

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: SHRI. S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Section 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992
In respect of:

No.	Name	Designation	CIN/PAN/DIN
1.	Parekh Aluminex Limited	Company	CIN: L27203MH1994PLC080732
2.	Mr. Rajendra Gothi	Executive Director	DIN:02211363
3.	C.V. Pabari & Co., Chartered Accountants	Statutory Auditors	PAN:AABPP5757A

Background

- 1.1 SEBI received a reference dated December 15, 2015 from the State Bank of India (hereinafter referred to as “**SBI**”) informing that the “*Due Diligence Audit*” Report dated June 28, 2013 of Parekh Aluminex Limited (hereinafter referred to as “**PAL**”/ “**the Company**”) carried out (for the period 2012-2013 by Deloitte Touche Tohmatsu India Pvt. Ltd. (“**Deloitte**”)) observed various irregularities of serious nature in the day to day affairs of PAL. SBI also informed that they reported the account of PAL as fraud and lodged a complaint with Central Bureau of Investigation (“**CBI**”). SBI vide letter dated May 20, 2016 forwarded copies of the complaint dated December 14, 2015 filed with CBI (Banking Security & Fraud Cell) against PAL and the “*Due Diligence Audit*” (carried out by Deloitte) Report. The said complaint filed by SBI (with CBI) *inter alia* alleged that PAL and its directors fraudulently availed credit facilities from a consortium of banks including SBI, misused such credit facilities with an intention to defraud and cheat the banks, thereby causing a loss to the tune of ₹122.07 crores and interest and other charges to SBI.

Details of the Company-

1.2 PAL was incorporated in September 1994. The registered office of PAL is at 601, Auto Commerce House, Kennedy Bridge, Nana Chowk, Mumbai 400007 and its administrative office is at I-9, Everest Building, 10th Floor, Tardeo, Mumbai 400034. The Company is engaged in manufacture of aluminum foil containers, aluminum foil rolls and other related products. The Company came out with a public issue in January 1997. The equity shares of the Company were listed on the Bombay Stock Exchange (“**BSE**”) on December 16, 2004 and National Stock Exchange of India Ltd. (“**NSE**”) on November 21, 2006. The equity shares of the company are currently suspended for trading (in both the exchanges) due to non-compliance with the *Listing Agreement*. The last trading in the shares of the company took place on March 30, 2015.

Due Diligence Audit of PAL-

2.1 Deloitte was appointed by a consortium of Banks (Lenders of PAL) including SBI to conduct the *Financial Due Diligence* of PAL as a part of their effort to restructure the debts of PAL.

2.2 The Draft *Financial Due Diligence* Report dated June 28, 2013 (for the period 2012-2013) of PAL prepared by Deloitte, (provided to SEBI by SBI, one of the Lenders of PAL) indicated various irregularities in inventories record, provision for doubtful debts, insurance of plant and machinery, cash and bank balances and drawing power calculations by PAL. The report noted the following points of concern with respect to the *Loans and Advances* given by the Company and transactions with the related parties:

(a) Lack of documentation for loans entered into:

As on December 31, 2012, total value of loans and advances given by PAL amounted to ₹ 1314.78 crores. There was no documentation entered into, with the borrowers defining the terms and conditions and security against which the loans were disbursed. The Report provided the following summary of the loans and advances given by the company:

Table –A

Particulars	Balance as on December 31, 2012 (in ₹ crores)
J K Shah Group	110.54
Kamlesh Kanungo Group	548.50
Kirti Kedia- Transcon Group	513.08
Orbit Group	10.73
Related entities	27.45
Shanti Dalal	3.50
Vishal Sharma Group	23.67
Y A Mamaji Group	7.83
Other Unsecured Loans	69.49
Total	1314.79

(b) Interest free loans:

Out of the above, loans outstanding to the extent of ₹ 869.25 crores as on December 31, 2012 had been advanced as interest free loans. Following is the summary of the same:

Table –B

Particulars	Balance as on December 31, 2012 (in ₹crores)
J K Shah Group	108.90
Kamlesh Kanungo Group	118.24
Kirti Kedia- Transcon Group	513.08
Orbit Group	10.73
Related entities	27.45
Shanti Dalal	3.50
Vishal Sharma Group	23.67
Y A Mamaji Group	7.83
Other Unsecured Loans	55.85
Total	869.25

(c) Loans to related entities:

Loans and advances to related entities amounted to ₹ 27.46 crores. No interest was charged on these loans. These are as follows:

Table –C

Particulars	Balance as on December 31, 2012 (in ₹ crores)
AAP Entertainment Limited	5.45
Arsenal Bulls Securities	12.50
AAP Realtor Limited	9.50
Total	27.45

(d) **Adjustment of loans against expenses:**

Loans amounting to ₹ 38.16 crores extended to companies trading in bullion were adjusted against expenses not directly attributable to company's business.

(e) **Payments to related parties:**

During the period April to December 2012, payments amounting to ₹ 207.78 crores were made to related parties. Out of these payments, payments (net of receipts) amounting to ₹ 34.49 crores were adjusted against other liabilities or expenses.

(f) **Stand still loan accounts:**

No movements of receipts or payments was observed during the period April 01, 2012 to December 31, 2012 in respect of 73 borrowers having loan outstanding amounting to ₹ 264.74 crores.

Investigation conducted by SEBI-

2.3 On receipt of the Due Diligence Audit Report of PAL, SEBI conducted a preliminary investigation to ascertain-

- *Whether the books of accounts of PAL were manipulated during the Financial Years (FYs) 2010-2011, and 2011-2012 and 2012-2013,*
- *Whether there was any diversion of funds, and*
- *Whether there were any other related violations*

2.4 As part of the preliminary examination, SEBI obtained information regarding PAL from BSE website, SBI, *Financial Due Diligence* Report of Deloitte, Annual Report of PAL, Audit Reports of M/s Chaturvedi & Shah and M/s Paresh Rakesh and Associates, etc.

2.5 In the light of the observations made in the *Financial Due Diligence Audit* Report by Deolitte and information obtained from SBI, BSE website, Annual Report, Audit Reports of M/s Chaturvedi & Shah and M/s Paresh Rakesh and Associates, etc., SEBI vide letter dated October 21, 2016 advised PAL to furnish *inter alia* the following details/information:

- i. *“A brief summary of the operations of the Company since its incorporation in the year 1994,*
- ii. *Role of late Sri. Amitabh Parekh, former M.D., in managing the operations of the Company,*
- iii. *Brief profile of all the Directors on board of the Company since 2002, auditors of the company (Financial year wise) including date of joining and resignation, reasons of resignation, etc..*
- iv. *Details about the CDR scheme from the date of its constitution till date,*
- v. *Details of the indebtedness of the company-loans taken by the company from every bank and any other institutions,*
- vi. *Details of loans advanced by the Company to various parties and status of the repayments and outstanding amounts from 2002-2003 till date,*
- vii. *Actions taken/initiated till date, including suits filed at various forums by various banks against the company and the assets offered by the company to various banks for redeeming their claims and all correspondence in this behalf.*
- viii. *Details of proceedings against the company, if any, before various statutory authorities like income tax, Sales Tax etc. from FY 2002-03 till date.*
- ix. *The reasons for steep fall in share prices of the company after the demise of late Shri Amitabh Parekh,*
- x. *Loans and advances given by the Company to various parties as on March 31, 2012 are ₹1284/- crores as per the Due Diligence Report of Deloitte. However, the amount of Loans and Advances shown in the books of the Company as on March 31, 2012 is ₹169/- crores (Source : Annual Report 2011-2012). The difference for the same may be explained,*
- xi. *The reasons for increase in revenue and scale of operations from 2002 till date may be explained, year wise,*
- xii. *Details of revenue, expenses and profits of the Company since April 01, 2012. The details of the balance sheets of the company made since April 01, 2012 may also be submitted.*
- xiii. *Details of loan granted by the company to the promoters and status of the said loans*
- xiv. *Any other related information that may be relevant to the state of affairs of the company”.*

2.5.1 In response, PAL vide letter dated November 19, 2016 stated “....we are in the process of collating the required information and details and shall shortly reply to SEBI’s letter in detail”.

2.6 Thereafter, SEBI vide letter dated January 06, 2017 sought certain clarifications in respect of the Audited Accounts of PAL for the FY 2011-2012 from the Statutory Auditors of PAL, viz. Chetan V. Pabari & Co., Chartered Accountants.

2.7 In response, Mr. Chetan Pabari vide letter dated January 12, 2017 sought 3-4 months’ time to gather the required information.

2.8 Subsequent to this, PAL vide letter dated January 13, 2017 submitted a detailed reply to SEBI's letter dated October 21, 2016. The reply of PAL was as under:

- 1) *"The Company was virtually single handedly run by the erstwhile Promoter and Chairman & Managing Director, Late Shri. Amitabh Parekh. He expired on 06.01.2013 at an early age of 39 years.*
- 2) *Since late Amitabh Parekh was the sole decision maker of the company and personally dealt with most of the key functions including finance & banking transactions, his sudden demise left the company in a state of shock and situation of "stand-still".Although there were other directors, Mr. Amitabh Parekh was the whole and sole in charge of the affairs of the Company. This fact was recognized by Indian Overseas Bank vide letter dated 07.01.2013 addressed to the Company and the family members of late Mr. Amitabh Parekh,*
- 3) *The various 'connections' had reacted negatively to the news of the sudden demise of late Shri Amitabh Parekh and as a result, the operations of the company in terms of debtor management, credit cycle, recovery of advances, inventory management etc. were adversely impacted.The Company has also claimed that substantial receivables were outstanding, thereby causing mismatch in cash flows of the company.*
- 4) *Accordingly, in order to rehabilitate and restructure the debts of the company, the lenders of the company decided to restructure their debts to the company by referring the company to the Corporate Debt Restructuring (**CDR**) Cell and accordingly a reference was made to the CDR Cell on January 01, 2013 with the support letters of Indian Overseas Bank (IOB) and Dena bank....*
- 5) *.....It was observed that totally 25 lenders had given various credit facilities/ loans to the company. The lenders called for a Joint Lenders Meeting (**JLM**) on January 17, 2013, wherein it was decided that a Corporate Debt Restructuring (**CDR**) package needed to be run in order to bring stability. Accordingly, in order to rehabilitate and restructure the debts of the Company, 22 of the 25 lenders of the Company decided to refer the company to the CDR Cell. A reference was made to the CDR Cell on January 24, 2013 with 'support letters' of Indian Overseas Bank (IOB) (exposure 14.53%) & Dena Bank (exposure 7.23%).*
- 6) *Pursuant to the reference made to the CDR Cell the lenders of the Company initiated various fact finding measures and appointed external agencies to prepare various documents, for the following purposes:*

S. No.	Name of Agency	Scope of work
1	P. R. Mohite & Co., Chartered Accountants	Stock Audit (February 2013)
2	Dun & Bradstreet	Techno-economic viability study report of the CDR package
3	IDBI Capital Services Ltd.	Compiling and aligning the CDR package in line with CDR Cell requirements and liaison with the CDR Cell
4	Cushman & Wakefield	Valuation Reports of various assets and properties
5	Deloitte Touche Tohmatsu India Pvt. Ltd.	Financial Due Diligence
6	M.V. Kini & Co, Legal Firm	To examine aspects relating to bringing securities outside the system legally into the system to safeguard the interests of the lenders, draft and vet the MRA & TRA agreements etc.

- 7) *.....The records available showed diversion of funds to non-core business by way of loans and advances. Based on this, the Auditors were required to carry out a limited financial review upto 31.12.2012. A flash Report was admitted to CDR-EG in March 2013.*

8) The CDR got approved with majority under "Borrower Class-C and CDR-EG issued the Letter of Approval (**LOA**) dated 30-08 2013. The Master Restructuring Agreement (**MRA**) has been signed thus implementing the CDR package as on 29-09- 2013, with cut-off date of 01.01.2013.

9) As per LOA, the total exposure which has been restructured under CDR is as follows:

WCTL	1798.81 cr.
NCDs	225.00 cr.
Total	₹ 2023.81 cr.

10) All the CDR bankers meet on regular basis,

11) With respect to the Deloitte Report, it is a known fact that IOB on the insistence of the lenders, particularly SBI, for the purpose of carrying out a due diligence, had appointed Deloitte.

12)The observations of the Deloitte Report were informed to the Company and discussed in length during the Joint Lenders Meeting (**JLM**). The company has at that point of time responded point-wise to all the observation and only upon receiving satisfactory replies did the lenders proceed with sanctioning the CDR. This fact can be verified from the JLM Minutes and also from IOB's letter Ref No. adv/1836/13 DATED 12.07.2013 addressed to the company (copy enclosed as Annexure -5) wherein they have chronicled the observations vis-à-vis the company's responses. It is now rather surprising that one of the lenders is coming up with the same queries once again after a period of 3 years have elapsed and for which reasonable answers have already been provided and the same have been accepted by the lenders we would also point out that an unsecured lender to the company, who has filed a winding u Petition against the company, had attached copy of this confidential "Deloitte Report" in its submission to the High court. It is rather astonishing how this third party had access to the proprietary report which supposedly should be in possession to IOB and copies with the other lenders. It was just then that the company also got a copy of the Report.

13) The CDR Scheme was approved by the CDR cell vide letter of approval dated 30.8.2013 issued by the CDR cell and the Master Restructuring agreement (MRA) and the trust & Retention Account (TRA) Agreement were executed on 23.09.2013 thus implementing the package retrospectively with cut off date of 01.01.2013. The executed MRA & TRA agreements were vetted by the Advocates to the JLF of 22 lenders, and duly certified.

14) It is pertinent to mention here that Fraud accounts cannot be referred to CDR, let aside getting approved by the CDR-EG. Only after all ramifications were out to the fore was the company referred to CDR cell and in accordance the CDR cell approved the package under 'Borrower Class'C' – Diversion of Fund'.

15) Upon implementation of CDR package, 3 Nominee Directors of the banks i.e. 1 each from IOB Axis Bank & EXIM Bank along with 1 Nominee Director of largest shareholder group of the company and 1 representative of the family of late Shri Amitabh Parekh came on Board, thus reconstituting the Board.

16) Needless to add, that under the aegis of CDR, the entire Company's operations, its accounts, payments are being run by the bank through a TRA account (Trust & Retention Account) under water fall mechanism in supervision of a JLM appointed Chartered Accountant and the same are being strictly monitored & supervised by the Bank. For all practical purpose the banks were the persons concerned running the show and the 2 external Directors were merely Non executive Independent Directors. All the monies received by the company goes in to the TRA and after the payment requisitions are made by the Company, the same are verified by the Chartered Accountant appointed by IOB and only after his approval the payments are released by IOB for meeting statutory requirements, administrative requirements and other manufacturing requirements. The company on its own accord cannot release payment in favour of anyone.

17) The provisional balance sheet for 18 months period ended 30th September 2013 was complied by the statutory auditors and was considered by the Board of Directors in the Board Meeting held on 4.2.2015 at the Regional office of IOB where all the Nominee Directors of the 3 banks were present.

18) Later on, as fallout of SBI's serving show cause Notices of Willful Default on the Company and all its Directors, all nominee directors of the Banks' and that of the shareholders' resigned, reducing the Board to being without required quorum.

- 19) We had repeatedly drawn the lenders' attention to the issue of signing the audited balance sheet of the company in various JLMs. The company has time and again brought to the attention of the lenders that since there is no quorum of the Board, the auditors are not signing the audit report and resultantly the balance sheet.
- 20) Mr. Devanshu Desai, the erstwhile independent director on board, has shown desperation to step down in wake of all the legal & other issues surrounding the company and resigned on 8th August 2016. Copy of his resignation letter enclosed as Annexure -10.
- 21) Mr. Deepen Parekh who was appointed as Independent Non- Executive Nominated Director on the insistence of CDR Cell as a pre-condition to the CDR package, has resigned since April 28, 2016, as the Bankers have exited CDR and as such the mandatory pre-requisite of his directorship does not remain any more.

The details of the indebtedness of the Company-loans taken by the Company from every bank and any other institution and outstanding amounts from FY 2001-03 till date-

- 22) After the demise of the sole decision maker, erstwhile CMD late Shri Amitabh Parekh and implementation of Corporate debt restructuring package, the new Board was formed who were perusing the records of the Company to their best ability with the help of professionals & advisors and relying upon the report of Deloitte as well as the provisions balance Sheet, as on the cut off date of 01.01.2013. The total indebtedness of the Company as was observed inter alia including the exposure under CDR are:

Sr. No.	Bank Name	Debt Restructured (O/s as on Cut off date 01/01/2013 (₹ In Crores)
1	Allababad bank	81
2	Axis Bank	238
3	Bank of Baroda	110
4	Canara Bank	70
5	Central Bank of India	100
6	Corporation Bank	60
7	Dena Bank	137
8	Dhanlaxmi bank	75
9	EXIM Bank	61
10	Federal Bank	50
11	ICICI Bank	18
12	IDBI Bank	40
13	ING /Kotak bank	75
14	Indian Overseas Bank	305
15	LIC of India	30
16	LIC Pension Fund	17
17	Punjab National Bank	124
18	State Bank of India	122
19	SBI Pension Fund	5
20	State Bank of Travancore	100
21	South Indian Bank	50
22	SICOM Ltd	105

23	UCO Bank	50
24	Union Bank of India	98
25	Vijaya bank	65
	Total	2186

23) The loans and advances given by the company as on 31.12.2013 have already been assigned in favour of the lenders and IOB has also filed cases for recovery of those debts in the Hon'ble DRT against those parties.

Details of Loans advanced by the company to various parties and status of repayments and outstanding amounts from FY 2001-2003 till date

24) As per the Deloitte report the company was to receive amounts Kindly note these receivables have already been assigned in favour of the lenders on the advice of the lenders' lawyers. Upon further examination, Loan statements & balance Confirmations of certain parties were traced and were handed over to the lenders. On the insistence of the lenders and their advocates, the company has given the Power of Attorney and Assigned the Receivables in favour of the lenders; whereby the lenders have now stepped in the shoes of the company (which is in extension of the covenants of Deed of Hypothecation executed by the Company) and the Bankers have already filed Original Application with Hon'ble DRT against these parties for recovery of the amounts to the tune of ₹ 1120.81 crore..... Here we wish to inform that upon assigning the receivables in favour of the bankers: the company has cut off its hands and is unable to legally initiate the recovery process as technically 2 parties cannot separately sue the same party for the recovery of same amount.

Actions taken/initiated till date, including suits filed at various forums by various banks against the company and the assets offered by the company to various banks for redeeming their claims and all correspondence in this behalf.

25) After the CDR Exit, mostly all the banks have initiated recovery actions against the company and have filed various suits and cases.

Details of proceedings against the company, if any, before various statutory authorities like income tax, Sales Tax etc. from FY 2002-03 till date.

26) There is demand from Income Tax department of ₹19.68 crore for AY 2012-13 and the company has been representing in the matter.

The reasons for steep fall in share prices of the company after the demise of late Shri Amitabh Parekh

- 27) We presume the very fact that the market at large had reacted negatively on the news of sudden demise of late Amitabh Parekh, and that had, therefore, impacted the operations of the company in terms of debtor management, credit cycle, recovery of advances, inventory management and resultantly must have impacted the market sentiments.
- 28) Further, we believe that late Shri Amitabh Parekh's Shareholding in the company was pledged to borrow monies, which was then sold by the lenders upon his death, which also might have led to fall in the share price.

Loans and advances given by the Company to various parties as on March 31, 2012 are ₹1284/- crores as per the Due Diligence Report of Deloitte Touche Tohmatsu India Pvt. Ltd. However, the amount of Loans and advances shown in the books of the Company as on March 31, 2012 is ₹ 169/- crores (Source : Annual Report 2011-2012). The difference for the same may be explained.

- 29) *After the demise of the sole decision maker, erstwhile CMD Shri Amitabh Parekh and implementation of corporate debt restructuring package, the new Board was formed who had reorganized the books and records to its best ability with the help of professionals & advisors and relied upon the report of Deloitte as well as the provisional Balance Sheet.*
- 30) *We draw your attention to the Provisional balance Sheet as at 30.9.2013 – Notes to Provisional Financial Statements – Note No.17 & 17.1 – wherein the Auditors have noted and clarified on the loans and advances figures.*
- 31) *The bankers and their lawyers have also in fact relied upon the findings of Deloitte Report wherein they have found out that ₹ 284 crores borrowed from banks have been diverted and given as Loans & Advances. Kindly note these receivables have already been assigned in favour of the lenders at the request of the lenders. On the insistence of the lenders and their advocates the company has given the power of Attorney and Assigned the Receivables in favour of the lenders; whereby the lenders have now stepped in the shoes of the company (which is in extension of the covenants of Deed of Hypothecation executed by the Company) and the Bankers have already filed Original Application in the Hon'ble DRT against these parties for recovery of the amounts to the tune of ₹ 1120.81 crore.*

The reasons for increase in revenue and scale of operations from 2002 till date may be explained, year wise-

- 32) *From January 2013 onwards, the sales achieved are about ₹20 crore per month operating at far lower capacity utilization.*
- 33) *Have said that we wish to highlight the huge potential the product carries in terms of market demand and value of money, a fact evident from Dun & Bradstreet reports about the Historical Demand growth and the Growth Drives behind the products manufactured by the company.*

Details of revenue, expenses and profits of the Company since April 01, 2012. The details of the balance sheets of the company made since April 01, 2012 may also be submitted.

- 34) *Please note that after the demise of late Shri Amitabh Parekh in January 2013 various restructuring & reorganizing steps were initiated to restore stability; CDR process being one of them. Similarly, the then Statutory Auditors M/s. Chaturvedi & Shah had also obtained permission for extension of financial year up to September 2013 and commenced work on the provisional balance Sheet for 18 months period. However, in the interim they resigned and the succeeding statutory auditors, M/s. Parekh Rakesh & Associates, then continued with the balance sheet finalization. Ultimately, the provisional balance sheet for 18 months period ended 30th September, 2013 was compiled and place before the board, who has approved it in their board meeting held on 4.2.2015.*
- 35) *Later on this balance sheet finally could [not] be signed as there was no quorum of Directors. This Auditor also was unable to sign off the Balance sheet. Even Indian Overseas bank had through various communications pressed upon them to do so but to no avail.*
- 36) *In fact, they have also tendered their resignation to the new Board vide resignation letter dated 29.11.2016*

Details of loan granted by the company to the promoters and status of the said loans-

37) *After the demise of the erstwhile CMD Shri Amitabh Parekh and implementation of corporate debt restructuring package, the new Board was formed who had reorganized the books and records to its best ability with the help of professionals & advisors and relied upon the report of Deloitte as well as the provisional Balance Sheet.,*

38) *And as per the provisional Balance Sheet it appears that following amounts are receivable / payable to the late promoter and / or his family:*

Late Mr. Amitabh Parekh	Nil
Mr. Deepen Arun Parekh	Rs. 6175.63 lacs
Mrs. Pratima Arun Parekh	Rs. 23.33 lacs

Details of the auditors of the company (Financial year wise) Reasons for resignation of auditors, if any, may be provided-

39) *As on the cut -off date when the new management took over. M/s. Chaturvedi & Shah, Chartered Accountants were the statutory auditors, appointed during the time of late Shri Amitabh Parekh. They subsequently resigned somewhere in June 2014,*

40) *Later on M/s. Parekh Rakesh & Associates were appointed as statutory auditors in the EGM held on 13.8.2014. But as is the fact they have been unable to sign off the Balance Sheet as at 30.9.2013 and have now tendered their resignation letter dated 29.11.2016 to the New Board.*

Any other related information that may be relevant to the state of affairs of the company may also be submitted.

41) *As per the CDR –EG decision letter dated 23.3.2016, the banks have exited the CDR mechanism. Currently, they have decided to continue as a JLF (**Joint Lenders Forum**),*

42) *The plant is operating at under capacity and the sales have been dwindling day by day, due to non-availability of fresh working capital, thereby eroding its core value,*

43) *On the other hand mounting legal cost required for defending the numerous cases / suits filed against the company is detrimental to the already miniscule cash flow,*

44) *In the current scenario, a wholesome resolution needs to be worked out to the mutual benefit of the company and its lenders. Taking a cue, the company had proposed an OTS (One Time Settlement) with the lenders to which many a banks have given positive response. This matter has also been discussed on the panel of JLF. In extension of that progressive talks are going on with various banks, SBI being one of them and negotiations are at an advanced stage.*

Relevant Information

45) *We wish to inform you that during the process of CDR, when State Bank of India had certain queries and reservations, the company personnel along with the external agencies had met and represented in front of SBI's DMD's office. All the relevant queries and observations raised by SBI were resolved and answered to satisfaction and the same queries are now been invoked. At that point in time on their insistence IOB had appointed Deloitte to carry financial due diligence and their report was discussed and accepted and the CDR was approved."*

2.9 On the basis of reports of the auditors, Deloitte Touche Tohmatsu, the submissions by the company, investigation by SEBI revealed that the company was involved in diversion of funds to non-core

activities by granting loans and advances to various parties. PAL was used by late Mr. Amitabh Parekh as a vehicle for siphoning off funds. Further, it was also observed that the Company had made misstatements in the financial statements. The statutory auditors, C. V. Pabari and Co. provided an audit report (2010-2011 and 2011-2012) which does not *prima facie*, provide a true and fair view of the state of affairs of the company, thereby aiding and abetting the Company in falsifying the books of accounts.

Investigation also found that apart from late Mr. Amitabh Parekh, Mr. Rajendra Gothi had been working as an Executive Director in the Company since October 01, 2009. It is noted that Mr. Rajendra Gothi has also signed the Financial Statements of the Company Annual Reports for the period 2009-10, 2010-11 before his resignation on October 25, 2011.

- 2.10 As per the preliminary findings of the Investigation Report, PAL, its Executive Director, Shri. Rajendra Gothi and its Statutory Auditors, C.V. Pabari & Co., Chartered Accountants were *prima facie* alleged to have violated the following provisions of law-

Name of the Entities	Nature of findings in brief	Violations
The Company 1. Parekh Aluminex Limited	a. Misstatement of accounts; b. Adoption of dubious and inconsistent practices in drawing up accounts; c. Employing devices to defraud the investors.	a. Section 12A (a) (b) (c) of the SEBI Act and Regulation 3(b) (c) and (d) and Regulation 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations. b. Regulation 4(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
Executive Director 2. Mr. Rajendra Gothi	a. Misstatement of accounts; b. Adoption of dubious and inconsistent practices in drawing up accounts; c. Employing devices to defraud the investors.	a. Section 12A (a) (b) (c) of the SEBI Act and Regulation 3(b) (c) and (d) and Regulation 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations. b. Regulation 4(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
Statutory Auditors 3. C. V. Pabari & Co., Chartered Accountants	a. Negligence in certification of accounts of listed company; b. Lack of professionalism in audit.	a. Section 12A (a) (b) (c) of the SEBI Act and Regulation 3(b)(c) and (d) and regulations 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations.

Consideration of Issues and Findings-

3.1 I have considered the preliminary findings of the Investigation Report along with the documents contained therein and all other relevant material available on record.

3.2 Before I proceed to deal with the charges contained in the Investigation Report (referred in the Table at paragraph no. 2.9 above) the relevant legal provisions, the contravention of which have been alleged therein, are reproduced below:

<u>SEBI ACT</u> Sections 12A(a), (b), (c), (d) and (e)	12A. No person shall directly or indirectly— - Use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder; - Employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange; - Engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder; - Engage in insider trading; - Deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
<u>PFUTP Regulations</u> Regulations 3(b), (c) and (d) Regulations 4(1) and 4(2)(a), (e), (f), (k) and (r)	3. Prohibition of certain dealings in securities. No person shall directly or indirectly— ... - Use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under; - Employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange; - Engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under. 4. Prohibition of manipulative, fraudulent and unfair trade practices. (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:— - Indulging in an act which creates false or misleading appearance of trading in the securities market; ... - Any act or omission amounting to manipulation of the price of a security; - Publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

3.3 In light of the aforementioned, I shall now proceed to deal with the charges levelled in the Investigation Report, on the basis of the preliminary findings, –

A. Violation of Sections 12A(a), (b) and (c) of the SEBI Act; Regulations 3(b), (c) and (d) read with Regulations 4(1) and 4(2)(a), (e), (f), (k) and (r) of the PFUTP Regulations by PAL and its Executive Director and Violation of Regulation 4(1) of the SEBI Listing Regulations by PAL and Regulation 4(2) of the SEBI Listing Regulations by Mr. Rajendra Gothi (Past Executive Director)-

- i. As per the preliminary findings contained in the Investigation Report, PAL and its past Executive Director *i.e.* Mr. Rajendra Gothi are *prima facie* found to have violated the aforementioned provisions of the SEBI Act, the PFUTP Regulations and SEBI Listing Regulations.

Misstatements of Accounts and Adoption of Dubious and Inconsistent Practices in Drawing up Accounts-

- ii. The financial statements of the Company have been prepared till September 30, 2013. After the financial statements for FY 2011-12, provisional financial statements were made for 18 months from April 01, 2012 to September 30, 2013. On examining the financial statements of PAL as on March 31, 2011, March 31, 2012, December 31, 2012 and September 30, 2013 (obtained from the Annual Results of PAL published in BSE website and the financial statements submitted by the Company), the following are observed:

Balance Sheets (Source: Annual Reports and Financial Statements as submitted by PAL)

(in ₹ crore)

Particulars	March 31, 2011	March 31, 2012	December 31, 2012	September 30, 2013
Share Capital	13	13	13	13
Reserves	355	433	118	(1053)
Deferred Tax Liabilities (Net)	2	13	-	-
Borrowings	536	994	2284	2437
Trade Payables	33	57	27	54
Other Current Liabilities	28	34	207	246
Short-Term Provisions	21	32	25	14
Total Liabilities	988	1576	2674	1711
Tangible Assets	461	562	513	284
Capital WIP	95	119	-	-
Other Non-Current Assets	1	2	639	128
Inventories	175	335	27	14
Debtors	194	346	21	18
Cash and Bank Balances	38	43	121	24
Loans and Advances	24	169	1353	1243
Total Assets	988	1576	2674	1711

Profit and Loss Accounts

(in ₹crores)

Particulars	2010-11	2011-12	April 2012-September 2013
Revenue from Operations	902	1369	1292
Other Income	2	4	100
Total Revenue	904	1373	1392
Raw Material	698	1051	1342
Change in Inventories of Finished Goods	-21	-21	59
Manufacturing and Operating Expenses	42	57	70
Employee Benefit Expenses	6	9	9
Finance Cost	36	71	472
Depreciation and Amortization Expenses	44	60	162
Other Expenses	18	26	701
Total Expenditure	823	1253	2815
Operating Profit	81	120	(1423)

- a. From the Balance Sheet, it is observed that there was a sharp surge in the *Loans and Advances* from ₹ 169/- crores as on March 2012 to ₹ 1353/- crore as on December 31, 2012 and ₹ 1243/- crore as on September 30, 2013.
- b. The financial statements of PAL for FY 2010-2011 and 2011-2012 were audited by its statutory auditors, Mr. Chetan Pabari, Proprietor of M/s C V Pabari & Co., Chartered Accountants. After the death of Mr. Amitabh Parekh, PAL requested M/s Chaturvedi & Shah to conduct an audit of the interim financial information of PAL. Accordingly, M/s Chaturvedi & Shah audited the Financial Statements for the period of 9 months starting from April 2012 to December 2012. M/s Chaturvedi & Shah resigned in June 2014 stating that they could not obtain audit evidence to their satisfaction for nearly all of the assets of the company, hence they could not form an audit opinion on the financial statements. After the resignation of M/s Chaturvedi & Shah in June 2014, the financial statements for the entire period of 18 months starting from April 2012 to September 2013 have been audited by M/s Paresh Rakesh and Associates. They also resigned from the Company on November 29, 2016 stating that in spite of their best efforts they were not able to get proper representation/records from the Company which they believed were required to complete the audit and form an opinion or otherwise on the accounts of the Company.
- c. As per the Balance Sheet as on March 31, 2012, the *Loans and Advances* of the company were ₹169/- crore. The statutory Auditors of PAL viz. M/s C V Pabari & Co. have provided an audit report where they have certified the loans and advances of PAL as ₹169/- crore (as on March 31, 2012). Subsequently, a sharp surge was noted in the amount of *Loans and Advances* given by the Company from April 2012 to December 2012 (audited by subsequent Auditors, viz. M/s Chaturvedi and Shah and M/s Paresh Rakesh and Associates). The *Loans and Advances* increased from ₹169/- crores to ₹1353/- crores (an increase of 700%) in just nine months.
- iii. In respect of the aforesaid sharp surge in the *Loans and Advances*, following are noted from the Audit Report of M/s Chaturvedi & Shah (for the period April 2012 to December 2012) and the Deloitte Report:
- The Auditors (M/s Chaturvedi & Shah) noted in their Report that *Loans and Advances* of ₹1079.18 crores which were given in earlier FYs (which were audited by M/s C V Pabari &

Co.) were netted off against the short term bank borrowings. As a result of the same, both bank borrowings and loans and advances given by the company were understated in previous financial statements of PAL (audited by M/s C V Pabari & Co.).

- It was after their proper classification, both the *Loans and Advances* as well as the *Borrowings* have increased as on December 2012 (audited by M/s Chaturvedi & Shah).
- The Auditors (M/s Chaturvedi & Shah) have further stated that they have not been provided with the documents to substantiate the nature of advances and the terms thereof.
- The report of Deloitte Touche Tohmatsu further indicates that the *Loans and Advances* of the company as on April 01, 2012 are ₹ 1284. 13 crore instead of ₹169/- crore. This was also confirmed by Auditors, viz. M/s Chaturvedi and Shah and M/s Paresh Rakesh and Associates as can be seen from the balance sheet of the Company (certified by these auditors).
- In sum, the *Loans and Advances* that are shown to be ₹169 crore as on March 31, 2012 (by M/s C.V. Pabari & Co.) are actually ₹1284.13 crore as provided in the report of Deloitte. This *prima facie* indicates that PAL has misstated their accounts, adopted dubious and inconsistent practices in drawing up accounts (for the period 2010-2011 and 2011-2012). The Statutory Auditor of PAL, viz. M/s C.V. Pabari & Co. has aided and abetted PAL for the same by certifying the false and misleading Audit Report.

- iv. I also note from the Report filed by Deloitte that as on December 31, 2012, loans amounting to ₹ 1314.78 crore were granted by PAL to various companies without any documentation specifying the terms and conditions. These loans were disbursed without any security. Out of the total value of loans given by PAL as on December 31, 2012 (which amounted to ₹ 1314.78 crores), loans outstanding to the extent of ₹ 869.25 crores were advanced to several entities including its related entities as interest free loans. The details of the same are as under:

Particulars	Balance as on December 31, 2012 (in ₹ crores)
J K Shah Group	108.90
Kamlesh Kanungo Group	118.24
Kirti Kedia- Transcon Group	513.08
Orbit Group	10.73
Shanti Dalal	3.50
Vishal Sharma Group	23.67
Y A Mamaji Group	7.83
Other Unsecured Loans	55.85
Total	841.80
Related entities*	27.45
Total	869.25

**AAP Entertainment Ltd. (₹ 5.45 crore), Arsenal Bulls Securities (₹ 12.50 crore) and AAP Realtor Ltd. (₹ 9.50 crore) are associate companies of PAL.*

- v. The Deloitte Report also indicated that PAL had also made payments amounting to ₹ 207.78 crore to related parties during the period April, 2012 to December 2012 and out of this an amount of ₹ 34.49 crore were adjusted against other liabilities/expenses. The Report also observed that there was no movements of receipts or payments in respect of the loan outstanding for 73 borrowers, amounting to ₹ 264.74 crore.
- vi. The Company in its reply vide letter dated January 13, 2017 to SEBI did not dispute the aforesaid facts, instead they stated that:
- It was Mr. Amitabh Parekh, who was controlling and managing affairs of the company and taking all financial decisions,
 - Totally 25 Lenders (Banks and Public Financial Institutions) had given various credit facilities /loans to the company, out of which 22 went in for CDR,
 - The new Board (formed subsequent to the demise of CMD, Mr. Amitabh Parekh on January 06, 2013), had reorganized the books and records to its best ability and relied upon the Report of Deloitte as well as the provisional Balance Sheet as on September 30, 2013 (prepared by M/s Paresh Rakesh and Associates),

- As per the provisional balance Sheet, amounts of ₹6175.63 lacs and ₹23.33 lacs are receivable/payable to Mr. Deepen Arun Parekh and Mr. Pratima Arun Parekh (family members of late promoter, Mr. Amitabh Parekh),
- As per the Report of Deloitte, the Company has diverted ₹ 1284/- crores borrowed from the Banks and given as *Loans and Advances* to various entities including the related entities of PAL. Loan Statements and Balance Confirmations of certain parties were traced,
- After the Company was referred to CDR cell, the CDR Cell approved the package under '*Borrower Class 'C' – Diversion of Funds*',
- After the CDR exit, most of the Banks have initiated recovery proceedings against the Company and have filed various suits and cases,
- The receivables have already been assigned in favour of the Lenders on the advice of Lenders/Lawyers and Lenders have now step into the shoes of company,
- After the signing of CDR no new funds have been borrowed by the company from any bank.

Role of the Executive Director, Mr. Rajendra Gothi-

- vii. Late Mr. Amitabh Parekh (Chairman and Managing Director of the company) and Mr. Rajendra Gothi (Executive Director) were involved in the day to day affairs of the company. Mr. Amitabh Parekh served as the Chairman and Managing Director of PAL until his death in January 2013. The Company in their reply vide letter dated October 21, 2016 stated that *"The Company was virtually single handedly run by the erstwhile Promoter and Chairman & Managing Director, Late Shri. Amitabh Parekh. He expired on 06.01.2013 at an early age of 39 years. He was the sole decision maker of the company and personally dealt with most of the key functions including finance & banking transactions."* Mr. Rajendra Gothi had been working as an Executive Director in PAL since October 01, 2009. Prior to that, he was acting as a Chairman of the Audit Committee of the Company. He resigned from the Company on October 25, 2011. The Company in its Annual Report for 2009-10 stated that he has been associated with the Company since 1995. As per the details available from the annual reports of the Company, Mr. Rajendra Gothi was also a director on the board of various related entities of PAL such as AAP Racing & Stud Farms Ltd., Deepen Holding Limited, AAP Securities Ltd, Arsenal Bulls Celebrations Limited, AAP Equity Capital Limited and AAP Entertainment Limited. It is relevant to note that Mr. Rajendra Gothi is the signatory to the Financial Statements of the

Company for the period 2009-10, 2010-11 before his resignation on October 25, 2011 (as noted from the annual reports of the Company).

- viii. As observed earlier, the Company has misstated their accounts, adopted dubious and inconsistent practices in drawing up accounts during the period 2010-2011 and Mr. Rajendra Gothi, was the Executive Director of the PAL during the period. The directors of the listed companies have great responsibility as they have access to inside information such as the financial position of the company, annual accounts etc. and they take major decisions on behalf of the company, which affects the investors. They are therefore, required to exercise the powers for the purposes for which they have been made Directors and any misuse of their powers for their personal gains or making false representations to the public has to be dealt with strongly.

Regulation 4(2) of the SEBI Listing Regulations requires Board of Directors of the listed entity to ensure the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, ensuring appropriate systems of control, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards. Regulation 4(2) casts an obligation on the board of directors that they should ensure the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

- ix. Under the facts and circumstances mentioned above, Mr. Rajendra Gothi, as the Executive Director of the PAL is *prima facie* found to have violated Section 12A (a) (b) (c) of the SEBI Act and Regulation 3(b),(c) and (d) and Regulations 4(1) and 4(2), (a), (e), (f), (k) and (r) of the PFUTP Regulations and provisions of Regulation 4(2) of the SEBI Listing Regulations.
- x. **Other Irregularities observed by SEBI Investigation (based on the Deloitte Report and the Report compiled by M /s Chaturvedi & Shah) -**

1. Advances in excess of limits prescribed under the Companies Act, 1956:

The Auditors have also raised concerns that the advances are in excess of the limits under the Section 372A of the Companies Act, 1956 and some of them are interest free or given at lower than bank rate, for which approvals required under the said section, has not been obtained.

2. Provisions not made for obsolescence of inventories:

The Company had not made the provision for obsolescence for such inventories which have remained unused for considerable period. After this, on an analysis of Balance Sheet as on September 30, 2013 and Profit & Loss Account for the period April 2012-September 2013 indicates that the Company has written off substantial amount of debtors, inventories and other tangible assets in order to provide the correct picture of the affairs. As a result of the same, Reserves have been reduced by ₹ 936/- crores.

3. Wrong classification of inventories and debtors:

The amount of inventories and debtors have reduced considerably as on December 2012. There is corresponding increase in the Non-current Assets. Referring to the same, Auditors have opined that inventories and debtors should be classified as “*Current Assets*” instead of classifying them as “*Non-current Assets*”.

4. Non-compliance of Accounting Standard 15- Employee Benefits

The policy of the company to account the gratuity on payment basis is not accordance with Accounting Standard 15- “Employee Benefits” which requires to make the provision for gratuity payable based on the actuarial valuation.

5. Lack of documentation for loans entered into:

As on December 31, 2012, total value of loans and advances given by the Company amounted to ₹ 1314.78 crores. There was no documentation entered into, with the borrowers defining the terms and conditions and security against which these loan were disbursed.

The Audit Report by M/s Paresh Rakesh & Associates for the period April 2012 to September 2013 states “*An amount of Rs. 623.86 crore was given by PAL as Loans and Advances relating to real estate*”. The Report further states that confirmations obtained from various parties to whom *Loans and Advances* were given indicated that advances were given by the Company for the purpose of real estate which is a non-core activity of the company.

6. Adjustment of loans against expenses:

Loans amounting to ₹38.16 crores extended to companies trading in bullion were adjusted against expenses not directly attributable to company’s business.

7. Wrong drawing power calculation-

The drawing power statement for the month of December 2012 was overstated by 335.53 crore.

8. Sharp decline in inventory, book debts and gross block-

The inventory value, book debts and gross block as reported in the Drawing Power Statement in December 2012 was decreased by 97%, 96% and 13% respectively as to what was reported in November 2012. No explanation has been provided by PAL for the same.

B. Violation of Section 12A (a) (b) (c) of the SEBI Act and Regulation 3(b)(c) and (d) and regulations 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations by the Statutory Auditors:

- xi. The preliminary findings contained in the Investigation Report point out that PAL's Statutory Auditor, C.V. Pabari & Co., Chartered Accountants have *prima facie* violated the aforementioned provisions of the SEBI Act, the PFUTP Regulations.
- xii. The duties of the auditors cannot be overemphasized. The role of C.V. Pabari & Co., Chartered Accountants who was the Statutory Auditor of PAL is evident from the fact that they certified the false and misleading Audit Report of PAL as on March 31, 2012. By doing so, they aided and abetted the company and its directors/promoters in manipulating financial statements. Negligence, continued laxity, complicity and failure on the part of the auditors only embolden the company to defraud investors with impunity by misstating their financials. In this case, the auditor M/s C. V. Pabari & Co. has totally failed in their duty as far as certifying the accounts of the company is concerned. As brought out earlier, PAL has diverted funds and the amount of loans and advances given by PAL has been understated by more than ₹ 1000/- crore. Various acts and omissions in the misstatements of the accounts were not brought out by M/s Pabari & Co. The amount of professional diligence that is expected from an auditor has been totally absent in this case and due to their casual and callous attitude, the company was able to falsify its books of account.
- xiii. Under the facts and circumstances mentioned above, the Auditors, V. Pabari & Co., Chartered Accountants are *prima facie* found to have violated Section 12A (a) (b) (c) of the SEBI Act and

Regulation 3(b),(c) and (d) and Regulations 4(1) and 4(2), (a), (e), (f), (k) and (r) of the PFUTP Regulations.

3.4 All things considered, I note that –

- i. Various irregularities concerning PAL's financial performance, assets, liabilities, etc., were observed in its Annual Reports, Balance Sheets, etc. which *inter alia* were, on account of misstatement of accounts; adoption of dubious and inconsistent practices in drawing up accounts. Such irregularities *prima facie* appear to have been made with the intention of manipulating/defrauding genuine investors in the securities market.
- ii. PAL's Chairman and Managing Director, late Mr. Amitabh Parekh and the Executive Director, Mr. Rajendra Gothi were primarily responsible for the falsification of *inter alia* PAL's Annual Reports, Balance Sheet, etc.
- iii. PAL's Statutory Auditor *i.e.* C.V. Pabari & Co. certified the misstated accounts of PAL and failed to maintain professional standards in Audit. The Statutory Auditor therefore, aided and abetted PAL and its Directors to perpetrate manipulation/fraud on genuine investors in the securities market.

3.5 While dealing with a matter of this nature, it would be worthwhile to place reliance on the following judicial pronouncements made by –

- A. The Hon'ble Securities Appellate Tribunal in the matter of **V. Natarajan vs. SEBI, SAT Appeal No.104 of 2011**, wherein it observed –

"... We are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated. These regulations, among others ... prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges.

... A basic premise that underlies the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities."

- B. The Hon'ble Supreme Court in its Judgment dated April 26, 2013, in **N. Narayanan vs. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)**, wherein it observed –

“40. The appellant has taken the stand, as already stated, that even though he was a Whole Time Director he was not conversant with the accounts and finance and was only dealing with the human resource management of the company, hence, he had no fraudulent intention to deceive the investors. We find it difficult to accept the contention. The appellant, admittedly, was a whole time Director of the company, as regards the preparation of the annual accounts, the balance-sheet and financial statement and laying of the same before the company at the Annual General Meeting and filing the same before the Registrar of the Companies as well as before SEBI, the Directors of the company have greater responsibility, especially when the company is a registered company. Directors of the companies, especially of the listed companies, have access to inside knowledge, such as, financial position of the company, dividend rates, annual accounts etc. Directors are expected to exercise the powers for the purposes for which they are conferred. Sometimes they may misuse their powers for their personal gain and makes false representations to the public for unlawful gain.

43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate “market abuse” and that we are governed by the ‘Rule of Law’. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and ‘market security’ is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors’ contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity. ...”

- C. The Hon’ble Bombay High Court in its Judgment dated August 13, 2010, in **Price Waterhouse & Co. vs. SEBI** (Writ Petition No. 5249 of 2010), wherein it observed –

“25. ... The powers available to the SEBI under the Act are to be exercised in the interest of investors and interest of securities market. In order to safeguard the interest of investors or interest of securities market, SEBI is entitled to take all ancillary steps and measures to see that the interest of the investors is protected. Looking to the provisions of the SEBI Act and the Regulations framed thereunder, in our view, it cannot be said that in a given case if there is material against any Chartered Accountant to the effect that he was instrumental in preparing false and fabricated accounts, the SEBI has absolutely no power to take any remedial or preventive

measures in such a case. It cannot be said that the SEBI cannot give appropriate directions in safeguarding the interest of the investors of a listed Company. Whether such directions and orders are required to be issued or not is a matter of inquiry. In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants.

...

With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market.”

3.6 The manipulation of the books of accounts and misstatements of the financial statements perpetrated by PAL and its Executive Director with the aid and assistance of the Statutory Auditor, C.V. Pabari & Co., (who certified the false and misleading financial statements), as discussed hereinabove are *prima facie* in violation of Sections 12A(a), (b) and (c) of the SEBI Act; Regulations 3(b), (c) and (d) read with Regulations 4(1) and 4(2)(a), (e), (f), (k) and (r) of the PFUTP Regulations. Further, the failure of PAL and its Executive Director, *viz.* Mr. Rajendra Gothi to make genuine and accurate disclosures regarding the true financial status of the Company is *prima facie* in violation of Regulation 4 (1) and (2) of the SEBI Listing Regulations.

3.7 Considering the aforementioned facts and circumstances, I am convinced that this is a case where suitable and immediate action is required to be taken against PAL and its Directors, for safeguarding the interests of investors and protecting the integrity of the securities market. SEBI has to deal sternly with persons/entities indulging in manipulative and deceptive devices to promote orderly and healthy growth of the Securities market. Fraud, deceit and artificiality have no place in the securities market. People with power and money and in management of the companies cannot be allowed to use devices / artifices to mislead / defraud ordinary investors of their companies, who have reposed trust in them. As listed companies thrive only with investors' contributions, companies need to be run on a going concern

basis and the financial statements need to be true and fair. Disclosure of information about the company is, therefore, crucial for the pricing of its securities and for market integrity.

The conduct of the aforementioned entities in perpetrating the manipulation/fraud *prima facie* is clearly to the detriment of the interests of investors and the securities market. Therefore, any action taken by SEBI should not only be to prevent any further harm to investors but also to send a stern message to prevent any person/entity from indulging in acts as observed in these proceedings. In light of the aforesaid, effective and expeditious preventive and remedial action by way of an *Interim Ex-Parte Order* is required to be taken against the aforementioned entities.

ORDER –

4.1 In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, issue the following directions –

- i. *Parekh Aluminex Ltd. is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly till further orders,*
- ii. *The stock exchanges concerned are permitted to allow PAL to square off their existing open positions in the Futures and Options Segment, if any, immediately. PAL shall not be allowed to take fresh positions or increase their open positions or execute trades. Further, the stock exchanges concerned shall ensure that no fresh positions are created for the said entity.*

4.1.1 The past Executive Director of PAL, Mr. Rajendra Gothi is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4) and 11B of the SEBI Act including the following, should not be taken/imposed against him:

- Restraining from accessing the securities market and is prohibiting from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly for an appropriate period,
- Restraining from holding any position as Director or Key Managerial Person of any listed company for an appropriate period.

4.1.2 The Statutory Auditor *viz.* M/s C.V. Pabari & Co. Chartered Accountants, Proprietor, Mr. Chetan Pabari, is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4) and 11B of the SEBI Act including the following, should not be taken/imposed against them:

- a. Directing them to restrain from, directly or indirectly, issuing any certificate required under securities laws i.e. SEBI Act; Securities Contract (Regulations) Act, 1956; Depositories Act, 1996; Rules, Regulations, Guidelines made thereunder; Listing Agreement along with the applicable provisions of the Companies Act, 2013; Rules, Regulations, Guidelines made thereunder, which are administered by SEBI, with respect to –

- Listed entities;
- Intermediaries and
- Initial Public Offer(s).

4.1.3 The aforementioned persons/entities mentioned in paragraph Nos. 4.1, 4.1.1 and 4.1.2 above may file their replies to SEBI within 21 days from the date of receipt of this Order. They may also indicate in their replies whether they wish to avail an opportunity of personal hearing in the matter.

4.1.4 The above directions shall come into force with immediate effect and shall be in force till further directions.

5. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against the persons/entities covered under this Order, in accordance with law.

Place: Mumbai
Date: August 30, 2017

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA