

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/GR/PU/2022-23/17202-17225)**

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

In respect of:

Noticee No.	Name of the Noticee	Pan No
1	Resurgere Mines and Minerals India Ltd.	AAACE0111B
2	Subash Sharma	AXCPS8189D
3	Amit Sharma	AVRPS2826C
4	Ishwar Das Agarwal	AAAPA9527G
5	Burzin Somandy	AEIPS6910P
6	Harish Khaitan	AAHPK3325R
7	Rakesh Gupta	AHKPG8143R
8	OPG Securities Pvt. Ltd.	AAACO1081C
9	Matrix Equitrade Pvt. Ltd.	AADCM9155C
10	H J Securities Pvt. Ltd.	AAACH5600E
11	Naman Sec. & Finance Pvt. Ltd	AAACN1917G
12	JMP Securities Pvt. Ltd.	AAACJ8850C
13	Prashant J Patel	AABPP2156M
14	Latin Manharlal Securities Pvt. Ltd.	AAACL2767L
15	PRB Securities Pvt. Ltd.	AABCP5425G
16	Transglobal Securities Ltd.	AABCT8250H
17	R M Shares Trading Pvt. Ltd.	AABCR6331B
18	Kaushik Shah Shares and Sec. Pvt. Ltd.	AAACK1702C
19	BP Fintrade Pvt. Ltd.	AAACY2372G
20	B K shah Co. Ketan Bhailal Shah	AMXPS8554L
21	Maniput Investments PVt. Ltd.	AABCM6735G
22	BP Equities Pvt. Ltd.	AAACY2372G
23	Motilal Oswal Securities Ltd.	AAACD3654Q
24	Magnum Equity Broking Ltd.	AAACM5661N

In the matter of Resurgere Mines and Minerals India Limited

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

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an investigation into the Initial Public Offer (hereinafter referred to as “**IPO**”) of Resurgere Mines and Minerals India Ltd., (hereinafter referred to as “**RMMIL / Company**”) for the period 01/09/2008 to 08/09/2008 (hereinafter referred to as “**investigation period**”) in order to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’), SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (“**ICDR Regulations**”) and SEBI (Stock brokers and Sub Brokers) Regulations, 1992 (“**Broker Regulations**”).
2. The investigation mainly looked into the possible violations by
 - a) RMMIL and its Whole Time Director, Independent Directors, Chief Financial and Compliance officer of RMMIL (Noticee No.1 to 7) while dealing in the shares issued through Initial Public Offering (IPO)
 - b) The Noticee No. 8 to 24 while trading in the scrip of RMMIL during the investigation period.
3. Pursuant to the Investigation, the followings were observed and alleged:
 - a. RMMIL had come out with an IPO during August 11-13, 2008. The investigation revealed that the entities who had applied in the IPO under the employee category were indirectly funded by RMMIL for making application in the IPO of RMMIL. Out of Rs.120 Crores raised by RMMIL in the IPO, proceeds to the extent of Rs.1,13,77,21,250/- have been siphoned off to pay certain entities in the group companies of RMMIL, (who funded) for making

application in the employees' category by RMMIL and not used for the purposes of objects of the issue, as stated in the prospectus. Thereby, adjudication proceeding was initiated against Noticee No. 1 to 6 under Section 15HA of SEBI Act, 1992 for the alleged violation of Section 12A(a),(b),(c) of SEBI Act and Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) ("**PFUTP Regulations**").

- b. RMMIL had issued an ICD for Rs.18 Crores which was raised from PR Vyappar on August 13, 2008, however the same was not disclosed in the prospectus dated August 22, 2008. Thereby, adjudication proceeding was initiated against Noticee No. 1 to 7 under Section 15HA & 15HB of SEBI Act, 1992, for the alleged violation of Regulation 57 (1) and (2) read with schedule VIII Part A (2)(VII)(A)(1), Regulations 59 and 60 (4) and 60 (7) (a) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") and Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of the PFUTP Regulations.
- c. RMMIL had not complied with summons issued by SEBI under Section 11(3) and 11C(3) of SEBI Act, by not providing the information sought. Thereby, adjudication proceeding was initiated against Noticee No. 1 to 3 under Section 15A (a) for the alleged violation of Sections 11(3) & 11C (3) of the SEBI Act.
- d. The Noticee No. 8 to 24 had indulged in self-trade which was resulted in creation of artificial volume without change of ownership, thereby, adjudication proceeding was initiated against them under Section 15HA & 15 HB of SEBI Act, 1992 for the alleged violation of Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(a) and (g) of the PFUTP Regulations and Clauses A(2), (3), (4), (5) of Code of Conduct for Stock brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock brokers and Sub Brokers)

Regulations, 1992 (“**Broker Regulations**”), as applicable for the alleged violations specified in the SCN.

APPOINTMENT OF THE ADJUDICATING OFFICER

4. Earlier, SEBI appointed Ms. Rachna Anand, as Adjudicating Officer (‘**AO**’) vide order dated September 06, 2017, under Section 19 read with Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty) Rules, 1995 (hereinafter referred to as “**the Adjudication Rules**”) to inquire and adjudge into the alleged irregularities alleged to have been committed by the said Noticees. Pursuant to the transfer of Ms. Rachna Anand, Shri Suresh B. Menon was appointed as the AO in the matter. Thereafter, pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the AO vide communique dated April 12, 2019 in the present matter. These proceedings are therefore been carried forward where it had been left off and SCN was issued in the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated October 05, 2021 (hereinafter referred to as ‘SCN’) was issued to all the Noticees in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA, 15HB and 15A(a) of the SEBI Act, 1992 on the said Noticees as applicable for the alleged violations specified in the SCN.
6. The details of the SCN served on the Noticees and the replies received are as under;

S.No.	Name of entity	SCN delivery	Reply
1	Resurgere Mines and Minerals India Ltd.	Yes	No
2	Subhash Sharma	Yes	19.04.2022

3	Amit Sharma	Yes	29.11.2021, 09.0.2022 & 22.03.2022
4	Ishwar Das Agarwal	Yes	dt 18.10.2021 & 05.03.2022
5	Burzin Somandy	Yes	05.04.2022
6	Harish Khaitan	Yes	04.04.2022
7	Rakesh Gupta	Yes	23.03.2022
8	OPG Securities Pvt. Ltd.	Yes	1.11.2021, 23.03.2022 & 17.04.2022
9	Matrix Equitrade Pvt. Ltd.	Yes	04.04.2022
10	H J Securities Pvt. Ltd.	Yes	04.04.2022
11	Naman Securities & Finance Pvt. Ltd	Yes	No
12	JMP Securities Pvt. Ltd.	Yes	20.11.2021 & 01.04.2022
13	Prashant J Patel (Add1)	Yes	15.06.2022
	Prashant J Patel (Add 2)	Yes	
14	Latin Manharlal Securities Pvt. Ltd.	Yes	23.11.2021 & 18.04.2022
15	PRB Securities Pvt. Ltd.	Yes	01.11.2021, 12.04.2022 & 22.03.2022
16	Transglobal Securities Ltd.	Yes	22.11.2021
17	R M Shares Trading Pvt. Ltd.	Yes	15.03.2022
18	Kaushik Shah Shares and Sec. Pvt. Ltd.	Yes	20.10.2021 & 04.04.2022
19	BP Fintrade Pvt. Ltd.	Yes	24.11.2021 & 13 04, 2022
20	B K shah Co. Ketan Bhailal Shah	Yes	No
21	Maniput Investments Pvt. Ltd.	Yes	No
22	BP Equities Pvt. Ltd.	Yes	24.11.2021 & 13 04, 2022

23	Motilal Oswal Securities Ltd.	Yes	04.04.2022
24	Magnum Equity Broking Ltd.	Yes	31.03.2022 & 15.04.2022

7. From the above table, it is observed that the SCN was duly served upon all the Noticees, by way of SPAD or Hand Delivery and /or E-mail and replies also received from most of them except Noticee No. 1, 11, 20 and 21 till date.
8. Subsequently, pursuant to the service of the SCN, the Noticees were provided opportunities of personal hearing in the matter. The details of dates of hearing and their attendance are tableted below;

Noticee No.	Noticee	Date of Hearing	Attended Y/N/Sought Adjournment	Dt of hearing	Attend ed Y/N
1	Resurgere Mines and Minerals India Ltd.	24.03.2022	N	NA	NA
2	Subhash Sharma	07.04.2022	Y	NA	NA
3	Amit Sharma	24.03.2022	sought adjournment	06.04.2022	Y
4	Ishwar Das Agarwal	24.03.2022	Y	NA	NA
5	Burzin Somandy	07.04.2022	Y	NA	NA
6	Harish Khaitan	24.03.2022	sought adjournment	06.04.2022	Y
7	Rakesh Gupta	25.03.2022	Y	NA	NA
8	OPG Securities Pvt. Ltd.	24.03.2022	sought adjournment	06.04.2022	Y
9	Matrix Equitrade Pvt. Ltd.	25.03.2022	sought adjournment	07.04.2022	Y
10	H J Securities Pvt. Ltd.	25.03.2022	sought adjournment	07.04.2022	Y
11	Naman Sec. & Finance Pvt. Ltd	25.03.2022	N	NA	NA
12	JMP Securities Pvt. Ltd.	25.03.2022	sought adjournment	07.04.2022	Y

13	Prashant J Patel	23.03.2022	N	04.05.2022	Y
14	Latin Manharlal Securities Pvt. Ltd.	23.03.2022	sought adjournment	05.04.2022	Y
15	PRB Securities Pvt. Ltd.	23.03.2022	sought adjournment	05.04.2022	Y
16	Transglobal Securities Ltd.	23.03.2022	Y	NA	NA
17	R M Shares Trading Pvt. Ltd.	05.04.2022	Y	NA	NA
18	Kaushik Shah Shares and Sec. Pvt. Ltd.	23.03.2022	Sought adjournment	04.05.2022	Y
19	BP Fintrade Pvt. Ltd.	22.03.2022	sought adjournment	04.04.2022	Y
20	B K shah Co. Ketan Bhailal Shah	22.03.2022	N	NA	NA
21	Maniput Investments Pvt. Ltd.	22.03.2022	sought adjournment	04.04.2022	N
22	BP Equities Pvt. Ltd.	22.03.2022	sought adjournment	04.04.2022	Y
23	Motilal Oswal Securities Ltd.	22.03.2022	sought adjournment	04.04.2022	Y
24	Magnum Equity Broking Ltd.	22.03.2022	sought adjournment	04.04.2022	Y

9. The hearing Noticee was served to all the Noticees and were duly delivered. Further, from the above table it is observed that though the Noticee No.12 attended the personal hearing conducted on 03.05.2022, but he has not submitted the reply till date. Whereas, Noticee No. 1, 11, 20 and 21 have

neither submitted their replies in the matter nor attended the personal hearing despite the SCN and the hearing Notice being duly delivered.

10. Considering the fact that the Noticee No. 1, 11, 20 and 21 have neither filed any reply nor availed the opportunity of personal hearing despite service of notices upon them, I am of the view that they have nothing to submit in terms of Rule 4(7) of the Adjudication Rules and the matter may be proceeded *ex-parte* on the basis of material available on record. In the absence of any response to the SCN, I presume that the Noticee No. 1, 11, 20 and 21 have admitted the charges levelled against them.
11. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, *".....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*.
12. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"..... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*
13. Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim*

violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”.

14. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticee Nos. 1, 11, 20 and 21 *ex-parte*, based on the material available on record.

15. While deciding the case, I cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charge based on the trades executed by the Noticee No. 1, 11, 20 and 21 and the supporting material as provided in the SCN.

16. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

REPLIES TO THE SCN BY THE NOTICEES

17. The relevant extract of the responses/replies of the Noticees are *inter alia* reproduced here under:

Noticee No.2:

- a. The Noticee has submitted that he has filed for settlement proceedings in the matter, which is under consideration and therefore, the matter needs to be kept in abeyance.

- b. Further, the Noticee had sought for inspection of documents, wherein the complete inspection report has not been provided to him.
- c. Company is under Corporate Insolvency Resolution Process as advised vide order dated September 11, 2019.
- d. The Noticee also contended that the ICDR Regulations were promulgated on 26.08.2009 i.e. after the company had issued and filed its prospectus dated 22.08.2008. Therefore, the charge of violation ICDR regulations, should be set aside.
- e. The Noticee has stated that all the charges are against the Company and no specific role of the Noticee No.2 has been pointed out.

Noticee No.3:

- a. The Noticee has stated that as he had resigned from the company on 24.08.2022, he is no longer associated with the company and also not in possession of most of the documents. Therefore he has sought for inspection of documents.
- b. The Noticee also stated that during the investigation period all the materials were managed by the MD and he was not involved in the day to day management of the company. Further, he stated that he was associated with the Company from 23.06.2004 to 24.08.2011 as the Whole Time Director (WTD) and he resigned on 24.08.2011.
- c. It is also stated that RMMIL had issued ICD against 18 crores raised from PR Vyapaar Pvt. Ltd. on 13.08.2008 while admitting that the same was not disclosed in the prospectus dated 22.08.2008, which is a violation of Regulation 57(1) and (2) r/w Schedule VIII Part A (2) (vII) (A)(1), Regulation 59 and 60(4) and 60(7)(a) of the ICDR Regulations.

- d. The Noticee also contended that the ICDR Regulations were promulgated on 26.08.2009 i.e. after the company had issued and filed its prospectus dated 22.08.2008. Therefore, the charge of violation ICDR regulations, should be set aside.
- e. The Noticee further, submitted that he has not participated in any funding activity as alleged in the Notice for making applications in the employees category. As regard the allegation of misutilization of funds, the Noticee has submitted that the object of the issue was modified by notice of postal ballot dated 14.03.2009.
- f. Also it is submitted that the Noticee had not received any summons. Therefore all the allegations regarding non-compliance of Section 11(3) and 11(c) of SEBI ACT, are baseless.
- g. The Noticee also stated that there is an inordinate delay of 13 years since the date of the alleged violations, which is not explained in the SCN.
- h. Further, the Noticee stated that SEBI has neither established the violations of Section 12 A as he was not involved in the siphoning of funds and also of PFUTP regulations as there has been neither any gain accrued to his account nor has he induced any person to commit any fraud and there is no loss caused to any investors.

Noticee No. 4:

- a. The Noticee submitted that he was inducted in the board of RMMIL as a Non-Executive Independent Director, on 14.08.2007 and resigned on 1.08.2007. He was never an ED or a WTD during the said period. I was not in-charge of, or involved with the day-to-day operations of the company, nor was I involved in the day-to-day management of the company.

- b. The Noticee also submitted that all the monetary transactions were private and he was not privy to them. He is not associated with Runwell Steel Pvt Ltd. and Trueline Multitrade Pvt Ltd. in any manner. He also stated that he was not in town on the said dates of the transactions. They were done without his knowledge, consent or approval.
- c. The status of the utilisation of the funds raised in the IPO was monitored by the Board as well as by the Audit Committee on a regular basis. The then CFO, Shri Harish Khetan used to certify that the utilisation of IPO funds has been made as stated in the offer document.
- d. The Noticee stated that the specific transactions of mis-utilisation of funds were never brought to the notice of the Board, therefore, he had no reason to disbelieve or suspect the presentation / certification of the high official of the Company viz. the CFO. Further, he stated that a Non-Executive Independent Director does not maintain the record of quotations, bills / invoices, receipts cheques etc. and is not responsible for the day-to-day functioning of the company. Therefore, he has acted in good faith and with due diligence.
- e. The Noticee further stated that that he had neither approved the prospectus nor signed it, as it was not placed before the board. Further, the Noticee also stated that he was not in town during the said issue of the ICD. The Noticee had raised concerns when he got to know about these material aspects of the Company's management and had resigned from the Board on 10.08.2010.
- f. The Noticee also submitted that SAT has exonerated the Independent Directors completely even though they had signed the prospectus and he had not even approved the prospectus nor signed it. Therefore, he cannot be held responsible for non-disclosure of ICD of Rs 18 crore issued by RMMIL to P.R. Vyaparn on 13.08.2008, in the prospectus dated 22nd August 2008.

Noticee No. 5:

- a. The Noticee has submitted that based on the material available on record, it can never be held that I had connived, or been responsible for any of the alleged violations and he has also been exonerated by WTM on the same facts and cause of action.
- b. The Noticee submitted that independent director of RMMIL who joined the board of RMMIL on August 14, 2007. I was never involved in the day-to-day management of the company. He also stated that he was present in the Board meeting which informed that proceeds of IPO were invested in ICDs and had raised concerns when he got to know about it later. Thereafter, he had shortly resigned on 10.08.2010.
- c. He submitted that the proceedings are untenable and vitiated by: (i) inordinate delay of 13 years and laches and (ii) retrospective application of the ICDR Regulations to transactions prior in time.
- d. The Noticee also submitted that Mr. Subhash Sharma being the Promoter/ Chairman and Managing director and Mr. Amit Sharma, being a Whole Time Director, were in charge of the day to day management of the affairs of RMMIL. Further, it is submitted that the Noticee as an independent director, without any knowledge of the alleged fraud, cannot simply be charged by merely occupying the office of an independent director, when the fraud occurred.

Noticee No.6:

- a. The Noticee contended that the documents sought for inspection not been provided, which had caused prejudice to them in terms of preparing their defence in the most effective way.

- b. He submitted that he was not aware of the receipt of funds by employees of RMMIL for subscribing of shares as he was not a signatory to any bank account or the escrow account and was also not a member of any allotment company of RMMIL.
- c. The Noticee also stated that allegation of violating Sections 12A (a), (b) or (c) of The SEBI Act,1992, may not be correct as he has neither employed any manipulative or deceptive device nor engaged 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.
- d. Further the Noticee stated that the statutory auditor and internal auditor also had certified about the utilization of IPO proceeds as per the objects stated in the prospectus therefore the Noticee had believed to be true and after due diligence.
- e. Also the Noticee has stated that he was not aware of ICD received from PR Vyapaar as Mr. Amit Sharma was responsible for the dissemination of data / information. Further, the Noticee stated that neither did he introduce nor know or connived with any Debtors, Creditors, Bankers, clients, stock brokers who acted on proprietary account nor otherwise, buy-sell brokers or any stake holders of the company. He also stated that he did not interact with them directly nor has signed any agreements, contracts, documents (including bank loan), documents related to day-to-day transactions related to RMMIL except for annual / quarterly financial statements and prospectus for which also he verified documents which existed then, believing it to be true.

Noticee No. 7:

- a. The Noticee has stated that the SCN in the matter has been issued after a lapse of 13 years.

- b. The Noticee has requested for the investigation report and other documents
- c. The Noticee has submitted that he joined as a Company Secretary of RMMIL and had to ensure compliances under various applicable acts and was not involved in utilization of ICD of Rs. 18 Crores and its non-disclosure in the Prospectus as RMMIL had constituted Audit Committee for end utilization of IPO proceeds.
- d. Further, the Noticee submitted that the Company had appointed M/s Motilal Oswal Securities Limited as Lead Merchant Banker who had filed draft Red Herring Prospectus dated 11th December, 2007, Red Herring Prospectus dated 1st August, 2008 and Prospectus dated 22nd August, 2008. The Company has also appointed J. Sagar Associates as Legal Advisors to the Issue. Therefore the Noticee had no role to play.

Noticee No. , 9, 10, 12 to 19, and 22 to 24

The common contentions of the aforesaid Noticees are as under:

- a. The Noticee states that SCN has been issued with a delay of more than 13 years, due to which the SCN should be disposed.
- b. The Noticee also submitted that it follows various intra-day/ jobbing/ arbitrage strategies in various scrips in stock market. The counter party order were placed by different jobbers from different terminals, therefore, there is no connection with the counter party and also there can be no meeting of mind. It also stated that its trading in scrip of RMMIL was in normal and ordinary course of its business.
- c. There was no system to detect such trades and provide alerts during 2008, which could have prevented such trades. Therefore, it can be stated that there was no malafide intention to create self-trades or

artificial volume which is evident from fact that the impugned trades constituted a meagre and miniscule percentage of market volume of NSE.

- d. The Noticee also stated that the said impugned trades did not affect the market price in the scrip of RMMIL, it has not made any disproportionate gain or unfair advantage nor has it caused any loss to investors.
- e. Certain Noticees had requested for inspection of documents.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

18. During the course of the proceedings, a search was done on the website of the Ministry of Corporate Affairs (“MCA”) to ascertain the present status of the Noticee No.1. It was observed from the MCA website that the status of RMMIL under CIRP, is shown as “*Under Corporate Insolvency Resolution Process*”. Since RMMIL is under CIRP as per the MCA database, I am of the view that before proceeding in the matter on its merit, it would be appropriate to first decide as to whether the Adjudication proceedings initiated against Noticee No.1 is maintainable. Therefore, in order to examine the maintainability of the present Adjudication proceedings against Noticee No.1, it will be appropriate to refer to Section 14 of the Insolvency and Bankruptcy Code, 2016, which reads as under;

19. Section 14 of the IBC imposes a moratorium on inter alia:

- “a) the institution of suits or continuation of pending suits or proceedings against the Company, including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing off by the Company or any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under

the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

20. Accordingly, I note that the Resolution plan has been accepted by NCLT vide its order dated September 11, 2019 wherein it had declared moratorium with regard to RMMIL while issuing directions as under;

“(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;” Accordingly, vide the said order, NCLT had appointed Mr. Naren Sheth as the Interim resolution Professional. Here I rely upon, SAT order dated 09.10.2020 in the matter of **Diwan Housing Finance Corporation Ltd. vs. SEBI**, wherein the Hon’ble SAT had held that, *“..... where a moratorium has been declared under section 14 of IBC, the authority which in the instant case is SEBI/AO will have no jurisdiction to institute any proceedings. Where a proceeding has already been instituted and during the pendency of the proceedings a moratorium order is passed under section 14 then the authority is prohibited from continuing with the proceedings. This is clear from the bare reading of the provisions of section 14(1) of the IBC.”* Further, it is also noted that the SCN dated October 05, 2021, in the matter, was issued pursuant to the above mentioned NCL order dated September 11, 2019.

21. Further, I note that the Hon’ble SAT, in its decision in **Monnet Ispat &Energy Ltd.** has held that *“.....15. In view of the aforesaid, it is clear that once the resolution plan is approved by the appropriate authority the same is binding on all concerned including the respondent.....*

18. In the light of the aforesaid, we are of the opinion that once a resolution plan has been approved it becomes binding on all creditors including

the government and local authorities including the respondent under section 31(1) of the IBC. It is no longer open to the respondent to issue a show cause notice or adjudicate and pass an order of penalty upon the appellant.”

The Hon’ble SAT also held similar view in the matters of Alok Industries Ltd. (appeal no. 300 of 2020) and Raj Oil Mills Ltd. (Appeal no. 54 of 2019).

22. At this juncture, since RMMIL is undergoing CIRP and a moratorium under Section 14 of IBC is in place, any order passed under Sections 15 HA, 15 HB and 15 A(a) of SEBI Act, 1992, against Noticee No. 1, will be infructuous. Accordingly, the present Adjudication proceedings against Noticee No.1, initiated vide SCN dated October 05, 2021, cannot be proceeded with and is disposed of.

23. As regards to the other Noticees i.e. Noticee No. 2 to 24, I have carefully perused the SCN, the documents / material available on record and their submissions. The issues that arise for consideration in the present case are:

- a. *Whether the aforesaid Noticees have violated the provisions of PFUTP Regulations, ICDR Regulations and Broker Regulations as alleged in the SCN, as applicable?*
- b. *Does the violation, if any, attract monetary penalty under Section 15HA, 15 HB and 15 A(a) of SEBI Act for the aforesaid Noticees, as applicable?*
- c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

24. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, ICDR Regulations and Broker Regulations are alleged to have been violated by the Noticees. The same are reproduced below:

PFUTP Regulations

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- a) buy, sell or otherwise deal in securities in a fraudulent manner;
- b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

.....

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

.....

(k)"disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

.....

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

SCHEDULE II, BROKER REGULATIONS, 1992

Code Of Conduct For Stock Brokers

(Regulation 7)

A.GENERAL

(1)

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board an the stock exchange from time to time as may be applicable to him.

SEBI ACT

Functions of Board.

11 (3). Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :— (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.

Investigation.

11C.

(1)

(2)

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

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;

ICDR Regulations, 2009

Manner of disclosures in the offer document.

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

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

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

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

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

....

SCHEDULE VIII – PART A - Disclosures In Red Herring Prospectus, Shelf Prospectus And Prospectus

(1)

(2) An issuer making a public issue of specified securities shall make the following disclosures in the offer document. However, an issuer making a fast

track issue of specified securities may not make the disclosures specified in Part B of this Schedule in the offer document. Further, an issuer making a further public offer of specified securities may not make the disclosures specified in Part C of this Schedule, in the offer document, if it satisfies the conditions specified in para 2 of that Part:

(VII)Particulars of the Issue:

(A)Objects of the Issue:

(1)The objects of the issue shall be disclosed.

Prohibition on payment of incentives.

59.No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities:

Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.

Explanation: For the purpose of this regulation, the expression “person connected with the issue” includes a person connected with the distribution of the issue.

Public communications, publicity materials, advertisements and research reports.

60. (1)...

.....

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

Companies, and the date of allotment of specified securities;(b)in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.

.....

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a)it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

Issue a: Whether the Noticees have violated the applicable provisions of PFUTP Regulations, ICDR Regulations and Broker Regulations as alleged in the SCN, as applicable?

25. Before proceeding to deal with the merits of the case, I wish to settle the following two preliminary objections raised by some of the Noticees:

- a) Noticees have contended that there was an inordinate delay of 13 years since the date of the alleged violations which was not explained in the SCN.
- b) Noticees have also contended that the documents sought for inspection not been provided to them, which had caused prejudice to them in terms of preparing their defence in the most effective way.

26. With regard to the contention of inordinate delay of 13 years since the date of the alleged violations that was not explained in the SCN, it is to be noted that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made there under. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations

relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all the documents concerning the defence of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*.

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

28. In view of the above, and considering the facts and circumstances, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticees, so the contentions of the Noticees in this regard are without merits.

29. As regards to the issue related to supply of documents, the Noticees have submitted that in the interest of natural justice such documents must be given to it including the Investigation Report of SEBI. In this regard, I note that all the documents that have been relied upon for the charges contained in the SCN, have already been provided to the Noticees along with the said SCN and exhaustive replies also have been filed by several Noticees as detailed

already in the preceding paragraphs. I also note that the details of transactions, which form the core of the charges against the Noticees, the evidence thereof have already been provided/cited to them in terms of bank statements. Further I note that the primary allegation of violation of the SEBI (PFUTP) Regulations is premised on such transactions only. Therefore, details pertaining to such transactions as noted in the investigation report have already been reproduced in the SCN (supported by documents already provided) were the only documents relevant with respect to the charges under relevant Act/ Regulations.

30. In this regard, the observations of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the case of **Mayrose Capfin Private Limited Vs. Securities and Exchange Board of India** (Appeal No. 20 of 2012) is reproduced below:

"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count". [emphasis supplied]

31. Further, I refer to the observation of the Hon'ble SAT in the matter of **Anant R Sathe Vs. SEBI (Appeal No. 150 of 2020)** vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and held that: *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

32. In view of the above, I note that the principles of natural justice have been complied with and the aforesaid contention of the Noticees in this regard are without merit.

33. Besides the aforementioned preliminary objections, the Noticee No. 2, 3, 4 and 5 have also raised specific contention that the ICDR Regulations were promulgated on 26.08.2009 i.e. after the company had issued and filed its prospectus dated 22.08.2008, therefore, the charge of violation of ICDR Regulations, should be set aside. In this regard, I would like to state that the DIP Guidelines was rescinded, when the ICDR regulations commenced and was brought into force. Regulation 111 of the ICDR Regulations states as under;

Repeals 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 document, 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.”

Thus the DIP guidelines is saved by the abovementioned ICDR Regulation.

A. Alleged violation of Noticee No.2 to 7 while dealing in issuance of shares in initial public offering (IPO).

I. Allegation of siphoning of IPO proceeds.

34. As regards to the allegation of siphoning of IPO proceeds, I note from the observation of SEBI investigation that the following 17 employees submitted application for subscription to the IPO of RMMIL against 2,50,000 shares reserved for employee category in the IPO. Their bidding and the details of shares applied vis-à-vis allotted and the source of money are given below:

(Table No. 1)

Sr. no	Name of employee	No. of Shares applied	Application money	No. of Shares allotted	Demat A/c Opening date	Status of Demat A/c	Source of Appl. Money
1	Rajesh M Sharma	50000	Rs.1.36 crore	49980	01/08/2003	Active	Fund transfer from Runwell Steel Pvt. Ltd.
2	Rakesh Gupta	15000	Rs.40.80 lakh	14994	06/12/2007	Active	
3	Rakesh Devendra Powale	15000	Rs.40.80 lakh	14994	22/11/2007	Closed on 14/09/2009	
4	Balkishan Kalia	15000	Rs.40.80 lakh	14994	17/01/2008	Closed on 19/04/2011	
5	Brijeshkumar Ravindra Dwivedi	15000	Rs.40.80 lakh	14994	26/11/2007	Closed on 24/03/2011	
6	Mukesh M Keni	15000	Rs.40.80 lakh	14994	27/11/2007	Closed on 13/04/2011	
7	Anita Linda Dsouza	12500	Rs. 34 lakh	12495	27/11/2007	Closed on 13/04/2011	
8	Namrata V Shinde (Birmole)	12500	Rs. 34 lakh	12495	17/01/2008	Closed on 09/05/2011	
9	Chandrash ekhar	12500	Rs. 34 lakh	12495	22/11/2007	Closed on	

	Madhukar Kahurke					13/04/2011	
10	Sandesh Padmakar Potdar	12500	Rs. 34 lakh	12495	22/11/2007	Closed on 11/05/2010	
11	Shilpa Shah	12500	Rs. 34 lakh	12495	06/12/2007	Active	
12	Bhiwaji Laxman Dawbhat	12500	Rs. 34 lakh	12495	22/11/2007	Active	
13	Swapnali K Mhatre (name changed to Pallavi Bhushan Pitale)	12500	Rs. 34 lakh	12495	22/11/2007	Closed on 19/04/2011	Fund transfer from Trueline Multitrade Pvt. Ltd.
14	Pratibha S Mohite	12500	Rs. 34 lakh	12495	04/03/2008	Closed on 09/05/2011	
15	Kalyani D Acharekar	12500	Rs. 34 lakh	12495	27/11/2007	Closed on 07/04/2011	Cheque Deposit from Trueline Multitrade Pvt. Ltd.
16	Shweta Ratnakar Nakashe	12500	Rs. 34 lakh	12495	17/01/2008	Closed on 17/04/2011	
17	Harish Khetan	100	Rs. 27200/-	100	11/08/1999	Active	Own Source
Total				2,50,000			

With regards to the above, I also note the observation of investigation which are detailed as under:

- It was observed from the Bank account statement of above mentioned 12 entities (Serial No.1 to 12 in Table No.1) received their application money on 18/08/2008 in their respective bank accounts maintained with Yes bank from the account (Yes Bank A/c no. 001083800000540) of Runwell Steel Private Ltd. (Runwell), promoter of RMMIL.

- Similarly, 4 entities (Serial No.13 to 16 in Table No.1) also received their application money from promoter group company Trueline Multitrade Pvt. Ltd. (Trueline) having bank account no. 000320110000341 with Bank of India. Out of the said 4 entities, 2 entities got RTGS transfer (credit) on 14/08/2008 and the other 2 entities received money by way of Cheque deposits on 13/08/2008 from “Trueline”
- Out of the 17 entities at Table No. 1 above, it was observed from the investigation that only one entity (Sl. No. 17) actually paid the money for its application through its bank account maintained with Union Bank of India.
- It is also observed that Mr. Rakesh Powale, one of the directors of Runwell, got allotment of 14,994 shares in employee category. Runwell is a promoter group company of RMMIL as mentioned in the prospectus. From the perusal of Bank Account statement of Runwell maintained with Yes Bank, following entries have been noted :

(Table No. 2)

Date	Description	Debits (Rs.)	Credits(Rs.)
18/08/08	Amit Sharma (Whole time Director of RMMIL)		10,00,000
18/08/08	Trueline Multitrade Pvt. Ltd.		6,50,000
18/08/08	Subhash Sharma		5,50,000
18/08/08	Mayfair Management Services Pvt.Ltd.		3,75,00,000
18/08/08	Resurgere Mines and Minerals India Ltd.		40,00,000
18/08/08	Resurgere Mines and Minerals India Ltd.		22,00,000
	Total		4,59,00,000
18/08/08	Amount transferred to 12 (twelve) employees of RMMIL	5,44,00,000	
11/09/08	Resurgere Mines and Minerals India Ltd.		4,00,00,000
11/09/08	Trueline Multitrade Pvt.Ltd.	6,50,000	
11/09/08	Amit Sharma (Whole time Director of RMMIL)	10,00,000	
11/09/08	Mayfair Management services Pvt.Ltd.	3,75,00,000	

11/09/08	Subhash Sharma	5,50,000	
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- From the above table, it can be seen that the amount received on 18/08/08 from Subhash Sharma, Amit Sharma, Trueline and Mayfair Management Services Pvt. Ltd. were returned on 11/09/08 after receiving Rs.4 crore from RMMIL.
- Four entities (Serial No.13 to 16 in table No.1) received the money for applying in the IPO from Trueline. As per the information available on MCA website, Trueline was incorporated on January 05, 2008 i.e. in the year of IPO of RMMIL. Ganesh Sonbhau Atkari and Baban Waman Bhosale are the directors of Trueline.
- From the account opening form received from Bank of India for a/c no. 000320110000341 of Trueline, it is noted that said account was opened on August 09, 2008 i.e. 2 days prior to opening of bids for IPO of RMMIL (Bids were open from August 11 to 13 of 2008). The form was also signed by Rakesh Powale and Mukesh Keni as authorized signatory in addition to above mentioned 2 directors of Trueline. Both Rakesh Powale and Mukesh Keni are directors in Victory Sponge Private Ltd. and Eminent Steel Private Ltd.
- It is also noted that both Rakesh Powale and Mukesh Keni were holding 0.01% each in Eminent Steel Private Ltd shareholding, in which Neelam Subhash Sharma (promoter of RMMIL) held 98% shareholding. It is noted that Rakesh Powale was also a director of Runwell Steel Private Ltd. In the Prospectus of the company Rakesh Powale was also named as a key management personnel who was holding 5625 shares in RMMIL. From the perusal of ICICI bank account no. 623505376151 of RMMIL, it is noted that Rs. 2,00,000/- were paid to Ganesh Atkari (director of Trueline) vide cheque no. 821720 on April 24, 2008.
- On perusal of bank account no. 000320110000341 with Bank of India of Trueline, it is noted that Rs.1 crore was deposited in the said account vide cheque no. 321032 drawn on the City Co-Operative Bank Ltd.(CCBL). CCBL

vide its letter dated September 23, 2011 informed that the said cheque of Rs.1 crore was issued from the account of M/s Deepak Minerals (A/c no. CD2938) and also informed that proprietor of M/s Deepak Mineral is Mukesh Keni. From the said CCBL Bank A/c statement of M/s Deepak Minerals, it is noted that address of M/s Deepak Minerals is; *15, Morvi House, 28/30, Goa Street, Ballard Estate, Mumbai-400038* which is same as that of RMMIL and other subsidiary/promoter group companies viz. Warana Minerals Private Ltd., Runwell, Eminent Steel Private Ltd. and Victory Sponge Private Ltd. RMMIL also holds bank account with CCBL bearing account no. CD/2827 which shows the same address.

- As per the information available on MCA website, email ids for said subsidiary/promoter group companies are wmpl@live.in, rspl@live.com, espl@live.com and vspl@live.com. Whereas email id for Trueline is tmpl@live.com which shows the same identification pattern for electronic mail for all group/related companies.

35. Further, from the above findings of the investigation, I note that the flow of funds that entities who applied in the IPO of RMMIL and were allotted shares in employee category, received money from group/related companies of RMMIL. Moreover, 2 entities (Serial No.2 & 13 in table No.1) received application money in their bank account on August 14, 2008 and 12 entities (3 to 9, 11, 12 & 14 to 16 in table No.1) received money in their bank account on August 18, 2008 whereas IPO of RMMIL was open during August 11-13, 2008. These entities were not having sufficient funds in their bank accounts when they applied for IPO of RMMIL. Funds were also transferred to the bank accounts of entities after the closing date of IPO application. I also note that it was only after receiving funds from group/related companies of RMMIL that these entities could get shares in the IPO. It is therefore I note from the analysis of fund movement that the company indirectly funded the applicants in the employee category for the purpose of making the application in the IPO and siphoned off money from the proceeds of the issue. Thus, it is seen that the claims of the company towards

utilization of IPO proceeds were not substantiated with any evidence in the form of agreement, quotations, bills, cheque, etc.,

36. It is therefore the above said facts clearly establish that the money was siphoned off from the issue proceeds to pay the group companies of RMMIL who had provided funds to 16 entities (entities at S. Nos. 1 – 16 in Table No.1), for making application in the employees' category. Further, it can also be noted that in case, if such funding had not been made, there would have been under subscription to the issue.

II. Non utilization of IPO proceeds for purpose for which it was raised

37. It has been alleged that the IPO proceeds not been utilized for the purpose for which it was raised. In this regard, I note that the objects of the issue as mentioned in the prospectus dated 22/08/2008 stated as follows:

- Purchase of plant and machinery for setting up of own extraction and crushing facilities at the mines.
- Purchase of railway rakes to set up our own logistics infrastructure facilities.
- Margin money for working capital.
- The following table summarizes the total estimated fund requirement:

Sr. No.	Particulars	Amount(in millions)
1	Purchase of Plant and Machineries at:	
	Nuagoan Mine	236.57
	Maharajpur Mine	452.73
	Jharkhand Mine	460.57
	Yelwan Jugai bauxite Mine	135.77
	Sub Total	1,285.64
2	Purchase of 6 railway rakes	1,163.60
3	Working Capital Margin	182.48
4	Provision for Contingencies and Pre-Operative Expenses	82.42
5	General Corporate Purposes	100

	Sub Total	2,814.14
6	Issue expenses	98
	Grand Total	2,912.14
i) Means of Finance :		
	Particulars	Amount(in millions)
	Term Loans	860
	Preferential allotment to Merrill Lynch International	430
	Pre-IPO allotment	137.5
	Net Proceeds of the public Issue	1,201.50
	Internal Accruals	283.14
	Total	2,912.14

38. Further I find that the objects were amended by way of postal ballot dated 14.03.2009. The following table summarizes the revised objects and the estimated fund requirement:

Sr. No.	Particulars	Revised Amount(in millions)
1	Purchase of Plant and Machineries at:	
	Nuagoan Mine	325.28
	Maharajpur Mine	565.91
	Jharkhand Mine	460.57
	Yelwan Jugai bauxite Mine	135.77
	Dhelana	525
	Pen Mine	131.01
	Sub Total	1,671.05
2	Working Capital Margin(Nuagoan, Maharajpur&Jharkhand)	214.41
	Working Capital Margin (Dhelana & Pen Mine)	16.95
3	Provision for Contingencies and Pre-Operative Expenses	76.73
4	Issue expenses	98.00
5	General Corporate Purposes	100.00
6	Acquiring & Developing Mining Assets, Set-up plant & Machinery for extraction & processing minerals at new mining assets, long term raising & Purchase contracts for new mining locations.	735.00
	Grand Total	2,912.14

Analysis of use of IPO proceeds:

39. I also note that the total amount mobilized by RMMIL through IPO was Rs.120.15 crore. Banks, where the IPO escrow accounts were maintained and the details of amount collected bank wise, are as under:

Bank Name	Amount in Rs
ICICI Bank	76,03,42,142.00
BNP Bank	39,49,53,568.00
HDFC bank	4,04,59,290.00
UTI AXIS Bank	34,99,200.00
Standard Chartered Bank	22,51,800.00
Total	120,15,00,000.00

40. On analysis of movement of funds pursuant to receipt in Escrow account by Investigation, I note that the company indirectly funded the applicants in the employee category for the purpose of making the application in its IPO and had siphoned off money from the proceeds of the issue. Further I also note that the claims of the company towards utilization of IPO proceeds are also not substantiated with any evidence in the form of agreements, quotations, bills, receipts, cheques, etc. Thus, in view of the above observation made in the investigation report with regards to fund transfers, inadequate and evasive replies of the company, non-cooperation on part of the company in providing the requisite documents during the investigation, establish that the funds raised in the IPO have not been used in accordance with the objects stated in the prospectus and the same were siphoned off.

B. Utilization of ICD Rs.18 Crores and Non- disclosure on the same.

41. As regards to the allegation of utilization of ICD Rs.18 crores and non-disclosure on the same to the exchange, I note that with regard to the end use of funds raised in the IPO, as stated above, further details and supporting documents were sought from the RMMIL and its Directors, vide various summons and

communications dated 42/10/2013, 25/10/2013, 26/09/2014, 12/10/2014, 24/11/2014, 24/02/2015, 16/03/2015, 06/04/2015. The details of the summons issued and its delivery status are as under;

Date of Summon	Issued to	Under section	Delivered or not
27/11/2013	Managing Director	11(2) & 11 C (3)	Yes
28/04/2015	Managing Director	11(3) & 11 C (3)	Yes
10/07/2015	Managing Director	11(3) & 11 C (3)	Yes

42. In respect of the above, I note that RMMIL in its various replies and responses during the investigation, submitted the following:-

- RMMIL vide its replies dated 10.05.2015, 15.06.2015 and 20.07.2015 submitted that the amount transferred to Jai Minerals and Laxmi Minerals was given as advance/token money for acquisition of mines. However due to certain adverse findings by RMMIL, the deal was cancelled and the respective amount was received back which is reflected in the bank statements. The amount received from the mutual funds were subsequently utilized as per the objects of the issue.
- RMMIL vide its reply dated 27.11.2014 submitted that ICD was issued to PR Vyapaar for raising Rs. 18 crores which was documented through agreement dated 13th August, 2008.
- RMMIL vide its replies dated 10.03.2015 and 15.06.2015 submitted that Jai Minerals and Grewal Mines are its customers, with whom it carries out routine business transactions and the amounts transferred to them was for purpose of acquisition of mines and supply of minerals.
- RMMIL vide its reply dated 10.05.2015 stated the transfer of amount of Rs 4 crores to Runwell on 11.09.2008 was for acquisition of mines.
- RMMIL vide its reply dated 20.07.2015 submitted that the amount of Rs 15 crores realized from fixed deposit was utilized for the purpose of purchase

of plant and machinery, acquisition of mining assets and mine development expenses.

43. Although RMMIL provided the above information and the bank statements depicting the above amounts, I note that there were no supporting documents like quotations, bills/invoices, receipts, cheques, etc. provided by RMMIL at any point of time to substantiate any of its submissions made above, despite summons and repeated reminder as mentioned in the table above. Further I find that the Company had sought for several extensions for submission of supporting documents on various pretexts in all its replies. The supporting documents have not been provided by the company despite lapse of time sought by it and even after two years of first communication in this regard.

44. Further, I note that since RMMIL did not cooperate in providing the proofs of use of funds, other means were explored to find out the extent of truth in submissions of RMMIL.

45. In respect of above, I find that information was also sought from entities who received major chunk of the issue proceeds. Following is the gist of information received from the said entities:-

S.No	Name of Entity	Amount Received INR	Summons Delivered (Y/N)	Reply Received (Y/N)	Reply of Entity
1	Runwell Steel Pvt. Ltd.	10,32,00,000	Y	Y	*The funds were received from RMMIL for acquisition of mines. (*No supporting documents have been provided by Runwell in its reply)
2	Jai Minerals	6,95,00,000	Y	Y	No funds have been received by the company from RMMIL.
3	Vyagreshwar Minerals Producers Co-op. Soc.	2,47,30,000			A sum of Rs 2,08,50,000 was received from RMMIL for supply of

			Y	Y	<i>bauxite ore for which supporting documents have also been provided.</i> The documents have been verified and found to be in order.
4	Prikar Financial Consultants	4,10,00,000	Y	Y	Took money pursuant to ICD agreement dated 8/10/2008 and repaid the same in March 2009.
5	KJS Alhuwalia	85,00,000	Y	Y	No funds have been received by the company from RMMIL.

46. This apart, information was also called from banks (from whom the company had availed term loans, in addition to the money raised in IPO, to achieve the objects as mentioned in the prospectus) as to whether the funds raised from them by RMMIL were used for the purpose for which they were availed and whether there was any non-compliance on the part of RMMIL of the terms and conditions of the agreements. In this respect, I note that the replies from the Banks are as under:

- i) Bank of India vide its reply dated 14.08.2015 has stated the company has been declared as wilful defaulters by the bank. The company did not use the funds for the purpose for which it had availed the loan facility and complaint have been filed with CBI for the same. A case has also been filed with DRT III Mumbai for recovery of the dues by the bank.
- ii) Union Bank vide its letter dated 13.08.2015 has stated that the account of the company has turned NPA on 30.06.2011 and is reported as fraud, due to diversion of funds. Subsequently, a case has been filed by the bank with DRT III Mumbai for recovery of its dues. The bank has taken possession of the 2 properties of the company which were offered as collateral security.
- iii) Barclays Bank vide its reply dated 20.08.2015 has stated that that the account of the company has turned NPA on 11.07.2011 and the company

has recalled the loans and invoked personal guarantees of the guarantors. The bank has initiated legal recovery action against the company by way of filing DRT suit, SARFAESI action for repossession of security and also filed criminal case against the company.

47. I note that the above information indicated that IPO proceeds to the extent of Rs.1,13,77,21,250 (after deducting Rs. 2,47,30,000 given to Vyagreshwar Minerals Producers Co-op. Soc. towards objects of issue and Rs. 3,70,48,750 given to Merchant banker towards issue expenses from the issue proceeds) had been siphoned off and not been used for purposes of objects of the issue, as stated in the prospectus. Therefore, the IPO money was not utilized for the objects as mentioned in the prospectus and the information provided so far by RMMIL was misleading.

48. In this regards, I note that the investigation also revealed that RMMIL vide its reply dated 27 November, 2014 submitted that it had issued ICD for Rs.18 crores through agreement dated 13th August, 2008 with PR Vyapaar. However, it is observed that RMMIL had not disclosed the said facts in the prospectus dated 22 August, 2008.

C. Non Compliance of summons RMMIL

49. As regards to the allegation of non-compliance of summons by Noticee Nos 2 & 3, I note that despite the lapse of time as sought by it and even after two years of first communication in this regard by SEBI, the supporting documents were not been provided by the aforesaid Noticees. This clearly depicts the wilful neglect/non-cooperation by them to provide the requisite information.

50. In view of the above, all the afore-stated breaches and violations committed certainly constitute fraud on shareholders and investors who have been deprived of material information. I also find that by acting contrary to investors' interest, its shareholders as well all the investors in Securities Market have

been manipulated and defrauded, which is in violation of provisions of SEBI Act and PFUTP Regulations as well as the provisions of DIP Guidelines read with ICDR Regulations, as pointed out in the SCN.

51. As regards to the submissions made by Noticee No. 2 that he had stated that he had filed for settlement proceedings in the matter, which is observed to be rejected by the panel of competent authorities. Further, I note that some of the documents submitted by the Noticee as a part of his reply are incorrect and therefore misleading, i.e. Annexure E is mentioned in the reply to be minutes of the personal hearing conducted on April 07, 2022, however, the actual Annexure E to the SCN is exchange of e-mail between the Noticee and the settlement division between the days October 05, 2021 and February 10, 2022. Further, I note that Noticee No.2 has mentioned Annexure F in the reply to be the copy of minutes of the inspection dated April 12, 2022, however, the actual Annexure F to the SCN is part of undertakings and waivers for the settlement application filed with SEBI. The Noticee has also stated in his reply that all the charges are against the company (RMMIL) and there is no specific role of Noticee No.2 has been pointed out. With regard to the same, I note that a Company, though a legal entity, cannot act by itself, it can act only through its directors who are collectively referred to as the Board of Directors. Further the responsibilities for corporate activities is not confined to directors, but are extended beyond the Board of Directors to individual directors, executives, officers of a company. In view of the same I note Noticee No.2 being the Chairman and Managing Director was responsible for its day-to-day affairs of RMMIL. Further, in this regard, I note that a Managing Director, as defined in Section 2(26) of the Companies Act, 1956, means a director who is entrusted with substantial powers of management which would not otherwise be exercisable by him. The proviso to section 2(26) provides that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.

52. In the matter of **Wasava Tyres v. The Printers (Mysore) Ltd.** [2007 139 CompCas 446 Kar], the Hon'ble Karnataka High Court has observed that – "...12. *The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore except the excluded acts the managing director has power and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the emit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-today affairs and business of the company...*"

53. Hence, I note that a Managing director is responsible for managing the day to-day affairs and business of the company and he has been vested with the said power under the Companies Act, 1956. Further, I note that Noticee No.2 is the Chairman and Managing Director of the *Noticee Company* and was in-charge of the day to day management of the affairs of the Company. This implies a high level of accountability and knowledge of the overall functioning of the company. He was not only expected to be aware of the working of Company but is mandated by law to be accountable for the mis-management in the affairs of Company. Accordingly, he was responsible for the day to day affairs of RMMIL and it was certainly his primary duty to keep the Board well informed about the actual status of utilisation of IPO proceeds and in general, about the affairs of the Company. Further, I also note from the records that he was aware of the fund transfers indirectly made to employees out of the IPO funds and also about the ICD taken from PR Vyapaar (as he has signed the ICD agreement with P R Vyapaar). He has knowingly perpetrated fraud on the shareholders by concealing material facts from them and by acting contrary to their interest behind their back.

54. I am of the view that the hierarchy in a Corporate Structure is designed in such a way that adequate checks and balances are available to prevent afore stated situation and a Managing Director is a key person for such a hierarchy to work properly in the interest of the Company and its shareholders. Further, it is not the

contention of the Noticee No.2 that he is denying his role in the company during the time of the issuance of the ICDs. Therefore, Noticee No.2's contention that his specific role has not been pointed out is without any merits. In view of the above, I find him accountable for the misleading disclosures and fraud committed on their shareholders and investors in the Securities Market resulting in the violation of Section 12A (a),(b),(c) of SEBI Act, Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of PFUTP Regulations, Regulation 57 (1) and (2) read with schedule VIII Part A (2)(VII)(A)(1), Regulations 59 and 60 (4) and 60 (7) (a) of ICDR Regulations and Sections 11(3) and 11C(3) of SEBI Act, 1992.

55. In so far as Noticee No. 3 is concerned, it is noted from the Prospectus that he was the Whole time Executive Director of RMMIL and also Director, Finance during the relevant period of IPO of RMMIL. While holding the post, he was actively involved in running the day to day affairs of the Company as well as involved in the IPO matters. Therefore, it can be said that being the Executive Director who control the company might had the full knowledge of the affairs of the Company including IPO funding and utilisation as he was responsible for the day to day affairs of the Company. Further, it was certainly not only his primary duty to keep the Board well informed about the actual status of utilisation of IPO proceeds but also mandated by law to be accountable for the mis-management in affair of the company. It is therefore from the available facts and records there is no evidence to show that he had no knowledge of the affairs of RMMIL pertaining to the mis-utilisation of IPO proceeds or the fund transfers made to the employees and also that he had exercised due diligence pertaining to matters relating to IPO of RMMIL.

56. As regards to his contention that he was no longer not only associated with the company and also not in possession of the relevant documents relating to the issue as he had resigned in August 2011, I note that, considering the fact that Noticee no. 3 was the Whole Time Executive Director, that too in charge of finance, during the relevant time of IPO as well as during the subsequent period of mis-utilisation of IPO proceeds, it cannot be wrong to assume that he would

have in fact had the knowledge of the affairs of the company including the utilisation of IPO proceeds. Therefore, his subsequent resignation in August 2011 would not have any relevance to the liability fastened on him under the SCN issued and served on him in the instant proceedings as he was very much active in the day to day affairs of the company and particularly in IPO issue. Further, I note that he has not only signed the Prospectus despite being aware of the ICD taken from P R Vyapaar on August 13, 2008 which was deliberately not disclosed in the said Prospectus, but has also transferred funds to Runwell on August 18, 2008 to fund the employees of RMMIL for participating in the IPO and Runwell refunded the said amounts to Noticee No.3 after receiving the money from the company.

57. Further, as regards to the charges of the major portion of the IPO proceeds not been utilized in terms of the objects of IPO mentioned in the Offer Document and that the proceeds have been utilized for purposes other than what have been disclosed to the investors, I note that while making the submissions during investigation, Noticee No.3 stated that although the proceeds were not put to use for the stated objects of IPO immediately, they have been finally utilized for the stated objects. In this regard, I note that Noticee No.3 has not placed any documents or furnished any details to show as to how the proceeds of IPO have been ultimately utilized. Considering the fact that no evidence has been furnished to support that the utilization of proceeds of IPO as stated by Noticee No.3, his statements in this regard deserve to be rejected as mere bald assertions.

58. In view of the above, I find that the end use of the proceeds of IPO has not been in terms of the statements and material disclosure made in the Offer Document/Prospectus, which is misleading and erroneous. Therefore, I conclude that the investors have been induced by the misleading and specious statements disclosed in the Offer Document and a fraud has been committed upon the investors of Securities Market more particularly upon the subscribers to the IPO of RMMIL.

59. Further, in various ICDs given by the Company and bank documents, I note that all the documents are carrying the signatures of Noticee No. 3. In view of all the above, and in the absence of any justifiable explanations from the Noticee No. 3 and lack of any verifiable documents to rely upon, I am constrained to hold that Noticee No. 3 is equally involved in the fraud perpetrated on the shareholders and investors of RMMIL in the matter of IPO utilisation by the Company. I find that the acts and conduct of Noticee No. 3 are also sufficient to hold him guilty of the violations of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations, as alleged in the SCN.

60. Persons or entities who are associated with the Securities Market especially persons like Noticee No. 3 who are at the helm of business affairs of a listed company are not only required to be diligent and to adhere to the rules and regulations but also to desist from adopting any unfair means. Herein, I find it appropriate to refer to the observations made by the Hon'ble Supreme Court of India in the matter of **N. Narayanan v. Adjudicating Officer, SEBI**, (2013) 12 SCC 152 wherein, while considering the liability of a Whole Time Director of a Listed Company, the Hon'ble Supreme Court has observed the following;

“Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.

..... The facts in this case clearly reveal that the Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person.....

.....the subsequent conduct of pledging their shares at artificially created prices, based on inflated financial results and raising loan on them would indicate that they had deliberately and with full knowledge committed the illegality.....”

61. The ICDs taken by the Company constituted material information, however no disclosure was done regarding the same. Thus, once again it can be said that the investors were kept in dark about the actual utilisation of IPO proceeds and were also unaware of the fact that the aforesaid borrowing through ICDs was to be repaid out of IPO proceeds. I also note that the Noticee being the Whole Time Executive Director had not responded to the summons issued to RMMIL. Further, Noticee no. 3 has also not disputed his role in the management of the Company and the transfer of IPO funds to various entities by the Company. In view of the above, I find him accountable for the misleading disclosures and fraud committed on their shareholders and investors in the Securities Market resulting in the violation of Section 12A (a),(b),(c) of SEBI Act, Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of PFUTP Regulations, Regulation 57 (1) and (2) read with schedule VIII Part A (2)(VII)(A)(1), Regulations 59 and 60 (4) and 60 (7) (a) of ICDR Regulations and Sections 11(3) and 11C(3) of SEBI Act, 1992.

62. As regards to the Noticee No. 4 and 5, it is noted that they have made several similar submissions, therefore, I have decided to deal with them together. I note that they have submitted that they had joined the company on the same day i.e. August 14, 2007 as Non-Executive Directors. Further, I note that they submitted that they were not involved in the day to day management of RMMIL and have discharged their responsibilities in good faith and with due-diligence. They have further submitted that all the actions taken by the Whole-Time Director was without the knowledge, consent or approval of the Board of Directors and for which they had raised concerns many times and subsequently resigned immediately on August 10, 2010 after coming to know of the wrongful intentions of the Company.

63. Noticee No. 4 has stated that he has relied upon the extracts of Board Meeting dated October 31, 2008 wherein the CFO has presented the status of utilisation of IPO proceeds in terms of the objects of the IPO. Therefore, in the absence of any of the irregularity brought to his notice, he did not have any reason to disbelieve the Company officials or Statutory Auditors. Further, the ICD was

issued to PR Vyapaar on August 13, 2008 when he was not even in Mumbai, therefore, it was not issued with his consent/approval. Even the Prospectus was not approved by him and he was not even member of that committee. Further, the declaration in the Prospectus was not signed by him as he was not in Mumbai on that date.

64. Noticee No. 5 has additionally stated that it was decided to invest the surplus IPO proceeds lying in various mutual fund schemes but no agenda about ICDs pertaining to IPO proceeds was discussed, therefore there was no reason to suspect any irregularity. It was stated that only in the Board Meeting dated October 31, 2008 (when Noticee no. 5 was absent) for the first time, it was brought to the notice of the Board that pending utilisation of IPO proceeds, the funds have been already temporarily invested in bank fixed deposits, ICDs and mutual funds. Noticee No. 5 also stated that only during the Audit Committee meeting on January 30, 2009, he was informed for the first time regarding investing the balance of IPO proceeds in ICDs during when he immediately had sought a detailed report on the matter. Further, during the Audit Committee Meetings on June 28, 2009/July 28, 2009 he objected to utilisation of IPO proceeds for extending ICDs and asked for recalling the ICDs. He finally resigned on August 10, 2010 after coming to know of the mis-conduct of the *Company* in opening a subsidiary company in UAE without permission of/or intimation to the Board.

65. From the documents submitted by the Noticee No. 4 and 5, I note that they had expressed their concerns in the audit committee meetings. Further, I note that being independent director at RMMIL and also being during certain meeting, there cannot be any direct participation. I also note that the two Noticees i.e. Noticee No. 4 & 5 were definitely holding the post of Directors during the relevant period and were members of the Audit Committee and additionally, Noticee No. 5 was also a member of the IPO and Allotment Committee. However, after perusing the submissions of the Noticees along with the materials available on record, I am of the view that the submissions made by them with supporting documents can't be ignored. It is also noted that the two

Noticees have attempted to demonstrate that considerable due diligence has been exercised by raising valid questions regarding the usage of IPO funds to extend as ICDs to other parties and have repeatedly demanded for recall of the ICDs as well, while acting in the capacity of Independent Directors, and they have always raised pertinent questions in the Board Meetings and have never acted as mute or silent spectator to the activities of the Company.

66. I also note that both the Noticees have also pointed out their reliance on the Statutory Auditors and CFO's statements in respect of confirmation of IPO funds utilisation in terms of the Prospectus. I further note that after coming to know that RMMIL was not observing transparency in its affairs, they have immediately taken a decision to step down from the position of directorship. Based on their explanations and submissions, I observe that they have endeavoured to act with due diligence to bring transparency in the working of RMMIL. Therefore, I find that the charges made against Noticees No. 4 and 5, would not sustain in the facts of the matter and accordingly, the proceedings against them deserve to be dropped.

67. With regards to Noticee No. 6, I take note of submissions made by him that he was the CFO of the Company from September 2007 to August 2012, and once the final documents were presented before him or accounting system reflected certain transactions, it was presumed that those were complete transactions. He was functioning under the instructions of Whole Time Director (WTD) who was also designated as Director, Finance and was also taking directions from CMD. The Noticee has stated that all the accounts related decisions were being taken by the WTD, Finance. He has claimed to be not a signatory to any of the bank accounts of RMMIL or its Promoter group companies. He has submitted that his reply is based on recollection of his memory after a gap of 12 years of actual transaction and that he has not reaped any undue benefits from the Company or its group companies.

68. From the perusal of submissions made by Noticee No. 6, it is noted that his main contentions are that he is not aware of any wrongdoings in the Company

pertaining to the IPO. He has relied on the inputs provided by his subordinates and has acted under instructions of the WTD, Finance (Mr. Amit Sharma / Noticee no. 3) and CMD. I note that Noticee no. 6 being the CFO of a listed Company, he cannot take such frivolous pleas of ignorance and more so when the contentions of the Noticee no. 6 are not verifiable and not convincing. It is further noted that not only clause 6.15.2 of the DIP Guidelines mandated the Noticee as the CFO to sign the Prospectus and certify that all disclosures made in the Prospectus are true and correct, but also warranted him to ensure that the funds so mobilised should be utilised on the lines of the disclosure made to the shareholders. Generally, a person who leads the finance and treasury functions of a business enterprise is designated as “CFO” and clearly, he has time and again submitted to the Audit Committee and Board of Directors the Financial results of the Company as well as apprised them with the status of utilisation of IPO proceeds in conformity with the objects mentioned in the Offer Document. The Directors of the Company have also stated to have relied on submissions made by RMMIL including by the CFO about the actual utilisation of the IPO proceeds.

69. It is also noted that Noticee No.6 stated that there was no specific restriction as per SEBI guidelines prevailing then, and on the credit rating part, he raised the matter in the Audit Committee and probably that was recorded. He has stated that he has not interacted either with the ICD giver or ICD taker. Further, RMMIL was permitted for interim use of funds as mentioned at page no. 46 of the Prospectus. In any case, it was the decision of the management and he did not have any role to play and it is Mr. Amit Sharma who was responsible for the dealing in IPO related matters with the Merchant Banker.

70. It is pertinent to note that a Company, though a legal entity, cannot act by itself, it can act only through its directors who are collectively referred to as the Board of Directors. Further the responsibilities for corporate activities is not confined to directors, but are extended beyond the Board of Directors to individual directors, executives, officers of a company. Officers of a corporation include CEO's and CFO's. CFO can be understood to be a person

charged and entrusted by the Board of Directors with the responsibility of compliance pertaining to preparation of annual accounts and balance sheet and presenting a true and fair view of the state of affairs of the company in terms of Sections 209, 210 and 211 of the Companies Act, 1956. The performance of any organization is reflected by the financial statements. Any ambiguity if remains there, makes the reflection of the performance doubtful. The role of CFO thus becomes very important as it is the duty of CFO to control the reflection of performance, which is reported to different authorities and they must perform their job with professional competency and integrity, so that the financial statements give credible information to the investors and they do not give misleading picture. Thus they have fiduciary responsibilities for reporting company's financial results and safeguarding the integrity of financial reporting. Financial disclosure is a critical component of effective corporate governance and enhances the protection of interests of investors.

71. I note that it is not the case of the Noticee No.6 that he was absent in the Board Meetings/Audit Committee Meetings held subsequent to the IPO. In this regard, on a conjoint reading of clause 49 of the Listing Agreement with DIP guidelines, it is viewed that the MD or CFO (Whole Time Director, Finance or any other person heading the finance function) are mandated to certify to the Board that they have reviewed the financial statements to the best of their knowledge and that they do not carry materially untrue statements. This has been mandated to place responsibility on the management of the Company to have effective internal controls and to make all relevant disclosures to the Board for effective decision making and to give comfort to the Directors who are not actively involved in the day to day affairs of the Company that the interest of the investors is well protected.

72. I find no merit in the submissions of the Noticee No.6 for the following reasons:

- a) He has not been able to substantiate as to whether ICD from P R Vyapaar was even disclosed in the Prospectus and why IPO proceeds were used

to repay the said ICD which was not even listed as an object in the Offer Document.

- b) Admittedly, the Noticee No.6 is responsible for the veracity of the facts disclosed in the Prospectus being signatory to the same and that too, in the capacity of a CFO of the Company. The submission of the Noticee is self-contradictory as on the one hand, he has submitted that a decision was taken to lend the surplus fund to companies having good rating, whereas on the other hand no supporting documents have been furnished to justify that lending to those companies was based on checking the credentials of those companies.
- c) It is also not the case of the Noticee that those decisions to advance ICDs were taken against his resistance or that he had presented a fair picture to the Board that lending should be made only to entities having good credit rating as decided in the Meeting of Audit Committee. It is not his submission that despite having presented the correct and true facts, the lending was done in terms of the subsequent decisions of the Board overruling the previous decision to advance ICDs only to companies having good ratings.
- d) The Noticee has failed to show that he has raised red flags in the Company or taken due diligence to ensure that the IPO proceeds are indeed utilised for the objects mentioned in the Prospectus, especially when the Company was in such a bad state financially, and yet IPO proceeds were being used to give ICDs for which the management was clearly not authorised to do so as per the Prospectus to the IPO.
- e) The Noticee appears to be merely trying to wash off his hands by heaping all the blame on the MD and WTD, which is not acceptable considering that he was the CFO of the Company having a lot of statutory responsibilities to discharge and the Noticee has not been able to demonstrate his due diligence or sincerity in his functioning as a CFO.
- f) Further, the Noticee has relied on the following clause mentioned in the Prospectus to emphasise that the Company was permitted to give ICDs:
“The management, in accordance with the policies set up by the Board shall have the discretion to deploy the net proceeds received by us from

this issue. Pending utilisation for the purposes described above we intend to temporarily invest the funds in high quality interest/dividend bearing liquid instruments including money market mutual funds, deposits with banks for necessary durations. We may also use a part of the Net Proceeds, pending utilisation for the purposes described above, to temporarily reduce our working capital borrowing from banks.”

73. In view of the above, I find that Noticee No. 6 has violated Section 12A (a),(b),(c) of SEBI Act, Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of PFUTP Regulations and Regulation 57 (1) and (2) read with schedule VIII Part A (2)(VII)(A)(1), Regulations 59 and 60 (4) and 60 (7) (a) of ICDR Regulations.

74. With regard to Noticee No.7, he has submitted that he joined as a Company Secretary of RMMIL and had to ensure compliances under various applicable acts and was not involved in utilization of ICD of Rs. 18 Crores and its non-disclosure in the Prospectus as RMMIL had constituted Audit Committee for end utilization of IPO proceeds. Further, he also submitted that the Company had appointed M/s Motilal Oswal Securities Limited as Lead Merchant Banker who had filed draft Red Herring Prospectus dated 11th December, 2007, Red Herring Prospectus dated 1st August, 2008 and Prospectus dated 22nd August, 2008. The Company has also appointed J. Sagar Associates as Legal Advisors to the Issue. Therefore the Noticee had no role to play.

75. With regard to the same, I note that the manner of disclosures in the offer document are provided under Regulation 57 of the ICDR Regulations and Schedule VIII – Part A of the ICDR Regulations, deals with disclosures in red herring prospectus, shelf prospectus and prospectus. From the same, it is observed that only the issuer making the public issue of specified securities shall make the relevant disclosures in the offer document. Further, Regulation 59 of the ICDR Regulations, dealing with the prohibition on payment of incentives and Regulation 60 of ICDR Regulations, dealing with public communications, publicity materials, advertisements and research reports, also specifies that the said regulations are applicable to the issuer and or a person

connected with the issue. I also note that Regulation 2 (r) of the ICDR regulations, states than an “issuer” means any person making an offer of specified securities. Additionally, I note that a compliance officer is inter-alia responsible for carrying out numerous core functions including co-ordination with recognised stock exchange(s) and depositories vis-a-vis compliance with rules, regulations and other directives of SEBI; monitoring e-mails received by grievance redressal division of the listed entity; maintenance of appropriate procedures to ensure correctness, authenticity and comprehensiveness in information being filed with SEBI etc. Therefore, I note that he ensures that a company complies with its outside regulatory and legal requirements as well as internal policies and bylaws. I also note that he has signed the declaration made in the Prospectus despite being aware of the actual intentions of the *Company* and have actively participated in the IPO Committee and have not displayed any due diligence having been exercised by him. In view thereof, I am left with no doubt but to hold him accountable for the misleading disclosures and fraud committed on their shareholders and investors in the Securities Market. In view of the above, I find Noticee No. 7 has violated Regulations 3(a),(b),(c) and (d), 4 (1), 4(2),(f),(k),(r) of PFUTP Regulations and Regulation 57 (1) and (2) read with schedule VIII Part A (2)(VII)(A)(1), Regulations 59 and 60 (4) and 60 (7) (a) of ICDR Regulations.

D. Self-trades:

a. Major Broker and Clients:

Broker's Concentration (BSE):

76.Details of Top 10 buy broker and sell broker concentration on BSE during the investigation is tabulated as below:

Buy Broker name	Total Shares	%age of Trd vol	Selling Broker Name	Total Shares	%age of Trd vol
OPG Securities Pvt Ltd	63,61,724	10.10	OPG Securities Pvt Ltd	63,61,724	10.10
Matrix Equitrade Pvt Ltd	54,59,844	8.67	Matrix Equitrade Pvt Ltd	54,59,844	8.67
H.J. Securities Pvt Ltd	33,20,639	5.27	H.J. Securities Pvt Ltd	33,20,639	5.27

Angel Broking Ltd	23,66,043	3.76	Angel Broking Ltd	23,66,043	3.76
Motilal Oswal Securities Ltd	22,22,327	3.53	Motilal Oswal Securities Ltd	22,22,327	3.53
Bonanza Portfolio Limited	11,47,195	1.82	Bonanza Portfolio Limited	11,47,195	1.82
Marwadi Shares and Finance Ltd	10,06,888	1.60	Marwadi Shares and Finance Ltd	10,06,888	1.60
Anand Rathi Financial Services Ltd	9,55,153	1.52	Anand Rathi Financial Services Ltd	9,55,153	1.52
Ashika Stock Broking Ltd	8,96,910	1.43	Eureka Stock & Share Broking Services Ltd	8,86,557	1.42
R.M. Shares Trading Pvt Ltd	8,88,604	1.41	Naman Securities & Finance Pvt Ltd.	8,88,346	1.40
Top 10 Buy Brokers	2,46,25,327	39.11	Top 10 Buy Brokers	2,46,14,716	39.09
Remaining Brokers	3,83,56,833	60.89	Remaining Brokers	3,83,67,444	60.91
Total Traded Volume	6,29,82,160	100.00	Total Traded Volume	6,29,82,160	100.00

77. It can be seen from the above table that trading member OPG Securities P Ltd. had the highest contribution of 10.10% in gross buy and 10.20% in gross sell on BSE during the investigation period.

Broker's Concentration (NSE):

78. Details of Top 10 buy broker and sell broker concentration on NSE during the investigation is tabulated as below:

Buy Broker name	Total Shares	%age of Trd vol	Selling Broker Name	Total Shares	%age of Trd vol
Motilal Oswal Securities Ltd	2677425	3.82	Motilal Oswal Securities Ltd	2791664	3.99
Kotak Securities Ltd	2152187	3.07	Kotak Securities Ltd	2097032	2.99
Kaushik Shah Shares & Securities Pvt Ltd	2088427	2.98	Kaushik Shah Shares & Securities Pvt Ltd	2088367	2.98
Karvy Stock Broking Ltd	2040185	2.91	Magnum Equity Broking Limited	1992567	2.85
Magnum Equity Broking Limited	1993632	2.85	Karvy Stock Broking Ltd	1945119	2.78
Composite Securities Ltd	1800767	2.57	Composite Securities Ltd	1782353	2.55
Latin Manharlal Securities Pvt	1509341	2.15	Latin Manharlal Securities Pvt	1503826	2.15
BP Equities Private Limited	1459121	2.08	BP Equities Private Limited	1457215	2.08

R.M. Share Trading Pvt Ltd	1424371	2.03	R.M. Share Trading Pvt Ltd	1424371	2.03
Prashant Jayantilal Patel	1412801	2.02	Prashant Jayantilal Patel	1412801	2.02
Top 10 Buy Brokers	1,85,58,257	26.50	Top 10 Buy Brokers	1,84,95,315	26.41
Remaining Brokers	5,14,80,386	73.50	Remaining Brokers	5,15,43,328	73.59
Total Traded Volume	7,00,38,643	100.00	Total Traded Volume	7,00,38,643	100.00

79. It can be seen from the above table that trading member Motilal Oswal Securities Ltd. had the highest contribution of 3.82% in gross buy and 3.99% in gross sell on NSE during the investigation period.

Client's Concentration (BSE):

80. Details of Top 10 buy broker and sell broker concentration on BSE during the investigation is tabulated as below:

Buy Broker name	Total Shares	%age of Trd vol	Selling Broker Name	Total Shares	%age of Trd vol
OPG Securities Pvt Ltd	63,61,724	10.10	OPG Securities Pvt Ltd	63,61,724	10.10
Matrix Equitrade Pvt Ltd	54,59,844	8.67	Matrix Equitrade Pvt Ltd	54,59,844	8.67
H.J. Securities Pvt Ltd	33,20,639	5.27	H.J. Securities Pvt Ltd	33,20,639	5.27
B K Shah Co Ketan Bhailal Shah	899646	1.43	B K Shah Co Ketan Bhailal Shah	899629	1.43
R.M. Share Trading Pvt Ltd	888604	1.41	R.M. Share Trading Pvt Ltd	888604	1.41
Eureka Stock & Share Broking Services Ltd	845492	1.34	Eureka Stock & Share Broking Services Ltd	845492	1.34
Ankit Girishkumar Vasani	812788	1.29	Ankit Girishkumar Vasani	803788	1.28
Transglobal Securities Ltd	702810	1.12	Transglobal Securities Ltd	703290	1.12
Mithali Mukesh Gudekar	669724	1.06	Mithali Mukesh Gudekar	645648	1.03
JMP Securities Pvt Ltd	607573	0.97	JMP Securities Pvt Ltd	607473	0.97
Top 10 Buy Brokers	2,05,68,844	32.66	Top 10 Buy Brokers	2,05,36,131	32.61
Remaining Brokers	4,24,13,316	67.34	Remaining Brokers	4,24,46,029	67.39
Total Traded Volume	6,29,82,160	100.00	Total Traded Volume	6,29,82,160	100.00

81. It is observed that client OPG Securities P Ltd. was highest buyer and seller for 63,61,724 shares (10.10% of total market volume) on BSE during the Investigation period.

Client's Concentration (NSE):

82. Details of Top 10 buy broker and sell broker concentration on NSE during the investigation is tabulated as below:

Buy Broker name	Total Shares	%age of Trd vol	Selling Broker Name	Total Shares	%age of Trd vol
Kaushik Shah Shares & Securities Pvt Ltd	2088427	2.98	Kaushik Shah Shares & Securities Pvt Ltd	2088367	2.98
Latin Manharlal Securities Pvt	1461617	2.09	Latin Manharlal Securities Pvt	1461617	2.09
BP Fintrade Private Limited	1458433	2.08	BP Fintrade Private Limited	1456727	2.08
R.M. Share Trading Pvt Ltd	1424371	2.03	R.M. Share Trading Pvt Ltd	1424371	2.03
Prashant Patel	1399600	2.00	Prashant Patel	1399600	2.00
Harbux Singh Sidhu	1352188	1.93	Harbux Singh Sidhu	1334359	1.91
PRB Securities Pvt Ltd	1322937	1.89	PRB Securities Pvt Ltd	1322937	1.89
Maniput Investments Pvt Ltd	1278782	1.83	Maniput Investments Pvt Ltd	1278782	1.83
Transglobal Securities Ltd	1268495	1.81	Transglobal Securities Ltd	1268515	1.81
B K Shah Co Ketan Bhailal Shah	1092814	1.56	B K Shah Co Ketan Bhailal Shah	1092783	1.56
Top 10 Buy Brokers	1,41,47,664	20.20	Top 10 Buy Brokers	1,41,28,058	20.17
Remaining Brokers	5,58,90,979	79.80	Remaining Brokers	5,59,10,585	79.83
Total Traded Volume	7,00,38,643	100.00	Total Traded Volume	7,00,38,643	100.00

83. It is observed that client Kaushik Shah Shares & Securities Pvt. Ltd. was highest buyer for 20,88,427 shares (2.98% of total market volume) and the highest seller for 20,88,367 shares (2.98% of total market volume) on NSE during the Investigation period.

84. Self-trades are trades in which both the buyer and the seller are the same entity. Self –trades create artificial volume in the market and give false and misleading appearance of trading in the scrip at the exchange. The investigation revealed that some entities have executed self-trades during the investigation period.

85. Trades of the following entities have been analyzed based on the repetitive nature of self-trades, the quantity of trades executed by them i.e. more than 10,000 shares and the number of trades executed by them i.e. more than 10 count of trades executed for two or more days:

Client Name	Broker Name (Buy & Sell)	Total Self Trade Volume	Total Self Trade Count	No of Days Of self- Trades	LTP Contribution By self-trades
Prashant J Patel	Prashant J Patel	25861	759	4	-1.85
BP Fintrade Private Limited	BP Fintrade Private Limited	20365	912	5	1.5
Latin Manharlal Securities Pvt	Latin Manharlal Securities Pvt	18817	37	4	-3.35
PRB Securities Pvt Ltd	PRB Securities Pvt Ltd	17040	38	4	1.25
Maniput Investments Pvt Ltd	Magnum Equity Broking Limited	15879	142	4	-11
Transglobal Securities Ltd	Transglobal Securities Ltd	14733	222	4	-3.8
B K Shah Co Ketan Bhailal Shah	Motilal Oswal Securities Ltd	13829	1092	4	72.75
R.M. Share Trading Pvt Ltd	R.M. Share Trading Pvt Ltd	11500	225	2	-3.05
Kaushik Shah Shares & Securities Pvt Ltd	Kaushik Shah Shares & Securities Pvt Ltd	10793	124	3	-1.85
	Total	1,48,817	3,551	-	51.95

86. From the above, it is observed that, in the self – trades of the above entities, most of the self - trades have been carried out by stock brokers in their proprietary account. Further, in other cases where trades were not carried out by stock brokers in the proprietary account, the stock brokers, for the clients,

on buy side as well as sell side were same. Thus, they have created artificial volume by engaging in self –trades, wherein there was no change of ownership.

87. In view of the foregoing, it was alleged that the Noticee Nos. 19 to 21 (i.e. BP Fintrade Pvt. Ltd., B K Shah Co. Ketan Bhailal Shah and Maniput Investments Pvt. Ltd.) have entered into self-trades repeatedly on both BSE and NSE without the intention of change of ownership and are alleged to have violated Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) & (g) of PFUTP Regulations. Further, the Noticee Nos. 8 to 18 (i.e. OPG Securities Pvt. Ltd., Matrix Equitrade Pvt. Ltd., H J Securities Pvt. Ltd, Naman Securities and Finance Pvt. Ltd., JMP Securities Pvt. Ltd., Prashant J Patel, Latin Manharlal Securities Pvt. Ltd., PRB Securities Pvt. Ltd., Transglobal Securities Ltd., R M Shares Trading Pvt. Ltd., Kaushik Shah Shares & Securities Pvt. Ltd.), being Stock Brokers have entered into self-trades in proprietary account repeatedly on BSE & NSE without the intention of change of ownership, causing creation of artificial volume in the scrip, resulting in false and misleading appearance of trading of the scrip in the securities market and are alleged to have violated Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) & (g) of PFUTP Regulations and Clause A (3), (4) & (5) of the Code of Conduct as specified under Schedule II read with Regulation 7 of the Broker Regulations. Additionally, Noticee No. 22 – 24 (i.e. B P Equities Pvt. Ltd., Motilal Oswal Securities Ltd. and Magnum Equity Broking Ltd.), acted as broker and counterparty broker for self-trades carried out by Noticee Nos. 18-20, thereby failed to exercise due skill and care and are alleged to have violated Clause A (2) of the Code of Conduct as specified under Schedule II read with Regulation 7 of the Broker Regulations.

88. With regard to the allegation of self-trades against Noticee No. 8 to 24, they have submitted that they followed various intra-day/ jobbing/ arbitrage strategies in various scrips in stock market. Also they submitted that the counter party orders were placed by different jobbers from different terminals, therefore, there is no connection with the counter party and also there can be no meeting of mind. It also stated that its trading in scrip of RMMIL was in normal and

ordinary course of its business. Further, the Noticees stated that there was no system to detect such trades and provide alerts during 2008, which could have prevented such trades, therefore, it can be stated that there was no malafide intention to create self-trades or artificial volume which is evident from fact that the impugned trades constituted a meagre and miniscule percentage of market volume of NSE. The Noticees also stated that the said impugned trades did not affect the market price in the scrip of RMMIL, it has not made any disproportionate gain or unfair advantage nor has it caused any loss to investors.

89. With regard to the same, I note that it is a settled law that self-trades per se does not create artificial market volume and manipulate the price of scrip, but those self-trades which do so will be treated as fraudulent. SEBI vide its policy dated May 16, 2017, observed that intention is a *sine qua non* for establishing manipulation in case of self-trades, and that accidental or unintentional self-trades are not covered under the PFUTP Regulations, 2003. Intention in such cases needs to be proved beyond reasonable doubt on the basis of evidence and supporting documents.

90. I note that in this case, all the Noticees (i.e. Noticee No. 8 to 24) charged with the allegation of self-trades, are brokers who are into the business of jobbing and arbitrage. I also note that self-trades are executed by jobbers or market maker. Based on the technical analysis, if certain price level is breached, it is perceived as a momentum is caught in direction of the price movement. In order to catch the momentum, jobbers put indicative orders of small quantity of shares near the trigger price on both sides and once any trade get executed, they put more orders in that direction and later at an appropriate opportunity they square off their positions to their advantage. Many times more than one jobber actively trades in same stock through same broker but different trading terminal and sometime jobbers' orders match with each other. Such trades though originated through different terminal IDs but end up at same broker so these are also counted as self-trades. Whereas, arbitragers see opportunity in stocks traded at more than one exchange/ Segment to

encash upon price differential in one exchange/ Segment vis-à-vis another by putting corrective orders. Here I would like to refer to the Adjudication Order dated March 16, 2017, in respect of M/s. Milkyway Mercanties Private Limited and M/s. SPFL Securities Limited in the matter of **MIC Electronics Ltd.**, where it is stated that *“while proceeding against several entities, discussed the practicalities in execution of trades and observed that a distinction needs to be made between ‘wilful self-trades’ which are done with a motive to induce other to trade in that particular stock, and ‘unintentional self-trades’ which are in the nature of jobbing and had occurred due to technicalities of the anonymous trading system; only intentional self-trades can be considered to be as manipulative.”*

91. Further, I note that the number of days during which the self-trades were executed are ranging between 2 to 5 days and if the purpose was to attract other investors in the market towards the scrip then the self-trades could have been executed for a longer time period. Therefore the intention to wilfully execute self-trades cannot be sufficiently proved. Since, the charge is of self-trades, the buyer and the seller are the same person, therefore the question of connection of the Noticees with the counter parties does not arise. I also note that the self-trades have not caused any impact on the market or caused any loss to any investors. SAT in **Smt. Krupa Sanjay Soni v. SEBI**, vide its order dated Jan 09, 2014 had taken a view that *“a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades.”*

92. Considering the fact that the Noticees were all in the business of jobbing and arbitrage and the lack of evidence thereof to prove their intention in executing such self-trades, I would like to give the benefit of the doubt to the Noticee Nos. 8 to 24 as matching of trades from different terminals becomes inevitable in the execution of arbitrage trades involving high volume and turnover.

93. Self-trades are trades executed on the stock market in which the same entity is both the buyer and the seller. As such, these trades do not represent a real change in beneficial ownership of the security.

94. The Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of **Balwinder Singh v. SEBI (2013)**, observed that self-trades (or wash-trades) are per se not allowed under SEBI Act and regulations made thereunder. In **Chirag Tanna v. The Adjudicating Officer (2013)**, Hon'ble SAT held that self-trades are, admittedly, fictitious and create artificial volumes in the traded scrip. In **Triumph International Finance Ltd v. SEBI (2007)**, the SAT observed that self-trades were fictitious because the buyer and the seller were the same. Further, in **Systematix Shares & Stocks India Limited v. SEBI (2012)**, Hon'ble SAT observed that trades, *"where beneficial ownership is not transferred, are admittedly manipulative in nature."*

95. Considering the observations of Hon'ble SAT in various matters, though self-trades on the face of it implies no transfer of beneficial ownership, hence, it is necessary to look into the attending circumstances of the case.

96. The Hon'ble SAT in case of **Ketan Parekh v. SEBI** (Appeal No. 2 of 2004) decided on July 14, 2006 had categorically held that-in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available.

97. Further Hon'ble SAT in the matter of **Angel Broking Ltd. V. SEBI** held that *"Self-trades and that too buying share at higher price and selling at a lower price clearly shows that the trades executed were not normal trades."*

98. From the aforesaid table, it is observed that the alleged self-trade percentage volume of the Noticees compared to the total market volume is only 0.111% in both exchanges during the investigation period which is much less than the total market volume. It is further observed from annexure to the SCN that trades

were matched at the same price or the lower price contributing to negative LTP for most of the entities. Hence as such the manipulation of the price is not discernible from the facts of the case.

99. Though the Noticees No. 8 to 24 had entered into self-trades on multiple occasions, yet the volume of self-trades vis -a-vis total volume in this scrip is not significant. No mala fide intention behind self-trades executed by the Noticees have been brought out in the investigation report. Further, no connection is also brought out vis-a vis other traders in the scrip during the investigation period. It is also pertinent to note that both exchanges have now put in place a system to avoid such self-trades with effect from March 16, 2015 (BSE) and October 12, 2015 (NSE).
100. I also note that no adverse observations regarding synchronized trading, reversal trading or executing orders varying from Last Traded Price or creation of New High Price etc. is alleged in the investigation report. In addition to same, no fraudulent pattern / modus operandi was explained under the investigation report regarding such self-trades.
101. Self-trades are generally executed to artificially raise the volume / or to manipulate the price of a scrip by way of creating misleading appearance of trading. However, on perusal of investigation report and taking into account miniscule volume of self trades as compared to the total market volume during the investigation period, no such malafide intention can be established in the present case.
102. Considering the facts and circumstance of the case, it is concluded that the violation of Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of the PFUTP Regulations and Clause A(2), (3), (4), (5) of Code of Conduct for Stock brokers as specified under Schedule II read with Regulation 7 of Broker Regulations,

1992 against the Noticee No. 8 to 24 do not stand established on the basis of the material placed before me in this proceeding.

103. Since the alleged violations against the Noticee No.8 to 24 are not established, issue (b) does not require any consideration.

104. Taking into account aforesaid observations and in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules and after considering all the facts and circumstances of the case and evidence on record, it is concluded that the allegations levelled against the Noticee No 8 to 24 are not established. Accordingly, the adjudication proceedings initiated against the Noticee No 8 to 24 vide the SCN dated October 05, 2021, stands disposed of without penalty.

Issue b: Does the violations, attract monetary penalty under Section 15HA, 15 HB and 15 A(a) of SEBI Act for the Noticees?

105. Therefore, in view of the violations as established above and the facts and circumstances, the Noticees are liable for actions under Section 15 HA, 15 HB and 15 A(a) that were in existence during the time of committing the violation (prior to amendment) which are reproduced hereunder:

15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-
(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

15 HA. Penalty for fraudulent and unfair trade practices.-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15HB.Penalty for contravention where no separate penalty has been provided.-

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

106. In the matter of **SEBI vs Kishore R. Ajmera**, (supra) the Hon'ble Supreme Court held that:

“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light”.

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

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

108. Hence, in view of the foregoing, I note that the aforesaid actions of Noticee Nos. 2, 3, 6 and 7 are liable for monetary penalty under Section 15HA, 15 HB and 15 A(a) of the SEBI Act.

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

109. While determining the quantum of penalty under Section 15HA, 15 HB and 15 A(a) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under: -.

Factors to be taken into account by the adjudicating officer.

Section 15J - While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

- a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- b) the amount of loss caused to an investor or group of investors as a result of the default;*
- c) the repetitive nature of the default.*

110. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticees is not available. Further, material available on record does not show that the said failure is repetitive. However, I observe that the Company by siphoning off not utilizing the IPO proceeds for the purpose for which it was raised and by making wrong and misleading disclosures and non-disclosure with respect to ICDs, has defrauded the investors at large and ultimately would have affected the investment decisions of the prospective investors at large. Further, there is no doubt that investors have been induced by the misleading and specious statements disclosed in the Offer Document and a fraud has been committed upon the investors and shareholders of the Securities Market more particularly upon the subscribers to the IPO of RMMIL. Such practices employed by the

Company, its directors, CFO, compliance officer etc., are serious in nature, thus, attract and deserve considerable penalties. The modus operandi adopted by the Noticee no 2, 3, 6 and 7 is detrimental to the smooth functioning of the securities market, and hence, deserve to be viewed seriously.

ORDER

111. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in 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 the following penalties on the Noticees, for the violations as specified in this order:

S.No.	Noticee	Penal Provisions	Penalty (Rs.)
1.	Subhash Sharma (Noticee No.2)	Sections, 15 HA, 15 HB & 15 A(a) of SEBI Act, 1992	Rs. 15 Lakhs/- (Rupees Fifteen Lakhs Only)
2.	Amit Sharma (Noticee No.3)		Rs. 15 Lakhs/- (Rupees Fifteen Lakhs Only)
3.	Harish Khaitan (Noticee No.6)	Sections, 15 HA & 15 HB of SEBI Act, 1992	Rs. 5 Lakhs/- (Rupees Five Lakhs Only)
4.	Rakesh Gupta (Noticee No.7)		Rs. 2 Lakhs/- (Rupees Two Lakhs Only)

112. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS→ ORDERS OF AO→ PAY NOW

113. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and

Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

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

114. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, Recovery Proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: June 21, 2022

Place: Mumbai

**G RAMAR
ADJUDICATING OFFICER**