

WTM/AB/IVD/ID5/20540/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sr. No.	Name of the Intermediary	Registration Number
1.	Comfort Securities Ltd. (Earlier known as Comfort Securities Pvt. Ltd.) Merchant Banker	INM000011328

In the matter of Ravi Kumar Distilleries Ltd.

1. The present proceedings have emanated from a show cause notice dated February 5, 2021 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Comfort Securities Ltd. (hereinafter referred to as “**Noticee**”/ “**CSL**”), under Section 12(3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”). The Noticee is a Merchant Banker registered with SEBI.
2. The SCN forwarded therewith a copy of an Enquiry Report dated December 31, 2020 (hereinafter referred to as “**ER**”) submitted by the Designated Authority

(hereinafter referred to as “**DA**”) and called upon the Noticee to show cause as to why action as recommended by the DA including passing of appropriate direction should not be taken against it in terms of the Regulation 27 of the Intermediaries Regulations.

3. The DA in the matter was appointed to conduct an enquiry against the Noticee, as pursuant to an investigation carried out by SEBI in the matter of Ravi Kumar Distilleries Ltd. (hereinafter referred to as “**RKDL**” / “**the Company**”), SEBI had *prima facie* found several irregularities and violations committed by the Noticee in connection with the Initial Public Offer (hereinafter referred to as “**IPO**”) of RKDL. After conducting the enquiry in the matter, considering the reply submitted by the Noticee and other material available on record, DA submitted the ER. The ER found that Noticee was involved in a fraudulent scheme to siphon off funds to the tune of Rs. 33.83 crore from the IPO proceeds of RKDL, and had thus violated Sections 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”). Further, it was found that the Noticee had failed to exercise due diligence, skill and independent professional judgment as the Merchant Banker to the IPO of RKDL and had therefore, violated Regulations 64(1) and 8(2) (b), (e) and (f) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”) (*since repealed*) as well as Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule III in the SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as “**MB Regulations**”). In view of this, the DA recommended that the certificate of registration of the Noticee as a merchant banker may be suspended for a period of one year.
4. A brief background of the matter, as can be deciphered from the ER, is as follows:

- a. RKDL came out with an IPO for issue of 1,15,00,000 equity shares of Rs. 10 each in December 2010. The IPO of RKDL opened for subscription on December 08, 2010 and closed on December 10, 2010. The issue price of the IPO was fixed at Rs. 64 per equity share, aggregating to Rs. 73.60 crore. The issue was subscribed by 2.16 times. The Book Running Lead Manager (hereinafter referred to as '**BRLM**') / Merchant Banker to the IPO was CSL, a SEBI registered Merchant Banker with registration no. INM000011328. Pursuant to the IPO, the scrip of RKDL was listed at BSE Ltd. (hereinafter referred to as '**BSE**') and National Stock Exchange (hereinafter referred to as '**NSE**'), on December 27, 2010.
- b. A news article appeared on the website of moneycontrol.com on December 21, 2011 which reported that a group company of the Noticee viz, Comfort Intech Ltd (hereinafter referred to as '**CIL**') had submitted a disclosure to BSE on December 05, 2011 that 51.77% of the shares of RKDL had been pledged with them. However, RKDL and its promoters made an announcement on December 21, 2011 vide their letter dated December 15, 2011 stating that no shares had been pledged by them with CIL. The Company also stated that CIL in connivance with the Noticee and Mr. Anil B Agarwal (Managing Director of the Noticee) had fabricated documents.
- c. The promoters of RKDL denied taking any loan from CIL or pledging shares of RKDL with CIL. RKDL further alleged that during the IPO process, Mr. Anil B. Agrawal, MD of the Noticee and also director of CIL routed Rs. 12 crore from RKDL to their associated/ connected benami companies by misusing the blank signed cheques and documents provided by the promoters of RKDL to Mr. Anil B. Agrawal.

- d. In view of the claims and counterclaims made by the Noticee, its associated companies and RKDL and its promoters, SEBI conducted an investigation in the matter. SEBI's investigation revealed that the Noticee, as a Merchant Banker to the IPO of RKDL, had not only failed to exercise due diligence and independent professional judgment but also acted in connivance with RKDL and its promoters, to siphon off an amount of Rs. 33.83 crore out of the IPO proceeds of RKDL (as on March 31, 2011), to certain entities including those who applied in the IPO of RKDL. Further, there were mis-statements and non-disclosures in the Prospectus of RKDL regarding bridge loans to be repaid from IPO proceeds, liability attached to the proceeds of the IPO and default in payment by Mr. Ravi Kumar (promoter and director of RKDL) with respect to a loan taken by him from the Union Bank of India.
5. After submission of the ER, an SCN was issued to the Noticee on February 5, 2021. The matter was placed before a Whole Time Member (WTM) for grant of hearing in the matter, however, hearing in the matter could not be conducted as the tenure of the WTM was coming to an end. Thereafter, the matter was placed before me for grant of personal hearing, on August 11, 2021. A personal hearing was scheduled for February 01, 2022. The Noticee filed a reply dated October 22, 2021. However, the Noticee did not appear for the hearing on February 01, 2022 and requested for an adjournment. The request of the Noticee was acceded to and the Noticee was granted another opportunity for hearing on March 08, 2021. The Noticee again requested for an adjournment and the same was also acceded to. Accordingly, another hearing was scheduled for April 04, 2022. The Authorised Representative (AR) of the Noticee appeared on the scheduled date and reiterated the submissions made in the reply dated October 22, 2021. The submissions of the Noticee, *inter alia*, are as follows:

- a. In the various disclosures (including quarterly disclosures and disclosures in Annual Report) made by RKDL post IPO, RKDL and its management had consistently disclosed that they have been utilizing IPO proceeds for 'Objects of Issue' and that by September 2011 the entire IPO proceeds of Rs.73.60 crores had been fully utilized by the Company. Pertinently, it may be noted that the said quarterly disclosures and the disclosure in the Annual Reports could not have been made without the knowledge and blessing of the directors of RKDL. Thereafter RKDL took a u-turn to state that the IPO proceeds had been siphoned off by CSL.
- b. The litigation by Union Bank of India and loan default by Shri Ravi Kumar was not in their knowledge at the time of filing the offer document. CSL had relied on the information provided by RKDL and its management personnel and all requisite due diligence was carried out by CSL as required by law.
- c. RKDL has trumped up a false story to cover the fact that the IPO funds were not utilised by them as consistently disclosed by them in the quarterly disclosures and various Annual Reports. In August 2013, for the first time RKDL in its Annual Report for the year 2012-13 made a disclosure that siphoning off has taken place from the IPO proceeds.
- d. CSL has followed all the processes and undertaken the due diligence and fulfilled all the obligations as a Merchant Banker as required in the ordinary course of business.
- e. CSL was not part of any siphoning off as alleged. It is implausible that Anil Agarwal (MD of the Noticee) had taken blank cheques from RKDL. The impugned loans were also disclosed in the Annual Reports of RKDL.

- f. The operations of both the companies viz. CSL and CIL were handled by independent group of professionals and strict confidentiality was being maintained in their operations. The operations of CSL and CIL were headed by Mr. Sarthak Vijlani and Mr. Praveen Naik, respectively, with separate dedicated teams.
- g. The role and responsibility of a BRLM is not of an investigator but of ensuring that all the disclosures as made available to it are duly made in the DRHP in a manner which is concise and at the same time, the same is true, adequate and fair based on the information provided by the issuer company. BRLM relies on the details/representations as submitted by Issuer Company and it is impossible for a BRLM to investigate into the authenticity and veracity of various books of accounts and other corporate records.
- h. There were no fund transactions between CSL and RKDL. The transactions between RKDL and other entities cannot have a bearing on CSL.
- i. There were no bridge loans taken by RKDL as alleged. All the funding that took place in the months of October to December 2010 were in the form of short-term working capital requirement.
- j. No funds were siphoned off through CSL and its connected/related entities and the only transaction that CSL had with these alleged connected entities were in capacity as a Stock Broker. All the transactions were legitimate investments done by its clients.
- k. CSL is also registered with SEBI as a broker and in that capacity acts as Syndicate Member in many public issues. Clients applying through CSL

cannot be alleged to be connected to it by any stretch of imagination and CSL cannot be held responsible for their activities.

- l. Out of the 33 entities with which connections are alleged, only 10 entities are connected to CSL by virtue of being clients of CSL, as CSL is also registered as a broker and a Depository Participant. Apart from these entities, it is submitted that CSL, its promoters and directors, do not have any relationship with the other 23 entities mentioned therein. It is denied that these entities acted as conduits to CSL and RKDL in the siphoning off/ routing the IPO proceeds by creating several layers for fund flow as alleged. There was no layering of funds. All the transactions between CSL and the 10 entities were bonafide and genuine transactions.
- m. The impugned fund transactions have to be appreciated in context of CSL being a Stock Broker and the fact that all the fund transactions are borne out by the contract notes, ledger statements maintained by CSL as a stock broker and the demat statements.
- n. The connections alleged qua the 10 entities are exceedingly peripheral in nature and same cannot result in finding that their actions are the actions of CSL or that CSL was one with those entities in the alleged siphoning off or being in any manner involved in their siphoning. The siphoning of IPO proceeds has been done entirely by RKDL itself on its own.
- o. CIL as an NBFC, was in the business of giving loans etc. Both, CSL & CIL are independent entities having their own corporate existence, management and operations. It is submitted that as a Merchant Banker, CSL had nothing to do with the NBFC activities of CIL.

- p. The theory of siphoning off as trotted out by RKDL cropped up for the first time only in August 2012 (i.e. consequent to queries of SEBI during the course of investigations) wherein RKDL, after siphoning off the IPO proceeds, cleverly dumped the blame for the same on Mr. Anil Agrawal (director of CSL). Significantly, it may be noted that, prior thereto, RKDL had inter alia consistently disclosed to the investors/ shareholders/ regulators at large that it has fully utilised the IPO proceeds.
- q. It is denied that CSL had any role to play in alleged movement of funds. RKDL and its directors were operating the bank accounts of RKDL. CSL as a merchant banker had no role to play in either raising of the funds by RKDL (by way of loan etc.) or the mode and manner of deployment of funds or in the repayment of funds etc. All the decisions with regard to the aforesaid were exclusively within the domain of RKDL and its directors. CSL has not received any funds from RKDL
- r. It would be too farfetched to believe that funds amounting to crores of rupees were being transferred in and out of the bank accounts of RKDL for months and RKDL was not aware of the same. As such it is clear that RKDL and its directors are responsible for siphoning of funds to the tune of Rs.33.83 crore out of the IPO proceeds.
- s. As regards the allegation that the prospectus failed to disclose the default of Ravi Kumar in repayment of the personal loans taken by him from Union Bank of India and the DRT proceedings filed by the Bank against him for the recovery thereof, it is reiterated that CSL was never informed of the same by Ravi Kumar or RKDL.
- t. There is nothing to demonstrate CSL's involvement in the alleged transfer of funds by various entities.

- u. Part financing the incremental working capital requirement was also given as an object of fund raising. So, by no imagination can it be inferred anything else than usage of funds by RKDL for object of the issue. Also settling of outstanding liabilities was also part of financing of incremental working capital. Further, the decision to pay the outstanding loan by RKDL from the IPO was an independent decision of RKDL management and was not informed to CSL at the time.
- v. The proceedings suffer from inordinate delay.

Consideration of submissions and findings:

- 6. I have taken into consideration the ER and the submissions of the Noticee.
- 7. At the outset, I note that the Noticee has submitted that the proceedings suffer from inordinate delay. I note that the investigation in the matter was initiated based on a news article that appeared on the website www.moneycontrol.com on December 21, 2011. The investigation was complex and involved examination of connections between more than 30 entities. As can be seen from paras 9 and 10, the connections were complex and could be established after detailed examination and thorough analysis of *inter alia* ownership structure, associate relationships and fund transactions between the entities. Sourcing of information and analysis of the same and establishing the connections was a time consuming process. The acts done by the entities involved, were done in a clandestine manner. The fund transfers amongst more than 30 entities took place during October 2010 and March 2011. The investigation could be completed only after examining more than 30 entities and the connections between these entities which also involved analysis of bank statements of these entities, after seeking them from various banks, which was a tedious and time consuming process. The

investigation in the matter could be completed in 2016. I note that an order dated March 12, 2019 was passed in related matter wherein the directors of the Noticee were debarred from accessing the securities market. An adjudication order was also passed in the matter on August 21, 2020 imposing penalties on various entities *inter alia* including the Noticee and its directors. Additionally, after completion of investigation, the pre-enquiry show cause notice was issued to the Noticee on September 30, 2016. The Noticee, upon receiving the pre-enquiry SCN requested for two months' extension to file its reply. However, even after passing of two months, no reply was submitted by the Noticee, and a reminder dated January 2017 was sent to the Noticee by the DA. The Noticee again sought an extension of a month vide its letter dated March 16, 2017, and the request of the Noticee was acceded to by the DA. However, no reply was received from the Noticee. Instead the Noticee again sought for a month's time vide letter dated April 12, 2017. The DA advised the Noticee to submit its reply latest by May 14, 2017 and also scheduled a hearing on May 23, 2017. The Noticee submitted a reply dated May 17, 2017 but requested that the personal hearing be adjourned. After the DA submitted his report dated December 31, 2020, the matter was placed before the then WTM on January 18, 2021, as noted above. However, due to the tenure of the then WTM coming to an end the matter was placed before me on August 11, 2021 for granting a date of hearing. As mentioned above in paragraph 5 above, hearings were scheduled for February 01, 2022 and March 08, 2021 and were adjourned at the request of the Noticee. After a number of adjournment in the matter availed by the Noticee, the hearing was finally completed on April 04, 2022. I note that all supporting documents relied upon in the SCN have been provided to the Noticee. Further, I note that in its reply, the Noticee has merely expressed its inability to defend itself, without specifically pointing out the prejudice, if any, that has been caused to it due to the purported delay in the issuance of the SCN. The Noticee has failed to state as to what record/ document/ evidence that could not be accessed/ obtained because of the alleged passage of time which has prejudiced its ability to defend itself. I also

note that the Noticee has filed detailed submissions in the matter. On the other hand, I note that SEBI Act, 1992 and the regulations framed thereunder have got a larger public purpose in the form of investor protection. Having this objective in mind and the fact that financial frauds are committed in a clandestine manner, legislature itself has not put any limitation period on initiating action. This purposes would stand defeated, if the manipulators are allowed to go scot free as the manipulators operate in a clandestine and sophisticated manner and detection of such violations is not easy. In view of the above facts, I find that no prejudice has been caused to the Noticee, nor has the Noticee been able to make out a case about the prejudice due to the purported delay in the issue of the SCN. Thus, I find the contention of alleged delay in issuance of SCN, is not sustainable in the facts and circumstances of the present case.

8. Proceeding further, I note that the allegation against the Noticee is that it had failed to exercise due diligence and independent professional judgment as the Merchant Banker to the IPO of RKDL. Further, the Noticee is also alleged to have acted in connivance with RKDL and its promoters, to siphon off an amount of Rs. 33.83 crore out of the IPO proceeds of RKDL (as on March 31, 2011), to certain entities including those who applied in the IPO of RKDL. The entities like CIL, Ranisati Dealer Pvt Ltd (hereinafter referred to as '**Ranisati**'), BLC Trading and Agencies Pvt Ltd (hereinafter referred to as '**BLC**'), Fact Enterprise Ltd (hereinafter referred to as '**FACT**'), Radhasoami Securities Pvt Ltd (hereinafter referred to as '**Radhasoami**'), Gulistan Vanijya Pvt Ltd (hereinafter referred to as '**Gulistan**'), Albright Electricals Pvt Ltd (hereinafter referred to as '**Albright**'), Vibhuti Muti Trade Pvt Ltd (hereinafter referred to as '**Vibhuti**'), Grafton Merchant Pvt Ltd (hereinafter referred to as '**Grafton**'), Sukusama Trading and Investments Pvt Ltd (hereinafter referred to as '**Sukusama**'), Heranba Finvest Services Pvt Ltd (hereinafter referred to as '**Heranba**') and Gaungour Suppliers Pvt Ltd (hereinafter referred to as '**Gaungour**'), who were connected with the Noticee, had allegedly aided and abetted the Noticee in siphoning off the IPO proceeds

and the above entities acted as layers and conduits in the movement of funds and routing of IPO proceeds to the allottees in the IPO of RKDL. Further, there were mis-statements and non-disclosures that were made in the Prospectus of RKDL regarding bridge loans to be repaid from IPO proceeds, liability attached to the proceeds of the IPO and default in payment by Mr. Ravi Kumar (promoter and director of RKDL) w.r.t. loan taken by him from the Union Bank of India.

9. As per the ER, the Noticee and CIL along with certain other entities, namely, Luharuka Exports Private Limited, Anil Agarwal HUF, Splash Media Infra Ltd. (SMIL) and Bhrosemand Commodities Private Limited are part of the same group and have been referred to as the 'Comfort Group'. The connections amongst these entities have been brought out in the table below:

Entities connected	Connection
1. Noticee	Anil Agrawal, Annu Agrawal and CIL are the promoters of the Noticee.
2. CIL	
3. Luharuka Exports Private Limited	Anil B. Agarwal, Annu Anil Agarwal, Jugal C. Thacker and Bharat N. Shiroya are four common directors of CIL and the Noticee.
4. Anil Agarwal HUF	
5. SMIL	Anil Agarwal is the MD of CIL and CSL (Noticee)
6. Bhrosemand Commodities Private Limited	- Shri Anil B. Agarwal and Annu Anil Agarwal are the common directors of Noticee, CIL and Luharuka Exports Private Limited. - Luharuka Exports Private Limited is an associate company of the Noticee
	Anil B. Agarwal is the Karta of Anil Agarwal HUF and director/promoter of the Noticee and CIL.
	Anil Agarwal HUF and CIL are the promoters of SMIL
	Bhrosemand Commodities Private Limited became promoter and took control of SMIL on March 06, 2010.

10. The connections of the Noticee/ Comfort Group with other entities through whom funds were routed to IPO allottees, are brought out below:

Sr. No.	Entities connected	Connection
1	• Comfort Group • FACT	• Anil B. Agarwal is the Karta of Anil Agarwal HUF and director/promoter of the Noticee and CIL. • FACT had allotted convertible warrants through preferential offer to Anil Agrawal HUF. Pursuant to conversion of warrants on 16/05/2010 and 24/05/2010, Anil Agarwal HUF became 13.095% shareholder of FACT. • FACT has submitted that Mr. Anil B. Agrawal is their financial consultant and entire preferential share application money was solicited and arranged by him. • SMIL transferred funds to Rajiv Kashyap who is the director of FACT.
2	• Comfort Group • Sukusama	• Amit Kumar Khemka, director of Noticee and brother-in-law of Anil B. Agrawal, was director of Sukusama during period August 02, 2007 to February 06, 2010. • Further, Amit Kumar Khemka was also holding shares of Sukusama as on Sep 30, 2010 and Sep 29, 2012. • E-mail Id of Sukusama, as per Form 32 filed on Aug 06, 2010 and Sep 03, 2010, is amit@comfortsecurities.co.in. • Further, from the Form 32 of Sukusama which was filed pursuant to Board resolution dated Aug 02, 2007, for appointment of Monika Khemka and Amit Kumar Khemka, has been certified by Anil B. Agrawal.
3	• Comfort Group • Sukusama	• Kailash Chandra Sharma was the common director of SMIL (director during the period 16/03/2010 to 30/05/2014) and Sukusama (director during the period

		10/04/2010 to 24/06/2011). Further, address of Sukusama (as per PNB A/c no. 1218002100031478) and SMIL (as per Union Bank of India A/c no. 317904010060458) is same, viz., Pyarelal Bldg, Near Infant Jesus School, Chincholi Bunder Road, Malad (W), Mumbai - 400064.
4	• Comfort Group • Suvidha Securities Pvt. Ltd. (Suvidha) • Albright	• Chandrakala Purohit (director of Noticee) is daughter of Jagadish Prasad Purohit, who is director of Suvidha. • The address of Chandrakala Purohit, Jagadish Prasad Purohit and Anil Kumar Purohit (director of Albright and Suvidha) is common viz., 6/1, Bijoy Mukherjee Lane, Kolkata- 700025. • Suvidha received/ transferred funds from/ to Luharuka Export Pvt Ltd (associate company of Noticee and CIL with common directors and promoters) and Annu Agrawal (wife of Anil Agrawal and director of CIL and Noticee), • Annu Agrawal received/ transferred funds from/ to Suvidha • Anil Kumar Purohit is common director of Albright and Suvidha.
5	• Comfort Group • Padma Impex Private Limited (Padma)	• Anil B. Agrawal transferred funds to Padma. • Annu Agrawal (who is director of CIL and the Noticee and also wife of Anil B. Agrawal) received/ transferred funds from/ to Padma.
7	• Comfort Group • Gulistan • Gaungour	• Sarbeswar Parida is/ was common director of Gulistan, Bhrosemmand, and Gaungour.
8	• Comfort Group • Grafton • Albright • Gaungour	• Address of Grafton, Albright, Bhrosemmand, one of the directors of Gaungour viz, Puspall Chandra and one of the directors of Albright viz, Dhruva Narayan Jha is

		common i.e., P-27 Princep Street, 3rd Floor, Kolkata, West Bengal- 700072. • Raj Kumar Purohit was common director of Grafton (cessation on 18/03/2010) and Albright. • Albright was one of the shareholders of Grafton as on Sep 30, 2009. • Grafton received/ transferred funds from/ to Gulistan and Albright
9	• BLC • Suvidha	• BLC received/ transferred funds from/to Suvidha.
10	• BLC • Ranisati	• While BLC has submitted that it had given Rs 3.51 crore to Ranisati as advances, no interest has been charged in respect of transactions between them.
11	• BLC • FACT	• As per Annual Report of FACT for FY 2011-12, FACT had given long term loans & advances to BLC.
12	• BLC • Gaungour	• One of the directors of BLC viz, Mukesh P Chouhan transferred funds to Gaungour.
13	• FACT • Ranisati	• FACT had allotted convertible warrants through preferential offer to Ranisati. Pursuant to conversion of warrants on 16/05/2010 and 24/05/2010, Ranisati became 13.095% shareholder of FACT.
14	• FACT • Sukusama	• Heading of the Annual Return form of Ranisati, filed pursuant to AGM dated Sep 29, 2012, is given as "Annual Return of Sukusama Trading & Investments Private Limited".
15	• Ranisati • Padma	• As on Sep 30, 2010 and Sep 30, 2011, Ranisati was holding 15.73% shares of Padma.
16	• Ranisati • Padma	• Ranisati received/ transferred funds from/to Padma
17	• Ranisati • Suvidha	• Ranisati Dealer received/ transferred funds from/to Suvidha

18	• Ranisati • Gaungour	• Rasika Sakpal, director of Ranisati received/ transferred funds from/to Gaungour
19	• Ranisati • S5 Trading Pvt. Ltd (S5 Trading)	• Rasika Sakpal, director of Ranisati received/ transferred funds from/to S5 Trading.
20	• Gulistan • Suvidha • Vibhuti	• Gulistan and Suvidha Securities were shareholders of Vibhuti as on Sep 29, 2009. • Address of Suvidha (as per Kotak Mahindra Bank A/c no. 09612000003224 statement_ and one of the directors of Vibhuti, viz Ramavatar Prajapati (during 22/12/2006 to 20/01/2011 was same, viz., 105 Sagar Shopping Center, J P Road, Andheri West, Mumbai-400 058.
21	• Gulistan • Grafton • Gaungour	• Gulistan received/ transferred funds from/ to Grafton and Gaungour,
22	• FACT • Gaungour	• As per Annual Report of FACT for FY 2011-12, FACT had given long term loans & advances to Gaungour. • FACT received/ transferred funds from/ to Gaungour
23	• Gaungour • Gulistan • CIL • S5 Trading • FACT • BLC	• Gaungour received/ transferred funds from/ to Gulistan, CIL, S5 Trading, Rasika Sakpal (director of Ranisati Dealer), FACT and Mukesh P Chouhan (director of BLC)
24	• FACT • Heranba	• An amount of Rs 2.75 crore as on March 31, 2011 and March 31, 2012 is shown as long term loans & advances given by FACT to Heranba. • FACT received/ transferred funds from/to Heranba
25	• FACT	• FACT has given long term loans & advances to Padma

	• Padma	• FACT received/ transferred funds from/ to Padma
26	• FACT • Suvidha	• FACT has given long term loans & advances to Suvidha.
27	• Sukusama • Radhasoami	• Onesource Business Services Pvt Ltd and Maheswari Finance Co. Pvt Ltd were the common shareholders of Sukusama (as on Sep 30, 2010 and Sep 29, 2012) and Radhasoami (as on Sep 30, 2009). • Jhunjhunwala Marketing & Services Pvt Ltd was common shareholder of Sukusama (as on Sep 30, 2010 and Sep 29, 2012) and Radhasoami Securities Pvt Ltd (as on Sep 30, 2009 and Sep 26, 2011).
28	• Sukusama • Radhasoami	• Suvidha was shareholders of Radhasoami as on Sep 30, 2009
29	• Comfort Group • Uday P. Shah	• Uday P Shah received funds from CIL.
30	• Everready Marketing	• Off market transfers between Everready Marketing and Padma in the scrip of Ravi Kumar Distilleries Ltd.
31	• Comfort Group • BLC	• E-mail Id of BLC and CIL, as per Forms 23AC for FY ended March 2007 as obtained from MCA records, is comfortin@vsnl.com. • Form 20B and Form 23AC of BLC for FY ended March 2008 has been certified by Anil B Agrawal.
32	• Comfort Group • Sukusama	• E-mail Id of Sukusama, as per Form 32 filed on Aug 06, 2010 and Sep 03, 2010, is amit@comfortsecurities.co.in.
33	• Comfort Group • BLC • Padma • Sukusama • Ranisati	• BLC, Bhrosemand, Padma, Sukusama and Ranisati are/ were having the same e-mail Id viz., pkc.mumbai@gmail.com, as per MCA records.

34	• Gulistan, • Gaungour, • Albright, • Grafton, • Suvidha • Vibhuti	• Gulistan, Gaungour, Albright, Grafton, Suvidha and Vibhuti are/ were having the same e-mail Id, viz., dhruvonarayan.jha@rediffmail.com, as per MCA records.
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11. The ER notes that the Noticee and Comfort Group were connected to the entities mentioned in the table above through common directors, common promoters, common addresses, common emails, shareholdings and fund transfers. The Noticee in his reply has not denied the aforesaid factual connections, but has stated that the connections are tenuous. However, I am unable to agree with the same as it is clear that the aforementioned entities were associated with each other and the Noticee in multiple ways, as mentioned in the table above.

Funds movement prior to the IPO of RKDL

12. The ER notes that SEBI's investigation revealed that prior to the opening of the IPO of RKDL on December 08, 2010, there were several transactions in the bank account of RKDL prior to the opening of its IPO. These transactions had taken place between RKDL and other entities, namely, CIL, FACT, BLC and Ranisati, as detailed below:
- a. RKDL received Rs. 2 crore from CIL on October 08, 2010
 - b. RKDL received Rs. 4.79 crore from CIL on November 25, 2010, and transferred the same amount to BLC on the same day.
 - c. On November 25, 2010, RKDL again received Rs. 4.65 from CIL, and transferred the same to Ranisati on the same day.
 - d. RKDL further received Rs. 16 lakh on November 29, 2010, Rs. 37 lakhs on December 01, 2010, Rs. 42 lakh and Rs. 12 lakh on December 06, 2010 from CIL and Rs. 20 lakh on December 08, 2010 from CIL.

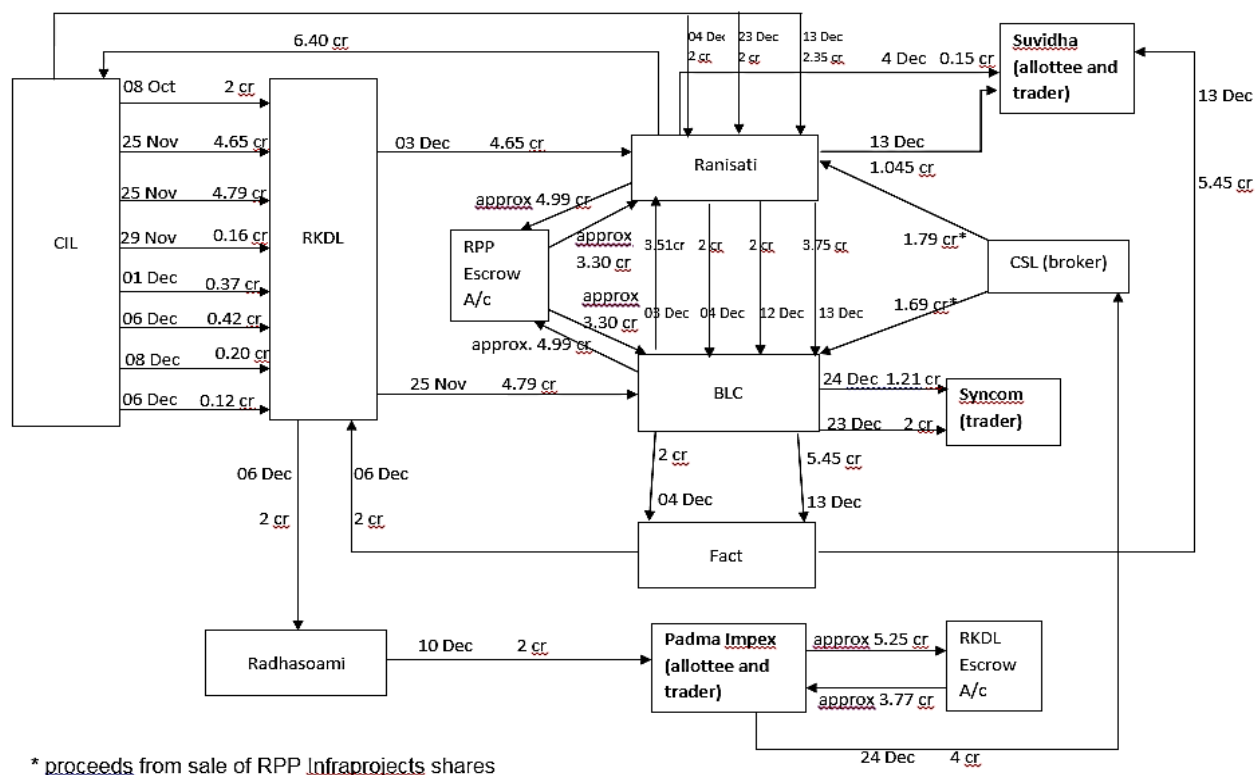
- e. On December 06, 2010, RKDL received Rs. 2 crore from FACT and on the same day transferred the same amount i.e. Rs 2 crore to Radhasoami.
13. Funds were transferred to and from RKDL, CIL and other connected entities prior to the opening of the IPO in a circuitous manner as described below:
- a. RKDL transferred Rs 4.79 crore to BLC on November 25, 2010 and on the same day BLC transferred an amount of Rs. 4,99,98,000.00 to the Escrow account of RPP Infraprojects Ltd (hereinafter referred to as '**RPP Infra**'). BLC received Rs. 3,30,82,575.00 on December 03, 2010 from RPP Infra and on the same day, BLC transferred Rs. 3.51 crore to Ranisati.
 - b. RKDL transferred Rs. 4.65 crore to Ranisati on November 25, 2010 and on the same day, Rs. 4,99,98,000.00 was transferred from the account of Ranisati to the Escrow account of RPP Infra. On December 03, 2010, Ranisati received an amount of Rs. 3,30,82,575.00 from RPP Infra and an amount of Rs. 3.51 crore from BLC (as noted at point 'a' above).
 - c. Ranisati transferred Rs. 15 lakh on December 04, 2010 to an entity called Suvidha, which had applied in the IPO of RKDL and had also traded in the scrip of RKDL.
 - d. Ranisati on December 03, 2010 transferred Rs 6.40 crore to CIL. CIL returned Rs. 2 crore to Ranisati on December 04, 2010. On the same day i.e. December 04, 2010, Ranisati transferred this amount of Rs. 2 crore to BLC, which was transferred by BLC to FACT on the same day. Subsequently, FACT also transferred the amount of Rs. 2 crore to RKDL on December 06, 2010.

- e. CIL, from its account with Union Bank of India (A/c no. 318001010036374) further transferred Rs 2.35 crore to Ranisati on December 13, 2010. The said Union Bank Account was a joint account of CIL, Annu Anil Agarwal and Anil B. Agarwal.
- f. CSL (Noticee) who was the broker of Ranisati, transferred Rs 2.15 crore to Ranisati on December 23, 2010 as pay-out of sale of shares. Of this amount, Rs 1.79 crore was from sale of 2,25,539 shares of RPP Infra allotted to Ranisati in the IPO of RPP Infra. Ranisati transferred Rs 3.75 crore to BLC and Rs 1.045 crore to Suvidha on the same day, i.e., December 13, 2010. Thus, Suvidha received Rs 15 lakh on December 04, 2010 and Rs 1.045 crore on December 13, 2010 from Ranisati, as noted above.
- g. CSL also transferred Rs 1,68,98,339 to BLC on December 13, 2010 as pay-out for sale of 2,25,539 shares of RPP Infra allotted to BLC in the IPO of RPP Infra. BLC transferred Rs 5.45 crore to FACT and FACT transferred Rs 5.45 crore to Suvidha on the same day.
- h. Suvidha transferred an amount of Rs 6,49,98,400 to the escrow account of RKDL on December 14, 2010 as it had applied for 10,15,600 shares in the IPO of RKDL. Suvidha was allotted 2,85,201 shares of RKDL for an amount of Rs 1,82,52,864. On December 20, 2010, Suvidha received Rs 4,67,45,536 for RKDL's IPO refund. On December 23, 2010, Suvidha transferred Rs 4.65 crore to Religare Securities (its broker) towards purchase of shares of RKDL. Suvidha bought 8 lakh shares of RKDL for around Rs 6.63 crore and sold 6 lakh shares for around Rs 4.78 crore on December 27, 2010, i.e. the date of listing of RKDL shares. Further, Suvidha also purchased 6,55,362 shares of RKDL for appx. Rs 5.31 crore and sold

2,41,434 shares for around Rs 1.98 crore during December 28-29, 2010.

- i. As stated above, CIL transferred Rs 2 crore to Ranisati on December 23, 2010 from its Union Bank of India account. On the same day, Ranisati transferred Rs 2 crore to BLC, which in turn transferred the same amount, i.e., Rs 2 crore to Syncom on the same day. Syncom had also received Rs 1.21 crore from BLC on December 24, 2010 and purchased 4.3 lakh shares of RKDL for a total value of around Rs 3.66 crore on December 27, 2010 i.e. the listing day of scrip of RKDL.
 - j. RKDL transferred Rs.2 crore to Radhasoami on December 06, 2010. On December 10, 2010, Radhasoami transferred the same amount (i.e. Rs. 2 crore) to Padma. On December 13, 2010, Padma transferred Rs 5,24,99,200.00 to the Escrow account of RKDL. Padma was allotted 2,30,359 shares of RKDL and received RKDL IPO refund of Rs. 3,77,56,224.00. On December 24, 2010, Padma transferred Rs 4 crore to the Noticee (who was broker of Padma) for buying shares of RKDL on the day of listing. Padma purchased 13,56,786 shares of RKDL for around Rs 11.52 crore and sold 10,71,786 shares for around Rs 8.95 crore on December 27, 2010, i.e. the listing day.
14. The above fund transactions, which took place prior to the receipt of IPO proceeds is given in a pictorial form below:

Fund movement prior to receipt of IPO proceeds



15. From the above fund transfers, it was noted that:
- A total amount of Rs. 12.71 crore was transferred by CIL to RKDL on various dates viz. October 08, 2010, November 25, 2010, November 29, 2010, December 01, 2010, December 06, 2010 and December 08, 2010.
 - Rs. 6.40 crore was received back by CIL from RKDL through Ranisati and BLC on December 03, 2010.
 - Out of this amount, Rs. 2 crore was transferred by CIL through Ranisati, BLC, FACT, RKDL and Radhasoami to Padma, which was an allottee in the IPO of RKDL and had also traded in the shares of RKDL post IPO.

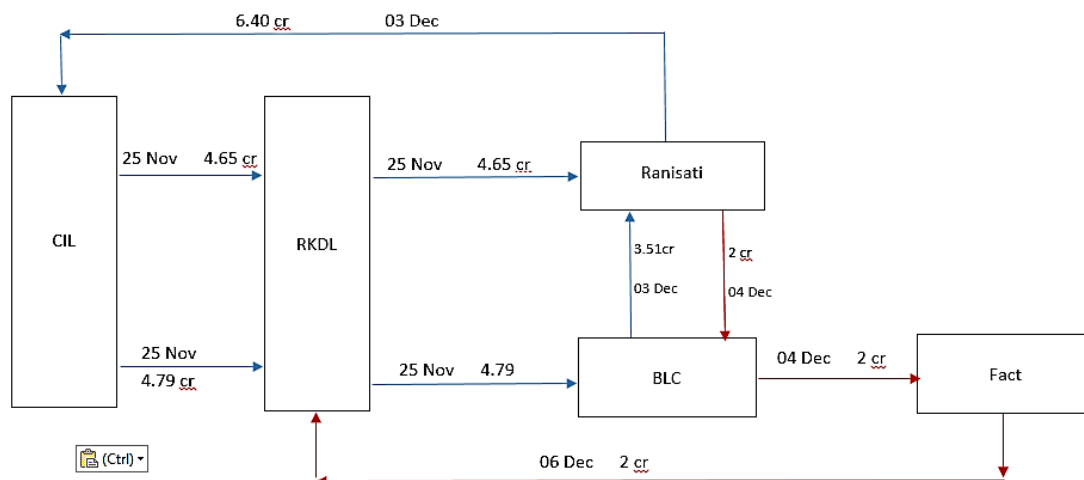
- d. CIL also transferred Rs. 2.35 crore to Ranisati, which was then routed through BLC and FACT to Suvidha. Suvidha was an allottee in the IPO of RKDL and also traded in the shares of RKDL post IPO.
 - e. Rs 3.48 crore from the sale of RPP Infra shares, allotted to BLC and Ranisati in IPO of RPP Infra, were also routed to Suvidha. BLC and Ranisati had applied in the IPO of RPP Infra from the funds received from RKDL. Further, it is observed that the Noticee was one of the syndicate members in the IPO of RPP Infra.
 - f. CIL transferred Rs 2 crore to Ranisati, which was again transferred through BLC to Syncom. Syncom was one of the net buyer of RKDL shares on the listing day.
 - g. Hence, funds were routed to Suvidha (Rs 0.15 crore + Rs 2.35 crore + approx. Rs 3.48 crore), Padma (Rs 2 crore) and Syncom (Rs. 2 crore) who were allottees/ traders in the scrip of RKDL, prior to the receipt of IPO proceeds by RKDL.
16. The IPO closed on December 10, 2010 and RKDL received Rs 40.35 crore on December 23, 2010, Rs 15.50 crore and Rs 16.50 crore on December 24, 2010, totaling Rs 72.35 crore as IPO proceeds. The IPO proceeds were received by RKDL in its Axis Bank Account (escrow account). From the bank account statement it was observed that out of the IPO proceeds amounting to Rs. 72.35 crore received in the escrow account of RKDL, only Rs. 34.8 crore was transferred to the bank account of RKDL (a/c no. 00000010397621613) maintained with SBI. From the account statement it is further seen that the

remaining amount of Rs. 37.28 crore was transferred to various other entities (most of which are/ were connected/ related to the Noticee).

Artificial liability in the books of RKDL

17. As noted above, on November 25, 2010, CIL transferred Rs. 4.65 crore and Rs. 4.69 crore to RKDL, creating a loan liability (i.e. Rs. 9.44 crore out of the total Rs. 12.71 crore received by RKDL from CIL during the period October 08, 2010 to December 13, 2010). The amounts of Rs. 4.65 crore and Rs. 4.69 crore were further transferred by RKDL to Ranisati and BLC, respectively, on the same day without any business rationale. Ranisati and BLC (through Ranisati) in turn transferred Rs. 6.40 crore to CIL. Hence, this amount of Rs. 6.40 crore was transferred from the account of RKDL to the account of CIL through layered transactions, and should have reduced RKDL's loan liability to CIL. However, in reality, the loan liability of Rs. 12.71 crore remained unchanged and Rs.6.4 crore was transferred from RKDL to CIL through layered transactions, resulting in round tripping of funds. The unchanged liability was reflected in the books of RKDL prior to its IPO. The total loan of Rs. 12.71 crore was later repaid by RKDL using the IPO proceeds. However, the effective liability of RKDL towards CIL was only Rs. 6.31 crore (as Rs. 6.40 crore was already transferred back to CIL by RKDL). Thus, a false liability was shown in the books of RKDL prior to its IPO.
18. Further, out of Rs. 9.44 crore received from RKDL on November 25, 2010 by Ranisati and BLC (out of which Rs. 6.40 crore was transferred back to CIL), Rs. 2 crore was transferred to FACT on December 04, 2010. Subsequently, on December 06, 2010, Rs. 2 crore was transferred from FACT to RKDL as a bridge loan. A loan liability of Rs. 2 crore towards FACT was created in the books of RKDL due to the same. However, as noted, the source of this amount of Rs. 2 crore was RKDL itself. As a result, an artificial liability of Rs. 2 crore was created in the books of RKDL.

19. Hence, a fictitious loan liability totaling Rs.8.4 crore (liability of Rs. 2 crore to FACT and Rs.6.4 crore to CIL) was created, whereas actually these funds emanated from RKDL itself. These 'loans' were settled using IPO proceeds, and in this manner IPO proceeds of RKDL were siphoned off to the tune of Rs.8.4 crore. The round tripping of funds is depicted in a pictorial form below:



20. Therefore, fictitious loan liability totaling Rs. 8.4 crore (Rs. 6.4 towards CIL and Rs. 2 crore towards FACT) was created in the books of RKDL with the help of entities connected to the Noticee.

Mis-statements in the prospectus of RKDL

21. As noted above, RKDL had received Rs. 12.71 crore from CIL between October 08, 2010 and December 13, 2010 (i.e., prior to the receipt of IPO proceeds by RKDL). RKDL repaid around Rs. 12.88 crore out of the IPO proceeds to CIL on December 24, 2010. On December 06, 2010 RKDL also received Rs. 2 crore from FACT (i.e., prior to receipt of IPO proceeds by RKDL), and repaid Rs. 2.01 crore to FACT on December 24, 2010 out of the IPO proceeds. The ER notes that FACT and CIL had stated that these amounts were given as loan to RKDL. However, in the prospectus of RKDL dated December 14, 2010, at point no.8,

under the head 'Notes forming part of the capital structure' (Page 48), it was disclosed that:

'Our Company has not raised any bridge loans against the proceeds of this Issue.'

22. Further, at page 190 of the prospectus of RKDL, under the head 'Material Development' it has been disclosed that -

'In the opinion of the Board of Directors of our Company, there have not arisen, since the date of the last audited financial statements disclosed in this Prospectus, any circumstances that materially or adversely affect or are likely to affect our profitability or value of assets or our ability to pay material liabilities within the next twelve (12) months. In accordance with SEBI requirements, our Company and the BRLM will ensure that investors in India are informed of material developments until such time as the grant of listing and trading permission by the Stock Exchanges.'

23. However, as noted above, there was an outstanding liability of approximately Rs. 14.89 crore (loans taken by RKDL from CIL and FACT), amounting to 20.23% of the total size of the IPO of RKDL. Hence, there was a liability of Rs 14.89 crore attached to the capital raised by RKDL by way of IPO proceeds. The same is a material fact and should have been disclosed to the investors through the prospectus.
24. The Noticee has not denied knowledge of these loans. However, the Noticee has stated that they had been informed by RKDL that the same was a short-term loan liability taken for temporary working capital requirements and that the loan would be repaid shortly and is availed on a need basis. The Noticee further stated that RKDL had not stated that it would be repaying the loans raised out of the IPO proceeds and in view of the same, the loans were not seen as material for disclosure in the prospectus.
25. I am of the view that as the BRLM, the Noticee was expected to carry out an independent judgement and due assessment of facts regarding disclosure of

such loans before finalizing the Prospectus of RKDL and not simply accepted such an explanation from RKDL. Further, given the size of loan, and the fact that it amounted to more than 20% of the size of the IPO and was outstanding at the time of the IPO should have indicated to the Noticee that the same were relevant for disclosure in the prospectus.

26. I also note that Mr. R. V. Ravikumar, one of the promoter directors of RKDL, had availed loans for Vanilla Cultivation and also a Car loan from Union Bank of India, T. Nagar, Chennai branch. The outstanding with interest upto September 30, 2011 on these loans was Rs 1,99,96,113.00. The ER notes that Mr. R. V. Ravikumar defaulted on the loans. Thereafter, his accounts were classified as Non-Performing Assets with effect from December 2009 by Union Bank of India. Further, a suit before the Debts Recovery Tribunal (DRT), II Chennai was filed by the bank for recovery of dues. However, I note that there was no disclosure of these borrowings in the IPO Prospectus of RKDL.
27. The Noticee, has submitted it was not aware of any litigation by Union Bank of India at the time of filing the offer document. The Noticee has also submitted that it relied on the information provided by RKDL and its management personnel. I note that the conduct/misconduct of promoter and director of any company is of paramount importance to the investors of that company. Since the same was not disclosed, I am of the view that, CSL, as BRLM, failed to conduct an independent due diligence with respect to the prospectus of the IPO of RKDL.
28. The Noticee has stated that Mr. Sarthak Vijlani was the overall in-charge of the Merchant Banking operations of the Noticee at the relevant time. Be that as it may, the same cannot discharge the Noticee of its duties as a Merchant Banker. The Merchant Banker has not been able to show that it made any efforts to determine what were the material facts that would affect the interest of the investors. On the contrary, it simply accepted the explanations offered by RKDL

and ignored the obvious facts. If material facts and information are suppressed, it puts investors, who make their investment decisions on the basis of the disclosures in the offer document, at a disadvantage and affects the integrity of the market as a whole. Hence, the Noticee has failed to exercise due diligence while handling the IPO of RKDL.

29. Hon'ble SAT in the matter of *Keynote Corporate Services Ltd. Vs SEBI* (order dated February 19, 2014) held:

"...Due diligence on part of Merchant Banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. It is about making an active effort to find out material developments that would affect interest of investors. It is on faith that intermediary has conducted due diligence with utmost sincerity that investing public goes forward and decides to invest in a particular company.

...As a matter of fact he is responsible for adequacy and veracity of all disclosures in all documents pertaining to issue of IPO, since as BRLM / Merchant Banker solemn duties are cast on him and for justifying the same he has to play a pro-active role by looking into authenticity of various matters/disclosures/statements, etc. contained in prospectus;

.... BRLM has to bring out documents pertaining to IPO so that investors can take judicious and informed decisions on subscription to IPO and thus he is responsible for failing investor's trust in prospectus of ESL for IPO and for doing considerable higher damage to securities market....

...this Tribunal expects better standards of performance from professionals, who charge reasonably good fee from clients and who bring out documents prospectus in this case), which are relied on by investors, at large, to take informed decisions regarding investments in scrips / IPO and this standard of professionalism should be higher than a reasonable man with ordinary prudence will demonstrate in the matter of due diligence

.... ensuring the truth and correctness of the letter of offer is a fundamental responsibility of the merchant banker which he has to discharge by exercising due diligence. In fact, an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator..."

30. A Merchant Banker is expected not to passively disclose whatever is given to it by the issuer. The Merchant Banker, rather, is expected to exercise reasonable diligence and to ensure adequate, true and fair disclosures in the Prospectus. The Noticee did not adhere to the high standards expected of a Merchant Banker and failed to exercise due diligence, skill, proper care, and independent professional judgment while acting as BRLM in the IPO of RKDL, which led to investors being deprived of material information. Therefore, I find that Noticee has violated the provisions of Regulations 64(1) and 8(2) (b), (e) and (f) of ICDR Regulations and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule III in the Merchant Banker Regulations.

SIPHONING OF FUNDS

31. The ER observes that a fraudulent scheme had been devised by RKDL and the Noticee to siphon funds to the tune of Rs. 33.83 crore from the IPO proceeds of RKDL. As noted above, RKDL had taken loans prior to its IPO, which were repaid using the funds from the IPO proceeds. However, the amounts received as loan were not actually used for any business purpose but rather transferred back to these entities connected to the Noticee through multiple layers and in a circuitous manner. A summary of the alleged siphoning off of funds out of IPO proceeds of RKDL till March 31, 2011 is given below:

SI. No.	Entities through which funds were siphoned off	Amount siphoned off (Rs.)
1	BLC, Ranisati, CIL and FACT	5.28 crore (4.79 crore + 0.49 crore)
2	Ranisati, CIL and FACT	9.55 crore (4.65 crore + 4.90 crore)
3	Radhasoami	2 crore
4	Gulistan Vanijya Pvt Ltd	4 crore
5	Vibhuti, Grafton, Albright and Gulistan	2.25 crore

6	Sukusama	3 crore
7	Heranba	5 crore
8	Gaungour, Grafton and Albright	2.75 crore
Total		33.83 crore

Siphoning through CIL, BLC, FACT and Ranisati

32. As noted above, CIL had transferred a total of Rs. 12.71 crore to RKDL prior to the receipt of IPO proceeds by RKDL. This included a sum of Rs. 4.65 crore and Rs. 4.79 crore on November 25, 2010. On the very same day, RKDL transferred Rs. 4.79 crore to BLC, and BLC transferred Rs 4,99,98,000/- to the Escrow account of RPP Infra. Thereafter, BLC received Rs 3,30,82,575/- from RPP Infra, and transferred Rs 3.51 crore to Ranisati on the same day. In turn, Ranisati transferred Rs 6.40 crore to CIL on the same date. Further, on January 3, 2011 RKDL transferred Rs.50 lakh to BLC and BLC transferred the entire amount to its broker, Fairwealth Securities Ltd. Rs. 49 lakh was received back by RKDL from BLC.
33. The ER notes that the rationale behind the above transactions was sought from BLC during investigation. Whereas in one instance BLC stated that the money was received from RKDL for purchase of shares of SMIL, in another letter BLC stated that the money was received from RKDL for application by shares of BLC. Hence, it was noted that BLC made contradictory statements regarding the reason for the fund transfers.
34. Further, the balance amount of Rs. 4.65 crore received by RKDL from CIL on November 25, 2010, was transferred on the same day itself to Ranisati. In turn, Ranisati transferred Rs. 4,99,98,000.00 to the Escrow account of RPP Infra on the same day. Ranisati received Rs. 3,30,82,575.00 back from RPP Infra as well Rs 3.51 crore from BLC on December 03, 2010. On the same day, Ranisati transferred Rs 6.40 crore to the account of CIL. Ranisati also transferred Rs 15

lakh on December 13, 2010 to the account of Suvidha. As noted above, Suvidha had applied in the IPO of RKDL and had also traded in the scrip of RKDL.

35. On December 24, 2010, i.e. after the receipt of IPO proceeds by RKDL, Ranisati received Rs 7.65 crore from RKDL and transferred Rs 7,02,47,901/- and Rs. 50 lakhs to FACT. Ranisati transferred Rs 12 lakh to Comfort Commotrade Pvt Ltd. on December 31, 2010 and transferred Rs. 2.75 crore back to RKDL on February 17, 2011.
36. The ER notes that Ranisati, during the course of investigation had submitted that it had received money from RKDL for purchase of shares of Ranisati. Ranisati was advised to submit documents in support of its claim, which was not done.
37. From the above it appears that there was no business rationale/ reason for making the fund transfers, neither BLC nor Ranisati could provide any cogent reason for the same during investigation. Thus, RKDL had transferred Rs. 4.79 crore to BLC prior to the IPO of RKDL and Rs. 1 lakh (as Rs. 49 lakh was received back by RKDL from BLC) after the IPO Issue. RKDL had transferred Rs. 4.65 crore to Ranisati prior to the IPO of RKDL and a net of Rs. 4.9 crore (as Rs. 2.75 crore was received back by RKDL from Ranisati) after the IPO issue. A total amount of Rs 14.83 crores out of the IPO proceeds of RKDL have been siphoned off through CIL, BLC, FACT and Ranisati.

Siphoning through FACT, Radhasoami and Padma

38. The ER notes that on December 06, 2010, FACT provided RKDL Rs. 2 crore as a short-term loan, which was later repaid from the IPO proceeds. On the same day itself (i.e. December 06, 2010), this amount was transferred to Radhasoami and thereafter, Radhasoami transferred Rs 2 crore to Padma on December 10, 2010. Subsequently, Padma transferred around Rs 5.29 crore on December 13, 2010 to the Escrow account of RKDL for allotment of shares in the IPO of RKDL.

Padma was allotted 2,30,359 shares of RKDL. Padma received Rs 3.78 crore on December 18, 2010 from the escrow account of RKDL as IPO refund money and transferred Rs. 4 crore to the Noticee for dealing in the shares of RKDL on the listing day of the scrip of RKDL i.e. December 27, 2010. Hence, the loan amount which showed on the books of RKDL was actually siphoned off to Padma through Radhasoami amount for applying in the IPO and trading in the scrip of RKDL. Thereafter, as noted above, FACT was also repaid Rs. 2 crore from the IPO proceeds. Hence, it was found that Rs. 2 crore had been siphoned off through FACT, Padma and Radhasoami.

Siphoning through Heranba

39. The ER states that between January 18, 2011 to January 21, 2011, Heranba received a total of Rs. 5 crore from RKDL out of the IPO proceeds. These amounts were transferred to the Noticee (who was the broker on Heranba) on the very same day. During the period January 01, 2011 to February 15, 2011, Heranba (through the Noticee) had bought 22,77,600 shares of SMIL (a Comfort Group company) for approx. Rs 23.21 crore at BSE. No explanation was provided for this transfer of Rs. 5 crore to Heranba. Hence, it was concluded that Rs. 5 crore of the IPO proceeds were siphoned through Heranba.

Siphoning through Gulistan

40. Gulistan received Rs 4 crore from RKDL on December 24, 2010 out of the IPO proceeds. It transferred Rs. 1 crore to Udaybhai Prabhudas Shah and Rs 3 crore to Prefer Abasan Pvt Ltd on the same day. Udaybhai Prabhudas Shah and Prefer Abasan Pvt Ltd routed these funds to its broker for buying the shares of RKDL.
41. During investigation, Prefer Abasan Pvt Ltd submitted that no loan agreements were entered into with Gulistan for the same. It was also observed that interest was paid on the loans. I don't find on record any explanation from Udaybhai

Prabhudas Shah regarding the fund transfers during investigation. Hence, it was concluded that Rs. 4 crore had been siphoned off from the IPO proceeds of RKDL through Gulistan.

Siphoning through Vibhuti, Grafton, Gulistan and Albright

42. Vibhuti received Rs 2.25 crore from RKDL on December 29, 2010, out of its IPO proceeds. Vibhuti transferred Rs. 1.25 crore to Grafton and Rs 1 crore to Albright on the same day. In turn, Albright transferred Rs 1 crore to Gulistan on the same day. The ER notes that during investigation these entities could not provide any evidence to prove that these transactions were of a genuine nature. Hence, it was concluded that Rs 2.25 crore had been siphoned off out of IPO proceeds of RKDL through Vibhuti and then through Grafton, Albright and Gulistan.

Siphoning through Sukusama

43. On January 18, 2011 RKDL transferred Rs 3 crore out of its IPO proceeds to Sukusama. In turn, Sukusama transferred Rs 2.27 crore to SMIL on the same day. Further, on January 19, 2011, i.e., the next day, Sukusama transferred approx. Rs 12.20 lakh to BLC, and BLC transferred Rs 13 lakh to the Noticee on January 20, 2011. BLC had purchased 1,37,626 shares of SMIL (a Comfort Group company), for a value of approx. Rs 1.64 crore, on January 18, 2011.
44. Sukusama, during SEBI's investigation, had submitted that it had received the amount from RKDL as share application money. However, this was not part of the objects of the IPO as per the prospectus of RKDL. Hence, it was concluded that Rs 3 crore had been siphoned off out of the IPO proceeds of RKDL through Sukusama.

Siphoning through Gaungour, Grafton and Albright

45. On February 18, 2011, Gaungour received Rs 2.75 crore from RKDL, out of its IPO proceeds. Gaungour transferred Rs 1 crore to Grafton and Rs 1.8 crore to Albright on the same day. The ER notes that these entities did not provide any rationale for the transfer of funds and hence it was concluded that Rs 2.75 crore had been siphoned off out of the IPO proceeds from RKDL through these related entities.
46. From the above paragraphs, I note that funds received by RKDL in its IPO were siphoned off through several entities in multiple layers. As noted above, most of the entities were related/ connected to the Noticee by way of common directors, promoters, common addresses, fund transfers, common email addresses and so on. Some of these entities, as detailed above, also received shares in the IPO of RKDL using the funds and some traded in the scrip on or soon after listing. No credible explanation has been put forward by the entities involved for these transfers. The Noticee has feigned ignorance and stated that the connections are nebulous. However, the fact that so many entities who received funds in so many layers out of the IPO proceeds of RKDL, were found to be connected to the Noticee in one way or another cannot be a coincidence.
47. The Noticee has also asserted that it was not involved in the siphoning of funds, and has been made a scapegoat by RKDL and its directors to save themselves. However, as noted above, the connections of the various entities involved in the said scheme with the Noticee could not have been known to RKDL or made up by the Company. Hence, the submission that these are trumped up assertions of RKDL is not tenable. When coupled with the fact that loan obligations of RKDL, as mentioned above, were not disclosed in the Prospectus, the role of the Noticee becomes undeniable.
48. In view of the above, I find that the Noticee was involved in the fraudulent scheme to siphon off IPO funds of RKDL, and hence has violated the provisions of

Sections 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

49. Further, as found above, the Noticee as the Merchant Banker to the IPO of RKDL, has failed to exercise due diligence, skill and independent professional judgment and has, therefore, violated the provisions of Regulations 64(1) and 8(2) (b), (e) and (f) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (since repealed).
50. In the aforesaid paras, the Noticee has been found to be in violation of the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. I note that SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 have been repealed by Regulation 301(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as **"ICDR Regulations, 2018"**). Regulation 301(1) of ICDR Regulations 2018 provides that *"Notwithstanding such rescission: a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations."* In this regard, it would be appropriate to refer to the judgement of Hon'ble Supreme Court of India in **Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1**, wherein, it was held that:

"103. Repeal and Saving Clause under ICDR 2009 would clearly indicate that the violation under DIP Guidelines was a continuing one. Regulation 111 of ICDR reads as follows:

"Repeal and Savings

111. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.

(2) Notwithstanding such rescission;

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer documents, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

104. Regulation 111(1) of ICDR 2009 rescinded the DIP Guidelines from 26.8.2009 and clause (2) of Regulation 111 contains the saving clause. The expression “anything done” or “any action taken” under Regulation 111(1) are of wide import and would take anything done by the company omitted to be done which they legally ought to have done. Non-performance of statutory obligations purposely or otherwise may also fall within the above mentioned expressions. Failure to take any action by SEBI under DIP Guidelines, in spite of the fact that Saharas did not discharge their statutory obligation, would not be a ground to contend that 2009 Regulations would not apply as also the saving clause. 2009 Regulations, in my view, will apply to all companies whether listed or unlisted. Further, in the instant case, SEBI was not informed of the issuance of securities by the Saharas while the DIP Guidelines were in force and Saharas continued to mobilize funds from the public which was nothing but continued violation which started when the DIP Guidelines were in force and also when they were replaced by 2009 Regulations. Further, it may also be recalled that any solicitation for subscription from public can be regulated only after complying with the requirements stipulated by SEBI, in fact, an amendment was made to Schedule II of the Companies Act vide notification No. GSR 650(3) dated 17.9.2002 by inserting a declaration which has to be signed by the directors of the company filing the prospectus, which reads as under:

“That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the

*Companies Act, 1956 or the securities and Exchange Board of India Act, 1992
or rules made there-under or guidelines issued, as the case may be.”*

51. I find that ratio of the aforesaid judgment of Hon'ble Supreme Court in Sahara case (supra) with respect to interpretation of repeal and saving clause of ICDR 2009 squarely applies to the facts of the present case. Therefore, violation of ICDR Regulations can be pursued under the corresponding provisions of ICDR Regulations, 2018.
52. The Noticee is a Merchant Banker, on whose due diligence of the offer document for IPO the investors rely in case of public offerings of securities. Here, the Noticee has not only been found involved in not making adequate disclosures in the prospectus but has also been found to be involved in the scheme of siphoning of issue proceeds by the Company. Therefore, the recommendation made by the Designated Authority regarding suspension of certificate of registration of the Noticee as a merchant banker for a period of one year is appropriate in the facts and circumstances of the present case.

Directions:

53. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, hereby suspend the certificate of registration of Comfort Securities Ltd, as a merchant banker (certificate of registration number INM000011328) for a period of one year from the date of this order.
54. Suspension of certificate of registration, as directed in para 52 above, shall have the effects and obligations as given in Regulation 32(1) of Intermediaries Regulations.

55. This order comes into force with immediate effect.
56. A copy of this order shall be served on the Noticee and all recognized Stock Exchanges.

Sd/-

Place: Mumbai

ANANTA BARUA

Date : October 19, 2022

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA