BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2023-24/25866-25867]

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

In respect of:

S. No.	**Name of Noticees**	**PAN**
1	M/s Chaturvedi & Shah	AAAFC0662N
2	M/s K. K. Mankeshwar & Co.	AABFK1156A

In the matter of CG Power and Industrial Solutions Limited,

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

BACKGROUND

1. CG Power and Industrial Solutions Ltd (hereinafter referred to as **CG Power/ Company**) had, vide a corporate announcement filed with Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**) on August 20, 2019, disclosed the outcome of its Board meeting held on August 19, 2019. From the said disclosure, it was inter alia noted that the total liabilities of the Company and the Group might have been potentially understated by approximately ₹1053.54 Crore and ₹1,608.17 Crore respectively, as on March 31, 2018 and by ₹601.83 Crore and ₹401.83 Crore, respectively as on April 1, 2017. It was also noted that advances to related and unrelated parties of the Company and the Group might have been potentially understated by ₹1,990.36 Crore and ₹2,806.63 Crore respectively, as on March 31, 2018 and by ₹1,479.34 Crore and ₹1,331.47 Crore respectively, as on April 1, 2017.

2. Pursuant to the above, Securities and Exchange Board of India (hereinafter referred to as **SEBI**) sought information in the matter in order to examine as to whether or not there

were any violations of the provisions of securities laws, etc. by the Company and its Directors / Promoters, during the period 2016-2019. In this regard, vide a letter dated August 26, 2019, the Company submitted a copy of the preliminary Investigation Report prepared by M/s Vaish Associates, an independent law firm appointed by the Company to conduct an investigation on certain transactions. Thereafter, SEBI had sought responses inter alia from the Chairman (Gautam Thapar), past Directors (Madhav Acharya, B. Hariharan) and CFO (V. R. Venkatesh) of CG Power.

3. Subsequently, SEBI, vide an Interim Order dated September 17, 2019, restrained the following persons, who were prima facie found to have perpetrated certain irregularities in CG Power in the nature of fraud, from accessing the securities market as well as from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders:

Sl. No.	Name	Designation / Role
1.	Mr. Gautam Thapar	Former Chairman of CG Power and Majority Shareholder (87%) of Avantha Holdings Limited, a Promoter Company of CG Power
2.	Mr. V. R. Venkatesh	CFO of CG Power from August 12, 2017 till August 30, 2019
3.	Mr. Madhav Acharya	CFO of CG Power from November 1, 2009 to August 11, 2017
4.	Mr. B. Hariharan	Non-Executive Non-Independent Director of CG Power from November 1, 2012 to March 8, 2019

4. Pursuant to the aforesaid directions made in the SEBI order dated September 17, 2019, BSE appointed MSA Probe Consulting Private Limited (hereinafter referred to as **MSA/ Forensic Auditor**) for conducting the forensic audit of the books of accounts of CG Power. Incidentally, SEBI passed a Confirmatory Order in the matter on March 11, 2020, pending receipt of the forensic audit report from MSA, wherein inter alia it was suggested to examine the role of MD & CEO, Risk and Audit Committee (RAC), Board and other employees of CG Power as well as that of Mr. Ashwin Mankeshwar i.e. Managing Partner of M/s K. K. Mankeshwar and Co. (hereinafter referred to as **KKM/ Noticee No. 2**), in the matter. KKM was the Statutory Auditor of the Company appointed in 81st Annual General Meeting of the Company dated September 28, 2018, till January 25, 2020.

5. Accordingly, in view of the above, SEBI conducted investigation in the matter and observed that M/s Chaturvedi & Shah (hereinafter referred to as **CAS/ Noticee No. 1**) was the joint statutory auditor of CG Power along with M/s Sharp & Tannan for the FY 2016-17 and subsequent to its resignation, on April 27, 2018, KKM was appointed as the statutory auditor of CG Power on April 28, 2018 to fill the casual vacancy, who completed the statutory audit of CG Power for the FY 2017-18. Investigation further observed and alleged that CAS and KKM had been acting against the fiduciary capacity, and that instead of working in the interest of shareholders of CG Power, they facilitated the scheme of cleaning up the books of accounts of CG Power, despite being aware of the irregularities and misstatements in the financial statements of CG Power. Accordingly, it was alleged that CAS and KKM have violated the provisions of section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003.

6. Thus, based on the aforesaid findings, SEBI decided to initiate Adjudicating Proceedings under Section 15HA of the SEBI Act for the above mentioned alleged violations by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

7. Initially, SEBI vide order dated July 14, 2021, appointed Shri Parag Basu, Chief General Manager as the Adjudicating Officer (hereinafter referred to as **AO**) in the matter. However, pursuant to his transfer, vide order dated March 11, 2022, the undersigned was appointed as the AO, under Section 15 I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge the aforesaid violations alleged to have been committed by the Noticees, as stated in para 5 above, under Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Two separate Show Cause Notices bearing number SEBI/EAD-2/PB/AS/OW/ 28953/1/2021 and SEBI/EAD-2/PB/AS/OW/28954/1/2021 dated October 18, 2021 (hereinafter referred to as **"SCN"**) were issued to Noticee No.1 and Noticee No.2 respectively in terms of Rule 4 of SEBI Adjudication Rules, calling them to show cause as to why an inquiry should not be held and penalty be not imposed on them under Section 15HA of SEBI Act, for the violations, as applicable, alleged to have been committed by the Noticees. The said SCN was duly delivered to both the Noticees by SPAD as well as e-mail.

9. Noticee No.1 and 2 submitted their reply vide letter dated January 20, 2023 and January 15, 2022 respectively.

10. Pursuant to the service of the SCN, an opportunity of personal hearing was granted to the Noticees on November 11, 2022, vide hearing notice dated November 4, 2022 which was duly served through e-mail. Vide mail dated November 11, 2022, Noticee No. 1 sought inspection and copies of certain documents which was granted to it on January 04, 2023. However, on request of adjournment, the date of inspection was fixed on January 06, 2023. The nominated person of the Authorized Representative (AR) of Noticee No.1 inspected the following documents on the said date and copies of the same were provided to them:
    a) Preliminary Investigation Report by M/s Vaish Associates
    b) SEBI Investigation Report
    c) Copy of the statement of Gagan Chaturvedi dated 09.02.2021 and Parag D. Mehta dated 10.02.2021
    d) Forensic audit report by MSA Probe Consulting Private Limited
    e) SEBI circular dated 18.10.2019, referred at paragraph 8 of the SCN.

11. Thereafter, another opportunity of personal hearing was granted to Noticee No.1 on January 31, 2023. The AR of the said Noticee attended the hearing and reiterated the submission made by the said Noticee. Subsequently, it submitted additional replies vide letters dated January 31, 2023 and February 13, 2023.

12. Since Noticee No.2 did not attend the personal hearing scheduled on November 11, 2022, one more opportunity of personal hearing was granted to it on February 14, 2023, vide mail dated February 03, 2023. However, Noticee No. 2 did not attend the said hearing as well.

13. The summary of the replies dated January 20, January 31, and February 13, 2023 submitted by Noticee No. 1, are as under:

   a) *The principle of natural justice not followed*
   b) *These proceedings deserve to be disposed of forthwith without any action against us, owing to the inordinate delay*
   c) *The information about the 'unauthorized transactions' pertaining to 'Nashik property' and 'Kanjurmarg property' was not known to them i.e. no 'mens rea'.*
   d) *While levying allegations against them, the SCN overlooked the contemporaneous documents on record with SEBI which demonstrates their innocence.*
   e) *The SCN admits the fact that the Circular dated 18.10.2019 was not applicable during the F.Y. 2016-17.*
   f) *The handwritten Note dated January 16, 2018 seems to be a forged document, the Hon'ble Whole Time Member, SEBI in his order dated 04.10.2022 has already disregarded allegations arising out of it. For the said reason as well as for the reasons elaborated by them in this response, the handwritten Note deserves to be disregarded.*
   g) *The SCN deserves to be disposed of since the amended provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 have been applied retrospectively.*
   h) *Since they are not dealing in Securities Market, the provisions of Section 12(A)(a), (b) and (c) of SEBI Act, 1992 are not applicable to them under these proceedings.*
   i) *The SCN deserves to be disposed of since section 15HA as quoted in SCN does not exist in SEBI Act, 1992.*
   j) *Quarterly audit committee presentations reveal that the auditors highlighted various issues and concerns in every quarterly meeting.*
   k) *The purported transactions of Nashik & Kanjurmarg were never disclosed to even Board members, the charges were not filed with ROC, guarantees and the undertakings were never passed through board minutes and the resolutions were forged.*
   l) *Management representations provided to the auditors for the financial year 2016 17 were false and misleading.*

14. Noticee No. 2, vide reply dated January 15, 2023, submitted the following:

   a) *An Independent Auditor's Report dated 30.08.2019 was submitted by KKM to the Board of the company. Vide the said report it was specifically pointed out under the heading — 'Basis for disclaimer of opinion' that in view of the proposed voluntary* *revision / reinstatement of the financial statements of prior years' which may result in revision / restatement of financial statements for the year ended March 31, 2019 and also considering the significance of certain transactions / specific matters described herein below — it was stated that KKM was not able to determine the consequential impact of the proposed revisions / restatements and the impact of certain transactions / specific matters on the Standalone Financial Statements as at March 31, 2019.*

b) The said transactions came to light pursuant to the self disclosure letter dated 19.08.2019 submitted by the company.

c) Mr. Ashwin Mankeshwar was inducted as an additional director in the said companies on 25.01.2017 and he resigned from the said companies on 14.03.2017. During this period, he did not attend any meeting of both the companies nor was he privy to any transaction entered into by these companies.

d) No remuneration was drawn by him during the period he was appointed as a director.

e) Mr. Mankeshwar's previous directorship is not in conflict with the statutory or any other laws.

f) No payments were received by him other than in the course of his statutory audit.

15. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs/Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

16. After perusal of the replies made by the Noticees and material available on record, I have the following issues for consideration:

ISSUE I: Whether Noticee No. 1 and 2 have violated provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003?

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

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

17. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, which read as under:

SEBI Act, 1992

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;

SEBI (PFUTP) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

(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 manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation – For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

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

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

FINDINGS

18. Considering the facts and circumstances of the case, submission of the Noticee and material available on record, I record my findings hereunder.

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

    a) there is an inordinate delay in issuing the SCN i.e. about 5-6 years old.

b) Inspection and copies of certain documents sought was not provided. Noticee has also relied on the judgement of Hon'ble Supreme Court in the matte of T. Takano vs SEBI and others.

20. With regard to the contention of Noticee No.1 that there is an inordinate delay in issuing 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 thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. In this regard, I note that SEBI initiated the investigation as soon as information regarding the issue came to its notice. I also note that the examination relating to this case are complex and time consuming process, which may require detailed analysis of the case facts as the current case involves multiple layers of transactions between multiple entities including entities situated in foreign jurisdictions. Subsequently, pursuant to the completion of examination, SCN was issued on October 18, 2021. Thereafter, I note that all the relevant information relied on for crystallizing the allegations against the Noticees have been provided to them and there was no delay the way it has been argued by Noticee No.1. Further, Noticee No.1 has also not specified how the delay, if any, has caused prejudice to it. In this regard, I rely on the judgment of the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, "*The record would show that all the documents concerning the defence of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

21. 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".

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

23. With regard to the other contention of Noticee No.1 that inspection and copies of certain documents sought was not provided and its reliance on the judgment of Hon'ble Supreme Court in the matter of T. Takano vs SEBI, I note that the relied upon and relevant documents in the present matter were duly provided to Noticee during the course of instant proceedings which are in line with the principle pronounced via the aforesaid judgment of Hon'ble Supreme Court. It is pertinent to note that the question before the Hon'ble Supreme Court in the aforesaid judgment was whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person whom a notice to show cause is issued, when all the relied upon documents have been furnished to the Noticee. In this context, the Apex court has opined at para 39 of the judgment that *"the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication"*. The Apex Court also relied on test for the standard of 'relevancy' laid down by a four judge Bench of the Hon'ble Supreme Court in *Khudiram Das vs. State of West Bengal (1975) 2 SCC 81*. The test is a two prong test where; firstly, the material must have nexus with the order and secondly, the material might have influenced the decision of the authority. The Black's Law Dictionary defines "nexus" as "a connection or link, often a casual one". Since, all relevant material relied upon in the instant proceedings have been provided to Noticee, I find that the principle pronounced by the Hon'ble Supreme Court in the said order has been duly complied with.

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

Subsequently, exhaustive reply has also been filed by Noticee No.1 as already detailed in the preceding paragraphs. Further, Noticee No.1 has also not sufficiently demonstrated how the documents sought by it were relevant to the allegation in the present case of not disclosing the fact of the case and how this ground of non-availability of information has caused prejudice to it.

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

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

ISSUE I. Whether Noticee Nos. 1 and 2 have violated provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003?

26. I note that CG Power, vide a corporate announcement filed with Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) on August 20, 2019, had disclosed the outcome of its Board meeting held on August 19, 2019. In the aforementioned disclosure, it was *inter alia* noted that the total liabilities of the Company and the Group were understated by approximately ₹1053.54 Crore and ₹1,608.17 Crore respectively, as on March 31, 2018 and by ₹601.83 Crore and ₹401.83 Crore, respectively as on April 1, 2017. It was also noted that advances to related and unrelated parties of the Company and the Group were understated by ₹1,990.36 Crore and ₹2,806.63 Crore respectively, as on March 31, 2018 and by ₹1,479.34 Crore and ₹1,331.47 Crore respectively, as on April 1, 2017.

27. I further note that SEBI sought information in the matter in order to examine as to whether or not there were any violations of the provisions of securities laws, etc. by the Company and its Directors / Promoters, during the period 2016-2019. In this regard, vide a letter dated August 26, 2019, the Company submitted a copy of the preliminary Investigation Report prepared by M/s Vaish Associates, an independent law firm appointed by the Company to conduct an investigation on certain transactions.

Thereafter, SEBI sought responses inter alia from the Chairman (Gautam Thapar), past Directors (Madhav Acharya, B. Hariharan) and CFO (V. R. Venkatesh) of CG Power.

28. It is also noted that subsequently, SEBI vide an Interim Order in the matter dated September 17, 2019, observed as under:

"Examination of The Preliminary Investigation Report And Audit Report And Findings –

4.1 An examination of the Preliminary Investigation Report revealed certain prima facie irregularities, which have been summarized as under:

i) Sale of Nashik property to Blue Garden Estate Private Limited ("Blue Garden").

a) In 1979, Maharashtra Industries Development Corporation ("MIDC") had leased a property it owned in Nashik ("Nashik property") to CG Power for a lease term of ninety–five years. As per the terms of the Lease Agreement, CG Power cannot assign/part with possession of land without the consent of MIDC.

b) In May 2016, CG Power entered into an Assignment Agreement with Blue Garden for assignment of its lease rights in the Nashik property, for a consideration amount of ₹264 Crore, without obtaining approval from MIDC. The Assignment Agreement was executed by Madhav Acharya (Executive Director–Finance) on behalf of CG Power and Atul Gulatee (Director) for Blue Garden. For payment of the consideration amount, Blue Garden took a loan of ₹200 Crore from Aditya Birla Finance Limited ("ABFL"), which was guaranteed by Avantha Holdings (Holding Company of CG Power) ("Avantha Holdings") on behalf of CG Power. The Nashik property was used as a 'Collateral Security' for the loan taken by Blue Garden from ABFL (by way of right of creation of mortgage). The aforementioned amount was immediately paid to CG Power as an advance wherein the Company had to pay an interest of 15% per annum on such advance. CG Power then further advanced said amount to Avantha Holdings (₹145 Crore) and Acton Global Private Limited ("Acton") (₹53 Crore) without any interest.

c) The majority shareholder of Avantha Holdings was Gautam Thapar (approximately 87%) and it also had Gautam Thapar, Ramni Nirula and B. Hariharan as its Directors at the relevant time. The aforementioned three individuals are/were Directors of CG Power.

d) Blue Garden is an entity incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Acton, Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power).

e) Acton is an entity incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power).

f) The amount so raised by Blue Garden and the onward lending to Avantha Holdings and Acton were not reflected/recorded in the financial statements of the Company.

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ii. Sale of Kanjurmarg property to Blue Garden

a) CG Power had earlier entered into an Agreement ("Evie Sale Agreement") to sell a property it owned in Kanjurmarg ("Kanjurmarg Property") to Evie Real Estate Private Limited ("Evie") for a consideration of ₹498 Crore. The Company had received ₹11 Crore from Evie, as initial consideration. The sale was to be completed before October 27, 2019. However, even before the aforesaid transaction could get terminated, CG Power entered into an Memorandum of Understanding in February 2017 ("MOU") with Blue Garden for transfer of the same property for a consideration amount of ₹498 Crore (₹189 Crore to be paid in advance) with a condition that the MOU will take effect only upon the failure of the Evie Sale Agreement.

b) For payment of a part of the consideration amount, Blue Garden took a loan of ₹190 Crore from ABFL. When the aforesaid amount was received by Blue Garden in February 2017, it was immediately paid as an advance by Blue Garden to the Company in terms of the MOU. CG Power thereafter advanced the money to Acton (₹192 Crore) without charging any interest. Acton in turn, utilised the aforementioned amount towards payment against the liability owed by BILT Graphic Paper Products Limited ("BILT") to ABFL.

c) At the time of execution of the MOU, there was a charge in the form of negative lien created in favour of Yes Bank Limited ("Yes Bank") on the Kanjurmarg Property. Despite such prior charges, a Power of Attorney was created in favour of Blue Garden for creation of the mortgage in the case of default under the MOU by CG Power.

d) No approval was obtained from the Board of CG Power for the execution of the MOU or transfer of money/advance received therein. The amount of ₹190 Crore received from Blue Garden and subsequent transfer of ₹192 Crore to Acton were not disclosed in the Audited Financial Statements of CG Power as the asset was offset against the liability (i.e. there was third party liability of Blue Garden and the asset for receivables from Acton). Thus, the financials have been misrepresented to the aforementioned extent.

……….."

29. Further, SEBI vide the aforesaid Interim Order *inter alia* directed as under-

"6.1…. (vi) BSE shall appoint an independent Auditor/Audit Firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015–16 onwards till date. The expenses for the aforementioned forensic audit shall be borne by the Company. The independent Auditor/Audit Firm so appointed shall verify inter alia the following –

a. Manipulation of Books of Accounts;

b. Misrepresentation including of financials and/or business operations;

c. Wrongful diversion/siphoning of company funds;
d. Any other related matter."

30. I note that pursuant to the aforesaid directions made in the SEBI order dated September 17, 2019, BSE appointed MSA for conducting the forensic audit of the books of accounts of CG Power. Incidentally, SEBI passed a Confirmatory Order in the matter on March 11, 2020, pending receipt of the forensic audit report from MSA, wherein inter alia it was suggested to examine the role of MD & CEO, Risk and Audit Committee, Board and other employees of CG Power as well as that of Mr. Ashwin Mankeshwar i.e. Managing Partner of KKM, in the matter. In this regard I note that KKM was the Statutory Auditor of the Company as appointed in 81st Annual General Meeting of the Company dated September 28, 2018, till January 25, 2020.

31. I further note that subsequent to the above, SEBI conducted investigation in the matter and observed as under:
CAS was the joint statutory auditor of CG Power along with M/s Sharp & Tannan for the FY 2016-17. CAS was inducted as the statutory auditor because M/s Sharp & Tannan was due for rotation under the Companies Act, 2013. As per the division of scope of work between the auditors, the corporate accounts of the Company under which the loans were given and taken were audited by CAS for the FY 2016-17. During the FY 2017-18, CAS became the sole statutory auditor, but it resigned, vide letter dated April 27, 2018 with immediate effect before completing the statutory audit for the year. The reason for the resignation, as stated in its letter, was that the Company, vide letter dated April 26, 2018, had informed CAS that it wanted to appoint one of the 'Big Four firms' as a statutory auditor due to a condition put by the lenders in their proposed lending agreement. Subsequent to resignation of CAS on April 27, 2018, KKM was appointed as the statutory auditor of CG Power on April 28, 2018 to fill the casual vacancy, and further, KKM completed the statutory audit of CG Power for the FY 2017-18.

A. <u>Observations w.r.t. M/s Chaturvedi & Shah:</u>

a) I note from the IR that during the audit period of Noticee No.1 i.e. during 2016-17, the transactions relating to a Nashik Property and a Kanjurmarg Property involving receipts of ₹390 crore by CG Power from Blue Garden and lending of ₹245 crore and ₹145 crore by CG Power to Acton Global Pvt Ltd (hereinafter referred to as **Acton**) and Avantha Holdings Ltd (hereinafter referred to as **AHL**) respectively were executed, which were not reflected in the audited financial statements of CG Power. Further, I note that the said transactions were undertaken without any agreement between CG Power, Blue Garden and Acton. Further, the advances against sale of properties received from Blue Garden to the extent of ₹388 Crore were adjusted by netting off against the amount transferred as loans to Acton and AHL by passing journal entries on March 30, 2017 and March 31, 2017 respectively.

b) When enquired by the Forensic Auditor viz. MSA about the transactions with Blue Garden and Acton, CAS, vide letter dated March 06, 2020, replied that they were unaware of the aforesaid transactions. However, they stated that they were aware that CG Power had advanced a sum of ₹28 Crore to Blue Garden during the FY 2016-17, so they sought an explanation from CG Power for such advance and were subsequently informed that CG Power had made such payment towards supply of consultancy services. CAS further stated vide aforesaid letter dated March 06, 2020, that they were provided with balance confirmation from Blue Garden as on March 31, 2017 and a copy of the agreement dated March 27, 2017 entered into by CG Power with Blue Garden for provision of consultancy services, and that they did not suspect any non-genuineness in this transaction between CG Power and Blue Garden.

c) Further, on perusal of the balance confirmation dated March 31, 2017, I note from the IR that it was signed by Mr. Bhimrao Venkataramana Rao on behalf of Blue Garden and Mr. Madhav Acharya on behalf of CG Power. Similarly, the agreement dated March 27, 2017 was signed by Mr. Bhimrao Venkataramana Rao on behalf of Blue Garden and Mr. V. R.Venkatesh on behalf of CG Power. However, it is contrary to the fact that Mr.V.R. Venkatesh had never been a director of CG Power. Further, he had taken charge as Chief Financial Officer of CG Power from Mr.Madhav Acharya only on August 11, 2017 i.e. subsequent to the aforesaid agreement stated to have been executed on March 27, 2017. Even Mr. Bhimrao Venkataramana, who had signed the agreement dated March 27, 2017 on behalf of

Blue Garden was appointed as a Director of Blue Garden only on April 15, 2017. It was therefore observed that the aforesaid facts clearly indicate that the agreement dated March 27, 2017 between CG Power and Blue Garden was created merely to provide some basis to the transactions between CG Power and Blue Garden. It was further observed that the agreement was dated only 4 days prior to the end of the FY 2016-17 while the transactions between CG Power and Blue Garden had begun since May 2016. Therefore, it was observed that CAS, who was the statutory auditor of the company, though admitted to have examined the said transaction, had not examined the aforesaid irregularities and did not brought out in the audit report for the FY 2016-17. It clearly indicates that CAS facilitated the company to make such entries in the books of account and hence the awareness of the transactions relating to Nashik Property and Kanjurmarg Property involving Blue Garden to facilitate the scheme of cleaning up the books of accounts of CG Power also cannot be ruled out.

d) Further, I note from IR that CG Power, vide letter dated December 09, 2019, submitted that while collating information/documents for the forensic investigation commissioned by the Company, certain forged resolutions, handwritten notes and approvals, which pointed to the involvement of Mr.V.R.Venkatesh, Mr. Madhav Acharya and Mr.B.Hariharan in carrying out unauthorized financial transactions, came to its attention. It was observed, inter alia, from the aforesaid letter that a hand-written note dated January 16, 2018 had been put up by Mr.V.R.Venkatesh to Mr. B.Hariharan for approval wherein it was noted that Mr.V.R.Venkatesh had proposed a scheme for reducing the balances of inventory, debtors, CG Power Solutions Limited (CG PSOL) and supplier advances in the books of CG Power by various means, some of which was stated to have been reduced subsequent to their discussions with Mr. Gagan Chaturvedi, Joint Managing Partner of CAS.

e) Further, in respect of the inventory and debtors' balances of ₹156 Crore and ₹120 Crore respectively, I note that as mentioned by Mr.V. R. Venkatesh in the note dated January 16, 2018, were fake, as the aforesaid amounts as mentioned in the aforesaid note were written off on March 31, 2018 by making journal which were approved by Mr. Venkatesh. It was also observed that there were no signatures of maker and/

or checker on the aforesaid vouchers. Further, supplier advances amounting to ₹440 crore as mentioned in the note dated January 16, 2018, also appeared to be fake as Mr. Venkatesh intended to cancel these advances and enter into fresh agreements with suppliers for ₹440 Crore. He also attempted to reduce the liability of CG Power Solutions Ltd, a wholly owned subsidiary of CG Power, in the books of CG Power from ₹1,370 Crore as on January 16, 2018 to ₹30 Crore as on March 31, 2018 by way of conversion of loans into equity, capital expenditure and cash movements, but it appears that he could not execute it.

f) In this regard, I further note that Mr. Venkatesh during the statement recording by SEBI on February 05, 2021 admitted that there had been a meeting held in this regard at the premises of CAS which was attended by Mr. Gagan Chaturvedi, Mr. Parag Mehta and another senior Partner of CAS. It was found that the proposal of Mr. Venkatesh was partly implemented by writing off fake inventory and debtors. However, the attempt to reduce the balance of CG PSOL from ₹1,370 Crore as on January 16, 2018 to ₹30 Crore as on March 31, 2018 was not successful.

g) This apart, the events viz. immediate resignation of CAS on April 27, 2018 upon receiving the letter dated April 26, 2018 from C G Power and quick appointment of KKM in the place of CAS on April 28, 2018 were seems to be unusual in nature. While the reason for resignation stated by CAS in its letter dated April 27, 2018 was that the Company wanted to appoint one of the Big Four firms as a statutory auditor, the resignation of CAS was accepted and KKM were appointed immediately upon resignation of CAS to complete the statutory audit of CG Power for the FY 2017-18. Further, while SRBC & Co. LLP (one of the Big Four firms) was appointed as a statutory auditor later in 2018 during the Annual General Meeting, KKM continued as the joint statutory auditor along with SRBC & Co. LLP. These events indicate that CAS could have completed the statutory audit for the FY 2017-18 before tendering their resignation. However, Noticee No. 1 simply accepted the communication of the company with regards to appointment of KKM in its place and accordingly resigned as the statutory auditor of CG Power, vide letter dated April 27, 2018, with immediate effect.

h) In this regard, I also note that auditor resignation was a red flag event, and further SEBI, vide Circular dated October 18, 2019, had also directed listed companies to ensure inter alia that if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year. However, in the present case, it was observed that CAS had signed the limited review reports for the first three quarters of the FY 2017-18, but resigned without issuing the audit report for the FY 2017-18. Further, it is observed that the said SEBI circular was issued subsequent to the FY 2017-18 and during that time there was no explicit requirement for issuing the audit report for the FY 2017-18 by CAS prior to tendering resignation. On the basis of tendering of their resignation without completing the statutory audit for the FY 2017-18, it is apparent that they were aware of the fact that the balances of various assets and liabilities of CG Power were not giving true and fair view of their state of affairs and they did not want to complete the statutory audit for the FY 2017-18.

B. <u>Observations w.r.t. M/s K K Mankeshwar & Co.:</u>

a) With regards to Noticee No. 2, I note from the IR that the statutory audit of CG Power for the FY 2018-19 was completed by KKM jointly with SRBC & Co. LLP after CG Power made an announcement in respect of various irregularities in the nature of fraud on August 20, 2019. While reviewing payments made in the past years, the Company came across certain unexplained payments from the Company and its subsidiaries made to KKM as well as association of Mr.Ashwin Mankeshwar, Managing Partner of KKM, as a Director of Blue Garden and Acton. In this regard, the RAC of CG Power issued a show cause notice to KKM under Section 140(1) of the Companies Act, 2013 and provided KKM with an opportunity of being heard. However, no submissions were made by KKM in respect of the aforesaid show cause notice.. After due consideration, the Board of Directors of CG Power determined that KKM could not be considered unrelated party to the company. Accordingly, the Board decided to seek approval of the Central Government for removal of KKM as the joint statutory auditor of the Company and, subject to such approval being granted, seek approval of the shareholders under section 140(1) of the Companies Act, 2013. Upon communication of this decision of the Board, KKM, on 25 January 2020, resigned as the joint statutory auditor of the Company with immediate effect.

b) It was observed that the events of immediate resignation of CAS on April 27, 2018 upon receiving the letter dated April 26, 2018 from CG Power and appointment of KKM in place of CAS on April 28, 2018 by passing a circular resolution by the Board of Directors of CG Power instead of holding a Board meeting were unusual. Further, it was observed that even though KKM was appointed on April 28, 2018, it was able to complete the statutory audit of CG power for the FY 2017-18 by May 30, 2018, i.e. within the prescribed time limits of 60 days from the end of financial year. It was observed from letter dated September 04, 2020 from Mr Ashwin Mankeshwar (Managing Partner of KKM), that he had been a Director of Blue Garden and Acton (holding company of Blue Garden) for the period of January 25, 2017 to March 14, 2017. Further, while he claimed that he did not draw any remuneration/ benefits and did not attend any meeting in the aforesaid letter, it was observed that the MoU between Blue Garden and CG Power for assigning, sale and transfer of rights of Kanjurmarg Property was entered into on February 1, 2017 and the funds amounting to ₹190 Crore received by Blue Garden as loan from Aditya Birla Finance Ltd in this regard were transferred to CG Power on February 16-17, 2017. The facts of Mr.Ashwin Mankeshwar becoming a Director of Blue Garden and Acton which were newly incorporated on March 21, 2016 for effecting the transactions relating to Nashik Property and Kanjurmarg Property and later KKM becoming the statutory auditor of CG Power on April 28, 2018 immediately upon resignation of CAS indicate that KKM was aware of these transactions. However, it was observed that KKM did not raise any issues in respect of these transactions in their audit report for the FY 2017-18 and facilitated CG power in showing the financials giving true and fair view of their state of affairs despite so many irregularities.

c) Further, it was observed that the fact that KKM was aware of the irregularities and misstatements in the financial statements of CG Power, while issuing the audit report for the FY 2017-18, gets established by the following facts and events:

- Mr. Ashwin Mankeshwar had been a Director of Blue Garden and Acton which were incorporated for effecting the transactions relating to Nashik Property and Kanjurmarg Property.
- The advances against the sale of properties received from Blue Garden to the extent of ₹245 Crore were adjusted against the amount transferred as loans to Acton by passing journal entries on March 30, 2017 without any agreement entered into by CG Power, Blue Garden and Acton to this effect.
- The fact that Mr. Ashwin Mankeshwar did not receive any remuneration from Blue Garden and Acton during the period of January 25, 2017 to March 14, 2017, while he was holding the position of Director in these companies, showed his close proximity with these companies and the nature of transactions in which these companies were involved.
- As stated in the Forensic Audit Report dated March 18, 2020, KKM provided multiple services to Avantha Group and CG Power Group entities during the FY 2016-17 and the FY 2017-18 apart from the statutory audit and received substantial remuneration in this regard.
- KKM were appointed as the statutory auditor of CG Power on April 28, 2018 immediately after the resignation of CAS on April 27, 2018, whose Managing Partner viz. Mr Ashwin Mankeshwar had earlier been a Director of Blue Garden and Acton, by passing a circular resolution by the Board of Directors of CG Power instead of holding a Board meeting. They completed the statutory audit of CG power for the FY 2017-18 and issued the audit report by May 30, 2018, i.e., within a month from their appointment.
- The facts that KKM received substantial remuneration from Avantha Group and were quickly appointed as the statutory auditor of CG Power upon resignation of CAS showed their close ties with Avantha Group entities who had been the beneficiaries of the fraudulent transfers from CG Power.

d) Further, with regards to the allegation of writing off Rs.156 crore by making fake journal vouchers signed by Mr.V. R Venkatesh on March 31, 2018, as detailed in para 31(A) above, it was observed that KKM issued the audit report of CG Power for the FY 2017-18 without any qualified opinion wherein the fake inventory balance of ₹156 Crore, as mentioned by Mr.V. R. Venkatesh in the note dated January 16, 2018, was written off.

32. On the basis of the aforesaid detailed facts, I observe that the Noticees have participated and acted against the fiduciary capacity, and that CAS and KKM, instead of working in the interest of shareholders of CG Power, facilitated the scheme of cleaning up the books of accounts of CG Power, despite being aware of the irregularities and misstatements in the financial statements of CG Power. In view of the aforesaid, for not highlighting in their audit report that the financial statements of CG Power did not give true and fair view of their state of affairs despite being aware of the same, Noticee No. 1 and 2 were alleged to have facilitated the scheme of cleaning up the books of accounts of CG Power and have violated sections 12A(a), (b) and (c) of the SEBI Act, 1992 and regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003.

33. In this regard, I note that Noticee No.1 has contended that the information about the 'unauthorized transactions' pertaining to 'Nashik property' and 'Kanjurmarg property' was not known to them and that the SCN itself brings out this fact. In this regard, I note that the SCN specifically mentions that the aforesaid property transactions were executed during 2016-17 and were not reflected in the audited financial statements of CG Power. The SCN further mention that the said transactions were done without any agreement between CG Power, Blue Garden and Acton and the advances against sale of properties received from Blue Garden to the extent of ₹388 Crore were adjusted by netting off against the amount transferred as loans to Acton and AHL by passing journal entries on March 30, 2017 and March 31, 2017. The above said facts cannot be denied by Noticee No.1.

34. Further, it is also evident that all the entries of the transactions were made in such a way to net off the assets and liabilities of different entities i.e. debit balance of one entity

netted off with credit balance of other entity in the books of account of CG Power which may not show the correct financial position of CG Power. In accounting norms, generally the netting of balance i.e. debit and credit of the same entity is permitted and not between the different entities. But in the present matter, the auditor did not raise question on the same and instead certified the same as true and fair in the auditor's report for the year 2016-17, which indicates the auditor's direct involvement on making such entries in the books of accounts of the company. In this regard, when specifically questioned during the hearing regarding the netting off between two different entities, Noticee No.1 submitted that they only seen the net amount appearing in the final books of accounts for FY 2016-17 and not each of the individual entry and the alleged netting off.

35. This apart, it is also noted with regards to the advance of Rs.28 crores by CG Power to Blue Garden during FY 2016-17 for the claimed consultancy services between them, that the said transaction was admittedly known to and examined by Noticee No.1. In this regard, I further note that the balance confirmation as on March 31, 2017 on behalf of CG power was signed by Mr. Madhav Acharya of Blue Garden and on behalf of Blue Garden, was signed by Mr. Bhimrao Venkataramana Rao of Blue Garden. It is also noted that the agreement dated March 27, 2017 was signed by Mr. V. R. Venkatesh of CG Power on behalf of CG Power and Mr. Bhimrao Venkataramana Rao for Blue Garden. However, it is interesting to note that Mr.V. R. Venkatesh had never been a director of CG Power. But he had taken charge as Chief Financial Officer of CG Power from Mr. Madhav Acharya only on August 11, 2017 i.e. subsequent to the aforesaid agreement stated to have been executed on March 27, 2017. Similarly, even Mr. Bhimrao Venkataramana, who had signed the agreement dated March 27, 2017 on behalf of Blue Garden was appointed as a Director of Blue Garden only on April 15, 2017.

36. It was therefore observed that the aforesaid facts clearly indicate that the agreement dated March 27, 2017 between CG Power and Blue Garden was created merely to provide some basis to the transactions between CG Power and Blue Garden. It was further observed that the agreement was dated only 4 days prior to the end of the FY 2016-17 while the transactions between CG Power and Blue Garden had begun since May 2016.

37. The above said facts of netting off the transactions pertaining to Nashik Property and Kanjurmarg Property involving receipts of ₹390 Crore by CG Power from Blue Garden and lending of ₹245 Crore and ₹145 Crore by CG Power to Acton and AHL respectively, were executed during 2016-17 as well as irregularities w.r.t. the signatories of the aforesaid agreement dated March 27, 2017 for Rs.28 crore between CG Power and Blue Garden, stated to have been executed for providing consultancy services, were not reflected in the audited Financial statements of CG Power. As already established that the said transactions were not genuine and created with some purpose and also considering the amount involved in the said transactions that too in the end of the financial year, this would have generally strike the statutory auditor like CAS to examine such transactions during the audit and question the irregularities as stated above. However, I note that in the present matter, CAS, the statutory auditor of the company, despite being aware of the aforesaid irregularities, certified the financial statements of the company as true and fair which shows the auditor's direct involvement on such misstatements of the company. Therefore, I find no merit in the above contention of the Noticee.

38. It is also imperative to note that no approval/consent of MIDC was obtained before sale of the Nashik property. Further, the land at Nashik was not a barren unused piece of land but home to a huge and fully operational factory owned by CG Power, which is a major contributor to CG Powers business and provides employment to a large number of people. It was clear that the land cannot be transferred as a standalone asset, separate from the operational factory and hence, given the fact that just the land alone had been agreed to be sold under the arrangement with ABFL through Blue Garden, the FAR observed that this demonstrates that there was no actual intention to sale, but was just a loan agreement, which ABFL didn't want to give directly as loan to CG Power and wanted to give it as an advance for sale of land through a SPV. It was further observed that no approval was obtained from the Board of CG Power for the execution of Memorandum Of Understanding between CG power and Blue Garden for transfer of Kanjurmarg property for a consideration amount of ₹498 Crore. I note that the aforesaid factors were also not considered by Noticee No.1 in its audit report.

39. I further note that the FAR has also observed as below:

"From all the above points collectively, it can be presumed that the auditors had the knowledge of the transaction of Rs.257.69 crore as mentioned above and the corresponding writing off of goods worth Rs.155.67 crore and also the sales of Rs.120 crore, which had eventually turned bad. Hence, the auditors ought to have observed that the entire trail of transactions was designed in a manner to reduce the outstanding advance given to AHL by CG Group. Yet it was not disclosed in its presentations or the final auditor's report."

40. In this regard, I also note that the aforementioned fraud done by CG Power involved multiple transactions each amounting to hundreds of crores. Further, the said transactions were done through the banking channel. It is pertinent to note here that at the time of preparation of the audit report, Noticee No.1 who had access to the bank statements and books of accounts of CG power and have the right to seek and obtain information and explanations from CG Power to their satisfaction. However, I note that Noticee No.1 allowed the said irregularities in above mentioned transactions in its audit report for the FY 2016-17 which shows the involvement of Noticee No. 1 with the company for facilitating it in showing true and fair picture of the financials.

41. With regards to the handwritten note as mentioned at para 32A(c) above, Notice No. 1 has submitted that they deny the knowledge or meeting as stated in handwritten note dated January 16, 2018, and the same seems to be a forged document, they have not been shown the original of the handwritten note, the hand written note does not indicate the time, date and venue of the purported meeting and there are no signed minutes of the purported meeting. Noticee No. 1 has further submitted that SCN relied upon the statement of Mr. V R Venkatesh and a note written by hand on such an important issue from an organization such as CG Power itself does not inspire confidence about the genuineness of the note and its contents. In this regard, I note that neither the said handwritten note has the date, time and place of the said meeting nor there is any signed minute of the meeting. Further, there is no supporting documents on record, establishing that the suggestions mentioned in the said handwritten note were actually recommended by Mr. Gagan Chaturvedi of CAS. I further note that in the order no.

WTM/AB/CFID/CFID_1/20149/2022-23 dated October 4, 2022 in the same matter, Hon'ble Whole Time Member of SEBI held that *"With regard to the 10th transaction, the SCN has alleged that Noticee no. 7 approved a scheme for reducing the balances of inventory, debtors, and supplier advances in the books of CG Power by various means, as proposed by Noticee no. 5, vide hand-written note dated January 16, 2018. In this regard, the Noticee has submitted that the allegation is totally vague and bereft of any details. That simply a photocopy of a handwritten note dated January 16, 2018 has been put and it has been stated the Noticee approved a scheme. Noticee no. 7 has further submitted that the original document namely the purported note allegedly approved by him is not even made available and in the absence of the document being made available the allegation is this regard is denied. Further, that it is not even indicated in the SCN as to what exactly was wrong with the said purported note, or for that matter if the same was implemented. In this regard, I am inclined to agree with the submissions of the Noticee, as I note that no details have been provided in the SCN with regard to the said allegation against Noticee no. 7 in approving the hand written note dated January 16, 2018. In view of the above, I find that the aforesaid allegation against Noticee no. 7 is not made out."*

42. In view of the above mentioned facts, I note that no concrete conclusion can be drawn against Noticee No. 1 based on the aforesaid handwritten note dated January 16, 2018. However, looking into the involvement of Noticee No.1 in facilitating the irregularities and misstatements in the financial statements of CG Power for the year 2016-17 as detailed in the preceding paragraphs, I also cannot completely rule out the possibility of Noticee No.1 giving the suggestions mentioned in the said handwritten note to Mr. V R Venkatesh, most of which were implemented later in March 2017.

43. Moving on to Noticee No. 2, from the contentions made vide its reply dated January 15, 2022, I note that the said Noticee raised various points w.r.t. the audit report of 2018-19 submitted by it on August 30, 2019 such as it pointed out in the report that the proposed voluntary revision / reinstatement of the financial statements of prior years' may result in revision / restatement of financial statements for the year ended March 31, 2019 and

also pointed out the fraudulent transactions with respect to the company having written back certain amounts which were written off in the year 2017-18.

In this regard, I note that all the said points were made only in the audit report of 2018-19 and not in the audit report of 2017-18 during which all the aforesaid fraudulent transactions were carried out by the company. I further note that the said audit report was submitted only on August 30, 2019 i.e. after CG Power made an announcement in respect of various irregularities in the nature of fraud on August 20, 2019. It did not report any of the aforementioned irregularities in financial transactions of CG Power in its report for 2017-18. I also note that KKM was appointed by CG Power, immediately after resignation of CAS and without holding any Board Meeting. Further, after its appointment on April 28, 2018, KKM submitted audit report for 2017-18 on May 30, 2018 i.e. almost in a month.

In view of the aforesaid facts, I find no merit in the submissions made by Noticee No. 2 that it highlighted certain points w.r.t. the irregularities in its audit report of 2018-19.

44. Noticee No. 2 has further contended that Mr. Ashwin Mankeshwar (Managing partner of Noticee No. 2) was inducted as an additional director in the Blue Garden and Acton on 25.01.2017 and he resigned from the said companies on 14.03.2017. It had further contended that he did not attend any meeting of both the companies nor was he privy to any transaction entered into by these companies and that no remuneration was drawn by him during the period he was appointed as a director.

In this regard, it is pertinent to mention that a MoU between Blue Garden and CG Power for assigning, sale and transfer of rights of Kanjurmarg Property was entered into on February 1, 2017 and the funds amounting to ₹190 Crore received by Blue Garden as loan from ABFL in this regard were transferred to CG Power on February 16 and 17, 2017. From the same, it is clear that it happened during the tenure of Mr. Ashwin Mankeshwar as director in Blue Garden and just after his appointment. FAR also states that Blue Garden and Acton were Special Purpose Vehicles, which were incorporated for effecting the transactions relating to Nashik Property and Kanjurmarg Property. I further note from FAR that KKM provided multiple services to Avantha Group and received substantial remuneration from them and were quickly appointed as the statutory auditor of CG Power upon resignation of CAS, which indicates their close ties with Avantha Group entities who had been the beneficiaries of the fraudulent transfers from CG Power. Further, the fact that Mr. Ashwin Mankeshwar did not receive any remuneration from Blue Garden and Acton during the period of January 25, 2017 to March 14, 2017 while he was holding the position of Director in these companies, as also stated by Noticee No. 2 in its contention, actually shows his close proximity with these companies and the nature of transactions in which these companies were involved.

The aforesaid facts coupled with the fact of immediate appointment of Noticee No. 2 after resignation of Noticee No.1 and the submission of audit report for the year 2017-18 within a month, clearly establish that Noticee No. 2 was aware of the irregularities and misstatements in the financial statements of CG Power, while issuing the audit report for the FY 2017-18.

In view of the above, I find no merit in the above contentions of Noticee No. 2.

45. I further note that Noticee No. 2 also did not question the fact that the inventory of ₹156 Crore, as mentioned *inter alia* in the hand written note dated January 16, 2018 of Mr. V R Venkatesh, was written off on March 31, 2018 by making fake journal voucher approved by Mr. V R Venkatesh and that there was no signature of maker and/ or checker on the aforesaid voucher.

46. The aforesaid discussions and observations in the preceding paragraphs pertaining to Noticee No. 1 and 2, clearly establish that despite being an expert in the field of accounting and finance and also being aware of the said irregularities and misstatement, Noticee No. 1 and 2, facilitated the irregularities and misstatements in the financial statements of CG Power for the year 2016-17 and 2017-18 respectively and accordingly acted against the fiduciary capacity knowing that the same when published would be relied upon by the investors to be true and fair and accordingly, instead of working in the interest of shareholders of CG Power, facilitated the scheme of cleaning up the books of

accounts of CG Power. These facts cannot be construed as mere negligence in part of the Noticees as a statutory auditor. I note that the act of facilitating in such a way to show the books of account of CG power as true and fair which is contrary to the actual facts is against the fiduciary role of the Noticees. I, therefore, find that by the aforesaid acts and omissions the Noticees aided and abetted CG Power in disseminating the false information in the Audit Report to wrongfully influence the decision of the investors and, thus, their acts and omissions amount to aiding and abetting in the fraudulent, unfair and manipulative acts covered within the definition of "fraud" and “fraudulent” under regulation 2(1)(c) of the PFUTP Regulations which reads as follows-:

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

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

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

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

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

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

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

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

(7) Deceptive behavior by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.(9)The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly.

47. I note that the aforesaid definition of "fraud" in regulation 2(1)(c) of the SEBI (PFUTP) Regulations is an inclusive one. It is inclusive with respect to act, expression, omission or concealment committed by any person whether in deceitful manner or not, while dealing in securities in order to induce another person. The definition is also inclusive with respect to knowing misrepresentation, concealment of material fact, suggestion to an untrue fact, active concealment of fact with knowledge, promise without intention to perform, reckless and careless representations, deceptive behaviour, false statement, etc., as listed in points (1) to (8) of Regulation 2(1)(c).

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

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

50. At this juncture, I find it relevant to quote the observations of Hon'ble High Court of Andhra Pradesh in the matter of **The Institute of Chartered Accountants of India Vs.**

Shri Mukesh Gang, Chartered decided on September 26, 2016 wherein the Court observed as follows:

"The Chartered Accountant is a professional whose expertise in accountancy is acknowledged. He is a member of an expert body and of a premier institute in India. The certificate issued by an Auditor has its own impact on the public at large, as it is largely on the basis of this certificate that the general public subscribe to the shares of the company. Reckless certification by an Auditor, which has resulted in the public being misled into subscribing to the shares of the company in the public issue, would undoubtedly amount to gross negligence. Large sections of society rely on the certification by the Chartered Accountants for taking man vital decisions. It is imperative that utmost care and caution is exercised in issuing such certificates, and the objectivity, integrity, reliability and credibility of the information therein is ensured. Of late, several instances have come to light where, due to the erroneous/ambiguous advice tendered by Chartered Accountants, borrowal accounts have had to face quick mortality resulting in huge losses for banks and financial institutions. To ensure public faith and protect gullible small investors from being cheated of their life savings, the Institute should ensure that its members possess competence of a high order, their character is above board, and their integrity beyond reproach. Chartered Accountants are responsible to the public for their actions, as heavy reliance is placed on their credibility by the general public consisting of investors, banks, financial institutions, governments etc. The Chartered Accountants duty is not merely to his client, but extends to various segments of society, more particularly in the commercial field, on whose expertise, integrity and impartiality they rely on in taking various decisions."

51. The findings narrated in the preceding paragraphs clearly establish that despite being aware of the irregularities and misstatements in the financials of CG Power, Noticee No. 1 and 2 facilitated the scheme of cleaning of the books of account by the company and allowed to show the financials of the company as true and fair by certifying the same in its audit report for 2016-17 and 2017-18 respectively. Accordingly, I note that by doing so, they have violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003.

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

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

53. The provisions of Section 15HA of the SEBI Act reproduced as under:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15HA. *If any person, who is required under this Act or any rules or regulations made thereunder, -*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, 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;

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

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

15J -Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

55. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of their failure. I am of the view that disclosure of true and fair information is crucial for investor protection and to maintain and restore their confidence in the securities market. The false and misleading disclosures in the audit report as found in this case are not only detrimental to the interests of investors but also endanger integrity of the securities markets. This is also a fit case where SEBI needs to send a stern message to professionals who associate themselves with securities market so as to prevent them from indulging in such acts of omissions and commissions as found in this case. In the facts and circumstances as discussed hereinabove, I find that material available on record are adequate enough to establish contravention of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003 by the Noticees as alleged in the SCN.

ORDER

56. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J 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 Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, I hereby impose following penalty on the Noticees viz. M/s Chaturvedi & Shah (Noticee No.1) and M/s K. K. Mankeshwar and Co. (Noticee No. 2) in the proceedings initiated vide Show Cause Notice No. SEBI/EAD-2/PB/AS/OW/ 28953/1/2021 and SEBI/EAD-2/PB/AS/OW/ 28954/1/2021 dated October 18, 2021 respectively, under Section 15HA of the SEBI Act, for the violation of provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003:

S. No.	Name of the Noticee	Violation	Penalty amount
1.	M/s Chaturvedi & Shah	Sections 12A(a), (b) and (c) of the SEBI Act, 1992; and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) of the PFUTP Regulations, 2003	Rs.5,00,000/- (Rupees Five Lakh Only/-)
2.	M/s K. K. Mankeshwar & Co.		Rs.5,00,000/- (Rupees Five Lakh Only/-)

57. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

58. The Noticee 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

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

1. Case Name:	
2. Name of payee:	
3. Date of payment:	

4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

60. 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.

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

Place: Mumbai **G. RAMAR**

Date: April 20, 2023 **ADJUDICATING OFFICER**