

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

In the matter of Ravi Kumar Distilleries Limited

In respect of:

Sr. No.	NOTICEE	PAN
1.	Sarthak Vijlani	ADMPV9381J

BACKGROUND:

- Pursuant to investigations by the Securities and Exchange Board of India (SEBI) into the manipulations in the Initial Public Offer (IPO) of Ravi Kumar Distilleries Limited (RKDL / the company), SEBI issued a common show cause notice (SCN) dated July 25, 2017 to various entities, including the above named Noticee, Shri Sarthak Vijlani (the Noticee), calling upon them to show cause as to why suitable directions under Sections 11B and 11(4) of the SEBI Act, 1992, including directions to debar them from buying, selling or dealing in securities for a particular duration should not be passed against them for the alleged violations of the provisions of the SEBI Act, 1992 (SEBI Act), the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003

(PFUTP Regulations, 2003) and other SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations, 2009). The investigation in the IPO of RKDL and its dealings before and after the IPO had revealed that a predominant portion of the proceeds of the IPO were siphoned off and also routed to certain entities for applying in the IPO of RKDL. The investigation had brought out close connections between various entities that were involved in the routing of funds and the Merchant Banker for the IPO, namely Comfort Securities Limited (CSL). It was alleged that a total amount of Rs 33.83 crore was siphoned off from the IPO proceeds through the entities connected to CSL as on March 31, 2011, and Rs. 18.67 crores was routed to several connected entities for purchasing shares of RKDL and also to allottees for their application in the IPO of RKDL. RKDL and the merchant banker, CSL had allegedly devised a scheme or artifice to siphon off IPO proceeds, and also to route IPO proceeds to certain entities for applying in the IPO of RKDL.

2. Further, it was alleged that there were certain mis-statements and non-disclosure of material facts in the offer document (prospectus) pertaining to the IPO. RKDL had failed to disclose in the offer document liabilities of Rs.14.89 Crores (approx. 20.23% of the size of the IPO), which were in the nature of bridge loans and were later repaid from the IPO proceeds. RKDL had also allegedly not disclosed about a loan default by R.V. Ravi Kumar, promoter of RKDL, in the Prospectus and had also made certain mis-statements in its Annual Report for FY 2010-11.

3. In view of the above, it was alleged that RKDL and its directors namely Mr R V Ravikumar, Mrs R Amirthavalli, Mrs S Vijayalakshmi, Mr Badrinath S Gandhi, Mr Popatlal Kathariya, Mr K S M Rao and Mr Ashok Shetty had indulged in fraudulent activities and had violated provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4(1), 4 (2) (f) and (k) of PFUTP Regulations, 2003. They were also alleged to have violated the provisions of Regulations 57(1), 60(4) (a) and 60 (7) (a) of ICDR Regulations, 2009 and Clauses 2(IV)(H)(24); 2(VII)(G); 2(X)(A)(1)(h) and 2(X)(A)(3)(a); 2(X)(A)(5); and 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57 (2) (a) of ICDR Regulations, 2009.
4. Further, since CSL was allegedly involved in the abovementioned siphoning of IPO proceeds to the tune of Rs 33.83 crore through the entities connected to CSL, routing of funds to several connected entities for purchasing shares of RKDL and also to allottees for their application in the IPO of RKDL and had also failed to ensure disclosure of the aforesaid bridge loans and to independently check the use of the funds received by RKDL prior to the date of Prospectus, it was alleged that the merchant banker CSL failed to exercise due diligence and independent professional judgment. In view of the same, the directors of the merchant banker CSL (during the relevant period) namely Anil Beniprasad Agrawal, Bharat Nanubhai Shiroya, Annu Anil Agrawal, Jugal Chandrakant Thacker, Amit Kumar Khemka, Chandrakala Purohit, and Mr

Sarthak Vijlani (authorized signatory to CSL for the due-diligence certificates in the IPO of RKDL) were alleged to have indulged in fraudulent activities, thereby violating the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. They were also alleged to have also violated the provisions of Regulation 64(1) and 8(2) (b), (e) and (f) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 and Regulation 13 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule III in the SEBI (Merchant Bankers) Regulations, 1992.

5. SEBI after adjudication of the aforesaid charges against RKDL and its directors, the directors of CSL and the Noticee, had passed a detailed order dated March 12, 2019 whereby allegations of violations of the abovementioned provisions of law by them stood established. Vide the said order, SEBI had *inter alia* debarred various entities, including the Noticee, from accessing the securities market and from buying, selling or otherwise dealing in securities for periods ranging from 3 to 5 years. Further, SEBI had also *inter alia* directed the directors of CSL and the Noticee to return an amount of Rs.33.83 crores with interest @12% calculated w.e.f. April 01, 2011 to RKDL, within a period of one year from the date of the order.

6. The findings of the investigation, the charges against various entities including the Noticee and the findings of the SEBI Order have been summarized above for the sake of brevity. In this regard, the SEBI Order dated March 12, 2019 may be referred to for complete details.
7. Aggrieved by the abovementioned SEBI Order, the Noticee preferred an appeal before the Hon'ble Securities Appellate Tribunal against the said order. The Hon'ble SAT vide its order dated May 31, 2019 *inter alia* remitted the case against the Noticee back to SEBI for fresh hearing. It quashed and set aside the SEBI Order qua the Noticee.
8. Accordingly, the SCN dated July 25, 2017 was served afresh to the Noticee.

REPLIES AND PERSONAL HEARINGS:

9. After service of the SCN afresh, the Noticee has replied vide letters dated June 20, 2019 and July 30, 2019. In the meantime, an opportunity of personal hearing was also granted to the Noticee on July 09, 2019 which was attended by him. The Noticee vide the aforesaid letters and during the personal hearing has submitted *inter alia* the following:
 - (a) The SCN has been served upon the Noticee after seven years. Further, prior to issuance of SCN, no communication was received by the Noticee from SEBI after he left employment with CSL.

- (b) The Noticee is a qualified Chartered Accountant. He started his career by seeking employment with CSL in the year 2007. Thereafter, he was given a designation of "Vice-prersident" in Merchant Banking Division of CSL. During his employment with CSL, he had worked under the supervision and guidance of Mr. Anil Agarwal (Director and Head of Merchant Banking Division) and Mr. Jugal Thacker (Director and President of Merchant Banking Division). Importantly, the Noticee was working purely as an employee and had never held any responsible position such as Director of CSL or any group company of CSL. During his employment, he was not authorized to take any decision on financial dealings of CSL in any manner whatsoever including with any of their clients/customers/constituents even with regard to negotiation on fee structure or any revenue model of CSL.
- (c) Apart from receiving salary, no financial gains or benefits were received by the Noticee. Further, after his resignation, CSL management did not prefer to keep and maintain cordial relationship with him.
- (d) On the subject matter of responsibility of Merchant Banking Division of CSL, the Noticee states that in the DRHP of CSL at page 64, under the work profile of Mr. Anil Agarwal, it is clearly stated that *"He is presently involved in the activities related to merchant banking."* It clearly establishes that Mr. Anil Agarwal was involved in day to day affairs of CSL and therefore, he himself owns the responsibility of the Merchant Banking Division of CSL.

- (e) Mr. Anil Agarwal has brought to the notice of SEBI the impending criminal proceedings initiated by him against the Noticee for the alleged forging of documents related to RBI. However, the Noticee states that the RBI has filed complaints and FIR against directors of Comfort Intech Limited (CIL), a group company of CSL, and has also issued a show cause notice. Pursuant thereto, the RBI passed an order and cancelled their NBFC License. In the said order, the name of the Noticee is not mentioned anywhere nor has he been made a party to the proceedings. This establishes that Mr. Anil Agarwal is unnecessarily dragging Noticee's name to hide his misdeeds. Further, the criminal proceedings initiated by the RBI have no connection with the instant proceedings.
- (f) As regards the rejection of anticipatory bail of the Noticee, as reported by Mr. Anil Agarwal to SEBI, the Hon'ble Bombay High Court vide order dated 23.08.2018 has already granted anticipatory bail to him.
- (g) The Noticee has not indulged in any fraudulent and unfair trade practices so as to warrant any kind of punitive directions.
- (h) The legal proceedings before RBI are irrelevant to the SEBI Proceedings. Anil Agarwal and his group is trying to implicate the Noticee in the entire case. The Noticee had joined CSL as his first job which involved IPO documentation. He was mainly looking at the disclosures in the prospectus. He merely drew salary and was not part of any meeting concerning RKDL, except meetings for IPO documentation. Only Anil Agarwal, MD, and Jugal Thakkar, the President of Merchant Banking Operations of CSL, used to

attend the meetings. The Noticee was not part of any commercial dealings and had no decision taking capacity. The Noticee worked in CSL from 2007 to May 2012 during which he handled only two issues. He used to report to Anil Agarwal on day to day basis.

- (i) The Noticee was not aware about RKDL's Axis Bank A/c in Mumbai until listing. The same was opened without his knowledge. He was only aware about bank accounts at Chennai and Pondicherry, which were not used for IPO proceeds. Around 10 days prior to IPO opening at Mumbai, after a press conference, where KSM Rao, Anil Agarwal and Ravi Kumar were present, he saw that blank cheques were handed over to Anil Agarwal by Ravi Kumar. Later, the Noticee once enquired about the same with Anil Agarwal but did not get proper answer. He could not suspect that something was wrong with the RKDL IPO dealings until dispute arose in 2011. The Noticee submitted that directors of many companies having transaction with RKDL used to regularly come to visit Anil Agarwal. These companies appeared to be shell companies. Anil Agarwal was the main person and all-in-all in the Comfort Group and managed its entire finance. He was closely involved with the Merchant Banking operations.
- (j) The Noticee admits that he had signed the due diligence certificate of RKDL. However, he submits that while the offer document was signed in March 2010, the alleged money transactions happened just few days before IPO. Thus, the Noticee cannot be held liable in this regard.

(k) The Noticee was merely an employee of Comfort Securities Limited (CSL).

As an employee, he had never been authorized and was never been responsible for any financial transaction on behalf of CSL or its group entities. He had no role whatsoever to play in affairs of any entities connected with CSL or RKDL. While levelling the allegations, distinction between the management of CSL and himself as an employee has been completely lost sight of.

(l) The subject matter of the SCN pertains to the Noticee's role as an authorised signatory to CSL for the Due Diligence Certificate in the Initial Public Offer ("IPO") of RKDL. The Noticee submits that as an Authorised signatory to CSL for the Due Diligence Certificate in the IPO of RKDL, he had followed all the processes and undertaken the due diligence and fulfilled all his obligations as required in the ordinary course of business. At all points of time, he had acted in bonafide manner. It is pertinent to note that during the process of due diligence, certain other staff of CSL had also been involved and they were also under complete guidance of Anil Agrawal, Promoter, Director and Head of Merchant Banking Department of CSL.

(m) The Noticee was serving as a Vice President-MBD at Comfort Securities Ltd, from May 2007 to June 2012. It was his first employment with Comfort Securities Ltd and during the IPO of RKDL, he was just 27 years old while the management of CSL was qualified and experienced. He was working under the guidance of Mr. Anil Agrawal, Promoter, Director & Head of

Merchant Banking Department of CSL. During his tenure with CSL, CSL as a Merchant Banker had handled two IPOs including of RKDL apart from various open offers and rights issues.

(n) The Noticee's main profile was to handle assignments related to merchant banking division viz IPO, Rights Issues, open offers, valuation certifications under guidance of Mr. Anil Agrawal (Director and Head of Merchant Banking Department). Mr. Jugal Thacker (Director and President of Merchant Banking Department) also used to guide him. His last drawn salary was of approximate Rs. 80,000 per Month in Comfort Securities Limited. He had never held any position of director / management of Comfort Securities Limited nor any of its group entities. During the course of employment, he was not authorized and responsible for conducting any bank transactions in Comfort Securities Limited nor any of its group entities. He had never received any kind of benefit monetary or otherwise from Comfort Securities Limited except the Salary in lieu of my employment.

(o) The Noticee had resigned on 15.05.2012 and his resignation was accepted by CSL on 19.06.2012.

(p) In so far as siphoning of proceeds of IPO is concerned, the allegations in respect of the Noticee are in the air and are sweeping, bald and devoid of any particulars and no material/ evidence has been brought on record to connect him with other entities and to demonstrate even remotely as to how he was involved/ connived with others. He has been working with CSL as

vice president of merchant banking till June, 2012 and he had never been director or signatory of bank accounts of any of the companies part of Comfort Group nor the entities allegedly connected with Comfort Group or its Directors. He was merely an employee of Comfort Securities Limited. He had not been authorized and was not responsible for any financial transaction on behalf of CSL or its group entities. After giving the resignation from CSL, he did not have any type of relation with CSL or with management of CSL.

- (q) He was not even remotely linked to any of the entities nor has a single rupee transaction been done through his bank account etc. The SCN has not established any connection between the Noticee and any of the entities involved in alleged routing and siphoning of the funds. No benefit has been derived by the Noticee due to alleged routing and siphoning of the funds. Hence it is completely irrational to club him with management of Comfort Securities Limited for alleged routing and siphoning of the funds.
- (r) In so far as allegation in the SCN that the default in payment of Loan by Mr. Ravi Kumar, promoter and director of RKDL, from Union Bank has not been disclosed in the Red Herring Prospectus and the Prospectus of RKDL are concerned, it is submitted that, the Noticee in his official capacity had carried out due-diligence and during the process of due diligence, it was never communicated to him by the management of RKDL about such loan. Apart from this, as a matter of policy before filing Draft Red Herring Prospectus, undertaking had also been taken from RKDL stating "that the

information contained in the Prospectus is a true and fair representation about Ravi Kumar Distilleries Limited and the Prospectus omits nothing which could have an impact on the information contained therein, or which is a material disclosure for prospective investors." Additionally an undertaking stating "The Directors declare and confirm that no information/material likely to have a bearing on the decision of investors in respect of shares offered in terms of the Prospectus has been suppressed/ withheld and/or incorporated in the manner that would amount to mis-statement / mis-representation" has been obtained from RKDL. The Noticee had also relied upon report of Legal Advisors to the Issue of RKDL Le. Corporate Law Chambers, Mumbai, which did not state anything on the said default.

- (s) In so far as allegation in the SCN, wherein it is alleged that during 8th October, 2010 to 13th December, 2010, Comfort Intech Limited (CIL) had transferred Rs. 12.88 Crores and Fact Enterprises Limited (Fact) had transferred Rs. 2 Crores to RKDL, which had been repaid out of IPO Proceeds and the same fact has not been disclosed in Prospectus as bridge loan or otherwise, it is submitted that these Loan transactions had never been intimated to the Noticee either by RKDL or CIL. It is evident from para 64 and 69 of SEBI order dated 12th March, 2019 and also as per various proceeding initiated by RKDL against Comfort Group, which are before NCLT, EOW etc. and as specified in para 72 of SEBI order dated 12th March, 2019, it is evident that RKDL, and its directors were not even aware of the

transactions in their Axis Bank Account and Mr. Anil Agrawal had allegedly conducted these transactions by misusing blank signed cheques without informing to RKDL or its Directors. Hence the Noticee could have never been in situation to find out these transactions. It is to be considered that he was working as mere employee of CSL and was not part of management of CSL. The Management of CSL had never informed any financial dealing with management of RKDL or otherwise.

- (t) Since the RKDL had come out with IPO in year 2010 and there is long duration of approximate 9 years has elapsed and at this juncture, it is very difficult for Noticee to recollect what documents / certificates have been signed by him in the capacity of Vice President-MBD on behalf of CSL. However as per page 271 of Prospectus of RKDL it is stated that Due-Diligence certificate of IPO of RKDL is dated 22nd March, 2010, and the same is a matter of record. Without prejudice to above contentions, the Noticee would like to state that the funding transactions as stated in para 33 of SCN had been effected during 8th October, 2010 to 13th December, 2010 which is much after the date of signing of Due Diligence Certificate.
- (u) During investigation, replies were sought from CSL and its directors however, no opportunity has been granted by investigating officer to the Noticee to put forth his version of facts and due to this CSL and its directors had tried to saddle the blame of their own actions on him.
- (v) Clubbing the Noticee with the management of CSL has resulted in distorted conclusions against him. It is submitted no separate distinction

has been made with management of CSL and himself being ex-employee of CSL. He has been erroneously lumped together with management and promoters of CSL in the same basket, without ascertaining his limited role as employee and without appreciating the fact that no monetary transaction of him with any of the entities involved. In so far as allegation against him, the following should be noted:

- He was mere an employee of Comfort Securities Limited.
- He is not even remotely linked to any of the entities mentioned in para 9 to 31 of SCN, nor a single rupee transaction has been done through his bank account etc.
- No establishment of any connection of Noticee with any of the entity involved in alleged routing and siphoning of the funds
- He has have never held any position of director / management of Comfort Securities Limited nor any of its group entities.
- He has never held any shares of Comfort Securities Limited nor any of its group entities.
- He was not authorized and responsible for conducting any bank transactions in Comfort Securities Limited nor any of its group entities.
- He has never received any kind of benefit monetary or otherwise from Comfort Securities Limited except the Salary in lieu of his employment.

- Merely because he was employee of CSL and signee of Due-Diligence certificate, no adverse inference can be drawn against him.

(w) There are serious contradictions in statements of the directors of CSL against their own records and in light of such contradictions, no adverse inferences can be drawn against the Noticee myself on the basis of such statements. Some of the contradictions are depicted as below:

- The Board of Directors of CSL has stated that the Noticee had been overall in-charge of Merchant banking operations and the Board of Directors has no knowledge of that. This statement has been given in order to save their skin. It is pertinent to note that CSL had filed its own Draft Prospectus dated 5th January, 2011 with SEBI. On page 64 of its DRHP, it has been clearly mentioned that Mr. Anil Agrawal is involved in the activities related to Merchant Banking and that he has high expertise in business advisory and Investments, Capital Markets, Mutual Funds and taxation. Also on page 69 of its DRHP in the Management Organization Chart, Merchant Banking Division was shown under Mr. Anil Agrawal. The said DRHP has been signed by the entire board of directors of CSL and while representing to SEBI in the instant proceedings, they have changed the stand and held the Noticee overall in-charge of merchant banking to save themselves.
- It is pertinent to note here that Mr. Anil Agrawal was the signatory in bank accounts of CSL and CIL. While granting loan to RKDL, he has not bothered to inform the Noticee or to disclose the same in prospectus of

RKDL as it is very clear from the above points he was not only involved in the merchant banking operations but was also heading the merchant banking division.

- As per para 60 of SEBI order dated 12th March, 2019, Noticee No. 12 i.e. Mr. Jugal Thacker has stated to SEBI that he was independent director of CSL, however as per page 64 of Draft Red Herring Prospectus of CSL, it is mentioned clearly that Mr. Jugal Thacker is non independent director. In addition to this, he was named as President of Merchant Banking Division in the application submitted by CSL to SEBI for registration as Merchant Banker in 2008 and which can be verified by SEBI through its internal records.
- Hence it can be concluded that the Noticee was not overall in charge of Merchant Banking division but was a part of the Merchant Banking division and was working under the guidance of Mr. Anil Agrawal and Mr. Jugal Thacker and had to report to the senior official i.e. Mr. Anil Agrawal on nearly daily basis to keep him updated.

(x) The officials of CSL know fully well that the matter of RKDL and the criminal matter pertaining to RBI are completely different, clearly distinguishable and not connected to each other. The officials of CSL had submitted to SEBI, an order passed by Hon'ble Session Court, Dindoshi Goregaon rejecting anticipatory bail of the Noticee. However they had intentionally hidden the fact that the Noticee had challenged the said order

in Hon'ble High Court of Bombay. Hon'ble High Court of Bombay vide its order dated 23.08.2018 has granted Anticipatory Bail to the Noticee. The matter is sub-judice and no inferences can be drawn against him on the basis of such litigation specifically since this impending criminal litigation has no relation whatsoever with matter related to investigation of RKDL.

(y) The Noticee requires to do the cross examination of all those persons whose statements / replies / submissions would be relied upon by SEBI in case of issuing any adverse directions upon him.

CONSIDERATION OF ISSUES:

10. I have examined the facts of the case, the charges against the Noticee and the submissions made by him in his defense. At the outset, I note from the order dated March 12, 2019 that the directors of CSL (Noticee nos. 9 to 14 named in the said order) have already been held liable for siphoning off of funds from the IPO proceeds of RKDL, for routing of funds to entities for applying in the IPO of RKDL, for various mis-statements and non-disclosures in the offer document of CSL regarding certain bridge loans taken by RKDL and for failing to exercise independent due diligence and professional judgement. The instant proceedings are limited to determining the role of the Noticee in commission of various violations and pass appropriate directions, if any, since the matter has been remanded back to SEBI for fresh determination. Hence, the order dated March 12, 2019 may be read and treated as part of this order.

11. As regards the charges of routing of funds and siphoning off of funds from IPO proceeds of RKDL against the Noticee, I note that the charges were made by clubbing him with the directors of CSL on the basis that he was the authorized signatory of CSL (the BRLM) for the due diligence certificate for the IPO of RKDL. However, I note that while the directors of CSL, who have been held guilty of such routing and siphoning off of funds were directly or indirectly connected to the entities through whom such routing/siphoning of funds was done, there is nothing on record which connects the Noticee to such entities. In this regard, I have considered the submissions of the Noticee that he was not a director and was working merely as an employee of CSL and had no decision making power in CSL. I have also taken note of the fact that no connection has been established between the Noticee and the entities through whom funds has been routed or siphoned off. The Noticee has also averred that he was not vested with any powers to operate the bank accounts of CSL. I find that there is nothing concrete to suspect the Noticee's involvement in the diversion of IPO funds. Considering all these factors in totality, I am of the opinion that the charges of routing and /or siphoning of funds against the Noticee, as alleged in the SCN, do not stand established. Accordingly, the charges of violation of the various provisions of the PFUTP Regulations against the Noticee, as alleged in the SCN, are dropped.

12. As regards the charges of mis-statements and non-disclosure of material facts in the offer document of RKDL, which pertain to certain bridge loans taken by RKDL and the default in payment of a loan by Shri Ravi Kumar, I note that the Noticee has submitted the following in his defense:
- (a) He worked under the supervision and guidance of Shri Anil Agarwal (Director and Head of Merchant Banking Division) and Shri Jugal Thacker (Director and President of Merchant Banking Division)
 - (b) The claim of the directors of CSL that merchant banking activities were entirely looked after by the Noticee is false, since the DRHP of CSL, under the work profile of Mr. Anil Agarwal mentioned that he was involved in the activities related to the merchant banking.
 - (c) The pre-IPO loan transactions of RKDL with the entities connected to CSL and/or its directors had never been reported to him, either by RKDL or Comfort Intech Limited (CIL).
 - (d) The Due Diligence Certificate of IPO of RKDL is dated 22nd March 2010, whereas the pre-IPO loan transactions had happened during October 08, 2010 to December 13, 2010, which is much after the date of signing of Due Diligence Certificate.
 - (e) As regards the default in payment of Loan by Mr. Ravi Kumar, promoter and director of RKDL, from Union Bank not having been disclosed in the Red Herring Prospectus and the Prospectus of RKDL, the same was never communicated to him by the management of RKDL during the process of due diligence. Further, as a matter of policy before filing Draft Red Herring

Prospectus, undertaking had also been taken from RKDL about the truthfulness and fairness of disclosures.

(f) The criminal matter pertaining to the RBI where Shri Anil Agarwal has accused the Noticee of forgery is totally unconnected with the present proceedings.

13. I note that the fact of mis-statements and non-disclosures pertaining to bridge loans of Rs.12.71 Crores taken by RKDL from CIL during October 08, 2010 to December 13, 2010 and Rs.2 Crore taken from Fact on December 06, 2010, against which Rs.12.88 Crore and Rs.2.01 Crore was repaid to CIL and Fact respectively (i.e. total Rs.14.89 Crores) out of IPO proceeds, which was approx. 20.23% of the size of IPO, has already been established vide Order dated March 12, 2019 (ref: paragraphs 82 to 88 of the Order dated March 12, 2019). I note that the Noticee has not denied the findings that the said loans were in the nature of bridge loans and were not reported in the offer documents. However, the Noticee has contended that he was not responsible for such mis-representation and non-disclosures since he was not aware of the said bridge loans. Thus, I note that the only issue which remains to be determined is whether the Noticee was in any way responsible for such mis-statements and non-disclosures or not.
14. As regards the mis-representation / non-disclosure of loan default by Mr. Ravi Kumar, the promoter and director of RKDL, I note that there is no concrete evidence to show that the company had disclosed the same to the merchant

banker. Considering the same, RKDL and its directors have already been held guilty of such non-disclosure in the Order dated March 12, 2019. As regards the non-disclosures and mis-representations about the abovementioned bridge loans, I note that the Noticee has repeatedly contended that he was not aware about the loan transactions. Further, he has also contended that the Due Diligence Certificate in question was signed in March 2010 whereas the loan transactions had taken place during October-December 2010. However, I note that even though the Noticee has denied having knowledge of the loan transactions as referred to above, his submissions are difficult to believe for the following reasons:

- (a) I note from the Noticee's submissions that he was acting as Vice President, Merchant Banking Division at CSL. Thus, he was occupying a very high position in Merchant Banking Division of CSL. Since he had signed the due diligence certificates, he cannot claim ignorance and avoid liability for the same.
- (b) The Noticee has submitted that he was not aware about the Axis Bank account opened by RKDL, which was used for pre-IPO and post IPO loan transactions and repayments. However, I note that the said account was the same one which was used by RKDL for credit of IPO proceeds (i.e. A/c. No. 910020037719618). Thus, it is very unlikely that the Noticee was not aware of the bank account which was supposed to be used for credit of IPO proceeds.

(c) Out of Rs.12.71 Crores received by RKDL from CIL, Rs.2 Crore was received on October 08, 2010 and Rs.20 Lakh was received on December 08, 2010 in RKDL's bank account with Tamilnad Mercantile Bank (A/c No. 055150050336277). The Noticee has submitted that he was not aware about RKDL's Axis Bank account. However, he has not said the same about the abovementioned account with Tamilnad Mercantile Bank. Thus, it is implied that the Noticee was aware of the transactions happening in the said bank account of RKDL.

(d) The Noticee has submitted that the due diligence certificate signed by him was dated March 22, 2010 whereas the abovementioned transactions had happened during October 08, 2010 to December 13, 2010. However, I note from the records that contrary to the claim of the Noticee, he had signed due diligence certificates at various stages of the IPO process. I note from the records that such certificates are dated 22/03/2010, 29/11/2010, 07/12/2010 and 09/12/2010 and thus, they pertain to the time period when the loan transactions were taking place.

15. I note that Regulation 8(2) (b), (e) and (f) of the ICDR Regulations, 2009 require a lead merchant banker to submit due diligence certificates at various stages of the IPO. Further, Regulation 64(1) of the ICDR Regulations stipulates that the lead merchant banker shall exercise due diligence and satisfy himself about all the aspects of the issue including veracity and adequacy of disclosure in the offer document. Similarly, Clauses 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct

for Merchant Bankers specified under Schedule III read with Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992 cast a duty on a merchant banker (i) to make all efforts to protect the interest of investors, (ii) to maintain high standards of integrity, dignity and fairness in the conduct of its business, (iii) to exercise due diligence, ensure proper care and exercise independent professional judgment at all times, (iv) to ensure that adequate disclosures are made to investors to enable them to make a balanced and informed decision, (vi) to ensure that investors are provided with true and adequate information without making any misleading claims or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision, and (vii) to maintain an appropriate level of knowledge and competence and abide by the provisions of SEBI Act, 1992 and other applicable laws.

16. The abovementioned legal provisions are quite clear in their import and required the Noticee to act in a responsible manner before putting his signature on the due diligence certificates. The due diligence certificates issued by a merchant banker provides reassurances to a lay investor about the disclosures made by the company to be true and free of mis-representation. However, in this case, considering the various facts and circumstances, as listed under para 14 above, I am of the opinion that there are adequate and reasonable grounds to believe that the Noticee, inspite of being aware of the abovermentioned loan transactions which were in the nature of bridge loans and were repaid out of

the IPO proceeds, failed to ensure their proper disclosure and to avoid misrepresentation. The Noticee, by failing to disclose the same in the offer documents, had failed to exercise due diligence and independent professional judgment expected from him as the signatory to the due diligence certificate pertaining to the IPO of RKDL. It is quite apparent that by signing the due diligence certificates without exercising the requisite care, he had acted in an irresponsible and perfunctory manner. Therefore, it is established that the Noticee has violated the provisions of Regulation 64(1) and 8(2) (b), (e) and (f) of SEBI (Issue of Capital & Disclosure Requirements, 2009 and Regulation 13 read with Clause 1, 2, 3, 4, 6, 7 and 21 of the Code of Conduct for Merchant Bankers specified under Schedule III in the SEBI (Merchant Bankers) Regulations, 1992.

Directions:

17. In view of the foregoing, in compliance with the Order of the Hon'ble SAT dated May 31, 2019 and in order to protect the interest of the investors and the integrity of the securities market, I, in exercise of powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 hereby restrain the Noticee from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of one year from the date of this order.

18. This Order shall come into force with immediate effect.
19. A copy of this order shall also be served upon the Exchanges and the Depositories.

DATE: FEBRUARY 14, 2020

PLACE: MUMBAI

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA