

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of Show Cause Notice dated June 30, 2016 in the matter of Inventure Growth & Securities Ltd. (IGSL)

In respect of:

Sr. No.	Noticees	PAN
1.	Inventure Growth & Securities Ltd.	AAAIC2044K
2.	Nagji K Rita	AADPR7934H
3.	Virendra D Singh	AAVPS0709B
4.	Kanji B Rita	AABPR6131J
5.	Vinod K Shah	AAEPS7502F
6.	Pravin N Gala	AACPG2087R
7.	Arun N Joshi	AAFPJ6710M
8.	Srinivasaiyer Jambunathan	AAAPI3724P
9.	Harshavardhan M Gajbhiye	AABPG8423A
10.	Ajay Khera	AJAPK7458D
11.	Deepak M Vaishnav	AABPV3392D
12.	Arvind Gala	ACSPG7022Q
13.	Bhavi Gandhi	APGPG9247J

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees".

1. Inventure Growth & Securities Ltd. (hereinafter referred to as "**IGSL**" / "**the company**") i.e. Noticee No. 1 was incorporated as a public limited company on June 22, 1995. The main business of the company is equity broking, depository activities, insurance advisory services, commodity broking, non-banking financial services and wealth management. Noticee No.2 is a promoter of the company, Noticee Nos. 2 to 11 were directors, Noticee No. 12 was Chief Financial Officer ("CFO") and Noticee No. 13 was Company Secretary & Compliance Officer of the company.

2. SEBI conducted an investigation into the company's affairs in relation to the Initial Public Offer ('IPO') of equity shares of IGSL. Post public issue and allotment, listing of the company's securities on BSE and NSE took place on August 04, 2011. The total shares traded on the listing day to shares offered through the IPO were 6.72 times on BSE and 8.40 times on NSE. The IPO was graded by Fitch Ratings India Private Limited and ICRA and both the agencies had graded the IPO with a rating of "2" indicating below average fundamentals. The key dates with regard to IPO are tabulated below:

TABLE 1

Date	Particulars
RHP	July 12, 2011
Issue open date	July 20, 2011
Issue close date	July 22, 2011
Prospectus	July 27, 2011
Listing date	August 04, 2011

3. The investigations *inter alia* revealed that as per the prospectus dated July 27, 2011 issued by IGSL, the object of the Issue along with allocation for each objective from the fund raised was as follows:

TABLE 2

Sr. No	Object	Allocation ₹ Crore)
1	Investment in subsidiary i.e., Inventure Finance Pvt Ltd. (IFPL)	30.00
2	Augmenting Long Term Working Capital Requirement	20.00
3	General corporate purposes	27.65
4	Public issue expenses	4.25
Total		81.90

4. The prospectus *inter alia* stated as follows:

"IFPL's lending business includes providing loans secured by shares held by customers of IFPL. Our Company [IGSL] is mainly engaged in the broking business, and IFPL helps our customers to leverage their equity market positions to take increased exposure. Thus, revenues are generated via two verticals; firstly interest income by IFPL's lending activities for providing leverage to the clients to undertake additional market exposures and secondly these additional exposures generate additional brokerage income for our Company [IGSL]. IFPL's lending business is complementary to our Company's broking business and it helps improve customer retention and source additional one. This leads to growth in terms of clients as well

as revenues of both the companies.... The customer funding is provided against a margin of approximately 25-50% and is available only for purchase of shares which form part of our "Approved List of securities".... Our Company [IGSL] believes that such investment in IFPL is in line with its strategy of expanding its core businesses and will also help us to strengthen the respective balance sheets... To enable clients to take greater participation in different segments of capital market, IFPL provides loan against shares to various clients, including our broking clients. Through such financing clients pay a partial sum of stock price and the balance is then funded by IFPL at an interest.... IFPL is RBI registered NBFC and is in the business of advancing loans to clients for acquisition of shares/stock/ bonds/ debentures/ securities issued by government or local authority or other securities of like marketable nature. This facility provides the clients with the opportunity to buy shares listed on the stock exchanges on credit."

5. As per the SCN, the contents of the prospectus revealed that that IFPL was into advancing money solely against shares/ securities and that too only to the clients of IGSL and this activity was sought to be expanded by way of deploying the proceeds of the IPO. Details with regard to utilization of funds by IFPL was sought and the same is tabulated below:

TABLE 3

S. No	Details of Money advanced (₹.)	31.03.2011	30.09.2011	31.03.2012
1	Secured against Shares	37,05,10,904	46,96,52,024	26,33,07,089
2	Less: Amount borrowed against shares	34,41,12,654	33,98,17,133	22,26,91,810
3	Net amount lent against shares	2,63,98,250	12,98,34,891	4,06,15,279
4	Secured against equipments	-	88,31,007	2,37,44,825
5	Secured against gold	-	-	7,30,000
6	Unsecured loans	3,51,85,939	47,54,76,785	40,21,43,430
7	Sub-total (4+5+6)	3,51,85,939	48,43,07,792	42,66,18,255

6. From the Table 3 above it was noted that post receipt of IPO money, the same was majorly utilized towards advancing unsecured loans, loans against equipments and gold loans. Further, it is noted that the majority of amount of unsecured loans were granted after July 13, 2011 i.e., the date from which IFPL/IGSL allegedly started receiving bridge loans which were later repaid upon receipt of IPO proceeds. It was also noted that only ₹10.34 crore was additionally deployed towards advancing loans against shares as on September 30, 2011 and the same declined

to ₹4.06 crore as on March 31, 2012. Therefore, the balance amount i.e. ₹25.94 Crore (30.00-4.06) was observed to having been utilized for purposes other than for which it was raised.

7. With respect to the second stated objective of augmenting long term working capital requirement, it was noted that the prospectus *inter alia* reads as follows:

"The working capital requirement mainly comprises of margin money to be placed with stock exchanges on the basis of trading volumes, market volatility and the extent of outstanding positions in respect of equity index/ stock futures & options. Such margin capital requirements also include initial margin and additional margin deposited for entering into the contracts for equity index/ stock futures and options.... In addition to this, our Company has to place stipulated margin in the cash segment with the stock exchanges for T+2 days. The stock exchanges also increase margin requirement in terms of percentage due to volatility in the markets. This gives rise to margin requirement even though the business may remain constant. Our Company's working capital requirements also arise on account of the time gap in realization of cheques received from clients and amount to be paid to the exchanges towards pay-in on the settlement dates. With growing business, this gap is widening, thus creating additional requirement for the working capital.... The working capital requirement of cash segment is mainly due to client business. However, in respect of derivatives segment, the margin requirements to be maintained with the stock exchanges would be used for proprietary trading only. ... it is found that the entire sum of ₹2,000 lakh is raised for the purpose of utilizing the same towards increasing the amount of collateral and towards funding clients receivables. "

8. On a combined analysis of information received from three clearing corporations, it was observed that margins had gone down from ₹59.2475 Crore to ₹48.3425 crore i.e., a reduction of ₹10.905 Crore, when comparing margins as on March 31, 2011 and September 30, 2011. However, IGSL submitted that the margin amounts cannot be compared as on a particular date and it needs to be seen on a daily basis. Therefore, daily closing balance of collaterals with the three clearing corporations was called for and an average of daily closing balances for each month was computed and the same is tabulated below:

TABLE 4

Month	Amount	Month	Amount
Apr-11	59.25	Oct-11	48.75
May-11	58.70	Nov-11	49.06
Jun-11	50.31	Dec-11	50.12
Jul-11	48.65	Jan-12	47.84
Aug-11	49.12	Feb-12	49.79
Sep-11	48.80	Mar-12	51.31

9. It was seen that the amount of margin was higher in the pre IPO period and there was no increase in the post IPO period i.e. from the month of August 2011. Therefore, it was observed that no part of IPO proceeds was used for funding the margin by way of deposit of collaterals with the clearing corporations. Also, the Company admitted vide its letter dated January 15, 2016 that a major part (₹7.84 Crore) of the amount intended to be deployed for working capital was invested for stock in hand held for arbitrage though the prospectus had stated that the amount under this head would be used for the purpose of increasing the amount of collateral with the exchanges and to fund client receivables.
10. On a perusal of the list of shares held by IGSL bought out of IPO money, it was observed that a majority of the fund allocation was towards purchase of two scrips i.e. Bedmutha Industries Limited and P.G Electroplast Limited. A total of 3,00,000 shares of Bedmutha Industries Limited were bought on market on August 19, 2011. Trading in the scrip of Bedmutha Industries Limited was limited and no trading in the nature of arbitrage was observed. Further, it was observed that IGSL was allotted shares of P.G Electroplast Limited in the IPO. Therefore, it was alleged that IGSL invested ₹8.59 crore out of the IPO proceeds in equity shares and failed to utilize it for working capital as disclosed in the prospectus, though deployment of funds for trading was not stated as a purpose.
11. The company had also made the following statements in the prospectus under the head 'Objects of the Issue':
- i) *"Bridge loans*
Our Company has not raised any bridge loan against the Issue Proceeds."

Though the company had stated in its prospectus that it had not raised any bridge loan, certain transactions entered into by the Company were found to be in the nature of bridge loans. IGSL being a broker was required to maintain separate bank accounts for dealing with clients' money. In this regard, it was noted that certain transactions in the company's bank account titled as 'BSE client account' maintained with HDFC bank (account number 00600340016840) did not appear to be in the normal course of business. An entity wise brief of the transactions along with the submission made by the Company vide its letter dated January 22, 2016 is provided below:

a) K.R. Shoppers Private Limited ('KRSPL') – It was found that KRSPL transferred a sum of ₹3.00 Crore on July 19, 2011. The amount of ₹3.00 Crore was paid by IGSL from its BSE Client account to KRSPL on August 03, 2011. In response to the queries raised on the transactions to the company, it submitted the following:

"We were received temporary amount from one of our director's company to meet working capital requirements and paid back, when we had surplus/sufficient fund."

Therefore, the company admitted to having availed loans. The fact that the amounts were repaid immediately upon receipt of the IPO proceeds substantiated the allegation that such bridge loan was against the issue proceeds.

b) Bikaner Wooltex Private Limited ('Bikaner')
Bikaner transferred a sum of ₹2.85 Crore on July 13, 2011 and a further sum of ₹0.15 Crore on July 14, 2011. The total amount of ₹3.00 Crore was paid by IGSL from its BSE Client account to Bikaner on August 03, 2011. In response to the queries raised on the transactions to the company, it submitted the following:

"Bikaner was willing to do business of shares & securities with our company IGSL and deposit for purchase of shares in BSE segment, but due to dispute on brokerage, the business could not take place and refunded money back from our BSE Client Account."

c) TPL Finance Limited ('TPL')
TPL transferred a sum of ₹2.00 Crore on July 16, 2011, ₹3.50 Crore on July 18, 2011, ₹2.00 Crore on July 19, 2011 and a further sum of ₹1.00 Crore on July 20, 2011. The total amount of ₹8.00 Crore was paid by IGSL from its BSE Client

account to TPL on August 03, 2011. In response to the queries raised on the transactions to the company, it submitted the following:

"TPL was willing to open trading account with our company, IGSL and deposit some amount for purchase of shares in BSE segment, but due to dispute on brokerage, the business could not take place and refunded money back from our BSE Client Account."

d) Deepmala Infra Private Limited ('Deepmala')

Deepmala transferred a sum of ₹3 Crore each on July 18, 2011 and July 19, 2011. The total amount of ₹6 Crore was paid by IGSL from its BSE Client account to Deepmala on August 03, 2011. In response to the queries raised on the transactions to the company, it submitted the following:

"We were not received proper KYC documents in time from Deepmala Infrastructure Pvt. Ltd. hence business could not take place and we refunded money in due course."

12. Vide letter dated February 01, 2016 to SEBI, the Company stated the following:

"TPL Finance, Deepmala Infra and Bikaner Wooltex was willing to do business with our company and deposited money in our BSE client account but due to dispute on brokerage with TPL Finance and Bikaner Wooltex and lack of KYC Document in case of Deepmala Infra we could not go ahead for any transaction/ trading business. We had registered them as our client and also provided client code as on respective date, but due to dispute we did not registered them on stock exchanges and refund their money..."

13. A summary of the transactions under consideration with the four entities are tabulated below:

TABLE 5

Date	Transferor	Amount in ₹ Crore
Amounts received by IGSL		
July 13, 2011	Bikaner	2.85
July 14, 2011		0.15
July 16, 2011	TPL	2.00
July 18, 2011		3.50
July 19, 2011		2.00
July 20, 2011		1.00
July 18, 2011	Deepmala	3.00
July 19, 2011		3.00
July 19, 2011	KRSPL	3.00

Total	20.50
All the aforesaid transactions were reversed on August 03, 2011 i.e., post receipt of IPO money	

14. Based on the above transactions, it was observed that the funds received from the four entities were in the nature of bridge loan against the issue proceeds which were repaid immediately upon receipt of IPO proceeds. Therefore, by stating that the Company has not raised any bridge loan, the Company and the signatories to the prospectus were alleged to have made a false statement in the prospectus. It was thus found that the company and the signatories to the prospectus failed to make material disclosures in the prospectus which are true and adequate so as to enable the investors/ applicants to take informed investment decision.

15. With respect to acceptance/ repayment of deposits, it was found from the bank statements of the Company, that a sum of ₹7.51 crore each was paid to Mrs. Hina Sanjay Shah and Mrs. Usha Atul Shah, wives of two brothers i.e., Sanjay Shah and Atul Shah respectively. It is further found from the prospectus that Ms. Usha Atul Shah has been a shareholder of IGSL. Vide letter dated January 22, 2016, the company mentioned that the money was received in September 2010 as Security Deposit/ Advances and refunded back in August 2011. When further details were sought on the said transactions, vide letter dated February 01, 2016, the company submitted as follows:

"...we clarify that money was deposited by them in advance to explore their future opportunities in bullish/bearish market in share/ securities business but they did not entered in to any transaction and money was refunded back when they demanded. These money had been received appox a year prior to IPO money realisation for doing securities transaction, but they could not order any type of buying or selling of securities in their family name and further the same have been refunded, when they had put up such request to company."

However, it was noted that the money was received in the own account of the broker company and not in the account designated for receiving money from clients. Further, the amount of balance was shown as Security Deposit from others in the accounts. From the difference in replies filed by the Company and the fact that the amount of ₹15.02 crore was repaid to the two entities after a period of one year, it was alleged that the said amounts were actually in the nature of deposits and the same were repaid immediately upon receipt of IPO funds. The fact that these

amounts were in the nature of 'Security Deposit from others' and not from clients was confirmed by Company vide its letter dated February 09, 2016 since the amounts received from the two entities have been shown under the head "Security deposit from Others" and not the other heads available in the account statement i.e., Margin from clients/ Security Deposit, Security Deposits from Rent". From the reply of the Company, it was observed that the company had accepted several deposits and an amount of Rs 6.39 crore as on March 31, 2010 and Rs 20.65 crore as on March 31, 2011 remained payable to non-corporate entities which were in the nature of deposits.

- 16.** Based on the above prima facie conclusions, SEBI issued a show cause notice dated June 30, 2016 (hereinafter referred to as "**SCN**") on the allegation that IGSL mis-utilised Public Issue proceeds to the extent of ₹36.19 crore (₹25.94 Crore under the head investment in subsidiary and ₹10.25 Crore under Long Term Working Capital) and also failed to make adequate disclosures with regard to alleged violation of the Companies Act, 1956 and the Deposit Rules regarding acceptance of deposits. Further, it was alleged that IGSL also made an untrue statement in the prospectus regarding availing bridge loans. Therefore Noticees were alleged to have violated Regulations 57 (1) and 57 (2) (a) read with Clause 2 (VII) (G) and 2(XVI) (B) (2) of part A of schedule VIII and Regulation 60 (4) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") , Section 12 A (a),(b),(c) of SEBI Act, 1992 and Regulations 3 (b),(c),(d), 4(1) and 4(2)(f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"). Accordingly, IGSL was directed to show cause as to why action in terms of Section u/s 11(1), 11(4), 11A and 11B of SEBI Act, 1992 including disgorgement should not be initiated for the violations alleged to have been committed. Noticee Nos. 2 to 13 were also directed to show cause as to why action in terms of Section Proceedings u/s 11(1), 11(4) and 11B of SEBI Act, 1992 including disgorgement should not be initiated for the violations alleged to have been committed by them.

- 17.** List of the replies to the SCN (*on merits of the case and allegations raised in the SCN*) and date(s) of replies are stated below:

Sr. No.	Noticee	Date of reply
1.	Inventure Growth & Securities Ltd.	17.08.2016, 10.11.2017

2.	Nagji K Rita	02.09.2016
3.	Virendra D Singh	(No reply on merits)
4.	Kanji B Rita	08.09.2016,
5.	Vinod K Shah	25.08.2016
6.	Pravin N Gala	30.08.2016,
7.	Arun N Joshi	Received on 16.09.2016
8.	Srinivasaiyer Jambunathan	N.A.
9.	Harshavardhan M Gajbhiye	01.09.2016
10.	Ajay Khera	22.09.2016
11.	Deepak M Vaishnav	25.08.2016
12.	Arvind Gala	22.08.2016
13.	Bhavi Gandhi	16.09.2016

18. An opportunity of personal hearing was granted to all the noticees on August 14, 2017. However only Noticee Nos. 2 and 3 i.e. Nagji K. Rita and Virendra D Singh appeared. They did not make any substantive submissions on the said date of hearing. Another opportunity of personal hearing was granted on October 30, 2017 to all the noticees for which Noticee Nos. 4, 11, 12 and 13 appeared in person and all the Noticees were represented by Pesi Modi, Senior Advocate and Advocates Prakash Shah, Robin Shah and Kumal Kataria appeared and made submissions. Noticee No. 8 i.e. Srinivasayer Jambunathan neither replied to the show cause notice nor appeared for the personal hearing. While Noticee No.1 provided details on the merits of the allegations in the SCN, the other noticees largely relied on the submissions made by the company. Summary of the written and oral submissions are as follows:

- (i) The prospectus does not state that money would be advanced solely against shares / securities, or that such loans would be given only to the clients of IGSL. In any event, as clearly evidenced even by Sr. No. 1 of the said table in para 11 of the SCN, as of 30.9.2011, after the IPO money was received, IFPL has loans "Secured against Shares" amounting to Rs. 46.96 Crores; i.e.; far in excess of the Rs. 30 Crores invested into IFPL as per the Prospectus objectives.
- (ii) The SCN incorrectly reduces the amount of loans "secured against shares" by the amount 'borrowed against shares' by IFPL. There is no merit or justification in doing so in relation to the assessment as to whether IPO funds were utilized by IFPL for giving loans against shares.

- (iii) The pre-IPO deployment in loans given against shares by IFPL was out of its own funds. The allocation of the IPO proceeds towards the existing loans against shares, would free up IFPL's own funds from such investments for utilization towards unsecured loans or other loans/purposes, or even to reduce its own borrowings if it deemed fit.
- (iv) As disclosed at page 70 of the Prospectus, being stock brokers, the long term working capital allocation in the IPO was required for the brokerage business. It was clearly disclosed that the same was to be utilized for both client trading as well as proprietary trading. Further, as disclosed at page 69 of the Prospectus, the working capital requirement "mainly" was to comprise of margin money requirements and for funding clients' pay-in obligation in cases where the client's payments were delayed
- (v) Actual margin deposits and pay-ins will vary day to day. Therefore it is incorrect to view the actual margin deposits or actual pay-in obligations on a monthly or annual basis, or only on certain specific dates as done in the SCN. What has to be assessed is the highest possible /potential liability for margin money and pay-in obligations, for which contingency, the funds have to be kept/made instantly available by all brokers. Even arbitraging requires margin deposit. Further, arbitraging normally is an intra-day square off. Therefore, funds used for arbitraging are effectively only by way of margins. It was clearly disclosed that IGSL did undertake substantial arbitrage and trading; that there were risks involved even in such arbitrage and trading; that margin money was required for such arbitrage and trading; and that such arbitrage and trading did contribute substantially to the revenues of IGSL.
- (vi) It would not have been prudent on the part of the Management of IGSL to let the money remain idle by maintaining higher deposits with the Exchanges even if they were not being used.
- (vii) All the said four entities from whom bridge loans were allegedly availed of, were duly registered clients of IGSL and had been allotted client IDs. The said money was given by the clients for trades which they intended to execute, but for various reasons (including disputes over brokerage rates, KYC non-compliance etc.), they did not execute their intended trades and sought refund of their money, which was duly refunded to them as per their request. The fact that UCC was not done, in fact supports the contention that there was some or the other reason because of which the client registration requirement was not completed and the money

was returned. The same is also proved by the fact that even in the SCN it is accepted that the said clients monies were deposited into and refunded to them from the "...`BSE Client' account maintained with HDFC bank". "Clients account" funds cannot be used or treated as "loans" by brokers. Therefore, the said funds cannot be alleged to be "Bridge Loans" by the clients to IGSL. There was no loan agreement executed with any of these parties. Most importantly, no interest was claimed by or paid to any of these parties.

- (viii) KR Shoppers Pvt. Ltd. was also registered with IGSL as a client and was disclosed in the prospectus as being an "Enterprise where key management personnel exercise significant influence". It had paid Rs. 3 Crore to IGSL, which was returned on August 3, 2011. However no interest was paid on the said funds. This transaction is not in the nature of a bridge loan but instead must be treated as a loan from a director's related party/associate.
- (ix) Any violation of section 58A of the Companies Act, 1956 &/or the Companies (Acceptance of Deposits) Rules, 1975, is not within the jurisdiction of SEBI and has been expressly excluded from the jurisdiction of SEBI as per the provisions of Section 55A of Companies Act, 1956. The same is only within the jurisdiction of the Central Government. In fact SEBI had made a reference on this same issue / allegation to the Ministry of Corporate Affairs, Government of India by its letter dated 3.5.2016. However MCA had issued a show cause notice, no further queries have been raised, and no action has been taken by the MCA. In any event, the said amounts were "security deposits" and were accounted for as such. Security deposits and advances received against sale of goods or rendering of (which would include the sale of shares &/or the services given by a broker to his clients for trading in stock exchanges) are expressly exempted from the definition of "deposit" vide Rule 2 (b) (vi) of the said Companies (Acceptance of Deposits) Rules, 1975. Mrs. Hina Sanjay Shah and Mrs. Usha Atul Shah were admittedly duly registered trading clients of IGSL since 2008 and are the wives respectively of Mr. Sanjay Shah and Mr. Atul Shah. They were operating their wives' trading accounts as well as the trading accounts of their companies- Bishaka Diamonds Pvt. Ltd. & Anchor Leasing Pvt. Ltd. There were also debit balances in the said 2 companies' accounts from time to time. The said payments were made by Mr. Sanjay Shah and Mr. Atul Shah into their said wives accounts to satisfy IGSL's apprehensions about outstanding dues, since IGSL could have adjusted the same towards the said companies dues. Later, the said advances /

security deposits were refunded to them as per their respective husband's request, but the actual payment to them was released only after the said companies dues were fully paid off. No interest was paid to them as incorrectly assumed in the SCN, and the same has been certified by the Independent Internal Auditors of IGSL.

- 19.** Since more than six months had elapsed from the last date of hearing and receipt of written submissions, vide letter dated May 09, 2018, the noticees were afforded an opportunity to make additional submissions, if any, on the SCN. However till date no replies to the said letter have been received from any of the noticees.

Issues for Consideration

- 20.** Based on the facts and allegations stated in the show cause notice and replies received from the Noticees, the issues for determination in the instant case are listed as follows:

- (i) Whether IGSL mis-utilised public issue proceeds contrary to the stated intent of investment in the company's subsidiary and augmenting the company's working capital, thereby violating the provisions of Regulation 57 (1), Clause (XV10)(2) of Part A of Schedule VIII and regulation 60(4) of SEBI (Issuance of Capital & Disclosure Requirements) Regulations 2009 ("**ICDR Regulations**") read with Section 12A(a), (b) and (c) of the SEBI Act, 1992 and; regulations 3(b)(c)(d), regulations 4(1) and 4(2)(f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations 2003 ("**PFUTP Regulations**").
- (ii) Whether IGSL made false statements in its RHP and prospectus with respect to raising bridge loans and thereby violated regulations 57(1) and 57(2) read with clause 2(VII)(G) and clause (XVI) (B)(2) of Part A of Schedule VIII of the ICDR Regulations.
- (iii) Whether IGSL failed to disclose acceptance of deposits under Section 58A of the Companies Act, 1956, thereby violating regulation 57(1) of the ICDR Regulations?

- 21.** Before addressing each of the aforesaid issues, for ease of reference, the provisions of law relevant to this case are reproduced below:

ICDR Regulations:

1. Regulation 57 (1), 57 (2), 60(4)

Manner of disclosures in the offer document.

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

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

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

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

(b) the letter of offer shall contain disclosures as specified in Part E of Schedule VIII:

Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

Public communications, publicity materials, advertisements and research reports.

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

- (a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;
- (b) in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.

2. Clause 2(VII)(G) of Schedule VIII, Part A

Sources of Financing of Funds Already Deployed: The means and source of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue.

3. Clause (XVI)(B)(2) of Schedule VIII, Part A

The signatories shall further certify that all disclosures made in the offer document are true and correct.

SEBI Act- Section 12A

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

...

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) 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;

PFUTP Regulations:

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

Prohibition of manipulative, fraudulent and unfair trade practices

4. (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:—*

...

- (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
- (r) planting false or misleading news which may induce sale or purchase of securities.*

Mis-utilisation of public issue proceeds - Loans advanced for other purposes

- 22.** According to the SCN, IGSL had stated in its prospectus that monies were sought to be raised from the public for investment in its subsidiary - Inventure Finance Pvt. Ltd. (IFPL). The SCN also noted that IFPL was engaged in the activity of advancing loans solely against shares/securities and only to the clients of IGSL. However, according to the SCN, IPO proceeds were largely used towards advancing unsecured loans, loans against equipments and gold loans and therefore, the SCN concluded that the part of IPO proceeds not used for loans against shares/securities was utilised for purposes other than for which it was raised. In its replies to the SCN, IGSL submitted that contrary to the allegations in the SCN, there are clauses in the memorandum of association and prospectus of the company that make it amply

clear that the nature of lending was inclusive and not restricted as SEBI had contended. Extracts of the provisions of MoA referred to by IGSL are as follows:

"2. To Invest money (not amounting to Banking Business) against personal, guarantee or against the security of leasehold and freehold land, shares, securities, stocks, merchants and other property and assets and generally to lend and other property and assets and generally to lend and advance money to such persons, firms or Companies and upon such terms and subject to such conditions as may seem expedient."

Extracts of the provisions of the prospectus referred to by IGSL in this context are as follows:

"Our Company undertakes its lending business through our subsidiary, IFPL. IFPL is presently registered with RBI as an NBFC not accepting public deposits. IFPL's lending business includes providing loans secured by shares held by customers of IFPL.... Based on the management estimates, our Company intends to deploy Rs. 3,000 lakhs which in turn will be used by IFPL to finance its onward lending business."

I have examined the prospectus of IGSL in detail, since this is the document that aids investors in making informed decisions about investments in the public issue of a company. I note that while there are stray references in the prospectus to the large array of businesses that IFPL undertook, the emphasis has been on IFPL's business of lending against shares and on it being complementary to IGSL's primary business i.e. stock broking. Specifically, I have taken note of certain pages/paragraphs in the prospectus, that emphasise two aspects- one, that IFPL's primary business was in the 'loan against shares business' and two, that allocation of the IPO proceeds by IGSL to IFPL would indirectly benefit IGSL's shareholders since IFPL's business of 'loan against shares' would complement IGSL's stock broking activity. Some of such statements in the prospectus certainly point to the emphasis on deployment of IPO proceeds towards the 'loan against shares' business of IFPL, as illustrated hereunder:

- (i) **Pages 30, 31 and 93** : At Page 30 of the prospectus, a chapter titled "Summary of our business" is provided. A table is provided on Page 31 enlisting various activities carried out by IGSL and its Subsidiaries. For the service area "Non Banking Financial Services", it was mentioned that the products offered were 'Loan Against Shares' and 'IPO Funding' and it was mentioned that the said services were provided by IFPL. A similar description is repeated under a chapter titled "Our Business" at Page 93 of the prospectus.

- (ii) **Page 99:** *"...To enable clients to take greater participation in different segments of capital market, IFPL provides loan against shares to various clients, including our broking clients. ..."*

Non Banking Financial Services

IFPL is RBI registered NBFC and is in the business of advancing loans to clients for acquisition of shares/stock/bonds/debentures/securities issued by government or local authority or other securities of like marketable nature. This facility provides the clients with the opportunity to buy shares listed on the stock exchanges on credit...."

- (iii) **Page 102:** **"Concentration on NBFC activities"**

This business segment has two revenue verticals, which are interest income and also generates brokerage from trading of shares. The brokerage income is earned by IGSL and interest income is credited in IFPL. There has been a growth in our NBFC activities in terms of clients as well as revenues. To augment this growth we are striving to strengthen our NBFC team. We also foresee a major growth in the NBFC in the coming years. We propose to increase our presence in this vertical, both in terms of team strength and geographic reach. To cater to the increasing needs of our clients we plan to invest ₹3,000 lakhs in our subsidiary IFPL. For further details on this investment refer to chapter titled "Objects of the issue" on page 68 of the Prospectus."

23. After including such disclosures in the Prospectus, the noticees have sought to rely on certain generic references made in the MoA of IFPL to its lending activities and certain parts of the Prospectus where IFPL's activities have been summarised in broad terms, to support their argument that IGSL had disclosed that funds allotted to IFPL will be utilised towards all activities of IFPL. However, going through the text of the prospectus, it is but obvious that the dominant message, conveyed to the potential subscribers of IGSL's shares, was that IFPL was primarily engaged in lending against shares which justified infusion of funds raised by IGSL into IFPL since such infusion would directly and indirectly benefit the shareholders of IGSL.

24. I have also perused Annual Reports filed by IGSL after the public issue to understand how IGSL described the business of its subsidiary - IFPL. The extract from Annual

Reports of FYs 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 describe IFPL's business as being IPO Funding and extending loans against shares. Some of the said Annual Reports also mention 'Loan against Gold' as being one of the businesses of IFPL. Clearly the dominant business of the IGSL's subsidiary - IFPL was described to IGSL's investors, even after the IPO, as being advancing loans against shares.

- 25.** Another aspect that has drawn my attention is the sudden spurt in unsecured lending by IFPL and corresponding decrease in loans against shares by IFPL, lent in the months immediately after the receipt of IPO proceeds. The data in this regard is extracted below:

TABLE 6

	31.03.2011			30.09.2011		
	Amount	No. of Accounts	Average per account	Amount	No. of Accounts	Average per account
Loan Against Shares	37,05,10,904	30	1,23,50,363	46,97,17,220	30	1,56,57,241
Unsecured Loans	3,51,85,939	40	8,79,648	47,54,76,785	53	89,71,260

I also note that in subsequent years, this trend of increasing unsecured lending and reduction in loans against shares has continued. The data in this context, based on information provided by IGSL, is extracted below:

TABLE 7

Particulars	31.03.11	31.03.12	31.03.13	31.03.14	31.03.15	31.03.16	31.03.17
Loan advanced Against Shares (Secured Loans as per Consolidated BS)	37,05,10,904	27,93,33,935	19,84,48,076	3,79,50,284	1,23,99,468	13,50,20,818	8,06,97,710
Loan availed by IFPL against collateral securities of the client held by the company as pledgee	34,11,63,937	21,91,60,496	12,45,41,661	2,55,00,000	-	-	-
Net Investment in Secured Loans	2,93,46,967	6,01,73,439	7,39,06,415	1,24,50,284	1,23,99,468	13,50,20,818	8,06,97,710

Unsecured Loans advanced	3,51,85,939	40,21,43,430	38,43,30,074	64,97,84,593	84,21,97,523	67,40,73,448	84,51,11,409
NPA/ Doubtfuls Assets			1,31,14,575	20,76,12,574	20,64,74,968	8,73,68,852	12,29,44,557

The noticees have sought to justify lesser quantum of loans against shares lent by IFPL on the general reduction in trading volumes in Indian stock exchanges during the FY 2011-12. This justification is based on turnover data of the stock exchanges for the said year. However a closer analysis renders this justification very feeble. I have examined the data relating to turnover on BSE and NSE during the FYs 2011-12 to appreciate the defence of the noticees. The data as extracted from the websites of the said stock exchanges are as follows:

TABLE 8

BSE Equity Turnover Year :2011-2012

Month	Total (in Cr. ₹)
<u>Mar-2012</u>	62,717.17
<u>Feb-2012</u>	69,946.92
<u>Jan-2012</u>	52,570.82
<u>Dec-2011</u>	39,492.21
<u>Nov-2011</u>	43,872.12
<u>Oct-2011</u>	43,515.17
<u>Sep-2011</u>	54,359.92
<u>Aug-2011</u>	53,300.75
<u>Jul-2011</u>	59,554.67
<u>Jun-2011</u>	59,337.30
<u>May-2011</u>	59,494.25
<u>Apr-2011</u>	69,336.28

TABLE 9

NSE Equity Turnover Year :

2011-2012

Month/Year	Turnover (₹cr)
Mar-2012	2,72,482
Feb-2012	327808
Jan-2012	2,36,872
Dec-2011	1,88,886
Nov-2011	2,06,344
Oct-2011	1,93,293
Sep-2011	2,35,270
Aug-2011	2,35,253

Jul-2011	2,30,003
Jun-2011	2,22,457
May-2011	2,33,876
Apr-2011	2,28,348

As can be seen from Tables 8 and 9, stock market volumes in FY 2011-12 did not undergo such rapid change in volumes in the months of August and September 2011, in order to justify the scale of reduction of IFPLs loans against shares business as reflected in the Table 7 above. Table 7 reveals that loans advanced against shares reduced by Rs. 9,11,76,969 between March 31, 2011 and March, 2012. Further, while Net investment in secured loans increased by only Rs 3,08,26,472 between March 31, 2011 and March 31, 2012, during the same period unsecured loans increased by Rs. 36,69,57,491. Table 6 reveals that during the months of April to September 2011, there was an exponential increase (i.e. almost 1251 %) in unsecured loans advanced by IFPL. Infact between March 31, 2011 and March 31, 2017 loans against shares advanced by IFPL reduced by Rs 28,98,13,194 (i.e. a 78.21 % reduction in loans against shares), whereas the value of unsecured loans have increased by Rs 80,99,25,470 during the same period (i.e. a 2301 % rise in unsecured loans). In the normal course of events, even assuming that there was a bona fide reduction in clients due to negative sentiment in the stock market, one would not expect such a large unexplained increase in unsecured loans by a registered NBFC. The source of such unsecured loans lent are obviously therefore suspect and supports the prima facie view that monies raised in the IPO on the pretext of the subsidiary's business of lending against shares were actually directed for the purpose of unsecured loans. Particularly when comparing the unsecured loans lent by IFPL as of March 31, 2011 with those as of March 31, 2012 i.e. subsequent to the receipt of the IPO Proceeds, I note that there has been an increase of almost Rs 37 crore. After giving detailed disclosures, wherein repeated references were made regarding IFPL's intent to use monies raised in the IPO for giving loans against shares, making business decisions completely at odds with the representation made to potential investors clearly constitutes misutilisation of IPO proceeds. This is not to state that a business entity cannot change its business objectives due to change in business conditions. The Companies Act, 1956 and Companies Act, 2013 permit change in end-use of IPO proceeds only after obtaining shareholder approval for the same. In any case, the fungible nature of money

ensures that companies with other sources of funds may use existing funds for purposes not stated in the prospectus. Also, a proposed line of business activity may not be feasible given certain adverse market conditions. However all of these justifications do not appear to apply in the case of the noticee company for the reasons already elaborated earlier. In any case, the company never approached the shareholders for alternative utilisation of IPO proceeds. The representation made in the prospectus was to the effect that investing monies raised in the IPO in IFPL would be beneficial to IGSL's investors since IFPL's business was complementary to that of IGSL. The prospectus further supported this argument by stating that risk management measures would be adhered to while lending against shares and explained how lending would be available only against select types of securities. It is highly doubtful that investors would have been interested in subscribing to IGSL's shares had it been disclosed that IFPL's real intent was to substantially increase unsecured lending, which is inherently highly risky. Therefore I am convinced that the subsequent actions of IGSL's subsidiary i.e. IFPL, prove that the disclosures made by IGSL were in fact misleading, fraudulent and made with the intent to induce subscription to IGSL's securities. In view of the above, I find that the noticees have violated Regulation 57 (1), Clause (XVI)(B)(2) of Part A of Schedule VIII and regulation 60(4) of ICDR Regulations read with Section 12A(a), (b) and (c) of the SEBI Act, 1992 and regulations 3(b)(c)(d), regulations 4(1) and 4(2)(f), (k) and (r) of the PFUTP Regulations.

Mis-utilisation of public issue proceeds - Augmentation of working capital

- 26.** As per the prospectus of IGSL, one of the main objects of the public issue was augmenting the long term working capital requirement of IGSL. Page 69 of IGSL's prospectus inter alia reads as follows:

"The working capital requirement mainly comprises of margin money to be placed with stock exchanges on the basis of trading volumes, market volatility and the extent of outstanding positions in respect of equity index/stock futures & options. Such margin capital requirements also include initial margin and additional margin deposited for entering into the contracts for equity index/ stock futures and options. Further, equity index/stock futures & options are marked-to-market on a daily basis in which case "Mark-to-Market Margin" is also required to be provided till the final settlement of the contracts.

In addition to this, our Company has to place stipulated margin in the cash segment with the stock exchanges for T+2 days. The stock exchanges also increase margin requirement in terms of percentage due to volatility in the markets. This gives rise to margin requirement even though the business may remain constant.

Our Company's working capital requirements also arise on account of the time gap in realization of cheques received from clients and amount to be paid to the exchanges towards pay-in on the settlement dates. With growing business, this gap is widening, thus creating additional requirement for the working capital.

*...
The margin requirements to be maintained with the stock exchanges would be used for clients as well as for proprietary trading. The working capital requirement of cash segment is mainly due to client business. However, in respect of derivatives segment, the margin requirements to be maintained with the stock exchanges would be used for proprietary trading only. Over and above the margin actually utilised, our Company is also required to deposit additional capital/margin with the stock exchanges to smoothly undertake its additional business activities."*

The prospectus further stated that working capital requirements were expected to rise because of increase in margins due to volatility or on account of the time gap in realisation of cheques received from clients and amount to be paid to the exchanges towards pay-in on the settlement dates. This working capital requirement was expected to rise further in tandem with the growth in financial markets. The prospectus also stated at page 68 thereof that the allocation for the objective of "Augmenting Long Term Working Capital Requirement" is Rs 20 crore. In its letter to SEBI, dated January 15, 2016, IGSL had submitted that the increase in working capital post the IPO was Rs. 20,36,22,425 (Twenty Crore Thirty Six Lakh Twenty two thousand four hundred twenty five rupees only). However, the SCN alleged that on an analysis of information received from the clearing corporations, it was noted that there was a reduction in margins in the post-IPO period as compared to the pre-IPO period, thereby implying that IPO proceeds intended to be used for working capital purpose had actually been diverted elsewhere.

- 27.** In its reply, IGSL has contended that the prospectus had sufficient disclosures regarding the risks attached to market conditions and change in valuation of stocks, in particular in the context of IGSL's proprietary trades. SEBI's official statistics on reduction of trading volumes in the financial year 2011-12 was reproduced to demonstrate that in the face of negative market conditions, trading volumes of IGSL could not have risen in proportion to its stated expectations. It also submitted that since money is fungible, the allocation of funds for the disclosed objective of meeting the shortfall between the collection of dues from the clients and the margin/pay-in obligation would free up IGSL's other funds. It was also contended that net position of "Amount Due from clients" and "Amount Due to Clients" cannot be considered, since one client's funds cannot be used for other client's margin/pay-in obligation. Also, as regards the allegation that a major

part of the amount to be deployed for working capital was invested for stock in hand held for arbitrage, it was contended that even arbitraging requires margin deposit and that funds used for arbitraging are effectively only by way of margins. It was also adequately disclosed that IGSL undertook substantial arbitrage and trading and that margin money is required for such arbitrage and trading.

28. I have considered the submissions of the noticees in the backdrop of the allegations in the SCN and find merit in the same. Upon perusal of the disclosures made in the prospectus, I note that it was clearly disclosed that working capital requirements mainly comprised of margin monies, which would be used for both client and proprietary trading and which would be used for arbitrage strategies as well. In Para 14 of the SCN, the specific allegation made is that the amount of margin is higher in the pre-IPO period and there was no increase in the post-IPO period i.e. from the month of August 2011. This allegation is based on the table in para 14 of the SCN (reproduced in Table 4 of this Order). However, I am unable to arrive at the same conclusion on a perusal of the said table. The table provides an average of daily closing balances for each month based on data available with 3 clearing corporations i.e. NSCCL, ICCL and MCX-SX CCL. From the said table, I note that average collateral placed by IGSL in April 2011 was Rs 59.25 crore which gradually reduced to Rs 48.65 crore in July 2011, but then again increased over the next couple of months to eventually reach Rs 51.31 crore in March 2012. Therefore I do not agree with the prima facie view expressed in the SCN that there was no increase in margins in the post-IPO period atleast based on the table in para 14 of the SCN. Also, I have taken note of the table at para 13 that the difference between amount due from clients as on 31.03.2011 and 30.09.2011 is Rs 21,02,53,701 clearly justifying the allocation of Rs 20 crore towards working capital. I also do not find merit in the SCN's assumption that amounts due from clients must be reduced from amounts due to clients in order to arrive at the net working capital. Since one clients' funds cannot be used for other client's margins it would be incorrect to reduce 'Amounts due to clients' from 'Amounts due from clients'. Based on the net figure as calculated above, it would not be reasonable to conclude that the amount allocated towards margins/working capital has been misutilised. Mere reduction in margin/collateral placed by the company (*in a few months subsequent to receipt of IPO proceeds*) with the clearing corporation does not tantamount to misutilisation of IPO proceeds contrary to the stated purpose of

raising funds for augmentation of working capital. Consequently the allegation in the SCN that IGSL had misutilised proceeds intended for working capital and invested the same in equity does not stand scrutiny for the purposes of this Order.

- 29.** In view of the above observations, I do not agree with the allegation in the SCN that mere reduction in collateral during the financial year 2011-2012 is indicative of mis-utilisation of IPO proceeds contrary to the stated intent of augmenting working capital.

Non-Disclosure of Bridge Loans

- 30.** Between July 13 and July 20 of 2011 amounts totalling to more than Rs 20 crore were received by IGSL from 4 entities and on August 03, 2011 i.e the day when IPO proceeds were received by IGSL, the whole amount was repaid to the said entities. This forms the foundation of the allegation that IGSL had received bridge loan from these entities even though it had explicitly disclosed in its prospectus that it did not avail of any bridge loans. IGSL's contention, with respect to three entities i.e. Bikaner Wooltex Ltd ("**Bikaner**"), TPL Finance ("**TPL**") and Deepmala Infra Pvt. Ltd. ("**Deepmala**"), is that they were prospective clients of IGSL and monies were received from them towards the proposed broker-client relationship. However since the relationships did not fructify, the monies collected from them were returned. For the same reason though internal client codes were recorded, the client names were not uploaded to the stock exchange for allotment of Unique Client Codes (UCCs). Also, IGSL relied on the statement in the SCN to state that monies were refunded from BSE Client Account which therefore points to the fact that the said entities were clients of IGSL and the repayment was only towards client money. IGSL has argued that in the absence of any other information, it must therefore be presumed that SEBI itself has recognised the said entities to be its clients. With respect to the alleged loan from the other entity - K.R. Shoppers Pvt. Ltd. ("**KR Shoppers**"), IGSL has contended that it was an entity where one of the management personnel of IGSL exercised significant influence. KR Shoppers had extended temporary funds to IGSL on earlier occasions also. Therefore according to IGSL, the impugned financing was not in the nature of bridge loan but in the nature of a loan from director's entity. I do not find merit in these submissions.

31. The transactions between clients and brokers is governed by the SEBI Press Release dated 18.11.1993, SEBI Circular dated 03.12.2009 and SEBI Circular dated August 22, 2011. The said legal framework makes it clear that monies can be credited into or repaid from a client account only if the monies pertain to 'client' related transactions. SEBI Circular dated 03.12.2009 specifically lays down *inter alia* processes/procedures required to be complied with for client registration by a stock broker. As per the circular, mandatory documents that need to be included as part of the client registration include member client agreement, KYC form and Risk Disclosure Document. Also a mandatory document is also required that deals with policies and procedures *inter alia* for temporarily suspending or closing a client's account at the clients' request or deregistering a client. I note that IGSL has not submitted any document to support its claim that Bikaner, TPL and Deepmala were registered as clients, and if so, whether upon their de-registration, the requisite procedure for deregistration had been complied with. Consequently, credit of monies received from them to the BSE Client Account itself becomes suspect. Crediting amounts received from persons (*whose credentials as 'clients' at the given point of time have not been proved*) to the BSE Client Account does not automatically mean that the said entities can be considered as clients. Infact while the noticees have not contested that KR Shoppers was repaid from the BSE Client Account, it refers to the money received from KR Shoppers as being a "loan from a directors' entity". This therefore questions the very use of Client Account by IGSL. Consequently, repayment to Bikaner, TPL and Deepmala from the BSE Client Account, in my view does not render the transactions as being refund of client monies. In fact, use of Client Account contrary to SEBI circulars in itself constitutes a violation. Though the SCN does not explicitly make this an allegation, the obvious misuse of Client Account especially in the case of K R Shoppers adds to the circumstantial evidence of IGSL having availed bridge loans/interim financing without making suitable disclosures of the same. The bonafides of these transactions become suspect considering the timing of the receipt of the monies by IGSL and its repayment (all four entities were repaid on August 03, 2011 i.e. the very next day of the receipt of IPO proceeds). As rightly stated by IGSL, a bridge loan is usually required to adhere to various processes such as board approval, scrutiny by lender, agreement for loan etc. But the absence of such processes does not change the nature of such a transaction. The ICDR Regulations require disclosure of interim financing arrangements including bridge loans which

are to be repaid from proceeds of the IPO. Clause 2(VII)(G) of Part A, Schedule VIII to the ICDR Regulations does not restrict the requirement to disclose only to 'bridge loans' but extends to any financial arrangements which are repaid from the proceeds of the issue. The spirit behind such a requirement is that investors must be aware of the extent to which the monies invested by them will move to pre-existing obligations of the company which are extraneous to the objects of the issue. In the case of KR Shoppers, IGSL's depiction of the amounts received from the said company as being a "loan from a director' entity" is infact an admission of the existence of interim financing arrangement from KR Shoppers. It has not been denied that there was a failure to make disclosure of this financing arrangement in accordance with the provisions of the ICDR Regulations. IGSL has also not been able to satisfactorily support its contention that Bikaner, TPL and Deepmala were its clients and that money repaid to them was only in the nature of client money. Consequently, monies received from them can only be categorised as interim financing/bridge loan, with respect to which they were required to make disclosures, since they had repaid the loans availed using the IPO proceeds. Infact by stating the contrary, IGSL and its directors and key management personnel who signed the prospectus have misrepresented the position. The circumstances and timing in which the transactions were executed and concluded substantially support the allegation that the financing was one which needed to be disclosed in terms of Clause 2(VII) (G) of Part A, Schedule VIII. In view of the above observations, I find that IGSL had made false statements in its RHP and prospectus with respect to raising bridge loans/other financial arrangements and thereby violated regulations 57(1) and 57(2) read with clause 2(VII)(G) and clause (XVI) (B)(2) of Part A of Schedule VIII of the ICDR Regulations.

Non-Disclosure of Acceptance of Deposits

- 32.** The noticees' defence with respect to the allegation of it having raised deposits without making disclosure is essentially two fold- one, that SEBI has no jurisdiction over non-compliance with section 58A of the Companies Act and two, that merely because the amounts were called 'security deposit' does not mean that they can be considered as 'deposits' for the purpose of section 58A of the Companies Act. With regard to the first point, the noticees' contention is that section 55A of the Companies Act, 1956 restricted SEBI's jurisdiction to select

provisions listed therein and this list does not include section 58A of the Companies Act. Relevant extract of section 55A is reproduced below:

"Powers of Securities and Exchange Board of India.

55A. *The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -*

(a) in case of listed public companies ;

(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and

(c) in any other case, be administered by the Central Government.

..."

33. Section 58A of the Companies Act deals with the manner of acceptance and repayment of deposits by companies and is supported by rules prescribed in pursuance of the provision i.e. the Companies(Acceptance of Deposits) Rules, 1975. The said section has elaborate provisions on the conditions to be complied with while accepting deposits, time period within which repayment must be made in the event of contravention of the rules, rights of depositors etc. The section also deals with the penalty for non-compliance with the provisions specified therein. Section 55A of the Companies Act, 1956 has delegated the responsibility of administering or enforcing the mandate of section 58 A to the Central Government. The noticee's assertion that since SEBI had referred the matter to the Ministry of Corporate Affairs (MCA) it meant that SEBI too felt that the issue was not within its jurisdiction, is without merit. Rather, SEBI's reference to MCA is only a matter of inter-regulatory coordination and cooperation so that MCA may take enforcement action if it deems it appropriate to do so. As admitted by the Noticees, MCA is yet to pass any orders for non-compliance of section 58A. This cannot automatically mean that MCA does not view the impugned monies as being 'deposits'.

34. Apparently, sections 55A and 58A operate in different realms. However, the law does not preclude SEBI from treating a 'deposit' under section 58A to be a 'deposit' for the purposes of disclosure. Therefore whether SEBI has the power to regulate deposits in terms of section 58A of the Companies Act, 1956 is an irrelevant issue. As long as the elements of the definition of 'deposit' under section 58A are satisfied, SEBI is empowered to take action for failing to disclose the existence of such a deposit in terms of the ICDR Regulations.

35. The next aspect of this issue is the factual question as to whether the amount maintained with IGSL did in fact constitute a 'deposit'. The noticees' stand on this issue appears to be inconsistent as can be seen from its replies to the notices sent during the course of investigation and those after issuance of the SCN. As recorded in the SCN, the noticee company in its reply dated February 11, 2016, had contended that money received from Ms. Hina Shah and Usha Atul Shah amounting to ₹15.02 crore was in the nature of client monies since they intended to place orders in the securities market. However, a year later those monies were returned as per their request since no transaction could fructify. On the other hand, in its replies dated August 17, 2016 and November 10, 2017, to the SCN, the noticee company narrated an elaborate explanation for the suspicious repayment of monies to Hina Shah and Usha Atul Shah one year after receiving them. IGSL submitted that the companies promoted by the husbands of Hina Shah and Usha Shah (*Sanjay Shah and Atul Shah, respectively*) had debit balances with IGSL and therefore the credit balances of Hina Shaha and Usha Shah were used to adjust against the debit balances of companies related to them (*the said related companies also being clients of IGSL*). Also, in its reply dated November 10, 2017, IGSL stated that Sanjay Shah and Atul Shah had made payments into their wives' accounts to satisfy IGSL's apprehensions about outstanding dues of the aforesaid client companies. Later, according to IGSL, the amounts were refunded to Hina Shah and Usha Shah as per their husbands' request but the actual payment was released only after the said dues of the aforesaid companies were fully paid off. IGSL also contended that no interest payment was made to the two clients. I find this elaborate narration to only be an afterthought that does not support their case, for the reasons stated below.

36. In pursuance of the Explanation to Section 58A of the Companies Act, the definition of 'deposit' has been further clarified in the Companies(Acceptance of Deposits) Rules, 1975. Rule 2(b)(vi) of the said Rules reads as follows:

"Definitions.-

1. In these Rules, unless the context otherwise requires,-

...

(b) "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-

...

(vi) any amount received by way of security or as an advance from any purchasing agent, selling agent, or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service;"

37. I note that 'Deposit' has been defined in an inclusive manner and not a restricted manner. Consequently, its exceptions need to be read strictly. It is also an established principle of interpretation that where a definition is an inclusive definition then the court cannot interpret the same in a restrictive manner (*State of Bombay vs Hospital Mazdoor Sabha AIR 1960 SC 610*). In the instant case, the noticee company's insistence that the amount received from the two clients were intended for placing trades appears to be more of an afterthought. Section 58A and the Rules prescribed thereunder are very specific in its exclusions, and clearly the instant facts do not lead one to believe that they did not fall within the definition of deposit. Monies received by stock brokers from clients could not have been maintained for unusually long period without accounting for it specifically. It is not clear why amounts were kept with the company for almost a year before it was decided that the clients did not want to place any trades and therefore the monies refunded to them. The elaborate explanation given for the same, including the reference to the debit balances of the companies associated with the said two clients, and the repayment of dues by the respective husbands of the two clients, all appear to be an afterthought. The explanation provided by IGSL does not appeal to logic nor is it founded in general practice.

38. The securities market being a highly liquid one, it is highly suspect that the clients took close to a year to decide they didn't want to use the money they kept with IGSL for trades and instead took the money back. The categorisation of this money as 'Security Deposit Others' and its non-maintenance in the 'Margin from clients' funds therefore adds to the strong suspicion that these were not monies paid in the normal course of business. Merely because interest was not paid on the money does not take away from it the nature of a deposit. As regards the other deposits accepted by IGSL, the first reply to SCN merely appends a list of persons to whom such amounts are due along with purported client codes without there being any details as to how much was due, when amounts were collected, when they were repaid and the amount of repayment etc. Clearly the allegation does not remain completely addressed by the Noticee company. Assuming that the story weaved were to be true, it is disconcerting that IGSL being a registered stock broker and proposing to be a listed company, held such large amounts from a 'proposed

client' for such a long period without there being appropriate record or nomenclature or proper disclosure.

39. The subject matter of this Order however is not enforcement action for non-compliance with the provisions of Section 58A of the Companies Act, but the failure of IGSL to make suitable disclosures regarding the same. A company's obligation to make repayments to deposit holders is a matter that needs to be disclosed adequately to the public before raising of public money towards the company's IPO. This would make the company's shareholders well aware of the company's liabilities and its needs for raising public money before making a decision to participate in the company's IPO. This is particularly true when the amounts involved are substantially large. In disclosures related to public issue, it is not enough that the disclosures made are true and correct. It is also essential that the issuer discloses all relevant and material information to enable the investors to take an informed decision without any suppression. The investors in IGSL's IPO were deprived of an informed decision when IGSL failed to disclose such large amounts as being due as deposits. I therefore find that IGSL and its noticee directors and key management personnel who certified the prospectus failed to make material disclosures regarding acceptance of deposits by IGSL thereby violating regulation 57(1) of the ICDR Regulations.

40. The non-disclosure of the existence of bridge loans extended and deposits accepted by IGSL cannot be construed as mere lapses of disclosure. Rather given the large size of the said loans/deposits and read along with the fact that large unsecured loans were granted prior to and after receipt of IPO proceeds points to a fraudulent scheme which IGSL had adopted. If investors had been made aware of the large size of debt obligations that IGSL had incurred and the fact that IPO proceeds were intended to be used towards discharging such obligations or extending highly risky unsecured loans, it is doubtful whether the said investors would have subscribed to IGSL's public issue. Clearly therefore considering the size of such debt and the overall scheme involved, the omission to make disclosures regarding bridge loans and deposits accepted were also fraudulent in nature in as much as they sought to induce the public to make investments in the IPO of IGSL on the strength of materially false information. I therefore find that IGSL and its noticee directors and key management personnel who certified the prospectus to

have also violated Section 12 A (a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(b), (c), (d), 4 (1) and 4(2)(f), (k) and (r) of the SEBI PFUTP Regulations, 2003 as well.

PROSPECTUS AND RELEVANCE OF DISCLOSURES

41. In its order dated August 31, 2012 in the case of Sahara India Real Estate Corporation Limited & Ors. v. Securities and Exchange Board of India & Anr., the Hon'ble Supreme Court observed that "*Prospectus is the principal medium through which the investors get information of the strength and weakness of the company, its creditworthiness, credence and confidence of promoters and the company's prospects.*" Also, in its order dated April 09, 2010, the Hon'ble Delhi High Court, in the case of Kimsuk Krisha Sinha v. SEBI, *inter alia* held as follows: "*While enforcing the civil liability for any loss or damage under Section 62 may be restricted to persons who subscribed for shares on the faith of the prospectus, Section 63 can be set in motion by any person including SEBI. The purpose of inserting Section 55A in the Companies Act was to empower the SEBI to take both corrective and preventive action. This is perhaps because as a regulatory body SEBI gets to see the draft prospectus preceding a public issue by a company even before the public gets to see the RHP. SEBI is enabled and empowered to examine the DRHP and insist on complete and truthful disclosure of all relevant facts therein. The very purpose of having an independent regulatory authority like SEBI, and vesting it with statutory powers of inquiry, is to enable it to take prompt action in matters relating to issue and transfer of shares. Particularly, SEBI is expected to be the sentinel, read the fine print of prospectuses keeping the investors interests in view. It has both a preventive and corrective role to perform.*"

Further the Hon'ble Securities Appellate Tribunal in the matter of HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI, SAT Appeal No. 99 of 2007 (decided on February 20, 2008) observed as follows:

"an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator".

DIRECTIONS

42. In light of the above observations, I find that the acts / omissions described hereinabove, in totality show that IGSL had misutilised the proceeds received from the IPO by applying them towards activities not disclosed in the prospectus. IGSL also actively concealed material information, and made false and inadequate disclosures in the RHP/Prospectus. I note that Nagji K Rita (Promoter and Managing Director), Virendra D Singh (Director), Kanji B Rita (Director), Vinod K Shah(Director), Pravin N Gala (Director), Arun N Joshi (Director), Srinivasaiyer Jambunathan (Director), Harshavardhan M Gajbhiye (Director), Ajay Khara (Director), Deepak M Vaishnav (Director), Arvind Gala (Chief Financial Officer) and Bhavi Gandhi (Company Secretary & Compliance Officer) (*collectively referred to as "Noticee Nos. 2-13"*) had signed the declaration in the prospectus certifying that all the statements in the prospectus are true and correct. In view of the conclusions in this Order regarding bridge loans and acceptance of deposits by IGSL, I find that Noticee Nos. 2-13 gave a wrong certificate in the RHP / Prospectus and were also responsible for concealing material information, and making false and inadequate disclosures in the RHP/Prospectus of IGSL as described above. Those among the noticees who were 'independent directors' on the board of IGSL have relied on section 149(12) of the Companies Act, 2013 to state that being independent or non-executive and non-promoter directors, they are liable for only those acts or omissions which have occurred with their knowledge, attributable through Board processes, and with their consent or connivance or where the respective directors had not acted diligently. However it is my considered view that this provision does not come to their aid since all of the noticees including those who were 'independent directors' had officially certified in the prospectus that disclosures made in the prospectus were true and correct. Considering the above findings, I find the Noticee Nos. 2-13 liable for having violated regulations 57(1) and 57(2) read with clause 2(VII)(G) and clause (XVI) (B)(2) of Part A of Schedule VIII of the ICDR Regulations and Section12A(a),(b),(c) of the SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(k) and (r) of the SEBI PFUTP Regulations.

43. As regards the allegation of misutilisation of IPO proceeds, I note that Noticee Nos. 2 - 11 were directors of the company post the receipt of IPO Proceeds as well. Since one of the main disclosed objects of the IPO was investment into IGSL's subsidiary i.e. IFPL, the Company through its directors were expected to ensure that utilisation of the IPO proceeds was in conformity with the promises conveyed

to the subscribers to the IPO. Accordingly I find the Company and the Noticee Directors i.e. Noticee Nos. 2-11 to be liable for having violated regulations 57(1) and 57(2) read with clause 2(VII)(G) and clause (XVI) (B)(2) of Part A of Schedule VIII of the ICDR Regulations and Section 12A(a),(b),(c) of the SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(k) and (r) of the SEBI PFUTP Regulations.

44. In view of the above, I in exercise of the powers conferred on me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby pass the following directions, with immediate effect -

- (i) the Noticees i.e. Inventure Growth and Securities Ltd, Nagji K Rita, Virendra D Singh, Kanji B Rita, Vinod K Shah, Pravin N Gala, Arun N Joshi, Srinivasaiyer Jambunathan, Harshavardhan M Gajbhiye, Ajay Khera, Deepak M Vaishnav, Arvind Gala and Bhavi Gandhi shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of 4 years from the date of this order;
- (ii) the Noticee Nos. 2-11 i.e. Nagji K Rita, Virendra D Singh, Kanji B Rita, Vinod K Shah, Pravin N Gala, Arun N Joshi, Srinivasaiyer Jambunathan, Harshavardhan M Gajbhiye, Ajay Khera and Deepak M Vaishnav shall not associate themselves with any listed company or company proposing to list, or any registered intermediary, in the capacity of a director, key management personnel or partner (in the case of a partnership firm), for a period of 4 years, with effect from January 1, 2019. Noticee No. 1 shall ensure that the board of directors is reconstituted to give effect to the aforesaid directions in order to ensure the smooth functioning of the company.
- (iii) the Noticee Nos. 12 and 13 i.e. Arvind Gala and Bhavi Gandhi are hereby warned/cautioned to exercise due care and diligence, in future in their conduct as Chief Financial Officer and Company Secretary, respectively of a listed company or a registered intermediary.

45. A copy of this Order shall be forwarded to the recognised stock exchanges, registered depositories and registered registrars to issue and share transfer agents for necessary compliance with the above directions.

DATE: August 06, 2018

PLACE: Mumbai

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA