

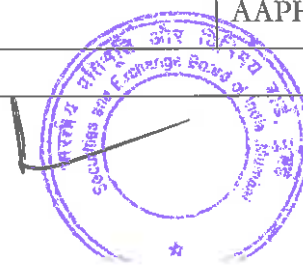
SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - AND IN CONTINUATION OF ORDER DATED MARCH 29, 2016, IN THE MATTER OF KAILASH AUTO FINANCE LIMITED

In respect of:

Sl. No.	Noticee	PAN
Company		
1	Kailash Auto Finance Ltd.	AACCK0928J
Beneficiaries		
2	N. Kanniah	AAHPK8800D
3	Krishna Agrawal	ACHPA6428P
4	Nand Kishore Agarwal	ACJPA2410P
5	Praveen Goud Adhikam	ACOPA7454Q
6	Sapna Goud Adhikam	ADAPA1398J
7	Poonam Makin	AEVPM9256K
8	Sunitha Mundada	ABZPM2965N
9	Prashant Singh Gaur	APBPG5512R
10	Sandeep Mahendrabhai Shah	AADPS4022M
11	Shiv Kumar HUF	AABHS3053G
12	Ramachandran Ananthan Pothe	AACPP8620K
13	Anand Swaroop Rathi	ABLPR8103M
14	Rajesh Rathi	ACDPR7543Q
15	Asha Rani Soni	AJEPS8536L
16	Bhagwati Devi Patwari	AEYPP3706L
17	Priyanka Patwari	ALSPK8179K
18	S K Patwari HUF	AAFHS3391K
19	Sajjan Kumar Patwari	AEYPP3705K
20	Sanjay Kumar Patwari	AFPPP9576G
21	Sanjay Kumar Patwari HUF	AASHS7307E
22	Sanjib Kumar Patwari	AFRPP9205L
23	Sanjib Kumar Patwari HUF	AAPHS3236R



24	Sarika Patwari	ABAPL2442E
25	Shaila Patwari	AJFPP4973M
26	Sunil Kumar Patwari	AFVPP3401L
27	Sunil Kumar Patwari HUF	AANHS6750A
	Entities at Sl. No. 02 to 27, shall, hereinafter, be collectively referred to as “<i>beneficiaries</i>” or individually by their respective names.	
<i>Recipients of CPAL and PML Shares</i>		
28	Anand Sagar Thakur	AEYPT0142A
29	Rudra Prasad Banerjee	AVTPB4409J
30	Binod Kumar Toshniwal	AFDPT0326E
31	Hanish Toshniwal	AHJPT9222F
32	Santosh Sharma	BFAPS7597Q
	Entities at Sl. No. 28 to 32, shall, hereinafter, be collectively referred to as “<i>Recipients of CPAL shares and Recipients of PML Shares</i>” or “<i>Recipients</i>” or individually by their respective names.	
The aforesaid entities at Sl. No. 01 to 32, shall, hereinafter, be referred to by their respective names or by their respective categories or collectively as “ the noticees ”.		

- Securities and Exchange Board of India (SEBI) vide an *ad-interim ex-parte order* dated March 29, 2016 (hereinafter referred to as the “*interim order*”), restrained the Company namely Kailash Auto Finance Limited (hereinafter referred to as “*Kailash Auto*”) and 245 other entities including the above named noticees, from accessing the securities market and further prohibited them from buying, selling or dealing in securities, either directly or indirectly, in any manner, whatsoever, till further directions. The persons/ entities against whom the *interim order* was passed, were advised to file their objections, if any, within twenty one days from the date of the *interim order* and, if they so desire, to avail themselves of an opportunity of personal hearing before SEBI.
- The *interim order* was passed taking into account the facts and circumstances as summarised hereunder:-
 - CPAL and PML were incorporated as private limited companies with share capital ₹1,00,000/- each, consisting of 10,000 equity shares of ₹ 10/- each on September 15, 2010 and September 19, 2010, respectively.
 - During Financial Year 2010-11, within a short time of its incorporation, CPAL had purportedly entered into a private placement arrangement with 13 entities (referred to



in the interim order as the 'primary allottees of CPAL') whereby CAPL issued 3,30,155 equity shares of face value ₹ 10/- each at a premium of ₹ 590/- and raised a share premium of ₹ 19,47,91,450/-. Then its shares were split from ₹ 10/- each to ₹ 1/- each, thereby converting 3,40,155 equity shares of ₹ 10/- each into 3,401,550 equity shares of ₹ 1/- each. Thereafter, during the same financial year, CPAL had issued 18,70,85,250 equity shares of ₹ 1/- each as bonus shares in the ratio of 55 shares for 1 share and further issued 95,200,000 equity shares of ₹ 1/- each through private placement. All the entities who received bonus shares, and who were allotted shares in this 2nd private placement are referred to as the "recipients of CPAL shares".

- (iii) Similarly, PML had made private placement of 3,36,900 equity shares of face value ₹ 10/- each at a premium of ₹ 690/- each during the Financial Year 2010-11 to 15 entities (hereinafter referred to as "primary allottees of PML") and purportedly raised a share premium of ₹ 23,24,61,000/- within short time of its incorporation. Then its shares were split from ₹ 10/- each to ₹ 1/- each, thereby converting 3,46,900 equity shares of ₹ 10/- each into 34,69,000 equity shares of ₹ 1/- each. Thereafter, during Financial Year 2011-12, PML had issued 225,485,000 equity shares of ₹ 1/- each as bonus shares in the ratio of 65 shares for 1 share and further issued 7,12,70,000 equity shares of ₹ 1/- each through private placement. All the entities who received bonus shares, and who were allotted shares in this 2nd private placement are referred to as the "recipients of PML shares."
- (iv) The *primary allottees* of CPAL and PML are connected to each other on the basis of common addresses and/or common directors as detailed in tables 5 and 6 of the interim order. The interim order in para 5 (s), (t) & (u) has brought out two charts of circulation of funds which indicates the fund flow between primary allottees of CPAL (i.e. the original allottees at the time of incorporation) with CPAL and similarly the fund flow between the primary allottees of PML with PML and also the inter-se connection between CPAL and PML.
- (v) During the Financial Year 2011-12, both CPAL and PML, were converted from private limited companies to public unlisted companies.
- (vi) Pursuant to the scheme of amalgamation of CPAL and PML with *Kailash Auto* (Noticee No.1 herein) in 2013, for every one equity share held by the shareholders of CPAL and PML, one equity share of *Kailash Auto* was allotted to them. It is relevant to state that the shareholders of CPAL and PML as on date of amalgamation were allotted shares of *Kailash Auto* and such allottees are called as *beneficiaries* in the interim order. Such group identified as *beneficiaries*, inter alia, includes noticees nos. 2 to 27 herein. It is



relevant to state that the shares of *CPAL* and *PML* were acquired by the beneficiaries at an average price of ₹ 1/- per share. As per the records of the Registrar to Issue and Share Transfer Agent of Kailash Auto, as on record date of amalgamation i.e June 08, 2013, the shares of CPAL were held by 1972 entities and the shares of PML were held by 2058 entities. Out of the total shareholders of CPAL and PML (4030 entities), 85 entities were common shareholders of CPAL and PML. The said *beneficiaries*, after holding the shares for around 12 months, off-loaded the shares of *Kailash Auto*, at an average price of ₹ 35/-, which was the result of an artificial price increase through transactions over the stock exchange. In the process, the *beneficiaries* made huge profits of approximately 3400% on their investment.

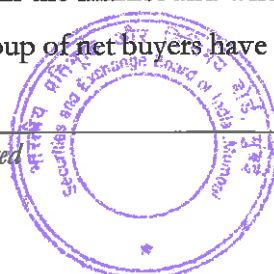
(vii) Subsequent to the amalgamation, the volume and price of Kailash Auto was observed to fluctuate in a precise pattern which is divided into three patches as shown below:-

(a) Patch – 1 (January 17, 2013 to June 04, 2013):- In this patch, the scrip was an illiquid one with negligible trading therein and the price was manipulated from ₹ 11/- to ₹ 36.25/- in 36 trading days by the connected parties who traded under a pre-meditated plan rigging the price by 230%. During this period the BSE Sensex moved from 19,964 (on January 17, 2013) to 19545 (on June 04, 2013)

(b) Patch – 2 (July 22, 2013 to November 05, 2014):- In this patch, average trading volume increased by 5577 times, as compared to Patch – 1 with slight reduction in price (₹ 36.85 on July 22, 2013 and ₹ 28.45 on November 05, 2014). The beneficiaries were net sellers and the entities forming part of Kailash Auto Group I and Kailash Auto Group II (as defined in the interim order) were net buyers.

(c) Patch – 3 (November 07, 2014 to December 31, 2015):- In this patch the downward trend in the trading volume and price of the scrip of Kailash Auto was observed to be on account of the trades of the beneficiaries who were exiting from the market.

(viii) In this regard, the analysis of the trades in various patches brought to light a set of net buyers who bought the shares of Kailash Auto from the *beneficiaries* and contributed to the creation of artificial demand in the market and who were connected or related to Kailash Auto. Such identified group of net buyers have been classified as *Kailash Auto*



Group I and Kailash Auto Group II, in the interim order depending on the inter-se connections within the group members, based on the KYC details, bank details, off-market transactions and information available from MCA web site and the details of the members of the two groups have been shown in Annexures A and B of the interim order.

- (ix) It was further alleged in the interim order that entities involved in such volume and price manipulation of *Kailash Auto* were being funded by different sources including the current promoter group of *Kailash Auto*, to buy shares of *Kailash Auto* from the *beneficiaries* and to provide exit to them from the market. Entities of *Kailash Auto Group I* and *Kailash Auto Group II* had received the funds *via* multiple layering / transfer of funds so as to mask the true identity of the ultimate owner of the funds.
 - (x) KYC of *Kailash Auto Group I* and *Kailash Auto Group II* entities, *prima facie*, depicts that though their income level was below ₹1 lakh, they had traded worth crores of rupees, in the scrip of *Kailash Auto*. From their bank statements, it was noted they were receiving huge amounts of funds on daily basis and the same were used to provide exit to the *beneficiaries*. Hence, the trading pattern of the entities of *Kailash Auto Group I* and *Kailash Auto Group II* does not match the income disclosed in their KYC. Further these entities acted as exit providers to the *beneficiaries* and created artificial traded volume.
 - (xi) The key financial parameters/ ratios of *Kailash Auto* did not present a healthy picture and were well below the industry standards. The Operating Revenue and the Operating Expenditure of *Kailash Auto* depicts hardly any operations being carried out by *Kailash Auto*. *Kailash Auto* has continuously reported negative or no profit. Further, Earning Per Share (EPS) of *Kailash Auto* was nil or negative and the value of the scrip was highly inflated with respect to its book value. Considering the financial and operating figures of *Kailash Auto*, the huge market capital of *Kailash Auto* and price/ traded volumes in the scrip during the relevant periods were alleged to be inflated and unrealistic as per the interim order.
 - (xii) It is further alleged in the interim order that the entire process of private placement, fabrication of share premium, issuance of bonus shares, subsequent transfer of shares and funds to connected/ related entities was designed to generate bogus LTCG which is exempt from tax under the provisions of the Income Tax Act, 1961. For perpetration of this scheme, the entities misused the stock exchange system.
3. It was therefore alleged in the *interim order* that the noticees, had committed such acts and omissions in the securities market, which are 'fraudulent', as defined under Regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)



Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and are in contravention of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) of PFUTP Regulations and Sections 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act").

4. Out of total 246 entities against whom the interim order dated March 29, 2016, was passed, the directions were subsequently confirmed against 221 entities on different dates (June 15, 2016, September 30, 2016, October 21, 2016 and October 27, 2016) through different orders. I note that one such confirmatory order dated June 15, 2016 covered 12 noticees referred to in Sl. No. 16 to 27 herein, who remained *ex parte* earlier. Subsequently, these 12 entities appealed before the Hon'ble Securities Appellate Tribunal (SAT) against the *ex-parte* confirmatory order and SAT vide order dated November 17, 2016, granted liberty to the 12 appellants to approach SEBI seeking modification of *ex-parte* confirmatory order and this order addresses the scope of confirmatory orders against them. Besides the said 12 noticees, this order also deals with the necessity of passing confirmatory orders against the 20 entities who for different reasons were not heard before. This order however excludes from its scope the remaining 5 entities who are presently pursuing their appeals before the Hon'ble SAT.
5. Accordingly, based on the representation of these 12 entities, they were called for fresh hearing on April 27, 2017. The entities appeared through Mr. Vinay Chauhan, Advocate, along with Dr. S K Jain, Company Secretary and made submissions.
6. Pursuant to the *interim order*, the noticees had filed their replies on different dates. Subsequently some of the noticees filed their written submissions and sought inspection of documents. Based upon the request of the noticees, an opportunity of inspection of the records/ documents which were relied upon by SEBI for the purpose of the *interim order* was provided to the noticees. Thereafter, several rounds of personal hearings were granted to the noticees on various dates. Out of such noticees, certain persons/ entities had attended the personal hearing, while some others had sought exemption and a few had failed to appear for the personal hearings. The additional written submissions, submitted by such noticees pursuant to the personal hearings were also taken on record.
7. Majority of entities have been heard and their replies are on similar lines. Some of the entities have sought adjournment / documents solely with a view to delay the proceedings. Certain other entities have not sent any reply or appeared for the hearing. In view of the fact that more than a year has passed by after the date of passing interim directions, I feel that the

passing of the confirmatory order cannot be delayed / deferred any further and I do not find it necessary to accede to the requests for adjournments of certain entities. I am taking into consideration the replies and submissions of entities who have responded and the materials available on records with respect to other entities as well, for passing this order.

8. In the case of Noticees who have submitted similar replies, common issues have been identified and grouped together for the sake of brevity. In addition, once a common ground / contention is raised by one of the noticees, it is not repeated for other noticees. The replies of the Noticees are also summarized below:

I. Company:

A. Kailash Auto Finance Limited (did not appear for hearing):

- (i) *They denied the allegations made in the Order and submitted that they have not violated the provisions of SEBI Act and PFUTP Regulations as alleged in the Order.*
- (ii) *They have not been furnished the entire material based on which SEBI has come to the alleged findings against them.*
- (iii) *The said Order is vitiated by gross violation of principles of natural justice, in as much as no opportunity was provided to them to explain their version and the circumstances as stated in the said Order did not justify dispensation of pre-decisional hearing.*
- (iv) *In the matter under reference, it is clear that there was no imminent danger or urgency so as to exercise powers under Sections 11 and 11(B) dispensing with the pre decisional hearing in gross violation of principles of natural justice.*
- (v) *The directions under Sections 11 and 11(B) are issued for safeguarding the markets and are not for penalizing the persons and denying their legal rights, on the basis of assumptions and presumptions. The direction issued against them, at this juncture is neither preventive or remedial nor curative, but out and out penal.*
- (vi) *The alleged private placements made by CPAL and PML were in the ordinary course of business debors sinister intent or design.*
- (vii) *SEBI has erroneously clubbed them with other entities (viz. beneficiaries, primary allottees, Kailash Auto Group I, Kailash Auto Group II and recipients of CPAL shares and recipients of PML shares). They are not involved with the said alleged groups nor had connived with them.*
- (viii) *The company was incorporated under the provisions of Companies Act 1956, and a NBFC registered with RBI. They have been carrying on the business of granting loans and advances to individuals and SMEs, etc. and dealing in shares and securities.*
- (ix) *During the period (November 07, 2013 to November 06, 2014) Kailash Auto was included in small cap focus list of Morgan Stanley Capital International Global Small Cap Indices (MSCI).*

At that time, Kailash Auto had market capitalisation greater than L&T Fin, City Union, Bank of Maharashtra, Vijaya Bank, Kotak Bank and Dena Bank. Further, during the period from December 14, 2013 to December 20, 2013 the stock was purchased by 13 Financial Institution and Foreign Institutional Investors (FII). Thereafter, on November 06, 2014 the scrip was removed from the cap focus list of MSCI. Neither the Company nor its directors/ promoters have dealt in the shares of the company during the relevant time.

- (x) They do not have any link/ connection / nexus with any of the alleged:
 - a. Beneficiaries/ primary allottees/ recipients of CPAL shares and recipients of PML shares, save and except that of a Company and shareholder.
 - b. Kailash Auto Group I, Kailash Auto Group II have dealt in the shares of the Company, during the impugned period and the company had no role to play in the trading done by these entities and the company did not have any financial transactions with them.*
- (xi) No material/ evidence has been brought on record to connect them with other entities and to demonstrate even remotely as to how they are acting in concert with others.*
- (xii) The corporate actions made by them were never questioned either by the stock exchange or SEBI, while granting approval for the same.*
- (xiii) Their registered office is currently at 15, Rollant Complex, 37/17, The Mall, Kanpur, Uttar Pradesh- 208 001. The inspection of their earlier registered office at 19, Rollant Complex, 37/17, The Mall, Kanpur, Uttar Pradesh - 208 001 was done by BSE. The said office was shared by them with a Chartered Accountant firm- M/s Kedia Gupta & Associates and not M/s Ajay Kedia & Associates. It may be noted that their employees sit at the said premises only.*
- (xiv) All the operations of the Company are handled at their corporate office at Mumbai. It is denied that corporate office was locked and no company officials were available at the time of visit of BSE officials at that address. The said allegations are totally false, sweeping, vague, misplaced and based on mere surmises and conjectures. BSE officials had conducted inspection in Mumbai office on December 03, 2014 and December 31, 2014. On December 03, 2014 the office was locked. However, on December 31, 2014, during the inspection their employee was present at the office, however, all the directors were outstation due to company related work.*
- (xv) The date of incorporation of CPAL and PML was September 18, 2010 and September 25, 2010, respectively.*
- (xvi) During FY 2010-11, CPAL had made private placement of its 3,30,155 equity shares of face value ₹10 per share. However, they had submitted to SEBI a list of 13 entities who were allotted 33,01,550 equity shares of face value ₹1/- per share. They submitted that the same was not deliberate and intentional and at the highest it was a technical, procedural and venial breach.*
- (xvii) The increase in the authorised share capital, issue of bonus shares and private placement of equity shares were undertaken by PML/ CPAL bonafide devoids sinister intent or design in the ordinary*

course of business, by seeking requisite approvals, complying with the applicable provisions of law and after making proper disclosures.

- (xviii) They denied that during the period, December 2010 to June 2011, same funds were being churned among PML/ CPAL and their respective primary allottees as alleged. In so far as CPAL and PML are concerned, the transactions were in the nature of transfer/ receipt of funds for sale/ purchase of unlisted shares and allotment of shares and cannot be said to be for the purpose of book entries. Further, it is denied that there was no infusion of cash in respect of private placements by CPAL and PML as alleged.
- (xix) They submitted that all the corporate actions viz. amalgamation, reduction of share capital etc. had the approval of SEBI, BSE and shareholders and details about the same were in the public domain and nobody raised any grievance about the same during the relevant period.
- (xx) They denied that CPAL and PML were incorporated with a dubious plan and premeditated arrangement and artifice to increase number of shares therein through sham and non-genuine transactions as alleged and the same has resulted in fetching exorbitant and unrealistic consideration in the scheme of amalgamation as alleged.
- (xxi) As a Company they had no control over the price of the scrip in the stock market. Even stock exchange had not raised any alarm bells despite the price of the scrip rising sharply as alleged.
- (xxii) They had no role to play in the price rise and the trading done by various entities/ persons (as set out in the Order) in the scrip.
- (xxiii) They were not aware of the transactions done by the beneficiaries during the relevant time. Further, they were not aware of the funds received by the recipients of shares of CPAL and PML.
- (xxiv) They were not aware of the tax evasion done by primary allottees, recipients of CPAL shares and recipients of PML shares, beneficiaries, LTP contributors, entities of Kailash Auto Group I and Kailash Auto Group II.
- (xxv) They denied that they were involved in any fraudulent, deceptive and manipulative device, plan and artifice designed to tamper with free market forces and to damage the integrity of the securities markets as alleged. Admittedly, neither the promoters nor the Company have traded in the scrip of the Company. Therefore, the allegation of misusing the stock exchange system to generate bogus LTCG to aid and help beneficiaries to convert their unaccounted income into accounted one with no payment of taxes as LTCG is tax exempt does not arise. They were not aware of the profits made by the beneficiaries during the relevant time.
- (xxvi) The loss of reputation as a result of the said Order would severely impede their business in future which is enormously detrimental to them.
- (xxvii) They submitted that they are suffering both financially and reputationally, and hence prayed that the Order to the extent it applies to them be reconsidered and the directions against them be withdrawn.

(xxviii) Pursuant to passing of the ex-parte order, the trading in the shares was suspended by BSE and consequently, the shareholders are stuck with the shares of the Company and are not in a position to unlock their value.

II. Beneficiaries:

A. Mr. N Kanniah (Represented by Advocate, S. K. Jain):

- (i) He denies the allegations, charges and findings levelled against him in the said ex-parte ad-interim order.
- (ii) He is an ordinary investor who acquired 15,00,000 equity shares of CPAL ₹1/- each in the FY 2011-12 out of investable funds available with him. All the said shares were credited to his demat account.
- (iii) During the FY 2012-13, CPAL got amalgamated with KAFL after getting due approvals from relevant regulatory authorities including the Hon'ble High Court of Allahabad and Bombay. As per the Scheme approved by the respective Hon'ble High Courts, he got 15,00,000 equity shares of KAFL of ₹1/- each against his holding of 15,00,000 equity shares of CPAL and the shares were credited to his demat account on July 22, 2013.
- (iv) That the said 15,00,000 equity shares of KAFL were sold by him during the period from August, 2013 to November, 2013.
- (v) He has not directly or indirectly bought or sold or otherwise dealt in securities in a fraudulent manner.
- (vi) He has not indulged in any fraudulent or unfair trade practice in trading in equity shares of KAFL.
- (vii) He has not indulged in any act which creates false or misleading appearance of trading in the securities market.
- (viii) He is not directly/ indirectly connected to KAFL and/ or its promoters and/ or its Directors and/ or KAFL employees or any of the persons/ entities as referred in the said ex- parte ad-interim order.
- (ix) All his transactions mentioned above were executed in a transparent manner and as per the applicable market rules and regulations.
- (x) All income or loss arising out of the trading in securities market are duly assessed by the Income Tax Department and due taxes where applicable are paid without claiming any LTCG benefits under the provisions of the Income Tax Act, 1961 as alleged.
- (xi) He has prayed to be allowed to trade in the Securities Market and to be able to sell his investments.
- (xii) He has sought inspection of documents that were relied upon in passing the said order.

B. Krishna Agarwal and Nand Kishore Agarwal (Represented by Mr. Vinay Chauhan and Mr. K.C. Jacob, Advocates, Corporate Law Chambers India):

- (i) They undertake the activity of trading in different types of securities with an intention to identify companies that have a growth potential, and invest in the same, with a view to gain profits, either in terms of capital profits, or revenue profits.
- (ii) No documentary evidence has been provided to substantiate this allegations made in the Order.
- (iii) They were made part of the 'Beneficiaries group' merely on the basis of being allotted shares of Kailash Auto in lieu of their holding of shares of CPAL. Later on they sold the shares to certain counter parties that are alleged to be part of 'Kailash Auto Group I' and 'Kailash Auto Group II'.
- (iv) They came to know about the investment through few friends in Mumbai, which can fetch some good returns through subscription of shares in CPAL. While gathering information about the said Company, they also came to know that there is a possibility of potential takeover of the Company. This gave them enough conviction to invest in the Company.
- (v) Each of them purchased 10,00,000 equity shares of CPAL at ₹1/- per share from Ritudhara Vincom Private Limited and the payment was duly made by cheque.
- (vi) The scheme of reduction of share capital of Kailash Auto and amalgamation of PML and CPAL with it were approved by the Hon'ble High Court of Allahabad and the Hon'ble High Court of Bombay vide separate orders dated May 9, 2013 and May 10, 2013, respectively. Pursuant to amalgamation of CPAL with Kailash Auto, each of them were allotted 10,00,000 Equity shares of KAFIL, in lieu of their holding in CPAL.
- (vii) In 2014, since there was an increase in price of the share, they decided to sell the shares. They traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party is not disclosed.
- (viii) They deny having link/ connection/ nexus with:
 - a. Kailash Auto, its promoters/ directors, save and except as a shareholder, by virtue of a shareholder, having received shares from the recipients of CPAL shares, who in return had received shares from the primary allottees of CPAL.
 - b. Persons/ entities who had traded in the scrip during the examination period.
 - c. Persons/ entities referred to in the Order.
- (ix) They denied being part of alleged group namely 'Kailash group' or being connected with Kailash and/ or its promoters/ directors or CPAL or PML, as stated in the said Order, either directly or indirectly.
- (x) They had nothing to do with the alleged price rise.
- (xi) The power to issue directions under Sections 11 and 11(B) of SEBI Act has to be exercised judiciously and it is all the more necessary in a case having adverse civil consequences as well as reputational adversity. Further, it is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification, as has been done in the matter under reference. In the instant case,

there was no such emergent situation or circumstance warranting such an ex-parte ad interim order. In the matter under reference, it is clear that there was no imminent danger or urgency so as to exercise powers under Sections 11 and 11 (B) dispensing with the pre decisional hearing.

- (xii) They submitted that the said order was passed without seeking any explanation from them which is in violation of principles of natural justice, equity and fair play and the said order has tarnished their reputation.*
- (xiii) They deny being a part of any scheme, plan, device and/ or artifice employed in any case of tax evasion. They deny having carried out manipulative transactions in securities nor have they misused the securities market. They deny the allegation that their act is fraudulent or that they have violated PFUTP Regulations.*
- (xiv) The criteria of 5 Lakh and more shares sold taken for short listing the entities (118 entities) is arbitrary and based purely on whims and fancies, which is legally untenable. This is against natural justice as the regulators cannot cherry-pick and hand out penalties.*
- (xv) They were not aware as to how the funds were obtained by the Kailash Auto Group I and Kailash Auto Group II entities, by way of funds transactions with promoter related entities. They were not aware that the funds were circulated among the entities connected with KAFL group. The pay-out amounts received by them from the broker towards sale of shares, from time to time, were utilized by them for their own business and financial purpose and were not transferred, either directly or indirectly to any of the entities as stated in the Order.*
- (xvi) They have not been furnished the entire material based on which SEBI has come to the alleged findings against them.*
- (xvii) It is denied that the purpose of their trading in the shares was to generate fictitious LTCG as alleged. It is denied that they facilitated in generating artificial volume and price rise entrapping the unsuspecting and gullible investors, to defraud them.*
- (xviii) The purported huge profit was made due to market forces of demand and supply, on which they have no control.*
- (xix) They did not receive any surveillance alerts either from SEBI or from the stock exchanges regarding the 'price fluctuation' in the scrip of Kailash Auto at the relevant time even when they have Data Warehousing Business Intelligence System (DWBIS). Had there been any such advisory received from any of the market systems, they would not have traded at the relevant time. They are bona fide and a genuine investors.*
- (xx) They have submitted that because of the Order, they are suffering both reputationally and financially. They have prayed that they be allowed to access securities market and buy, sell or deal in securities and an order lifting the directions issued under ad-interim ex-parte order may be passed on an urgent basis. They have also prayed that that their demat accounts be unfrozen or alternatively, they may be allowed to sell their shareholding in scrips and to utilise the sale proceeds, for their requirements.*

C. Praveen Goud Adhikam and Sapna Goud Adhikam (Represented by Advocates, KRCV Seshachalam and Madhusudan Dalia):

- (i) *The ex-parte order was passed without giving any opportunity of hearing, solely based on certain documents, reports and information.*
- (ii) *They have sought complete inspection of documents that were relied in passing the order.*
- (iii) *None of the documents proved the following basic facts that SEBI alleged in the Order:*
 - a. *they belong to or colluded with promoter group;*
 - b. *they have relation with or colluded/ associated with promoters/ directors/ exit providers;*
 - c. *they are part of or are aware of any scheme or contrivance or fraud while trading in securities;*
 - d. *they have used the system to convert black money into white money; or*
 - e. *they have used the system to avoid LTCCG.*
- (iv) *They have submitted that they had purchased 7,50,000 shares each of an unlisted company, CPAL in 2011 from Jatadhari Marketing Pvt. Ltd. from their own sources of funds. The investment was not in furtherance of any fraud or part of any scheme or connivance to defraud as alleged in the Order. Later CPAL merged with Kailash Auto and they were allotted the shares of Kailash Auto. They sold the shares of Kailash Auto after holding them from July 29, 2013 to October 20, 2014. Further, the proceeds of sale of shares had been utilized for genuine business purposes.*
- (v) *They have not purchased shares from any of the primary allottees, and they are not related to any primary allottees. They are not aware of and are not concerned with the flow of funds allegedly between/ among the primary allottees.*
- (vi) *They do not belong to any entity related/ connected to Kailash. Further, neither had they traded substantially amongst such connected entities nor did they create artificial volume and/ or artificial price rise in the scrip.*
- (vii) *They sold their shares in open market at market price, and they did not manipulate the price of shares of Kailash Auto. Merely because they earned profits, it cannot be alleged that they have committed any fraud. The market determined price of the scrip cannot be questioned on the basis of the fundamentals of the Company.*
- (viii) *They have denied that they have acted in concert with Kailash Group to misuse the stock exchange system to generate fictitious LTCCG so as to convert their unaccounted income.*
- (ix) *They did not employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed on a recognized stock exchange. They only sold shares in the market in an online anonymous trading system, and there was no allegation that monies went from their account to any of the buyers accounts.*
- (x) *They did not violate PFUTP Regulations as alleged in the Order.*



- (xi) Mr. Praveen Adbikam has a debit balance of `2,78,801.89/- in PCS Securities Ltd. and they are insisting for payment. He is not able to make the said payment due to the restraint order.
- (xii) They have sought permission to sell the shares in the market to secure themselves from market volatility.

D. Poonam Makin (Represented by Anil Mohan Pokhriyal) and Prashant Singh Gaur (Represented by Gurmeet Singh Walia):

- (i) They are investors in the securities market and trade in various scrips from time to time. They undertake the activity of trading in securities with an intention to identify companies that have a growth potential and invest in the same, with a view to gain profits, either in terms of capital profits, or revenue profits.
- (ii) They were made part of the 'Beneficiaries group' merely on the basis of being allotted shares of Kailash Auto in lieu of their holding of shares of PML. Later on, they sold the shares to certain counter parties that are alleged to be part of 'Kailash Auto Group I' and 'Kailash Auto Group II'. No documentary evidence has been provided in the Order to justify the allegation.
- (iii) Mr. Prashant Singh Gaur purchased 1,20,000 shares of PML at Re. 1/- per share by making payment through Cheque. He was also gifted 4,80,000 shares by his sister Ms. Meenu Singh Gaur on August 18, 2014. On the advice of friends he sold the shares since he needed funds and in usual course received payment from broker in his bank account.
- (iv) Ms. Poonam Makin purchased shares of PML through Brijdhara Mercantile Pvt. Ltd. by making payment of ₹8,00,000/- and ₹2,00,000/- vide cheque number 393273 and 393274 dated October 6, 2012 & October 16, 2012.
- (v) They purchased the shares on the advice and guidance of friends who have some knowledge of financial sector. They were told that their investment is safe and in future it will get good return as the company has good future prospects.
- (vi) They traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party is not disclosed.
- (vii) They are not connected to/ part of any alleged group namely 'Kailash group' and/ or its promoters/ directors or CPAL or PML, directly or indirectly, as stated in the said Order either directly or indirectly.
- (viii) The said order was passed without seeking any explanations from them or giving them an opportunity of being heard which is a violation of principles of natural justice, equity and fair play and the said order has tarnished his reputation.
- (ix) They deny being a part of any scheme, plan, device and/ or artifice employed in any case of tax evasion. They deny having carried out manipulative transactions in securities nor have they misused

the securities market. They deny the allegation that their act is fraudulent or that they have violated PFUTP Regulations.

- (x) They did not receive any surveillance alerts either from SEBI or from the stock exchanges regarding the 'price fluctuation' in the scrip of Kailash at the relevant time even when they have DWBIS. Had there been any such advisory received from any of the market systems, they would not have traded at the relevant time. They are bona fide and genuine investors.*
- (xi) They have prayed that they be allowed to access securities market and buy, sell or deal in securities and an order lifting the directions issued under ex-parte ad-interim order may be passed on an urgent basis.*

E. Sunitha Munanda (Represented by Purshotam Mundada):

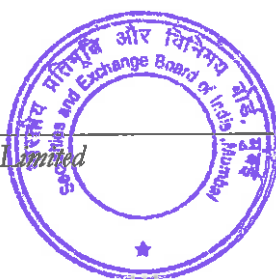
- (i) The merger of CPAL and PML with KAFL was made with the approval of Hon'ble High Court of Allahabad and Hon'ble High Court of Bombay. The scheme of reduction of capital in the Kailash Auto was also approved by the Hon'ble High Court. All other subsequent developments such as private placement of equity shares were also intimated to SEBI from time to time. If there was any discrepancy in the shares issued by the company and as reported to SEBI, an appropriate action would have been taken at that time only.*
- (ii) She had purchased the shares of CPAL in good faith believing it to be a good company.*
- (iii) The freezing of demat account has caused lot of inconvenience and removed the opportunity to sell the shares which has resulted in loss of money.*
- (iv) She has sought relief viz. release of her demat accounts.*

F. Sandeep Mahendrabhai Shah (Represented by Advocates, Prakash Shah & Associates):

- (i) He has not been provided with the findings of investigation and/ or any cogent evidence in respect of serious allegation charged against him.*
- (ii) The interim order has been issued ex parte and he has been condemned unheard, which is violation of basic principles equity, fair play and natural justice. Even if statute dispenses with pre-decisional hearing, the same should be resorted to in exceptional circumstances.*
- (iii) The directions issued under Sections 11 and 11(B) of the SEBI Act, 1992 are drastic in nature and should be invoked only in case of emergency and extraordinary situation. However nothing has been brought on record in the aforesaid ex-parte order to justify and warrant such an arbitrary and penal action against him.*
- (iv) Out of 118 alleged beneficiaries, SEBI has already passed confirmatory orders against around 98 entities vide separate orders. It is SEBI's own case that all noticees were allegedly involved in 'modus operandi' as delineated therein. However, order is passed qua 98 alleged beneficiaries and remaining*

20 entities have been delinked from other alleged group of beneficiaries. In view thereof, merely passing of Order in the process of continuation of proceedings is bad in law and has caused harm, loss and prejudice to him.

- (v) His alleged role and involvement in the present directions is totally misplaced and based on surmises, conjectures, erroneous data and wrong interpretation of facts.
- (vi) An open ended restraint order against him is in breach of fundamental right of carrying on business bestowed upon every citizen under Article 19 (g) of the Constitution of India.
- (vii) If a regulatory body like BSE did not find anything amiss in KAFL even after adequate due-diligence, how common investor like him is expected to know of alleged wrongdoing, if any, while dealing in said scrip.
- (viii) He sold 5.65 lakh shares at relevant time constituting only 0.12 % of total shares of KAFL sold in market at relevant time. Further, only 118 entities out of 3592 entities are made part of present proceedings and no action has been taken against remaining 3474 entities. Such an approach towards similarly placed entities is unfair and arbitrary.
- (ix) He does not have any connection and relationship with alleged KAFL group, its promoters, directors, employee or any of its alleged connected entities. Further, he does not have any common address, telephone number, email id or any such commonality with any of entities mentioned in the order as Kailash Auto Group I and Kailash Auto Group II.
- (x) Out of total of around 638 trading days covered in 3 patches of investigation period, he traded in KAFL for mere 12 days, which did not have any impact on price and volume of KAFL scrip. Further, his trading was spread from December 2013 to November 2014 which itself negates any manipulative intent on his part.
- (xi) He submitted that when he dealt in said scrip, large numbers of entities were dealing in KAFL and volume in the said scrip was substantial. Thus, his trading in the said scrip did not affect the market equilibrium, as alleged or otherwise. Also, he sold his shares on floor of market and did not know as to who purchased the same.
- (xii) He has sought complete inspection of documents that were relied in passing of the order.
- (xiii) Since interim order is based on 'prima facie findings' the same should not operate as a stigma against him in the securities market and also his other business activities.
- (xiv) The allegation that he indulged in 'fraudulent' activity is without any substance and has caused great harm, loss & damage to him, his family & business.
- (xv) Merely and solely because he received shares of an unlisted company in off-market, it cannot be presumed or pre-supposed that he had a nexus/ link/ relationship with anyone. He submitted that off market transaction are not illegal per se.



- (xvi) He has requested to be able to sell the shares/ securities lying in his demat account and utilize the sale proceeds thereof for his requirements. Further, he has requested that he be permitted to deal in securities other than securities listed on stock exchange.

G. Ramchandran Pothi (Represented by Advocate, Rajesh Khandelwal):

- (i) He is an investor in securities market and has been investing occasionally in different scrips. He identifies the shares and securities of different companies that have a growth potential and are expected to yield good returns either in terms of capital profits or revenue profits.
- (ii) An Investment Advisor approached him sometime during July-August, 2012 and advised to invest in the shares of PML, a closely held public limited company, which had ambitious growth plan which should yield good returns. Accordingly, he issued a cheque in favour of M/s. Needful Vincom Private Limited (being the existing shareholder/ seller of the shares) to acquire 50,000 shares of ₹10/- each of PML at a price of ₹10/- each, thus making an investment of ₹5,00,000 in aggregate.
- (iii) The Order was against the principle of equity and natural justice as no opportunity has been given to him for an explanation/ clarification.
- (iv) He is not connected either directly or indirectly or in any other manner to any of the interconnected groups identified by SEBI nor had any knowledge of any relationships between the parties mentioned therein.
- (v) He traded on the anonymous and automated trading platform of the stock exchange wherein the identity of the counter party is not disclosed.
- (vi) He denied that he knew about the counterparties at any time, as sought to be alleged in the Order. He sold shares to earn profit as a genuine investor. He is not at all connected/ related to the recipients of PML shares.
- (vii) He has been connected with the group of 'Beneficiaries' merely on account of the sale of shares of Kailash Auto by him.
- (viii) He denied being involved in any way in manipulation of the share prices and thus violating the relevant provisions of the SEBI Act and PFUTP Regulations or being hand in glove with any person. He carried out trading based on information and analysis.
- (ix) He has prayed that he be allowed to access securities market and buy, sell or deal in securities and an order lifting the directions issued under ex-parte ad-interim order may be passed on an urgent basis.

H. Anand Swaroop Rathi, Rajesh Rathi and Asha Soni (Represented by Mr. Vinay Chauhan and Mr. K.C. Jacob, Advocates, Corporate Law Chambers India):

- (i) They denied the allegations made against them in the Order.

- (ii) *They undertake the activity of trading in shares with an intention to identify companies that have a growth potential, and invest in the same, with a view to gain profits, either in terms of capital profits, or revenue profits.*
 - (iii) *They traded on the anonymous trading platform of the stock exchanges wherein the identity of the counter party is not disclosed. While selling the shares allotted to them by Kailash Auto, they were not aware of the counter party that bought the shares.*
 - (iv) *They denied being a part of any scheme, plan, device and/ or artifice employed either in a SEBI case, or tax evasion. They denied having carried out manipulative transactions in securities or having misused the securities market. They have not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of punitive directions. They denied having violated the provisions of PFUTP Regulations or provisions of SEBI Act as alleged.*
 - (v) *They have been made part of the alleged 'Beneficiaries group' merely on the basis that they were allotted shares of Kailash Auto in lieu of their respective holdings in PML and later on sold the shares to a certain counterparty that is alleged to be a part of Kailash Auto Group I and Kailash Auto Group II. No documentary evidence has been provided to substantiate this allegation.*
 - (vi) *They did not receive any surveillance alerts either from SEBI or from the stock exchanges regarding the 'price fluctuation' in the scrip of Kailash Auto at the relevant time even when SEBI has DWBIS. Had there been any such advisory received from any of the market systems, they would not have traded at the relevant time.*
 - (vii) *They have not been furnished with the entire material based on which the allegations have been levelled against them. They have sought complete inspection of documents referred to and relied upon in the Order.*
 - (viii) *The Order was passed without seeking any explanation from them which is in violation of principles of natural justice, equity and fair play and the said order has tarnished their reputation. Even if statute dispenses with pre-decisional hearing, the same should be resorted to in exceptional circumstances:*
 - a. *wherein the mischief attempted to be cured represents a grave and imminent danger and a personal hearing would preclude the grave and imminent danger from being averted; or*
 - b. *in a clear case of public injury flowing from least delay; or*
 - c. *possible or supervening public interest; or interest of justice would be better served by denying the opportunity of hearing; or danger to be averted or prevented is imminent.*
- In the instant matter, there was no emergent situation so as to exercise powers under Sections 11 and 11(B) dispensing with the pre-decisional hearing in gross violation of principles of natural justice.*
- (ix) *They had purchased 5,00,000 shares each of an unlisted company PML on January 5, 2013 and the payment was duly made by cheques. The investment decision was based on recommendation from some of their 'friends' in Mumbai, and while gathering information they came to know about a*

potential takeover of the company. On May 10, 2013, PML merged with Kailash Auto as a result of which they were allotted 5,00,000 shares each of Kailash Auto.

- (x) There was nothing in the public domain about anything amiss in the scrip of Kailash Auto. Further, neither stock exchange nor SEBI had raised any grievance in public domain about the price rise or volume rise in the scrip at that point in time.*
- (xi) The proceeds of sale of shares were utilized by them for their own financial purposes and were not transferred (directly or indirectly) to any of the entities as stated in the order.*
- (xii) They don't have link/ nexus/ relationship/ connection/ dealing/ collusion/ arrangement/ agreement with:*
 - a. Kailash Auto, its promoters/ directors, save and except as a shareholder.*
 - b. Persons/ entities who had traded in the scrip during the examination period.*
 - c. Persons/ entities referred to in the Order.*
 - d. Persons/ entities which were trading in the scrip and categorised as 'net buyers'.*
- (xiii) They are not part of any alleged group namely 'Kailash group' or 'CPAL' or 'PML' as stated in the said Order either directly or indirectly.*
- (xiv) They have no role whatsoever to play in the trading done by various entities/ persons or "two groups" in creating artificial demand for the shares. Nothing has been brought in order to connect them to other persons/ entities who allegedly have acted as exit providers to them.*
- (xv) They had nothing to do with the alleged price rise.*
- (xvi) The scheme of amalgamation was approved by both High Court of Bombay and High Court of Allahabad, and at no point of time either the stock exchange or SEBI had raised any alarm bells. Thus, the said scheme was allowed by both SEBI and BSE.*
- (xvii) The criteria of 5 Lakh and more shares sold taken for short listing the entities (118 entities) is arbitrary and based purely on whims and fancies, which is legally untenable. This is against natural justice as the regulators cannot cherry-pick and hand out penalties.*
- (xviii) They are not aware of funds transactions or any other means through which the funds were obtained by the Kailash Auto Group I and Kailash Auto Group II, from the promoter related entities. They were not aware that the funds were circulated among the entities connected with KAFL group etc. as alleged and the same is of no concern to them.*
- (xix) They have not transferred any funds to any entity related or connected to Kailash Auto Group.*
- (xx) With respect to the private placements and bonus issue made by CPAL and PML during the year 2011-12, neither SEBI nor the exchanges had raised any grievance at that time. They obtained shares of PML after paying the requisite subscription amount. They have no knowledge as to how these funds were utilized by the PML entities.*



- (xxxi) *The LTCG was just a bonus and there was no ulterior motive or motivation to go through such alleged grand scheme of events for such exemptions. They denied that such profit was generated on account of rigged price of the scrip and creation of artificially inflated volumes.*
- (xxcii) *They denied that they had colluded with other entities mentioned in the Order and structured such transactions to generate bogus LTCG. They denied that they have misused the stock exchange system as alleged. They denied that they have acted in concert under a premeditated plan with other entities mentioned in the Order, as alleged. They denied that they facilitated in artificial volume and price rise entrapping the unsuspecting and gullible investors and to defraud them. All of their trading was bona fide and in the ordinary course of business.*
- (xxciii) *They have requested that the charges in the Order be dropped and they be permitted to deal in securities market as they are suffering both reputationally and financially.*
- (xxciv) *Pending the period of investigation, Ms. Asha Soni sought permission to sell shares of other companies lying in her demat account and to utilise the sale proceeds.*
- (xxcv) *The value of investment in their portfolio is fluctuating and they are suffering both reputationally and financially, so they prayed as follows:*
- a. They be allowed to access securities market and buy, sell or deal in securities.*
 - b. An order lifting the directions issued under Ex-Parte Ad- Interim Order may be passed on an urgent basis.*

I. Bhagwati Devi Patwari, Sanjib Kumar Patwari HUF, Priyanka Patwari, Sarika Patwari, S K Patwari HUF, Sanjay Kumar Patwari HUF, Shaila Patwari, Sanjay Kumar Patwari, Sanjib Kumar Patwari, Sajjan Kumar Patwari, Sunil Kumar Patwari and Sunil Kumar Patwari HUF (Represented by CS, Dr. S. K. Jain, Advocates, Mr. Vikas Bengani, Mr. Amal Varma, Mr. Vinay Chauhan, Mr. K. K. Varma and Mr. P. K. Sarkar):

- (i) They denied the allegations levelled in the interim order including the allegation that they have violated the PFUTP Regulations and the SEBI Act.*
- (ii) The order is grossly unjust and unfair and has been passed in gross violation of the Principles of Natural Justice as they have not been provided with any opportunity of hearing.*
- (iii) They were unfairly and unequally treated in the said Orders. Large number of other entities who had also traded in the scrip, Kailash Auto, had been favourably treated as compared to them.*
- (iv) Their fundamental right guaranteed under Article 19(1) (g) of Constitution of India has been snatched away by putting unreasonable restrictions and debarring them from accessing the securities market.*
- (v) They are high net worth individuals with various business interests. Their portfolio is well diversified and includes investments in Equity Segment (listed and unlisted shares), Debt Segment, Government*

Securities, Mutual Fund Units, etc. The investment in unlisted companies, though, high risk investment but sometimes gives extraordinary gain. Such investments were made by them on the basis of investment advice received from various sources.

- (vi) They purchased shares of CPAL and PML from own self acquired fund and held the said shares as an investment. Such investment in the shares of CPAL and PML was insignificant qua their total investments. At the time when they bought the shares of CPAL and PML, there was nothing adverse about the said companies in public domain.*
- (vii) They did not have any involvement/ nexus/ connection with any of the alleged primary allottees of CPAL and PML, recipients of CPAL shares and recipients of PML shares in bonus issue/ private placements, except shares purchased, Kailash Auto and its promoters and directors, CPAL and PML, other beneficiaries, persons/entities who had traded in the scrip (including Kailash Auto Group I and Kailash Auto Group II) during the investigation period, other persons/entities referred to in the Order, etc.*
- (viii) The order does not establish their involvement in alleged layering of fund, circulation of funds and securities amongst inter-connected parties for acquisition and divestment of securities of alleged connected unlisted private companies.*
- (ix) At the relevant time, they were not aware of any alleged dubious plan or premeditated arrangement of CPAL and PML or its promoters/ directors or others in the market.*
- (x) Since KAFL was listed on BSE, it was presumed that BSE would have ensured that KAFL is carrying out proper business operations as disclosed in its filings etc., that KAFL has the financials and operations to justify its listing status on the exchange.*
- (xi) They sold the shares of Kailash Auto, received as a consequence to amalgamation of CPAL and PML with Kailash Auto, in the swap ratio arrived at by approved valuer and pursuant to the Orders of Hon'ble Allahabad and Bombay High Courts, through on market transactions at prevailing market rate. They bought and sold the shares with the purpose of making profit with no manipulative intent. They sold the shares partly/ fully over a period of time and all trading decisions were taken on the basis of publicly available data and on an individual basis.*
- (xii) At the time when the amalgamation took place between CPAL, PML and KAFL, no authority had raised any objections, in terms of their previous incorporation, share issuances, private placements, allotments, bonus issues etc.*
- (xiii) The sales were carried out through the broker on the screen based mechanism of the stock exchange where the system is completely anonymous and it is not possible to know the counter party buyer or broker. At the relevant time they were not aware of other persons/ entities (including the Kailash Auto Group I and Kailash Auto Group II entities) who were trading in the scrip.*



- (xiv) *The pay-out amounts received from the broker towards sale of shares of KAFL, from time to time, were utilized by them for their own business and financial purposes and were not transferred, whether directly or indirectly to any of the entities as stated in the interim order.*
- (xv) *They deny that Kailash Auto Group I and Kailash Auto Group II entities have provided a profitable exit to them as alleged. If there was any purported premeditated understanding, all or substantial part of their trades would have matched with the alleged Kailash Auto Group I and Kailash Auto Group II entities only, which is not the case.*
- (xvi) *They had not employed any device, scheme or artifice or engaged in any act practice while dealing in the scrip of Kailash Auto nor were they aware of any such fraudulent practice adopted by any of the alleged entities in the said scrip.*
- (xvii) *They refuted that they had generated any trading volume or contributed to the price rise in the scrip of Kailash Auto save and except that they sold their shares. At no point of time either the stock exchange or SEBI had raised any alarm bells as to price movement in the scrip or that the price rise was not in consonance with KAFL's financials or fundamentals.*
- (xviii) *In the interim order, it is revealed that the purported beneficiaries i.e. 3592 had sold 46,56,90,392 shares of Kailash Auto out of which purported Kailash Auto Group bought only 17,50,81,045 shares. There was a huge gap between gross sell quantity and gross buy quantity i.e. about 29 crores shares. Such huge difference clearly demonstrates that the purported exit providers were not the only buyers when the purported beneficiaries were sellers.*
- (xix) *Upon analysis of trade and order logs provided by SEBI to them, it was revealed that the counter parties to their sell transactions were Foreign Institutional Investors and other corporates who must have bought the shares of KAFL based on thorough research and seeing value in such investment.*
- (xx) *If the law provides the facility of LTCG, if the shares are sold after a period of more than one year, then how can they be faulted if they sold the shares post expiry of one year and are eligible for LTCG?*
- (xxi) *They had only sold shares out of their investments and did not execute a single buy trade in the said scrip. Their sell trades in the scrip of Kailash Auto was miniscule as compared to total market volume i.e. approx. 70 crores shares during Patch 2 and 3. As per the interim order, the purported beneficiaries had sold 46,56,90,392 shares of Kailash Auto during Patch 2 and 4.96 crores shares during Patch 3, however, the gross buy purported exit providers was only 17,50,81,045 shares during Patch 2 which demonstrates that the scrip was highly liquid and it was mere coincidence that some of their trades were matched with some purported exit providers who were admittedly not in any way related/ connected/ associated with them in any manner whatsoever.*
- (xxii) *The interim order is discriminatory as it penalizes only 118 entities out of 3592 entities who had allegedly traded in the scrip of Kailash Auto.*



- (xxiii) They were unaware that the high trading volumes were contributed by Kailash Auto Group I and Kailash Auto Group II as net buyers to the alleged beneficiaries/ sell.
- (xxiv) As per the interim order, the purported beneficiaries had sold approx. 46.57 crores shares of Kailash Auto out of which only approx. 17.51 crores shares were purportedly picked up by the exit providers. The interim order is totally silent as to who are the buyers of remaining 29.06 crores (approx.) shares sold by the purported beneficiaries and how their case could be different from the purported exit providers.
- (xxv) They refuted that they had funded Kailash Auto Group I and Kailash Auto Group II entities including the current promoter of the group of Kailash Auto to buy shares of Kailash Auto from the purported beneficiaries as alleged.
- (xxvi) They were totally unaware that purported price rise and purported maintenance thereof during the Patch 1 were predominantly on account of transactions amongst the connected/ related entities as found during preliminary inquiry. They were also unaware that prior to Patch 2, the scrip of Kailash Auto was illiquid and thinly traded.
- (xxvii) They denied that they had any role in the entire process of private placement, fabrication of share premium, issuance of bonus shares, subsequent transfer of shares and funds to connected/ related entities was designed and structured on the building blocks of a slew of transfers and retransfers to beguile the same as transactions with commercial sense to generate bogus LTCG which is exempt from tax under the provisions of the Income Tax Act, 1961 as alleged.
- (xxviii) They also denied that they had any role in the alleged misuse of stock exchange system.
- (xxix) In the Order, no directions have been issued against persons who were erstwhile shareholders of CPAL and PML and who consequent to the amalgamation were allotted shares of KAFL and who had sold the shares in the market, on the purported ground that they have sold shares below 5 lacs during the investigation period. If SEBI's theory of alleged bogus LTCG is correct then, qua the persons/ entities (3474 in number) who have made alleged profit/ bogus LTCG to the tune of ₹1150 crores, out of the purported profit of ₹1583 crores, have been let off. Said approach is totally discriminatory and arbitrary. Thus, the interim order is totally biased, unilateral, arbitrary, discriminatory and totally unsustainable in the eyes of law.
- (xxx) They also denied that their trades in the scrip of Kailash Auto were fraudulent, manipulative and deceptive.
- (xxxi) They denied that they had indulged in any act, conduct, behaviour which connote a deceptive conduct, designed to deceive or defraud investors by controlling or artificially affecting the price of shares of Kailash Auto, since being in dominant position to control supply and demand, they interfered with free forces of supply and demand, as alleged.
- (xxxii) They denied that they had any role and/ or involvement in misusing the stock exchange system to generate bogus LTCG to convert any unaccounted income into accounted income. They had made

bonafide investment in the scrip of CPAL and/ or PML and earned profit due to prudent investment decision.

- (xxxiii) *They denied that they had employed any fraudulent, manipulative and deceptive device, plan and artifice, employed by connected parties which not only endangers the interests of investors in securities but also the integrity of securities market as a whole, as alleged.*
- (xxxiv) *They prayed that the Orders to the extent it applies to them be reconsidered and the directions against them be withdrawn. Further, they prayed that they may be permitted to liquidate their investments in debt and equity segment, mutual fund units and government securities. To facilitate investment their demat account be defrozeed and PAN be made operative. Further, they be allowed to utilize proceeds from sale of their investment in their business operations and for other bonafide purposes. They also want to be permitted to make investments in BSE/ NSE 500 scrips, Mutual Funds, Debt Instruments, other than equity segment.*

III. Recipients of CPAL and PML shares:

A. Binod and Hanish Toshniwal (Represented by CA, Ravi Vijay Ramaiya) and Santosh Sharma (did not appear for hearing):

- (i) *They undertake the activity of trading in different types of securities with an intention to identify companies that have a growth potential, and invest in the same, with a view to gain profits, either in terms of capital profits or revenue profits.*
- (ii) *No documentary evidence has been provided to substantiate this allegations made in the Order.*
- (iii) *They never held shares of Kailash Auto, nor were they connected to the Company, directly or indirectly. They were made part of the 'Recipients of CPAL & PML Group' merely on the basis of holding shares of PML.*
- (iv) *The Order was passed without seeking any justification from them which is in violation of principles of natural justice, equity and fair play.*
- (v) *They denied being part of any scheme, plan, device and/ or artifice employed either in a SEBI case, or any other case of tax evasion.*
- (vi) *They denied that that their act is deceitful or that they misused the systems of securities market & the Exchange. They denied that they have not contravened the provisions of PFUTP and/ or SEBI Act.*
- (vii) *They have requested for lifting the directions issued under the Order on an urgent basis so that their reputation is restored.*

B. Rudra Prasad Banerjee and Anand Sagar Thakur (did not appear for hearing)

- (i) *No documentary evidence has been provided in the Order to justify the allegation.*

- (ii) *They are investors in the securities market and trade in various listed and unlisted scrips from time to time. They undertake the activity of trading in securities with an intention to identify companies that have a growth potential and invests in the same, with a view to gain profits, either in terms of capital profits, or revenue profits.*
- (iii) *The said order was passed without seeking any explanations from them or giving them an opportunity of being heard which is a violation of principles of natural justice, equity and fair play and the said order has tarnished his reputation.*
- (iv) *They were made part of the 'Recipient of CPAL & PML group' merely on the basis of holding shares of CPAL.*
- (v) *They deny being a part of any scheme, plan, device and/ or artifice employed in any case of tax evasion. They deny having carried out manipulative transactions in securities nor have they misused the securities market.*
- (vi) *They have prayed that they be allowed to access securities market and buy, sell or deal in securities and an order lifting the directions issued under ex-parte ad-interim order may be passed on an urgent basis.*

9. Further, the noticee, Shiv Kumar HUF, having PAN - AABHS3053G, has neither filed any reply nor has it availed the opportunities of personal hearing.

10. I have considered the allegations levelled against the noticees in the interim order, their replies/written submissions and other material available on record. I note that in the instant case, the directions issued against the noticees are interim in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide the *interim order* in the matter in order to protect the interests of investors in the securities market. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the *interim* directions, issued against the noticees vide the *interim order*, need to be confirmed, vacated or modified in any manner, during the pendency of investigation in the matter.

11. Almost all the noticees have raised common issues. Therefore, before dealing with specific replies/submissions of the noticees on merit, I deem it necessary to deal with the preliminary and common issues raised by the noticees.



Common issues raised by noticees:-

- A. Whether SEBI has jurisdiction to investigate matters related to LTCG?
- B. Whether *interim order* has been passed in complete disregard of the principles of natural justice without giving an opportunity of hearing before passing the *interim order*?
- C. Whether there was any requirement and urgency for passing such restraints as imposed by the interim order and whether the same results in breach of fundamental right of doing trade and business?
- D. Whether after giving permission to the company to amalgamate by court and thereafter listing the shares, such an exercise can be questioned by SEBI?
- E. Other issues raised by noticees:-
 - I. Whether interim order without bringing out individual role of noticees in the manipulation can impose such restrictions on them?
 - II. Whether it is correct to question their intent when they have used their own funds and sold in the market in an anonymous trading platform of the exchange?
 - III. Whether BSE or SEBI failed to raise alarm bells on the unusual price movement in the scrips?
 - IV. Whether SEBI has adopted a discriminatory approach by excluding beneficiaries who had sold less than 5 Lakh shares?

A. Whether SEBI has jurisdiction to investigate matters related to LTCG?

12. Some of the Noticees have contended that the primary allegation in the *ex-parte ad interim order* against them is of conversion of unaccounted income into accounted income and subsequent tax evasion which falls outside the jurisdiction of SEBI. The Noticees have also submitted that they have not received any query from Income Tax Authorities regarding LTCG and tax

evasion falls outside the jurisdiction of SEBI. They have stated that their capital gain is genuine. As regards the lack of jurisdiction of SEBI in tax avoidance matters, I note that the *interim order* has brought out the *modus operandi* wherein the company in nexus with the *beneficiaries* were able to float equity shares on private placement basis and thereafter the connected entities misused the stock exchange mechanism to provide exit to *beneficiaries* at a high price in order to help the *beneficiaries* to generate fictitious long term capital gain (LTCG). The *interim order* has detailed at length the manner in which price and volume of the scrip were *prima facie* manipulated by the entities. The manipulation in the traded volume and price of the scrip by a group of connected entities has the potential to induce gullible and genuine investors to trade in a scrip in which they would otherwise not trade. The net buyers in order to provide exit to *beneficiaries* at a high price interfered with the open price discovery mechanism of the stock exchange. Apparently, when certain entities act in concert with the motive of making exorbitant profits which may not have arisen from normal trades in the securities market, such entities are distorting the fair and free operation of price discovery and cutting at the root of market integrity. Thus, *prima facie* a fraud in the securities market is established inasmuch as it involves manipulative transactions in securities and misuse of the securities market. Accordingly, I am of the view that SEBI has acted well within its jurisdiction, in the matter. An observation in the interim order to the effect that the object of such market manipulation would have been enhancement of the gains from tax angle does not take the matter out of the purview of SEBI.

B. Whether interim order has been passed in complete disregard of the principles of natural justice without giving an opportunity of hearing before passing the interim order?

13. Some of the Noticees have contended that the *interim order* has been passed in complete disregard of the principles of natural justice as no opportunity of hearing was provided to the Noticees. In this regard, I note that the *interim order* has been passed on the basis of *prima facie*

findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order*. The *interim order* has also been issued in the nature of a show cause notice affording the Noticees a post-decisional opportunity of hearing. I also note that the power of SEBI to pass *interim orders* flows from sections 11 and 11B of the SEBI Act which enable SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

" There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

14. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that "*Provided*

further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

"Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

I, therefore, do not find that the interim order is vitiated for want of a personal hearing prior to passing of the order.

C. Whether there was any requirement and urgency for passing such restraints as imposed by the interim order and whether the same results in breach of fundamental right of doing trade and business?

15. The Noticees have raised another contention that the power to issue directions under sections 11(4) and 11B is a drastic power having serious civil consequences and ramifications on the reputations and livelihood of those against whom it is directed. The said power is not available for routine application and cannot be used for penal action. In this regard, I note that in this case the purpose of the interim order is to achieve the objectives of investor protection and secure the market integrity by enforcing the provisions of the SEBI Act. Urgent measures by way of restraining the noticees from continued operations in the securities market were considered necessary in furtherance of the objectives of the SEBI Act. I, therefore, do not agree with the contentions of these Noticees that such an exercise of power is not done routinely and retrospectively.



16. Some of the noticees have further contended that there was no emergent situation that existed which warranted SEBI to pass the *interim order* without providing them an opportunity of personal hearing. In this regard, I note that the time taken to arrive at a decision/action, as in this case, is dependent on the complexity of the matter, its scale and *modus operandi* involved and other attendant circumstances. The power under sections 11 and 11B of the SEBI Act can be invoked at any stage i.e. either during pendency or on completion of inquiry or investigation. Further, the *interim order* sets out the reasons and circumstances which led to the issuance of *ex-parte ad-interim directions*.
17. Another contention of the noticees is that the restraint order is in breach of their fundamental right to carry on trade and business under the Constitution of India. Article 19(1)(g) guarantees to all citizens, the right to practice any profession or to carry on any occupation, trade or business subject to reasonable restrictions imposed by sectoral regulators in the interest of general public. SEBI Act, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the noticees seem to be *prima facie* involved in the manipulative scheme and the noticees have therefore been restrained from accessing the securities market and dealing in securities till further directions. It is a settled law that the fundamental rights to trade ensured under the Constitution are subject to restrictions stemming out of legal requirements mandated in other statutes.

D. Whether after permission by court for amalgamation and thereafter listing the scrip, such an exercise can be questioned by SEBI?

18. It needs to be stated that the interim order does not find fault with the manner in which the

amalgamation took place or the manner in which scrip was listed but deals with the intent of the companies, promoters, beneficiaries etc. in going for a strategic private placement, fabrication of share premium, issuance of bonus shares, subsequent transfer of shares and transfer of funds to connected/ related entities designed to generate bogus LTCG. The private placement in the scrips being made to benefit certain identified entities at the cost of the integrity of the whole of securities market is the thrust of the interim order. Thus there is no merit in the above contention.

E. Other issues raised by noticees

I. Whether interim order without bringing out individual role of noticees in the manipulation can impose such restriction on them?

19. Certain noticees have also contended that no material evidence has been brought on record to demonstrate any kind of nexus or prior arrangement between the *recipients, beneficiaries* and *Kailash Auto, CPAL* and *PML* or any other entities debarred by this order. Some of the noticees have also contended that they have invested in the *PML* and/ or *CPAL* based on background of the company, positive news/ rumours about the company, potential takeover / merger with another company etc. In this regard, I note that the noticees were unable to demonstrate or provide plausible reasons as to why any rational investor would like to invest in a closely held company with hardly any operations and had poor business/ financial standing. *CPAL* and *PML* had nil value of tangible and intangible assets. Despite such poor financial background of the company, the exuberance shown by the noticees for companies like *CPAL* and *PML* casts doubt on the investment/ trading strategy of these noticees. In my view, this type of investment was possible only when the entities are acting in nexus for a common objective as brought out in the *interim order*.

20. Upon an appreciation of the scheme as a whole, I notice that several entities and group of entities as identified in the interim order have broadly been shown to have some connection

with the alleged market fraud. As stated in the earlier paragraphs, since interim order is an emergent measure taken by SEBI in the interest of investor, the issuance of such order cannot await the identification of each entities' role to the main scheme. I do not find any merit in the contention of the noticee as the role of noticees would be revealed only in a detailed investigation, which will consume time at the cost of immediacy.

II. Whether it is correct to question their intent when they have used their own funds and sold in the market in an anonymous trading platform of the exchange?

21. As regards the contention of certain noticees that pricing of a scrip is subjective, contingent upon forces of demand and supply and at no point of time either the stock exchange or SEBI had raised any alarm as to price movement in the scrip, I note that it is an admitted position that the movement in the price of a scrip is driven by various factors. Unlike in the instant case, the steep price rise with meagre volume followed by sudden increase in volume at high price cannot be assumed as a normal market trend when the buyers and sellers of *Patch - 2* are found to be entities of *Kailash Auto Group I and Kailash Auto Group II* and *beneficiaries*. It has been found that certain entities of *Kailash Auto Group I and Kailash Auto Group II* had acted as buyers when the *beneficiaries* were selling the shares of *Kailash Auto*. It is apparent from the trading pattern that the said *Kailash Auto Group I and Kailash Auto Group II* entities had bought shares at high prices in market which saw sudden sale of huge number of shares post amalgamation by the *beneficiaries*. Such trading behaviour belies any economic rationale and indicates existence of premeditated arrangement among the *beneficiaries* and those *Kailash Auto Group I and Kailash Auto Group II*. The facts and circumstances of this case were fit for issuing directions by way of *interim order* during the pendency of the investigation. I, therefore, do not find any merit in the contentions of the noticees.

22. There have been instances of market manipulation wherein entities have deployed their own funds and these manipulations have been perpetrated through the trading platform. The mere act of bringing in own funds does not rule out any possibility of manipulation. Only the

ongoing investigation would reveal the complicity or otherwise of various parties in the fraud.

Thus these are not valid grounds available to the noticees to challenge the interim order.

III. Whether BSE or SEBI failed to raise alarm bells on the unusual price movement in the scrips?

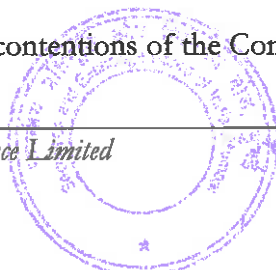
23. The thrust of interim order was not price or volume manipulation. It was the whole scheme beginning from the strategic private placement, amalgamation, fabrication of share premium, issuance of bonus shares, subsequent transfer of shares and transfer of funds to connected/ related entities designed to generate bogus LTCG, by investing in the scrip of the aforesaid company in a strategic manner by misusing the stock exchange mechanism. Therefore, the contention raised by noticees are without merit.

IV. Whether SEBI has adopted a discriminatory approach by excluding beneficiaries who had sold less than 5 Lakh shares?

24. The entities have contended that SEBI has adopted a discriminatory approach by including them in *the interim order* and excluding certain other *beneficiaries* from the purview of the same as they have not sold more than 5 lakh shares. In this regard, I find it important to mention that the *interim order* clearly mentioned that a detailed investigation in the matter is in progress. The fact that certain *beneficiaries* have been left out in the *interim order* does not signify that they are outside the scope of SEBI's investigation or have been exonerated. At the stage of the *interim order*, directions were issued against entities whose role/involvement in the entire scheme was *prima facie* observed in light of the facts and circumstances at that stage. It is pertinent to clarify that appropriate action in accordance with the provisions of law will be initiated against entities (including the *beneficiaries*) who are found to have played a role in the plan / scheme / design employed in this case.

A. Company:

25. I may now consider the specific contentions of the Company. It has raised a contention that



all the corporate actions were undertaken in the ordinary course of business and had the approval of SEBI, BSE and shareholders and details about the same were in the public domain and nobody raised any grievance about the same during the relevant period. I note that the interim order does not find fault with the manner of issue of private placement of shares but deals with the strategy employed by the company, recipients, beneficiaries etc. in the whole scheme. The thrust of the interim order was the manner in which private placements and bonus issues were made to benefit certain identified entities at the cost of the integrity of the whole of securities market. Thus there is no merit in the above contention.

26. The noticee has contended that it was not connected/ has been erroneously connected with the other entities viz. *Kailash Auto Group I* and *Kailash Auto Group II*, *primary allottees*, recipients of *CPAL shares* and recipients of *PML shares*, beneficiaries, etc. In this regard I note that the *interim order* brings out at Table 12 and corresponding paragraphs that the promoter and promoter related entities of KAFL were transferring funds to the entities who were part of *Kailash Auto Group I* and *Kailash Auto Group II*. CPAL and PML, promoters of Kailash Auto, made private placement to the *primary allottees*. The *interim order* also brings out instance of monetary trail which shows how entities forming part of *Kailash Auto Group II* are connected to CPAL and PML, the beneficiaries and recipients of *CPAL shares* and recipients of *PML shares*. I have carefully considered these submissions but I am unable to accept them at face value as only a full investigation would reveal the validity or otherwise of such contentions and hence I would not like to pre-judge the issue, at this stage.

27. The noticee has denied that corporate office was locked and no company officials were available at the time of visit of BSE officials at that address and any such allegations are baseless. In this regard, I note that they have also accepted that out of the two days that BSE officials visited their corporate office, on one day the office was locked and the other day, an employee was present but none of the directors. Even with regard to the inspection of their registered office,

they have failed to prove that any employee was present at that time. The Noticee has merely stated that, *"it may be noted that our employees sit at the said premises only"*. In view of the above, at this juncture, I am unable to accept the submissions of the Noticee in this regard and this is subject to the findings on facts on a matter under investigation.

28. The noticee has further contended that same funds were not being churned among CPAL and PML and their respective primary allottees as alleged. In so far as CPAL and PML are concerned, the transactions were in the nature of transfer/ receipt of funds for sale/ purchase of unlisted shares and allotment of shares. In this regard, I note that it is too much of a coincidence that several primary allottees of CPAL and PML were simultaneously investing in the equity shares of each other's companies and transferring the funds to another entity immediately after receiving the same from one entity. As detailed investigation in the matter is still in progress and the facts and veracity of the submissions along with the documents are being looked into by the investigation, I do not deem it appropriate to deal with these submissions of the noticees at this juncture, as the same would prejudice the investigation.

29. The noticee has denied that CPAL and PML were incorporated with a dubious plan and premeditated arrangement and artifice to increase number of shares therein through sham and non-genuine transactions and contended that all their transactions were in the ordinary course of business without any malafide intent or design. In this regard, I note that within a year of their incorporation with share capital of only ₹1 lakh each, both CPAL and PML undertook stock split and made private placements to the tune of approx. ₹33 lakhs at premiums of ₹ 590 and ₹ 690, respectively per share. The financial figures reveal that they incurred losses and had no tangible or intangible assets in the FY10-11 and FY11-12, however, in the same FY, the *primary allottees* transferred the shares to the *recipients* and CPAL and PML made private placement and bonus issue (in the huge ratio of 1:55 and 1:65, respectively), thereby increasing their share capital substantially. In the next 6 months i.e. by September 2012, the shareholders of CPAL and PML increased from less than 50 each to 1100 and 680, respectively, through

off-market or physical transfers. All of this happened just months before the decision to merge with Kailash Auto Finance limited in November 2012. It all appears that they were not carrying out any operations and were incurring losses but continued to make private placements and bonus issues with alleged dubious intent.

30. The noticee has contended that they had no control over the price of the scrip in the stock market. I note that the role played by the the *LTP contributors* and their counterparties have already been highlighted in the *interim order*. It is alleged in the interim order that the promoters funded the net buyers i.e. entities forming part of *Kailash Auto Group I* and *Kailash Auto Group II*, who were trading in the scrip. KAFL and its promoters were connected to the exit providers who bought the shares from the beneficiaries exit the scrip at profit since the price of the scrip had been artificially increased. Hence, KAFL has also indirectly played a role and the same would be brought out in the ongoing investigation.

31. The noticee has contended that they were not aware of the transactions done by the *beneficiaries* or receipt of funds by the *recipients*. I note that it has been explained above that the promoter and promoter group of KAFL allegedly transferred funds to *Kailash Auto Group I* and *Kailash Auto Group II*, who provided exit to the *beneficiaries*. It has also been alleged by an instance / example that an entity forming part of *Kailash Auto Group II* received funds through multiple layering from the *beneficiaries*, *recipients* and CPAL and PML. On an overall evaluation of the facts of the matter, I am convinced that there is a prima facie case made out against the entities covered in this notice generally and the investigation is further examining the matter, which would bring out their roles in detail depending on the material. I do not want to prejudice the investigation in any manner whatsoever, at this stage.

B. Beneficiaries and Recipients of CPAL shares and recipients of PML shares:

32. I may now consider the preliminary contentions of the *recipients of CPAL shares*, *recipients of PML*

shares and beneficiaries. They have raised a common contention that there is nothing in the *interim order* to allege or demonstrate any wrong-doing on their part. They have further contended that they are not connected/ related to *Kailash Auto*/ its promoters/ with any entities who are alleged to have indulged in price manipulation with the entities who have provided exit to the *beneficiaries*. The noticees have also contended that they had invested in the scrip of *CPAL* and *PML* from their own funds as genuine investors considering it a good investment opportunity. It has been further contended that they invested in the shares of *CPAL* and *PML* as its objectives and growth prospects were looking great, especially in light of prospects of takeover/ merger of the company with some other company. Thus, they had invested in the scrip after seeing the scope of development in *CPAL* and *PML*. Hence, they cannot be said to be involved in any dubious plan or artifice as alleged in the *interim order*.

33. In this regard, it may be noted that recipients and *beneficiaries* have invested in such closely held companies that reported no value creation and made loss or negligible amount of profit since their incorporation. Also, the news of amalgamation of *CPAL* and *PML* with *Kailash Auto* was first announced at public portal, i.e., BSE website, by *Kailash Auto* on November 22, 2012, however the news of amalgamation was known to privileged recipients and *beneficiaries* at the time when they were investing in the scrip of *CPAL* and *PML*, as they were expecting the price of *Kailash Auto* shares would do well in future. This shows that recipients and *beneficiaries* had invested in *CPAL* and *PML* not considering the operating performance of *CPAL* or *PML* but with the intent to use shares of *CPAL* and *PML* to receive shares of *Kailash Auto* and further use the market platform to exit. It shows that recipients and *beneficiaries* were acting in concert in this alleged dubious scheme which is under investigation. Therefore I, reject the contention of the recipients and *beneficiaries* in this regard and keep these issue open to investigation.

34. Some of the *beneficiaries* have claimed that they were approached by certain individuals to make investment in the *CPAL* and *PML*, I am unable to accept the explanation of the *beneficiaries*

that they invested in the shares of *CPAL* and *PML* on the advice/ tips of some random sources. I note that such persons/ entities have failed to give any plausible explanation as to how *recipients of CPAL shares and recipients of PML shares* had transferred shares of *CPAL* and *PML* at around ₹1/- each to them, when same shares were allotted by *CPAL* and *PML* to primary allottees at huge premium and costing the *primary allottees* ₹600/- or ₹700/- for each such allotted shares. This could only be possible if the *beneficiaries* had nexus and prior understanding with the *recipients of CPAL shares and recipients of PML shares* with regard to the plan, device and artifice as *prima facie* found in the *interim order*. I note that the *beneficiaries* have not been able to furnish any satisfactory documentary evidence to explain how they were approached for buying shares of *CPAL* and *PML*. As brought out in the *interim order*, ultimate winners in of the whole scheme in question are the *beneficiaries* and as such they cannot pretend to be oblivious to the scheme/ plan/ device/ artifice in question.

35. It is intriguing to note that, in spite of the poor track record, prior to amalgamation, price of the scrip of *Kailash Auto* had increased from ₹11/- to ₹36.25/ in 36 trading days with average trading volume of 280 shares per day. Thereafter, *beneficiaries* including the noticees were able to offload their shares at high price, continuously for a period of around 15-16 months. In any normal market, a sudden supply if not matched by similar demand leads to price fall. However, in this case, the *beneficiaries* were able to offload shares at higher price because of the presence of entities of *Kailash Auto Group I* and *Kailash Auto Group II* who had acted as buyers when the *beneficiaries* were selling their shares. The circumstances *prima facie* show that in the whole process, artificial demand was created by the entities of *Kailash Auto Group I* and *Kailash Auto Group II* so as to absorb the supply from the *beneficiaries*. Thus as a result of the trading between the *beneficiaries* and entities of *Kailash Auto Group I* and *Kailash Auto Group II* in *Patch - 2*, the average trading volume in the scrip had increased by 5,57,752.10%, i.e., (5577 times) as compared to *Patch-1*. Such increase in volume was mainly on account of matched trading amongst *Kailash Auto Group I* and *Kailash Auto Group II* entities and *beneficiaries*. This artificial

volume in the scrip created by the *beneficiaries* including the noticees and the entities of *Kailash Auto Group I and Kailash Auto Group II* had the potential to induce any genuine investor to invest in the scrip without knowing the scheme of operations deployed, as in the instant case. Such facts and circumstances reinforce the finding in the *interim order* that *beneficiaries* and entities of *Kailash Auto Group I and Kailash Auto Group II* had used the securities market system to artificially increase volume for making illegal gains and to convert ill-gotten gains into genuine one. Therefore, I am convinced that there is a *prima facie* case made out against the noticees and the investigation is further examining the matter, which would bring out their roles in detail depending on the material.

36. Certain *beneficiaries* have contended that they are not aware that entities of *Kailash Auto Group I and Kailash Auto Group II* had provided profitable exit to them and no adverse inference can be drawn against them based on the same. Even though I agree with the submissions of the noticees that exchange platform is an anonymous trading platform where counterparty is not known, the anonymity argument does not fit in the instant case when it is observed that the noticees dealing in the scrip were driven by the common objective of the scheme. The objective of the scheme was aptly brought out in the *interim order* which says that that the scheme was orchestrated to provide LTCG benefit to the *beneficiaries* where *Kailash Auto* acted as a platform for issue of equity shares pursuant to amalgamation and the entities of *Kailash Auto Group I and Kailash Auto Group II* acted as exit providers to provide exit to these *beneficiaries* so that they can claim LTCG and convert their unaccounted income into accounted one. The *modus operandi* deployed in the instant case is such that the entities involved in the scheme necessarily have to act in concert, under a pre-meditated plan to achieve the end objective of the scheme. Admittedly, none of the noticees have denied to have dealt in the scrip during the examination period as mentioned in the *interim order* and when the acts and deeds of these noticees are seen holistically with the facts and circumstances of this case, it *prima facie* appears that they are acting in nexus. Therefore, I do not accept the contention of the noticees.

37. The schemes, plan, device and artifice employed in this case, apart from being a possible case of money laundering or tax evasion, which could be seen by the concerned law enforcement agencies separately, is *prima facie*, also a fraud in the securities market in as much as it involves manipulative transactions in securities and misuse of the securities market. The manipulation in the traded volume and price of the scrip by a group of connected entities has the potential to induce gullible and genuine investors to trade in the scrip and harm them. As such, the acts and omissions of entities of *Kailash Auto Group I and Kailash Auto Group II* and *beneficiaries* are 'fraudulent' as defined under Regulation 2(1)(c) of the PFUTP Regulations and are in contravention of the provisions of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a), (b), (e) and (g) of PFUTP Regulations and Sections 12A(a), (b) and (c) of the SEBI Act, 1992. I, therefore, reject the contention of the *beneficiaries* in this regard.

38. In the instant case, the *interim* order has reasonably highlighted the *modus operandi* wherein *CPAL* and *PML* and their primary allottees engineered a web of transfers and retransfers of funds and shares amongst themselves in a bid to create a facade of infusion of funds by way of private placement of shares when actually there was no infusion of funds for the large part of the private placement and thereafter the *recipients of CPAL shares and recipients of PML shares* acted as conduit to facilitate the transfer of shares of *CPAL* and *PML* to the *beneficiaries*. Further, *beneficiaries* with the aid of the entities of *Kailash Auto Group I and Kailash Auto Group II* misused the stock exchange mechanism to exit at a high price and book illegitimate gains with no payment of taxes as LTCG is exempt from tax under Section 10(38) of the Income Tax Act, 1961. Thus, as detailed above, the noticees, while acting under alleged dubious plan, device and artifice, have traded in the shares of *Kailash Auto* that *prima facie* led to the creation of artificial volume in the scrip, by misuse of the securities market system.

39. I, therefore, find that, at this stage, the following 32 noticees have failed to give any plausible reasoning/ explanation for their acts and omissions as described in the *interim order* and have

not been able to make out a *prima facie* case for revocation of the *interim order*. I, therefore, in this case, reject the prayers of such noticees for setting aside the *interim order* or for complete removal of the restraint imposed by it. The list of these noticees is as under:

Sl. No.	Noticee	PAN
1	Kailash Auto Finance Ltd.	AACCK0928J
2	N. Kanniah	AAHPK8800D
3	Krishna Agrawal	ACHPA6428P
4	Nand Kishore Agarwal	ACJPA2410P
5	Praveen Goud Adhikam	ACOPA7454Q
6	Sapna Goud Adhikam	ADAPA1398J
7	Poonam Makin	AEVPM9256K
8	Sunitha Mundada	ABZPM2965N
9	Prashant Singh Gaur	APBPG5512R
10	Sandeep Mahendrabhai Shah	AADPS4022M
11	Shiv Kumar HUF	AABHS3053G
12	Ramachandran Ananthan Pothe	AACPP8620K
13	Anand Swaroop Rathi	ABLPR8103M
14	Rajesh Rathi	ACDPR7543Q
15	Asha Rani Soni	AJEPS8536L
16	Anand Sagar Thakur	AEYPT0142A
17	Rudra Prasad Banerjee	AVTPB4409J
18	Binod Kumar Toshniwal	AFDPT0326E
19	Hanish Toshniwal	AHJPT9222F
20	Santosh Sharma	BFAPS7597Q
21	Bhagwati Devi Patwari	AEYPP3706L
22	Priyanka Patwari	ALSPK8179K
23	S K Patwari HUF	AAFHS3391K
24	Sajjan Kumar Patwari	AEYPP3705K
25	Sanjay Kumar Patwari	AFPPP9576G
26	Sanjay Kumar Patwari HUF	AASHS7307E
27	Sanjib Kumar Patwari	AFRPP9205L
28	Sanjib Kumar Patwari HUF	AAPHS3236R
29	Sarika Patwari	ABAPL2442E
30	Shaila Patwari	AJFPP4973M

31	Sunil Kumar Patwari	AFVPP3401L
32	Sunil Kumar Patwari HUF	AANHS6750A

40. Considering the above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm that the directions issued vide *ad interim ex parte* order dated March 29, 2016 as against all the 32 Noticees mentioned above, shall continue until further orders. This is however subject to the reliefs which are given to other entities, as detailed hereunder with immediate effect so as to ensure consistency with the earlier orders passed against other entities in this matter, namely:-

- (a) Carry on delivery based transactions in cash segment in the securities covered in NSE Nifty 500 Index scrips and/ or S&P BSE 500 scrips;
- (b) Subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;
- (c) Deal in Debt/Government Securities;
- (d) Invest in ETF
- (e) Avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;
- (f) Sell the securities held in the demat account as on the date of the *interim* order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in an orderly manner under the supervision of the stock exchanges;
- (g) Tender / sell the shares lying in their demat accounts or in any open offer/delisting offer under the relevant regulations of SEBI, as on the date of the interim order, with the condition that the sale proceeds should be deposited in an interest bearing Escrow account with a nationalized bank.
- (h) Deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange as provided under:-



- i. the sale proceeds may be utilised for investments permitted in para 43 (a) to (e) above;
- ii. upto 25% of the value of the portfolio as on the date of the *interim order* or the amount* in excess of the profit made /loss incurred or value of shares purchased to give exit, whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems.

** The amount will include the value of portfolio in the demat account*

Explanation: For the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers the value of portfolio shall exclude the value of clients' securities lying in their demat accounts.

- (i) The aforesaid reliefs shall be subject to the supervision of exchanges and depositories. The stock exchanges may use the existing mechanism available for implementing the similar interim relief earlier granted to some of the other entities.

41. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

DATE: July 13, 2017

PLACE: MUMBAI



G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

