that General Corporate Purpose include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with the Board. According to the proviso to the said clause, any issue related expenses shall not be considered as a part of General Corporate Purpose merely because no specific amount has been allocated for such expenses in the draft offer document filed with the Board.

gg) The attention further is drawn upon the purpose as mentioned in the prospectus which states that the *"Our company in accordance with the policies set up by our Board, will have the flexibility in applying the remaining net proceeds of this issue aggregating Rs. 250 Lacs for General Corporate Purpose towards financing normal capital expenditure, strategic initiatives, expanding into new geographies, pre-operative expenses, funding routine working capital and strengthening our marketing capabilities."*

hh) Therefore, as per the explanation and information provided by the company Rs. 430 Lakhs were given to the subsidiary / associate company is well within the specified "General Corporate Purpose" which is also in accordance of the policies set up by the Board of the Company.

Allegation with regard to Issue Expenses - Payment made to Seaman International Inc

ii) The nature of expenses to Seaman International Inc is Courier charges. The copy of relevant vouchers / invoice is provided.

Allegation with regard to the statutory auditor had wrongly certified that the company had utilised the IPO proceeds for public issue expenses to the extent of Rs. 1479.32 lakhs (i.e. Rs.1,630.98 lakhs – Rs.151.66 lakhs)

jj) The management of TIL had drawn his attention on the following paras mentioned on in Prospectus:-

"The main objects of our Memorandum of Association permit us to undertake our existing activities and activities for which the funds are being raised by us, through the present issue. <u>The fund requirement and deployment is based on internal management estimates</u> and has not been appraised by any bank or financial institution.

Our funding requirements are dependent on a number of factors which may not be in the control of our management, changes in our financial conditions or current *commercial conditions. Such factors may <u>entail rescheduling and/or revising the planned expenditure and funding requirement and increasing or decreasing the expenditure for a particular purpose from the planned expenditure</u>."*

kk) Above underlines phrase / sentences gives an authority to the management of the company to utilises the IPO funds in accordance with the estimates made by the management. As an auditor, he had relied upon the contention made by the management of the issuer company and the objects and other relevant information in prospectus and accordingly, issued a certificate of utilisation of IPO proceeds. He also submitted that the auditor is always dependent upon the information and explanation provided by the client.

13. The Noticees, vide latter dated June 21, 2019 made, inter alia, the following submissions:

- *That the undersigned had issued the certificate for utilisation of IPO proceeds dated May 30, 2015 after examining audited Accounts for the Financial Year in terms of objects mentioned in the prospectus issued, information disclosed in the audited accounts and the information & explanation provided by the issuer company.*

- *The audit report is a document by which an auditor expresses his opinion on the accounts and state of affairs of a company on a particular date and while forming an opinion if any material observation comes into notice, a qualification is made in the audit report, whereas the certificate is a document through which correctness and accuracy about some matter is confirmed. The undersigned being an auditor had drawn the factual information on the basis of the audited accounts of the issuer company, in the utilisation certificate dated May 30, 2015. Therefore, the question of qualification in certificate does not arise as the certificate is a document of facts only.*

- *That the table in Annexure - 1 is drawn on the basis of figures from the audited accounts for the year 2014-15 of the issuer company and the certificate contains the said fact clearly as "We have examined the Audited accounts of the company....". Therefore, the certificate dated May 30, 2015 contain the facts from the audited accounts only.*

- *That the amount mentioned in the certificate has been actually incurred and duly recorded in the books of account on the basis of supporting documents and vouchers, correctly classified and presented in the financial statements as per the requirement of Schedule III of the Companies Act, 2013 and rules framed thereunder. In fact, the figures in the Certificate have been used and grouped from the said audited accounts for the purpose of classification as per the objects stated in the prospectus as there is no such specific heads like "working capital finance" or "General Corporate Purposes" in the schedule III of the Companies Act, 2013:*

- *That there is difference of opinion with regard to the meaning and definition of objects of the issue more specifically over the definition of the 'Working Capital' and 'General Corporate Purposes' as the same was not mentioned in the show cause notice which precluded the undersigned to explain the certificate in earlier* *submission. Further, there is no consideration of projects disclosed in the prospectus under these objects and the manner of executing such projects by the Company. Therefore, the conclusion that the amount was wrongly certified by the auditors is wrong and on unfounded grounds and hence denied.*

- *That the objects for which IPO was brought, are given on the page no. 43 of the relevant Prospectus filed by the Company. The undersigned bona:fidely noted them and verified the utilisation of IPO proceeds in columnar form, from the figures in the respective heads presented in the audited accounts and of which details were submitted w your Good self in pursuance to the summon dated 05110/2016 and 24/10/2017.*
- *Accordingly. the figures of non-utilisation of IPO proceeds aggregating to Rs. 873.48 Lakhs as pointed out was actually utilised and shown in the certificate dated May 30, 2015 and hence the certificate is true and correct for the objects stated in the prospectus of the Company.*

- *That it is further submitted that the allegation that amount of Rs 1479.32 lakhs is amount wrongly certified by the auditor" is based on the incorrect conclusion made out and based on surmises, conjectures and without any substance. Therefore, the conclusion that 'amount wrongly certified by the auditors' is wrong and on unfounded grounds and hence denied for the following reasons:*

  a) *That the amount has been actually incurred and du1y recorded in the books of account on the basis of supporting documents and vouchers, correctly classified and presented in the financial statements as per the requirement of Schedule III of the Companies Act, 2013 and rules framed there under.*

  b) *That the undersigned has bonafidely considered the definition of 'working capital' and •general corporate purposes' as per the guidance note issued by the ICAI and SEBI ICDR Regulations 2009 respectively.*

  c) *That the information in respect of projects and the manner of executing such projects disclosed in the prospectus have been relied upon by the undersigned.*

  d) *That the figures in the Certificate have been used and grouped from the audited accounts of the Company for the financial year 2014-15.*

  e) *That the certificate is a document through which correctness and accuracy about some matter is confirmed and the undersigned being an auditor had drawn the factual information on the basis of the audited accounts of the issuer company, in the utilisation certificate dated May 30, 2015.*

14. After the case was transferred to the undersigned, another opportunity of personal hearing was given to the Noticees on December 10, 2019. The Noticees appeared on the scheduled date and vide letter dated December 10, 2019 made, inter alia, the following submissions:

- *That the certificate consists the amounts in tabular form with a comparison between the amount proposed for utilization and actual utilization. A reconciliation for the amounts derived from audited accounts has been provided.*
- *That the amount was actually incurred and duly recorded in the books of account on the basis of supporting documents and vouchers, correctly classified and presented in the financial statements as per the requirement of Schedule III of the Companies Act, 2013 and rules framed there under.*
- *That the figures in the Certificate have been used and grouped from the audited accounts of the Company for the financial year 2014-25.*
- *That the undersigned has bonafidely considered the definition of 'working capital' and 'general corporate purposes' as per the guidance note issued by the ICAI and SEBI ICDR Regulations 2009 respectively. For the sake of convenience, again mentioning the definition of 'Working capital' the excess of current assets over current liabilities including short term loans and "General Corporate Purpose include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called.*
- *That the information in respect of projects and the manner of executing such projects disclosed in the prospectus have been relied upon by the undersigned.*
- *That the certificate is a document through which correctness and accuracy about some matter is confirmed and the undersigned being an auditor had drawn the factual information on the basis of the audited accounts of the company, in the utilization certificate dated May 30, 2015 after examining the audited accounts upon which audit report contains the qualification.*

ISSUES FOR CONSIDERATION

15. After perusal of the material available on record, the following issues emerge for consideration:

    A. Whether the Noticees have violated 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 PFUTP Regulations?

    B. If the answer to the issues at 'A' above is in affirmative, then whether the Noticees are liable for monetary penalty under section 15HA of the Act?

    C. If the answer to issue at 'B' is affirmative, then what quantum of monetary penalty should be imposed on the Noticees?

FINDINGS

Issue A: Whether the Noticees have violated 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 PFUTP Regulations?

16. Before dealing with the allegations against the Noticees herein, for convenience, the relevant provisions of the SEBI Act and PFUTP Regulations applicable in the matter are reproduced hereunder:

[CHAPTER VA

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING, AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

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

12A. No person shall directly or indirectly -

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

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

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

d) ……

e) ……

CHAPTER II

PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES

RELATING TO THE SECURITIES MARKET

3. Prohibition of certain dealings in securities

No person shall directly or indirectly -

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

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

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

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

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

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

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

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.

17. The Noticees have raised several technical objections in respect of the SCN. Before, examining the material and facts and circumstances as available on record, it is deemed fit to deal with technical objections raised by the Noticees under the following heads.

Distinction between 'a Certificate' and 'a Report'

18. The Noticees have contended that as per paragraph 2.2 of the 'Guidance note on Audit reports and certificate for special purposes" issued by the ICAI wherein the distinction between 'a Certificate' and 'a Report' has been clarified that - *"…<u>A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon</u>…..".*

19. To recapitulate it is to note that the audit certificate for utisliation of the IPO proceeds is mandated in the regulatory provisions so that investors would know the manner of

utilization of the proceeds of the IPO as to its intended use. Given this it is reasonable expectation that the audit certificate should ordinarily be a self-contained document. It should not confine itself to a mere reference to another report issued by the reporting auditor but should include all relevant information contained in such report. The reporting auditor should clearly indicate in his certificate, the extent of responsibility which he assumes. Where the statement on which he is required to give his certificate, includes some information which has not been audited, he should clearly indicate in his certificate the particulars of such information. In certain cases, the form and/or contents of the certificate, as prescribed by a statute i.e. SEBI Act / Regulations in this case may not be adequate. In such situations, the reporting auditor should consider modifying the certificate to the extent applicable in such a manner that true and fair information is disclosed to the investors at all times. In case this is not possible, he should clearly indicate the limitations in his certificate itself. It is noted that in this case the auditor has provided an “unqualified utilization certificate”.

20. It is pertinent to note that at the time of issuance of the unqualified Utilisation Certificate, the Noticees have access to the bank statements and books of accounts of TIL and have the right to seek and obtain information and explanations from TIL to their satisfaction. In this regard, from the documents available on record, it is noted that VCG on behalf of VCGC had qualified in his Audit Report dated May 30, 2015, that – *“….there has been variation in the utilisation of money between the objects of pubic issue contained in the prospectus and actual utilisation, which was needed to be authorised from the members. In view of this, we are unable to comment upon the appropriateness of variation in utilisation of money.”* Although the fact that the firm was unable to comment upon the appropriateness of variation in utilisation of money, VCG, on behalf of VCGC, had issued a unqualified Utilisation Certificate without clearly indicating the limitations in his certificate i.e. the deviation in the numeric figures in the proposed amount and actual amount utilised should have been qualified by giving cross reference to audit qualifications made in the Auditor Report.

21. The basic fact remains that the statutory auditor had issued an unqualified Utilisation Certificate in spite of the fact that he was indeed not able to comment upon the

appropriateness of variation in utilisation of money. The Noticees were obligated to ensure true and fair disclosure in this regard in the Utilisation Certificate forming part of the financial statements, which they failed to observe. Therefore, it can be viewed that the Noticees have aided TIL in allowing misleading information to be presented in the Utilisation Certificate forming part of the financial statements and their contention that – *"a certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion"* is devoid of any merit. Therefore, the contentions of the Noticees in this regard are rejected.

The firm should not be a party to the adjudication proceedings

22. VCG has contended that the firm i.e. VCGC should not be party to the adjudication proceedings, if any, as the Firm does not exist without the Partners and other partners are not liable for the act done by one partner.

23. It is noted that as per section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm. If a partner does an act in the usual course of business of the firm, then his act binds the firm. This authority of a partner to bind the firm is Implied Authority. Section 22 of the Indian Partnership Act, 1932, adds that the act which was done by the partner to bind the firm must be done in the name of the firm or in any other manner which implies an intention to bind the firm.

24. In the instant case, the statutory auditor of TIL for the financial year 2014-15 was VCGC. VCG, as a partner of VCGC, had done act of signing the audit report of TIL for the financial year 2014-15 in the usual course of business of the firm. Thus, the said of VCG done in the usual course of business will bind the firm i.e. VCGC. Further, utilisation certificate under consideration commences with the phrase – *"We have examined the Audited Accounts of the Company ….."* which clearly indicates that the partner i.e. VCG acted in the usual course of business on behalf of the firm i.e. VCGC. Reliance is placed on the order no. WTM/GM/DRA 1/ 83 /2017-18 dated January 10, 2018, passed by , SEBI in the matter of *Price Waterhouse, Chartered Accountants*, where entities/firms practicing as Chartered Accountants in India under the brand and

banner of the network - Price Waterhouse were held liable for the violations of PW Bangalore and its partners. In view of the said facts, therefore the contentions of the Noticees are rejected.

25. Having dealt with the technical objections raised by the Noticees hereinabove, the allegations emanating from the analysis on the details of utilisation of IPO proceeds certified by VCG under each heads of objects under the following heads is dealt with as under:

26. The tabulated statement of "utilization of funds", "proposed to be utilized" by the company as stated in prospectus and subsequently "certified by the Noticees is given below:

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)**
To Finance long term incremental working capital requirements	1000.00	888.38
Renovation and Interior of Registered office	160.00	159.28
Brand Building	150.00	72.95
General Corporate purposes	250.00	430.00
Issue expenses	70.98	80.37
Total	**1630.98**	**1630.98**

27. It is observed that the Noticees had certified that TIL had utilized ₹ 888.38 lakh towards financing of Long Term Incremental Working Capital Requirements of the company, the break up of which is as under:

Sl. No.	**Particulars**	**Amount (in ₹)**
1	Tarini Infrastructure Ltd (TinL)	4,00,00,000
2	Tarini Wilderness Innovation Pvt Ltd (TWIL)	65,00,000
3	Venture Infrastructure Ltd (VIL)	1,75,00,000
4	B. Soilmec India Pvt Ltd (BSIL)	45,00,000
5	Banthia Fintrade Pvt Ltd (BFL)	1,00,00,000
6	ICICI Bank Ltd (IBL)	55,38,174
7	Payment of Salaries	48,00,000
	Total	**8,88,38,174**

Payments made to TinL, TWIL, VIL and BSIL

28. The allegation is that IPO proceeds were utilized by TIL for financing the capital expenditure of its group companies by way of loans at the interest of PLR+2%, which is in the nature of financing activities and same was not forming part of the objects of the issue disclosed in the prospectus. In this regard, it is observed that all the agreements with group companies *viz*. TinL, TWIL, VIL and BSIL to whom IPO proceeds have been transferred as loans were signed on July 30, 2014. The contents / language of all the agreements are similar and all the agreements have been executed on the same day i.e. July 30, 2014. All the agreements executed on a plain un-stamped and un-notarized piece of paper through which an aggregate amount ₹ 7,95,00,000 crores have been transferred to the said four group companies. The said amounts were repayable in one or more tranches within a period of three years from the date of the agreement and the loan amounts carried interest at the rate of PLR+2% on the monthly outstanding balance.

29. The Noticees contended that as per the information and explanation provided by TIL, the amounts have been paid to these respective companies as Loans and advances for working capital requirement of the Project executed through the SPV. Accordingly, the statutory auditor has relied upon the information and documents furnished and considered the utilisation for mentioned objects as per the prospectus. The Noticees had drawn attention to the following paras mentioned in the Prospectus of TIL which gives an authority to the management of TIL to utilise the IPO funds in accordance with the estimates made by the management which is duly approved:-

> *"The main objects of our Memorandum of Association permit us to undertake our existing activities and activities for which the funds are being raised by us, through the present issue. <u>The fund requirement and deployment is based on internal management estimates and has not been appraised by any bank or financial institution</u>.*
>
> *<u>Our funding requirements are dependent on a number of factors which may not be in the control of our management, changes in our financial conditions or current commercial conditions. Such factors may entail rescheduling and/or revising the planned expenditure and funding requirement and increasing or decreasing the expenditure for a particular purpose from the planned expenditure</u>."*

30. Reference is drawn to the order no. WTM/SKM/EFD1-DRAIII/ 15 /2019 dated March 29, 2019, passed by, SEBI in the similar matter against M/s Tarini International Ltd. wherein the following position has been held:

"30. ………., the agreements have been executed on a plain piece of paper which are not even notarized. All the agreements with the related entities have been signed by the managing director and whole time director of Tarini. I see no reason for execution of any agreement for justifying the transfer of IPO proceeds to promoter related entities, if the promoters/Noticees had indeed a bonafide belief and understanding that proceeds of IPO would be legally available to be utilized for the group companies of Tarini. Neither, the Prospectus makes any disclosure of any such understanding or belief purportedly made by the promoters nor the Noticees were ever prohibited from disclosing any such fact/ understanding in the Prospectus stating that the IPO proceeds would be utilized for the entire Tarini group of Companies. Thus the agreements submitted on behalf of the Noticees to justify the transfer of IPO proceeds to group entities under the head of working capital appear to be an afterthought exercise to provide a rationale for the diversion of IPO proceeds to group entities that has taken place as soon as the IPO proceeds were received. In view of the above, it is clear that Tarini has utilized the IPO proceeds for financing the activities of its group companies by way of advancing loans to them. Therefore, this act of Tarini can be stated to be in the nature of financing activities and not utilization of IPO proceeds for meeting its working capital requirements. This act of Tarini of providing loans to its group companies may not be in the business interest of Tarini and its shareholders. The same is also not in compliance with the provisions of law as such fund transfers do not form part of the stated objects of the IPO as disclosed by Tarini in the prospectus. Noticees appear to have misled the investors by concealing material facts and not disclosing the actual intended utilization of IPO proceeds for assisting the group companies and not for meeting it's own project expenditure…"

31. It is clear that agreements submitted by TIL to justify the transfer of IPO proceeds to group entities under the head of working capital appear to be an afterthought paper trail creation exercise to cover up the diversion of IPO proceeds to group entities. TIL

had utilized the IPO proceeds for financing the activities of its group companies by way of advancing loans to them. It is clear that the noticees had access to these documents and nevertheless issued an unqualified utilisation certificate, the Noticees had provided misleading and fraudulent statement and have aided and abetted the company in disseminating false financial position.

Payment made to Banthia Fintrade Pvt Limited

32. The allegation is that on one hand, the statutory auditor had qualified his audit report to state that "*you could not verify whether the company had actually utilised Rs. 100 lakhs*" to meet its long term working capital requirements, on the other hand, contrary to the qualification, the statutory auditor had issued an unqualified utilisation certificate certifying the utilisation towards the intended purpose, which is clearly misleading.

33. The Noticees submitted that TIL had produced the table of IPO proceeds' deployment disclosing the payment of Rs. 100 Lakhs to M/s Banthia Fintrade Pvt. Limited with ledger in which the purpose of the payment has been mentioned. On their enquiry, TIL had informed that the certain documents have been impounded by the Income tax Authorities during the search conducted in the month of September 2014 and unable to produce the agreement. The amount paid to Banthia Fintrade Pvt Limited has been verified from the accounts and bank statement with reference to the narration in ledger. Therefore, the amount has been considered for "To Finance Long Term Incremental Working Capital Requirement" on the basis of explanation and information provided. Since, the agreement entered between TIL and the vendor was not made available on records, therefore, to express the opinion on the audited financials, the appropriate qualification has been given in the Auditor's report. In the certificate, since it started with the *phrase "We have examined the Audited Accounts of the company----"*, they were of the view that qualification in the audit report on this issue to make user aware of the facts and to comply with the guidance prescribed by ICAI.

34. In this regard it is noted that as agreement entered between TIL and the vendor was not made available on records, the Noticees have made qualifications to this extent in the audit report. The limited point for determination is whether issuance of unqualified utilisation certificate by the statutory auditor to this end is appropriate or not. It is observed that the Noticees were obligated to ensure true and fair disclosure in this regard in the Utilisation Certificate forming part of the financial statements, which they failed to observe. Therefore, the Noticees have aided TIL in allowing misleading information to be presented in the Utilisation Certificate forming part of the financial statements and their contention that – *"a certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion"* is devoid of any merit, therefore, rejected.

Payment made to ICICI Bank

35. The allegation is that while issuing unqualified certificate, the statutory auditor had certified that the company had utilised ₹ 55,38,174 to finance long term incremental working capital requirements knowing fully well about the negative balance in the account in spite of the fact that he was aware that the prospectus did not mention repayment of bank loan as one of the objects of the issue

36. The Noticees submitted that according to the Prospectus, the amount was to be utilised for the purpose of *"To Finance Long Term Incremental Working Capital Requirement"* in which the Issuer Company has mentioned and assessed the working capital requirement and disclosed the intention to utilize Rs.1000 Lacs towards the total working capital requirement in paragraphs for the purpose of Hydro Projects in Lesotho, Africa and Dropdown overdraft facility. Since both disclosures about Lesotho Projects and Dropdown working facility in the prospectus are made under the object of *"To finance long term incremental working capital"*, it is understood that the company may utilise the IPO proceeds to reduce the Overdraft facility. The negative balance in account stands as overdraft facility as extended by the bank to issuer company.

37. In this regard, Overdraft account is normally a current/running account and not considered as a loan account. Generally, this facility is offered by banks to its customers to meet their temporary fund requirements, including for working capital requirements. Negative balance in Overdraft account is understood to be a very common phenomena and once amount/ proceeds are infused/credited in the Overdraft account, then automatically the account becomes positive. Given the very nature of the account, the contentions of the noticee to this extent is accepted.

Payment of salaries

38. The allegation is that out of ₹48,00,000 certified by the statutory auditor, expenditure of only ₹14,90,000 could be independently verified by him and the same should have been considered as utilized towards the working capital and the balance amount i.e. ₹ 33,10,000 could not be verified by him. In response to the allegation, the Noticees have provided the details of salary payment disclosing the amounts paid of ₹49.24 Lakhs for the month of June, July and August.

39. In this regard, reliance has been placed on the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the matter against TIL wherein he has held the following position:

"33. With respect to the payment of salary, I note that the Noticees have claimed that Tarini has paid a total salary of ₹66,77,665 for the months from May to August 2014. However,~~I~~find that the Noticees have not submitted supporting documents to prove that such an amount of salary was indeed paid to the staff of Tarini, I rather observe that in the Annual report of Tarini for the year 2014-15, the total salary and wages for the entire year was shown at ₹56,08,221, whereas from the list submitted by Tarini, I find that monthly salary expenditure has been shown to be ₹17 lakh (approx.). Thus, when compared with the salary figures mentioned in Annual Report of Tarini, for an entire year, the salary claimed to have been paid for only 4 months becomes more than the entire year's salary made by Company. Interestingly from the bank statement of Tarini maintained with Karur Vysya Bank, the payment made towards salary for the

month of June 2014 is found to be only ₹5.98 Lakh as against monthly salary pay out of ₹17 lakhs claimed by the Noticees in their submissions. Thus, ~~I~~ find that no credible evidence has been submitted by Noticees to substantiate their claim of payment of ₹66,77,665 towards the salary of employees out of the IPO proceeds for the months of May to August, 2014. Under the circumstances such an expenditure remains unsubstantiated by the Noticees.

40. In view of the aforesaid Judgment, I concur with the views of the Whole Time Member, SEBI. I am of the view that that the evidence that has been submitted by the Noticees to substantiate the claim of payment of ₹ 49.24 made by TIL towards the salary to its employees out of the IPO proceeds for the months of Lakhs for the month of June, July and August 2014 is considered not credible and such an expenditure remains unsubstantiated.

41. In view of the facts above, I conclude that TIL had incurred only ₹ 55,38,174 (payment to ICICI Bank) to finance long term incremental working capital requirements as against ₹ 8,88,38,174 certified by the statutory auditor in the unqualified utilisation certificate. Thus, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds to finance long term incremental working capital requirements to the extent of ₹ 8,33,00,000 (i.e. ₹ 8,88,38,174 - ₹ 55,38,174) as against ₹ 8,73,48,174 (i.e. ₹ 8,88,38,174 - ₹ 14,90,000) alleged in the SCN. In view of the said facts, I am of the view that by issuing an unqualified audit report and consequential utilisation certificate, the Noticees have aided and abetted the company in disseminating the false financial position and had provided misleading and fraudulent statement even though they were in possession and aware of the aforesaid information.

Payment to VIIL

42. The allegation is that the payment made to VIIL for an amount of ₹ 7,07,365/- was not for the services availed by the company but was meant for its subsidiary company and in the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company had utilised ₹ 6,58,280 for renovation and interior of its registered office.

43. In this context, the Noticees have submitted that payment of the bill has been made by the issuer company. Further, the Noticees submitted that as per the information provided by the management of TIL, the vendor has inadvertently put the name of the Tinl on the invoice, but, the work has been done by the vendor for the issuer company. In support of their claim, the Noticees have provided copy of ledger account and relevant Form 16A issued by TIL for the deduction of tax at source to the vendor. I also note that there is no adverse inference in this regard in the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the similar matter against TIL. I am, therefore, inclined to agree with the contention of the Noticees in this regard.

Payment made to BSIL and MDDL

44. The allegation as regard payment made to BSIL is that out of the payment made to BSIL for an amount of ₹1,65,00,000, ₹1,20,00,000 was in the nature of advancing the loan to BSIL for the purpose of funding the preparation of detailed project report and survey investigation and to acquire the land for the project and thus, the statutory auditor had wrongly certified that the company has utilised ₹1,20,00,000 for renovation and interior of the registered office.

45. Further, as regard payment made to MDDL, it is observed that the contract of ₹160 lakhs was given to MDDL by the company for office renovation/rebuilding works before the start of its IPO and the contract was terminated after executing works for about ₹ 30 lakhs. Further, the flow of funds from IPO proceeds to MDDL was not noticed except for the payment of ₹25,00,000 on March 28, 2014 (prior to IPO date) which was the payment towards partial work executed by MDDL In this regard, it has been alleged that TIL had not made any payment to MDDL from the IPO proceeds and the statutory auditor had wrongly certified that the company had utilised ₹30,00,000 for renovation and interior of registered office.

46. In this regard, the Noticees submitted that on the basis of renovation work and confirmation of advance for the purpose of renovation from the contractor company, the said payment has been included against the object of renovation and interior

expenses of TIL's registered office. Accordingly, they have considered the amount so paid under the head of Renovation and Interior expenses. With regard to other observation that the payment was made before the date of issue of IPO, attention is drawn upon the fact that the issuer company has made the payment to the vendor to initiate and mobilize the work, therefore it require be treated as utilisation against the IPO proceeds. In support of their claim, the Noticees provided the copy of relevant TDS certificate and ledger account in the books of TIL.

47. Further, as regards payment to MDDL, the Noticees submitted that the invoice received from MDDL was for ₹ 30 Lakh and tax deducted at source thereupon by the issuer company on the said amount. Accordingly, they have considered the amount so paid under the head of Renovation and Interior expenses.

48. In this regard, I place reliance on the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the matter against TIL wherein he has held the following position:

"38. After carefully considering the reply of the Noticees and material available on record, I find that Tarini has not provided any cogent reason for the termination of the agreement with Mapple. Further, a copy of the agreement claimed to have been executed with Mapple has not been furnished to support if it had at all entered into any agreement with Maple. As regards the transfer of ₹120.00 lakh to Soilmec to complete the renovation and interior work carried out in the registered office of the Company, from a perusal of copy of agreement dated July 30, 2014 as entered into between Tarini and Soilmec, I note that the said agreement contain clauses pertaining to a loan given by Tarini to Soilmec. The said agreement does not contain any statement with respect to renovation work or any work ancillary to renovation. As per the clauses of the agreements, the funds were transferred as loan to Soilmec for acquisition of land, preparation of project report, survey investigation etc. Thus, it becomes clear that the agreement was not related to any renovation and interior work of registered office of the company and the amount was not actually spent by Tarini for renovation and interior work of registered office as per the objects stipulated in the

Prospectus. The amount appears to have been actually diverted to one of the promoter related entities for some other unrelated work but falsely being claimed under the head of renovation and interior work. Hence, the submission of the Noticees on this item of expenditure is found to be grossly erroneous, unsubstantiated and not acceptable. Thus it becomes evident that the entire expenditure claimed under renovation of registered office has actually been appropriated for some other unexplained purpose, thereby blatantly deviating from the stated objects of IPO."

49. In view of the aforesaid order, I concur with the views of the Whole Time Member, SEBI. I am of the view that that the evidence that has been submitted by the Noticees to substantiate the claim of payment of ₹ 120 lakh made by TIL to BSIL towards the Renovation and Interior expenses is considered not credible and such an expenditure remains unsubstantiated as the same was appears to have been actually diverted to one of the promoter related entities for some other unrelated work but falsely being claimed under the head of renovation and interior work. Further, as regards payment made to MDDL, I note that TIL has not provided any cogent reason for the termination of the agreement with MDDL and a copy of the agreement claimed to have been executed with MDDL has not been furnished in support of its claim. Accordingly, I am of the view that that the evidence that has been submitted by the Noticees to substantiate the claim of payment of ₹ 30 lakh made by TIL to MDDL towards the Renovation and Interior expenses is considered not credible and such an expenditure remains unsubstantiated.

50. In view of the facts detailed above, I conclude that TIL had incurred only ₹ 2,69,650 (payment to Arvee Sales) towards renovation and interior of registered office. Thus, the statutory auditor had wrongly certified that the company had utilised the IPO proceeds towards renovation and interior of registered office to the extent of ₹ 1,56,58,280 (i.e. ₹ 1,59,27,930 - ₹ 2,69,650). In view of the said facts, I am of the view that by issuing an unqualified audit report and consequential utilisation certificate, the Noticees have aided and abetted the company in disseminating the false financial position and had provided misleading and fraudulent statement even though they were in possession and aware of the aforesaid information.

Payment made towards salary cost of Senior & Middle management and Air, Rail ticket and taxi Charges and Raka Adversting & Marketing Pvt Ltd. and Prana PR Private Limited

51. With respect to the payments made towards salary cost of senior & middle management and Air, Rail ticket and taxi Charges, the statutory auditor had neither provided the copies of invoices nor the ledger account for these payments and the same could not be independently verified from bank statements as well. In view of the same, it has been alleged that in the unqualified utilisation certificate, the statutory auditor had wrongly certified that the company has utilised ₹ 14,18,682 for Brand Building (i.e. Salary cost of Senior & Middle management - ₹11,90,000 + Air, Rail ticket and taxi Charges - ₹ 2,28,682).

52. Further, as regards payment made to Raka Adversting & Marketing Pvt Ltd. and Prana PR Private Limited for an amount of ₹2,00,047 and ₹ 2,74,707, respectively, the Noticees have provided only the copies of ledger of the said vendors in the books of the company. In view of the same, it has been alleged that the statutory auditor, in the unqualified utilisation certificate, had wrongly certified that the company has utilised ₹ 4,74,754 for Brand Building.

53. With respect to the payments made towards salary cost of senior & middle management and Air, Rail ticket and taxi Charges, the Noticees submitted the details of salary of ₹ 49.24 Lakhs which consists of the salary paid to Harikrishna for ₹ 14.90 Lakhs, In support of their claim, the Noticees provided the copy of bills and relevant details. With respect to Payment made to Raka Adversting & Marketing Pvt Ltd. and Prana PR Private Limited, the Noticees submitted copy of ledger account and relevant invoices.

54. In this regard, I place reliance on the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the matter against TIL wherein he has held the following position:

“39. The third objective in the Prospectus states that Tarini intends to deploy ₹150.00 Lacs out of net issue proceeds for brand building. In this regard, I note that as per the details of utilization provided by Tarini, only ₹9,58,716 was actually utilized for brand building as against ₹150 lakh proposed to be utilized for brand building as disclosed in the prospectus. However, on this expenditure no adverse finding has been alleged in the SCN, hence the same does not call for further discussion in this order.”

55. I note that there is no adverse inference in this regard in the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the similar matter against TIL. I am, therefore, inclined to agree with the contention of the Noticees in this regard.

Payment made towards General Corporate purposes

56. The allegation is that that TIL had advanced the loan of ₹ 430 lakhs for the purpose of purchase of land and setting up of sugar factory by TSDL at Parbhani, Maharashtra and did not relate to it and although the statutory auditor was in possession the loan documents, in the unqualified utilisation certificate, he had misleadingly certified that the company had utilised ₹4,30,00,000 for its general corporate purposes.

57. In this regard, the Noticees submitted that, as per the explanation and information provided by the company, ₹ 430 Lakhs were given to the subsidiary / associate company is well within the specified “General Corporate Purpose” which is also in accordance of the policies set up by the Board of the Company.

58. In this regards, I place reliance on the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the matter against TIL wherein he has held the following position:

“42. …..I find that all these payments are related to its group company viz. Tarini Sugars and Distilleries Limited and have been incurred in connection with purchase of land and setting up of Sugar Factory at Parbhani, Maharashtra and not incurred for any corporate purpose of Tarini. Under the circumstances, I find that Tarini has

actually utilized only ₹2,37,000 towards general corporate purposes out of the total expenditure of ₹94.26 lakhs claimed to be utilized for general corporate purposes, thereby diverting ₹91,89,000 towards meeting the expenditure in connection with proposed sugar factory of its group company, which certainly cannot be stated to have been incurred towards the stated objects for which the IPO proceeds were received by Tarini.

43. In this regard, I also note that the statutory auditors in their audit report have qualified the Consolidated Financial Statements for the F.Y. 2014-15 by making the following observation:

"We draw attention to the note 30 of the financial statements whereby the holding company has raised the money by way of Public Issue, during the year. Further, there has been variation in the utilization of money, between the objects of public issue contained in the prospectus and actual utilization, which was need to be authorized from the members. In view of this, we are unable to comment upon the appropriateness of variation in utilization of money by holding company."

59. As seen from the order of the Whole Time Member, SEBI, the statutory auditors have made qualifications in this regard in their report. However, I disagree with their claim that the payment made by TIL towards advancing the loan of ₹ 430 lakhs to the subsidiary / associate company is well within the specified "General Corporate Purpose" which is in accordance of the policies set up by the Board of the Company. In my view, their contentions are considered not credible and such an expenditure remains unsubstantiated.

Payment made to Seaman International Inc

60. The allegation is that the statutory auditor had neither provided the copies of invoices nor stated the nature of good bought/services availed from the vendor i.e. Seaman International Inc. for payment of ₹ 32,608 which was claimed as payment towards issue expenses. In this regard, the Noticees submitted that nature of expenses to

Seaman International Inc is courier charges and provided copies of relevant vouchers / invoice.

61. In this regard, I place reliance on the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the matter against TIL wherein he has held the following position:

"45. This is the last broad object on which IPO proceeds were meant to be utilized to the extent of ₹.70.98 lacs against which ₹.47.24 lacs is explained to have been incurred by Tarini as per their email dated April 04, 2016. I find that Investigation has not made any adverse findings nor any allegation has been leveled against the Noticees with regard to the utilization of the issue expenses, hence the same is not being discussed further in this order."

62. I note that there is no adverse inference in this regard in the order dated March 29, 2019, passed by the Whole Time Member, SEBI in the similar matter against TIL. I am, therefore, inclined to agree with the contention of the Noticees in this regard.

63. To sum up, it was observed that the company had incurred only ₹ 211.40 lakhs out of IPO proceeds for objects stated in the prospectus as against ₹ 1630.98 lakhs certified by the statutory auditor. The breakup of the same is as under:

Objects of the Issue	**Amount certified by Statutory Auditors in certificate dated May 30, 2015 (Rs. in lacs)**	**Actual amount for which statutory auditors provided the documents relied upon (Rs. in lacs)**	**Amount wrongly certified as alleged in the SCN (Rs. In lacs)**	**Amount wrongly certified as identified pursuant to inquiry (Rs. In lacs)**
To Finance long term incremental working capital requirements	888.38	14.90	873.48	833.00
Renovation and Interior of Registered office	159.28	2.70	156.58	156.58
Brand Building	72.95	54.02	18.93	0.00
General Corporate purposes	430	-	430.00	430.00
Issue expenses	80.37	80.05	0.32	0.0
Total	**1630.98**	**151.66**	**1,479.32**	**1,419.58**

64. In this case, as discussed hereinabove, it has been established that the Noticees have falsely certified unqualified Utilisation Certificate, containing distorted information, which they did not believe to be true but certified knowing that the same when published would be relied upon by the investors to be true and fair and aided TIL in permitting misleading information to be presented in the Utilisation Certificate forming part of the financial statements. I, therefore, find that by the aforesaid acts and omissions the Noticees aided and abetted TIL in disseminating the false information to be presented in the Utilisation Certificate to wrongfully influence the decision of the investors and, thus, their acts and omissions amount to aiding and abetting in the fraudulent, unfair and manipulative acts covered within the definition of "fraud" and “fraudulent” under regulation 2(1)(c) of the PFUTP Regulations which reads as follows:-

Definition of ‘fraud” – Regulation 2(1)(c).

(c)“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behaviour by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly."

65. Being fraudulent, unfair and manipulative the above acts and omissions attract the prohibitions contained in regulation 3 and 4 of the PFUTP Regulations read with sections 12A of the SEBI Act. The following rulings of the Hon'ble Securities Appellate Tribunal in matter of *V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal no. 104 of 2011)* would also be relevant in the context of this case:-*"… we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging in any act, practice, and 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 that are listed on stock exchanges."*

66. In view of the above, I find that the allegation of violation 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 PFUTP Regulations stand established and the Noticee is liable for penalty under regulation 15HA of the Act which reads as under:

Section 15HA of the SEBI Act, 1992 *is as follows:*

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

67. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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…".*

68. While determining the quantum of penalty under section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which read as under:-

> ***Section 15J** - **Factors to be taken into account by the adjudicating officer** While adjudging quantum of penalty under section 15, 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;*

69. I am of the view that disclosure of true and fair information is crucial for investor protection and to maintain and restore their confidence in the securities market. 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. In the facts and circumstances as discussed hereinabove, I find that material available on record are adequate enough to establish contravention of Sections 12 A (a),(b) and (c) of SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations as alleged in the SCN by the Noticees.

ORDER

70. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read

with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakh only) on the Noticees jointly and severally viz. VCG & Co. and Vishal Chandra Gupta in terms of 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 PFUTP Regulations. In my view, the aforesaid penalty is commensurate with the violation committed by the Noticee.

PENALTY PAYMENT OPTIONS

71. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - III [**EFD 1-DRA-3**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

72. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

73. In the event of failure to pay the said amount of penalty within 45 days of the receipt 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.

74. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 20, 2020
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER