

WTM/AB/IVD/ID1/9413/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 107 OF SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENT) REGULATIONS, 2009.

In respect of:

Noticee no.	Noticee Name	PAN
1.	M/s. Birla Pacific Medspa Ltd. CIN No. L85100MH2008PLC184689	AAAFK1583C
2.	Mr. Yashovardhan Birla	AAJPB2505N
3.	Dr. Abhijit Prabhakar Desai	AEKPD9806M
4.	Mr. Palaparthi Venkata Ramana Murthy	ABRPM1271B
5.	Mr. Venkateshwaralu Nelabhotla	AADPV8720H
6.	Mr. Mohandas Shenoy Adige	AARPA3809L
7.	Mr. Vijay Agarwal	AABPA9526A
8.	Mr. Anoj Menon	AHTPM6650N
9.	Mr. Rajesh Shah	AAGPS9485D
10.	Mr. Upkar Singh Kholi	AAIPK0833F
11.	Mr. Tushar Dey	AHEPD2060J
12.	Mrs. Khyati Vinodbhai Mashru / Mrs. Khyati Hemang Danani	AOVPM3715M

(The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as “the Noticees”)

In the matter of Birla Pacific Medspa Ltd.

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1. Present proceedings have been initiated against the Noticees, vide a show cause notice dated March 27, 2017 (hereinafter referred to as “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), to the

Noticees, under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Regulation 107 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations, 2009**”) for violation of Regulations 57(1), 60(4) (a) and 60 (7) (a) of ICDR Regulations, 2009 and Regulation 57 (2) (a) read with Clause 2 (XVI) (B) (2) of Part A of Schedule VIII of ICDR Regulations, 2009.

2. Facts stated in the SCN and the allegations made therein are narrated in brief, as hereunder:

- a. Investigation was carried out for the period July 07, 2011 to July 15, 2011 (**‘Investigation Period’**) to find out the violation of securities laws in the script of Birla Pacific Medspa Ltd. (**‘BPML’**).
- b. BPML came out with offer documents namely Red Herring Prospectus dated March 18, 2011 and Prospectus dated June 29, 2011 (hereinafter collectively referred to as **‘Prospectus’**) at the time of its initial public offer with the following objects of the issue:
 - i. To meet capital expenditure towards establishing 55 outlets of Evolve Medspa across various cities and places;
 - ii. To meet expenses towards brand promotion;
 - iii. To meet the working capital requirements for running the above centres;
 - iv. To meet Issue related expenses;
 - v. To enlist Company’s Shares on Bombay Stock Exchange Limited (BSE).
- c. It was disclosed in the Prospectus that BPML operated healthcare centres under the brand name EVOLVE. As on June 29, 2011, BPML had five self-operated EVOLVE centers functioning in Mumbai.

- d. The fund requirement for meeting the objects of the issue was disclosed as shown below:

Sr. No.	Particulars	Amount (in Rs.Crore)
1	Capital Expenditure for Setting up 55 Evolve centers across the country (Rs. 0.9 crore each for one clinic)	49.50
2	Working Capital Requirements	0.70
3	Brand Promotion	6.00
4	Issue Expenses	6.50
5	Contingencies	1.23
6	Preliminary and preoperative expenses	1.23
	Total	65.17

- e. BPML issued 6,51,75,000 equity shares of Rs. 10/- each at a price of Rs. 10/- per equity share, resulting into aggregate issue size of Rs. 65.17 crores through 100% book building. The issue constituted 58.12% of the post issue paid-up capital of BPML. The BPML issue was graded by M/s Brickworks Ratings India Pvt Ltd and was assigned "BWR IPO Grade 2" indicating "below average fundamentals."
- f. The issue opened on June 20, 2011 and closed on June 23, 2011. Issue was subscribed 1.18 times. The category wise bidding details are as under:

Particulars	Subscription ratio	Applied Qty	No. of applicants	Allotted Qty	% to Total Allotted Qty	No. of allottees
Non Institutional Investors	1.00	1614000	5	1614000	2.48%	5
Qualified Institutional Buyers	1.00	33812000	5	33812000	51.88%	5
Retail Individual Investors	1.39	41441000	3249	29750366	45.65%	2966
Overall subscription	1.18	76867000	3259	65176366	100.00%	2976

- g. The scrip of BPML got listed on BSE on July 07, 2011. Investigation revealed that the price of the scrip had seen sharp volatility on listing day, closing on Rs. 25.35 - 154% more than issue price of Rs. 10 per share.

- h. The Price-Volume data of the scrip on BSE for the period during and after the Investigation Period is given below:

Period	Dates	Opening Price on first day of the period (Rs.)	Closing price on last day of the period (Rs.)	Low price during the period (Rs.)	High Price during the period (Rs.)	Weighted Average price in the period (Rs.)	Avg. no. of shares traded during the period
During Investigation Period	July 07, 2011 – July 15, 2011	10.1	15.75	10.1	30.7	18.09	2,40,59,598
After Investigation Period	July 18, 2011 – Aug 17, 2011	15.65	19.9	14.2	21.4	18.73	23,83,417

- i. The trading volume during the Investigation Period was very high as compared to the trading volume after the Investigation Period. This was due to the high listing day volume of 13,58,59,684 shares on July 07, 2011. On the first day of Investigation Period, the scrip price opened at Rs. 10.1 (near the face value) and closed at Rs. 15.75 at the end of Investigation Period. The average price of the scrip during and after the Investigation Period was Rs. 18.09 and Rs. 18.73 respectively.
- j. On the listing day (July 07, 2011), 2205 out of the 2966 retail allottees had sold their shares (2,49,81,435 shares in total). All 5 HNI clients had sold all of their shares (16,14,000 shares). 2 of the QIBs had also sold shares (10,90,500 shares) on the listing day. The counterparties to these retail clients were analyzed and the same was compared with the net buyers and loss makers on the listing day. Following are the tabular details of the analysis:

Net buyers/loss makers on listing day/Counterparties to IPO allottees' sell trades:

Client Name	Gross Buy	Gross Sell	Net Qty.	Total Buy Qty. from the Allottee	Number of Alottees
Vikabh Securities Pvt Ltd	5849568	500000	5349568	1940834	150
V P Patel	16308562	11013467	5295095	6339818	537
Marutinandan Infosolutions Pvt Ltd	2257755	0	2257755	1476997	112

Client Name	Gross Buy	Gross Sell	Net Qty.	Total Buy Qty. from the Allottee	Number of Alottees
Vikabh Securities Pvt Ltd	5849568	500000	5349568	1940834	150
V P Patel	16308562	11013467	5295095	6339818	537
Orbit Financial Consultants Pvt Ltd	1701001	1000	1700001	1065908	91
Gateway Financial Services Ltd	1635752	35752	1600000	1468967	127
Jalan Cement Works Ltd	1600000	0	1600000	1410159	120
Rupak Trading Pvt Ltd	1152486	0	1152486	882628	71
Saamil Bhavnagari Lopa	2168860	1135000	1033860	1083693	78
Man Mohan Damani	1000000	0	1000000	69464	3
Pradeep Kumar Saraogi	1000000	0	1000000	711304	68
Total				1,64,49,772	1,357

- k. It is alleged that BPML had transferred Rs. 7 Crore each to entities named Sanjukta Vanijya Pvt Ltd (**'Sanjukta Vanijya'**) and Darshan Tradelink Pvt Ltd (**'Darshan Tradelink'**) on July 07, 2011 as pass-through entities from IPO proceeds, which were then advanced to net buyers on listing day namely Jalan Cement Works Ltd (Rs.3 Cr) (**'Jalan Cement'**), Marutinandan Infosolutions Pvt Ltd (Rs. 2.29 Cr) (**'Marutinandan'**), Orbit Financial Consultants Pvt Ltd (Rs. 2 Cr) (**'Orbit'**), Rupak Trading Pvt Ltd (Rs. 2.29 Cr) (**'Rupak Trading'**). Together, these four entities paid Rs. 12.52 Cr on July 07, 2011 to their broker GRD Securities towards their pay-in obligation against buy trades in the scrip of BPML on listing day. These four entities traded through broker GRD Securities. Summary of fund flow is presented below:

Client Name	Gross Buy Value	Funds Received from SanjuktaVanijya	Funds Received from DarshanTradelink	Funds transferred to GRD Securities
Jalan Cement Works Ltd	2,12,85,000	1,00,00,000	2,00,00,000	30000000
Marutinandan Infosolutions Pvt Ltd	3,21,01,843	2,29,00,000	0	22900000
Orbit Financial Consultants Pvt Ltd	2,38,32,675	0	2,00,00,000	20000000
Rupak Trading Pvt Ltd	1,56,91,075	2,19,00,000	3,00,00,000	52300000
Total	9,29,10,593	5,48,00,000	7,00,00,000	12,52,00,000

- l. The above mentioned four net buyers after receiving funds from the proceeds of the IPO from BPML, acquired a net of 67,11,242 shares (value of approx. Rs. 9.29 crores) i.e. 21.56% of the total delivered quantity of 3,11,08,577 shares on July 07, 2011 and 10.3% of the issue size. Further, they took delivery of 99.98% of their total buy volume against market average of 22.90% on the day. On the day of listing, the price increased and it closed at Rs. 25.35. Orbit and Marutinandan sold their holding in BPML during Aug-Dec 2011. Rupak Trading was trading in BPML till January 2012 and Jalan Cement was trading in BPML till December 2011.
- m. In violation of the principles of fair market where the price of a scrip is to be decided on the demand and supply, the above buyer entities namely Jalan Cement, Rupak Trading, Orbit, and Marutinandan were the artificial buyers of shares of BPML who were financed by the BPML. The counterparties to the purchase of shares by these four entities included the retail allottees and some NIIs. QIBs didn't appear as counterparty to these purchases. These entities distorted the market equilibrium of trading. It is also alleged that Rs. 14 Cr of the proceeds of the IPO was diverted by BPML for operations in the equity market.
- n. It is alleged that BPML routed the funds of IPO to the above said four entities who eventually traded in the scrip with the help of funds received from BPML for providing buying support in violation of the principles of fair market principle and thereby the act of BPML and its directors alleged to be fraudulent which resulted on the fraud on the investors of BPML. These trades acted as a fraud on the investors by creating a misleading appearance of trading in the securities market and by supporting the demand (buy) and therefore the price of the scrip.
- o. By providing money out of the IPO proceeds to the above entities and these entities buying the shares of BPML with the said proceeds, BPML has facilitated purchase of its own securities out of the IPO proceeds. BPML has thus violated section 77 of Companies Act, 1956 as per which "No public company, and no private company which is a subsidiary of a public

company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company"

- p. The schedule of implementation of BPML as disclosed in the Prospectus (page 27 of Prospectus) mentioned that 15, 15 and 25 centers would be completed during FY 2011-12, 2012-13 and 2013-14 respectively. However, no such clinic was opened. Thus, BPML had failed to utilize the IPO proceeds as per the objects of the issue stated in the Prospectus and instead had diverted the IPO proceeds to various entities.
- q. BPML received IPO proceeds of Rs. 64,17,63,660.00 (Rs. 64.17 crores) in its bank a/c (Yes Bank, Nariman Pt Mumbai – A/c No. 4840000358384) on July 06, 2011. From these IPO funds in Yes Bank a/c, on July 6 and July 7, 2011, funds worth Rs. 34.91 Crores were transferred by BPML to various entities namely Laxmi Trading Co, N P Enterprise, New Fashion, K V Impex, J C Enterprise, Vora Associates, Subhshree Hirise Pvt Ltd, Sanjukta Vanijya, Darshan Tradelink, Skylight Distributors Pvt Ltd. The details of the 1st layer transfers are given in following table:

1st Layer Fund flow out of IPO proceeds from BPML's Yes Bank a/c No. 4840000358384			
Date	From(Name)	To(Name) -1st layer	Sum of Amt (Rs.crore)
July 06, 2011	BPML's Yes Bank a/c No. 4840000358384	DarshanTradelink	7.00
July 06, 2011		J C Enterprise	2.00
July 06, 2011		K V Impex	2.50
July 06, 2011		Laxmi Trading Co.	3.00
July 06, 2011		N P Enterprise	3.00
July 06, 2011		New Fashion	3.00
July 06, 2011		SanjuktaVanijya	7.00
July 06, 2011		Skylight Distributors	1.00
July 06, 2011		SubhshreeHiris	1.00
July 06, 2011		Vora Associates	2.16
July 07, 2011		Birla Power	1.50
July 07, 2011		N P Enterprise	0.61
July 07, 2011		New Fashion	0.62
July 07, 2011		Vora Associates	0.53
Total			34.91

- r. These funds from above mentioned accounts in 1st layer were again transferred to other entities as per following table:

Date	From(Name)	To(Name)	Sum of Amt (Rs.crore)
July 07, 2011	Darshan Tradelink	Jalan Cement Works	2.00
		Orbit Financial Consultants	2.00
		Rupak Trading Pvt Lt	3.00
			7.00
July 06, 2011	J C Enterprise	Jaya Enterprise	0.30
		Kaveri Enterprise	1.40
		Max Enterprise	0.30
			2.00
July 06, 2011	Laxmi Trading Co	Charm Enterprises	0.80
		Kaveri Enterprise	1.60
July 07, 2011	Laxmi Trading Co	Muskan Trading Co	0.60
			3.00
July 06, 2011	N P Enterprise	Charm Enterprises	0.80
		Jaya Enterprise	0.90
		Max Enterprise	0.40
July 07, 2011	N P Enterprise	Kiran Enterprises	0.28
		Mitesh Enterprises	0.50
		Muskan Trading Co	0.50
			3.38
July 06, 2011	New Fashion	Charm Enterprises	0.40
		Jaya Enterprise	0.30
		Kaveri Enterprise	0.85
		Max Enterprise	0.30
		Mitesh Enterprises	0.50
			2.35
July 07, 2011	New Fashion	Charm Enterprises	0.34
		Eden Financial Service	0.23
		Mitesh Enterprises	0.50
July 06, 2011	SanjuktaVanijya	Jalan Cement Works	1.00
July 07, 2011	SanjuktaVanijya	Marutinandan	2.29
		Rupak Trading Pvt Lt	2.19
			6.55
July 07, 2011	Rupak Trading Pvt Lt	Grd Securities Ltd	2.23
Grand Total			26.51

- s. Contrary to the claim of BPML that advance against the interior design work at 'Evolve' centers, the payment was made to them as first layer for payment to the ultimate net buyers. Similarly, contrary to the claim of BPML, the payment made to N P Enterprise, New Fashion, Vora Associates, Laxmi Trading, J C Enterprise (reply of BPML dated August, 06, 2013) was not for buying any medical instrument.

- t. It was observed from Bank KYC documents that N P Enterprise, New Fashion, Vora Associates, Laxmi Trading, J C Enterprise are proprietorships dealing in cloth trading, commission agent etc and have no experience in providing medical equipment. These entities are also related to each other through family members or relatives. These funds have not been received back by BPML (reply of BPML dated August, 06, 2013 and dated November 07, 2014). Further Laxmi Trading Company and N P Enterprise are untraceable.
- u. BPML in its reply dated July 27, 2012 had submitted that the payments were made in advance to avoid any delay in execution of the project. However, in clear contradiction to this, within 4 days of listing, on July 11, 2011, BPML board decided to go slow on setting up of Evolve clinic citing not so good response at existing clinics and decided to deploy the surplus money as ICDs to group companies. The very purpose of IPO i.e. setting up of 55 clinics was defeated by this board resolution within 4 days of listing. It is alleged that BPML did not open even a single new clinic and had transferred IPO money to entities who have no experience in interior design or medical equipments supply. BPML later on changed the IPO objectives and invested in Group Company such as Birla Kerala Vaidyashala (reply of BPML dated November 07, 2014). BPML had also failed to provide any evidence of setting up of IVF centres as per changed IPO objects. In its letter dated August 06, 2013, BPML again submitted reply which contained statements claiming capital expenditure through advances to various entities as per new objective without any substantiating evidence of actual completion of work.
- v. Thus, all these financial transactions, shown by BPML as being advances for the purpose of fulfilling issue objects, were fraudulent and some of them were also used to fund purchase of shares of BPML and support price of the shares on listing day.
- w. It is alleged that BPML had no plans to utilize money as per disclosures made in the Prospectus and thus, BPML has played fraud on IPO subscribers who had trusted BPML management with their money to be

utilized as per issue objectives. BPML has thus deviated from issue objects and diverted money from IPO proceeds worth Rs. 33.4 crores (as calculated from BPML reply dated August 06, 2013). It is alleged that funds worth Rs. 33.4 Cr was siphoned off by BPML through different entities e.g. N P Enterprise, New Fashion, Vora Associates, Laxmi Trading, J C Enterprise, Subhshree Hirise Pvt Ltd, Skylight Distributors Pvt. Ltd. and K V Impex in the name Advances for IPO issue objectives such as interior design, purchase of medical equipments etc.

- x. It is further alleged from the bank account statement of BPML and from various replies of BPML including reply dated July 02, 2012 and August 17, 2012, that BPML had extended Inter Corporate Deposits ('ICD's') from IPO issue proceeds to its group companies Birla Cotsyn Ltd, Birla Power Solutions Ltd, Birla Infrastructure Ltd etc. in violation of the disclosures made in Prospectus regarding interim use of IPO proceeds. As per Prospectus, there is no provision for ICDs to group companies. As per the Prospectus, pending utilization the IPO money were to be invested in interest or dividend bearing liquid instruments, deposits.
- y. Further in violation of the disclosure made in the Prospectus, the funds transferred through Sanjukta Vanijya and Darshan Tradelink to Jalan Cement, Rupak Trading, Orbit, and Marutinandan were used by these respective entities towards pay-in obligation of their listing day trades. It is alleged that this is clearly in contrast with BPML's disclosure in prospectus that "Issue proceeds will not be used for equity instruments"
- z. As per the disclosures in the Prospectus, the IPO proceeds pending utilization were to be invested only in liquid instruments, which didn't include "corporate deposits". However, in its meeting dated July 11, 2011 i.e. after listing of BPML shares, within 4 days, the board had passed resolution of approval for investment in Birla Group companies through ICDs @ rate of 15 % interest per annum.

aa. Further as per reply dated August 17, 2012 of BPML, BPML had extended in total Rs. 29.395 crores to various group companies as ICDs between July 7, 2011 to May 31, 2012. BPML had also submitted that out of Rs. 29.395 crores, it received back ICDs totalling only Rs. 6 crores as on August 17, 2012. BPML mentioned that it had received interest of only Rs. 7,83,000 net of TDS from these ICDs. BPML in its reply dated August 17, 2012 had stated that as per ICD agreement the interest was payable upon return of ICD's. However, interest was not received even on ICD's worth Rs. 6 crores in which principal was received back.

Group Company (Date of ICDs 07/07/2011- 31/05/2012)	ICD Amount in Rs. Crore	ICD Repayment amount in Rs. crore	Interest on ICDs Receivable/received in Rs. crore
Birla CotsynInd	0.6	NIL	0.1814 (*received 0.0108)
Birla Infrastructure Ltd	1.06	NIL	0.3417
Birla Research & Lifesciences Ltd	5.135	5.135 (*shares of Birla Kerala Vaidyashala received)	0.6582
Birla Surya Ltd	5	4	0.3505
Birla Power Solutions Ltd	19.21	3.82	4.80 (*received 0.065)
Birla Kerala Vaidyashala Pvt Ltd	0.535	0.05	0.06
	31.54	13.01 **	6.39 *

Out of Rs. 31.54 crores

unpaid ICD Rs. 18.54 crore

*** paid ICD Rs. 13.01 crore - Rs. 5.135 is appropriated towards shares of Birla Kerala Vaidyashala as per new objects of issue.*

** received interest of Rs. 0.0783 crore only as per reply dated August 17, 2012- unpaid interest Rs. 6.32 crore*

bb. ICD's worth Rs. 18.54 crore, and interest of Rs. 6.32 crore remained unpaid as on November 07, 2014. The amount from IPO proceeds worth Rs. 18.54 crore remain unutilized, diverted and non-recoverable. Unpaid interest upon which amounts to Rs. 6.32 crore.

cc. It can be seen that money totalling Rs. 33.4 crore advanced out of IPO proceeds to entities including West Bengal based SkyLight Distributors Pvt. Ltd., Subhashree Hirise Pvt. Ltd., and cloth merchants including N P Enterprise, New Fashion, Vora Associates, Laxmi Trading, J C Enterprise and K V Impex, has not been received back by BPML. Further Laxmi

Trading Company and N P Enterprise are untraceable. Thus, this money has been siphoned off.

dd. From the remaining money, regular ICD's were issued by BPML to its group companies. Out of total amount of Rs. 31.54 crores issued as ICD's, it received back ICD's totalling only Rs. 13.01 crores as on November 07, 2014. ICD's worth Rs. 18.54 crore remain unpaid along with unpaid interest which amounts to Rs. 6.32 crore. BPML received interest of only Rs. 7,83,000 from these ICD's. The said use of funds as ICD's was not even disclosed in the Prospectus of BPML.

ee. Money (Rs. 14 crores) from issue proceeds was also advanced to some entities who in turn transferred it to net buyers of BPML scrip on listing day. Apart from few issue expenses and few receipts of advertising expenses, BPML, as on November 07, 2014, has not been able to show utilization of IPO proceeds as per Issue Objects with evidence. No new clinic has been setup. Therefore, the money from IPO proceeds has not been utilized as per the issue objects as disclosed in the Prospectus.

ff. The actual amount spent by BPML, which it is claiming to have utilized as per IPO objects has been in the form of advances given to various entities. These claims by BPML towards utilization of IPO proceeds have not been substantiated with any evidence in the form of agreements, quotations, bills, receipts, photographs of centers etc. Instead, BPML had passed board resolution to go slow on setting of new clinics and later on changed the issue objects itself. And as on September 08, 2014 only two employees including the CEO were working in back office of BPML. The scrip has been suspended from trading by BSE due to penal reasons. The scrip last traded on June 22, 2015.

gg. It is alleged that BPML had come out with IPO to fund group companies operations through ICD's and siphoning off money from genuine investors. It is alleged that the issue of ICD's, non-receipt of interest and investment in equity instruments is in contradiction to the disclosures made in the

Prospectus by BPML. It is further alleged that the acts of BPML tantamount to mis-statements with regards to disclosures made by it in the offer document. BPML has deviated from IPO objectives, mis-utilized IPO funds, diverted and siphoned off money from IPO proceeds.

hh. It is thus alleged that BPML and its directors who authorized issue of ICDs in board meeting dated July 11, 2011 namely Noticee no. 2 to 11 and Company Secretary Noticee no. 12, have violated provisions of Regulations 57(1), 60(4) (a) and 60 (7) (a) of ICDR Regulations, 2009 and Clause 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57 (2) (a) of ICDR Regulations, 2009.

Personal hearing, replies and written submissions:

3. Personal hearing for Noticee no. 3 was held on October 1, 2019 and October 18, 2019, for Noticee no. 5 was held on September 24, 2019, for Noticee no. 7 and 8 was held on July 25, 2019 and September 24, 2019, for Noticee no. 9 and 10 was held on July 25, 2019 and August 22, 2019, for Noticee no. 11 and 12 was held on August 22, 2019 and for Noticee no. 6 was held on July 25, 2019. I note that Noticee no. 4 was granted an opportunity of hearing on August 22, 2019, but he failed to avail the same. I note that Noticee no. 1 was granted an opportunity of hearing on two occasions i.e. July 25, 2019 and August 22, 2019, but it failed to appear on any of the days. I also note that Noticee no. 2 was granted an opportunity of personal hearing on four occasions i.e. July 25, 2019, August 22, 2019, October 1, 2019 and October 18, 2019, but Noticee no. 2 did not avail the opportunity of personal hearing on any of the four occasions. Noticee no. 2 has consistently maintained that he has not been granted complete inspection of documents in the matter, hence, he cannot avail the opportunity of personal hearing or file his merit based reply. In its replies, SEBI had intimated that the inspection of the documents relied upon in the SCN has already been provided to Noticee no. 2 and in one communication dated October 7, 2019, it was even informed by SEBI to Noticee no. 2 that October 18, 2019 would be the last and final opportunity of personal hearing being granted. However, I note that, Noticee no. 2 did not avail any of the opportunities of personal hearings that were granted to him.

4. On the basis of their request, Noticee no. 2, 5, 6, 7, 8 and 9 were granted inspection of documents that were relied upon by the SCN. I note that Noticee no. 1 had also sought inspection of documents and accordingly, it was granted an opportunity of inspection of documents on August 20, 2019. However, Noticee no. 1 has failed to avail the opportunity of inspection of documents on the said date.
5. I note that Noticee no. 1 has not filed any merit based reply to the SCN. Noticee no. 2, inter alia, vide his replies dated July 9, 2019, September 25, 2019 and email dated July 21, 2020 has raised certain contentions to the allegations in the SCN. I also note that Noticee no. 4 has not filed any reply to the SCN. I also note that Noticee no. 3 has filed its merit based reply dated October 18, 2019, Noticee no. 5 has filed its merit based reply dated September 24, 2019, Noticee no. 6 has filed its merit based reply dated October 24, 2017 and July 15, 2019, Noticee no. 7 has filed its merit based reply dated July 25, 2019 and written submissions dated October 1, 2019, Noticee no. 8 has filed its merit based reply dated August 19, 2019 and Noticee no. 9 and 10 have filed their merit based replies dated August 21, 2019 and written submissions dated September 16, 2019. Noticee no. 11 has not filed any reply to the SCN. Noticee no. 12 has filed her merit based reply dated October 11, 2019 and additional reply dated July 17, 2020 to the SCN.
6. I note that Noticee no. 1 vide its reply dated July 9, 2019 and Noticee no. 2 vide his replies dated July 9, 2019, September 25, 2019 and email dated July 21, 2020, have raised the following contentions to the allegations in the SCN:
 - a. They have not been provided with the complete inspection of all the relevant documents by SEBI, as were requested by them vide their letter dated January 25, 2019. It is the case of these Noticees that the inspection of documents as provided by SEBI is incomplete and this has prejudiced their right and effected their ability to put forth an effective defence against the allegations in the SCN.
 - b. Noticee no. 2 has also raised the contention that being the non-executive director on the board of BPML, he was not involved in the day to day management of the affairs at BPML and that he resigned from the board of

BPML on February 14, 2013, after which date he had no material/pecuniary relationship with the other directors, its promoters or senior management of BPML.

7. I note that Noticee no. 3 vide his reply dated October 18, 2019 and at the time of personal hearing held on October 18, 2019, has raised the following key contentions to the SCN:

- a. The SCN has been sent to me over eight years after the events mentioned therein and over two years after the SCN itself is stated to have been issued. It is clear that any proceedings based on the events mentioned in the SCN are hopelessly time bared and outside limitation.
- b. BPML was the product of a joint venture between the Pacific Health Care Group (Singapore) and Yash Birla Group and me. In the said joint venture company, the shareholding was to be split 50:50 between Birla Wellness and Healthcare Pvt. Ltd. and the Pacific Healthcare Group. I was given a share of 7.5% in BPML which was treated to be part of the share of Pacific Healthcare Group. I did not invest any money in BPML and the said share was given to me for the clinical expertise I was to bring in the operations of BPML.
- c. It was also agreed that I would be a nominee of Pacific Healthcare Holdings Ltd. on the board of joint venture company i.e. BPML. It was further agreed that I would be the Managing Director of BPML and would be in charge of the day to day management. However, while it was made clear that strategic and policy decisions of the joint venture company would be taken by the Board. I was to be guided in all matters that did not require the approval of the Board by a 'JV Committee'. My role was purely pertaining to the clinical operations of BPML and never took any strategic or financial decisions.
- d. Right from the time the Joint Venture Agreement was executed from the words and conduct of Yash Birla Group, I was under the bona fide impression that they shared my vision of growing the business of BPML as much as possible. From the time the Joint Venture Agreement was executed till even after the IPO funds were received, the Yash Birla Group continued to represent that they had all intention of expanding the business of BPML

and ensuring its financial success. Based on the said words and conduct of Yash Birla Group, I had bona fide belief that the intention was to open more clinics in a phased manner and that the IPO funds would be used for the purposes mentioned in the offer document.

- e. It is pertinent to mention that the Yash Birla Group exercised complete control over the affairs of BPML after the dilution of the stake of Pacific Healthcare Group below 20% and the corresponding rise in stake of Yash Birla Group.
 - f. All though I was marked as cc to certain emails, all financial decisions were taken by Yash Birla Group with no consultation with me whatsoever. I had not signed any cheques relating to IPO proceeds. I have never signed any agreement or cheque granting any inter-corporate deposit after the IPO proceeds were received, nor was I part of any decision making process in respect thereof.
 - g. Since financial decisions were always taken by Yash Birla group, I had no reason to doubt or interfere in the policy decision informed to me and no reason for not to consent to use of surplus use of proceeds of IPO pending their utilization for the purposes mentioned in the Prospectus. I was under the impression that what was being done was legal and was permissible and that the said surplus proceeds could be used for the purpose mentioned in the Prospectus.
 - h. After I segregated myself from matters relating to Evolve, I focused my energies on other aspects of the business of BPML such as need-based medicine and cosmeceuticals. I also continued practicing at Evolve centres as dermatologist. From December 2011 until my resignation as director from the board of BPML, I did not look into matters connected with Evolve medspa. On September 30, 2012, I formally resigned as an employee and Managing Director of BPML. Since, then, I have had no connection with the said company.
8. The key contentions raised by Noticee no. 5 vide his merit based reply dated September 24, 2019 and at the time of his personal hearing, are as follows:

- a. It is submitted that these proceedings are vitiated by inordinate delay and laches, rendering it impossible for Noticee no. 5, who is constrained by lack of access to records, from effectively responding to the allegations in the SCN.
- b. Noticee no. 5 was the non-executive director of BPML from November 11, 2010 to July 7, 2012. Being a non-executive director of BPML, he was not involved in the day to day affairs at BPML. Noticee no. 5 was also not particularly involved in any IPO or the management of the funds, bank accounts or operations of BPML and had very limited role in his brief and temporary period of work as non-executive director.
- c. The Prospectus permitted that pending utilization, the IPO proceeds could be temporarily invested in interest or dividend bearing liquid instruments including various fixed or dividend bearing liquid instruments, which inter-alia included fixed and variable return instruments. The list of investment /instruments mentioned in the Prospectus for the purpose of 'interim use of funds' was inclusive in nature and could not have been exhaustive.
- d. The specific use of the term 'inter-corporate deposit' in the Prospectus in the section 'interim use of funds' could not be said to have affected or altered the informed investment decision of any applicant or investor in any manner whatsoever.
- e. The fundamental flaw in the SCN is that it has sought to make the Noticee liable merely by virtue of his being designated as a director of BPML. Such an approach is untenable since when the law is well settled that liability depends on the role played by the director in the alleged default and not his designation.
- f. The only document which is being relied upon by SEBI in the SCN to prove presence of Noticee no. 5 in the alleged board meeting dated July 11, 2011 is the minutes of the said meeting. However, in the absence of any other document such as the Notice (alongwith Agenda) to the board meeting or 'Attendance Register' bearing any signature of Noticee no. 5, particularly considering the fact that the minutes of the board meeting of August 2011, records board meeting of June 2011 as the 'previous board meeting'. It cannot be conclusively said that Noticee no. 5 attended the board meeting of July 11, 2011. Thus, no consent or knowledge of authorization of

investment in ICD's can be attributed to Noticee no. 5 without effectively proving his presence in the alleged board meeting.

9. I note that Noticee no. 9 and 10 vide their separate merit based replies dated August 21, 2019 and written submissions dated September 16, 2019 and at the time of personal hearing held on October 18, 2019, have raised the following key contentions to the SCN:

- a. Noticee no. 10 was an independent director in BPML from November 23, 2010 to May 8, 2013. Noticee no. 9 was an independent director in BPML from June 6, 2010 to February 20, 2014.
- b. Being independent directors, they did not have any role in the day to day operations and management of BPML.
- c. Failure to supply documents relied upon by the SCN: (a) KYC documents (b) various replies filed by BPML (c) replies filed by other Noticees in the present SCN.
- d. The allegations pertain to the participation of the Noticee no. 9 and 10 in Board meeting dated July 11, 2011, for which the SCN was issued nearly six years thereafter. In the interregnum the Noticee no. 9 and 10 have resigned as directors and have no access to the records of BPML. The gross delay presents a significance difficulty on the Noticee to present the defence on facts.
- e. No allegation of any particular instance of misfeasance, malfeasance or non-feasance by the Noticee no. 9 and 10 including the personal involvement in or knowledge of any of the transactions referred to SCN has been alleged. Significantly, there is no allegation in the SCN that they were involved in the granting of advances to third parties or in the subsequent misuse of the said advances by the third parties. There is also no allegation in the SCN against the Noticee no. 9 and 10 that they had advanced the ICD's to the group companies of BPML or were a signatory thereof.
- f. As per the Prospectus of BPML, the funds raised by BPML were proposed to be utilized in a phased manner. Only sum of ₹ 23.02 crores of IPO proceeds were to be used in the first year and the balance proceeds were

- to be utilized thereafter in a phased manner. Similarly, in the Prospectus several risk factors including due to macro-economic factors were recorded.
- g. The utilization of proceeds as shown in the Annual Report itself shows that the funds of ₹ 43.14 crore were in fact used for the objects of the IPO and in fact in line with the schedule of utilization of funds as stated in the Prospectus, which contemplated that by FY 2012-13 ₹ 39.35 crore would be utilized. This also belies that the decision taken on July 11, 2011 permitted BPML to go slow on the establishment of Evolve Centres since funds were infact used by BPML for objects of the IPO in line with the implementation schedule disclosed with the Prospectus. The independent directors were entitled to rely upon the representation of the management and the audited accounts. Thus, the allegation that BPML never intended to use the IPO proceeds for the purpose they were raised is clearly incorrect.
 - h. The discussion in the minutes of the meeting on ICD's was in the context of section 372A of the Companies Act, 1956 and thus the approval of the board of directors was sought for ICD's as they were to be issued to related parties and the terms of the same were therefore to be discussed in that context alone.
 - i. BPML as per the disclosure, intended to use the proceeds in interest or dividend bearing instruments. The instruments which were enumerated in the said disclosure were merely illustrative of the kind of investments that the BPML could make. This is clear from the word 'including' while describing such instruments. It is settled principle of interpretation that the term 'including' denotes an expansive definition which merely indicates the broad class of items as included in that definition and not all of them within that class.
 - j. Further, the representation that the ICD's were coupled with an express condition that the ICD's would be repayable on demand within seven days notice, itself demonstrates that the ICD's were liquid instruments. Even the Auditors of BPML has clubbed the ICD's which as aforesaid is equivalent to liquid assets.
 - k. The mere fact that the group companies to whom ICD's were issued later defaulted in repayment, does not the render the decision illegal from inception. The decision was taking relying on Chairman's representation viz.

the ICD's were to be placed on interest of 15% which was comparable to the market and further it was expressly provided that the same would be provided to group companies and that too repayable on demand within seven days.

- l. The SCN merely refers to an array of legal provisions, being the provisions of Regulations 57(1), 60(4)(a) and 60 (7) (a) of ICDR Regulations, 2009 and Clause 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57 (2) (a) of ICDR Regulations, 2009, without even attempting to apply the facts of the case to the ingredients of the aforesaid regulations. This itself makes the charges vague and ambiguous and totally unsustainable in law.
- m. An independent director or non-executive director cannot be proceeded against by SEBI under the SEBI (ICDR) Regulations, 2009 or otherwise, particularly for bona fide decisions taken by him/her during the course of the board meeting. SEBI (ICDR) Regulations, 2009 do not provide any vicarious liability of the directors for the acts of the company. Section 27 of the SEBI Act, 1992, as it then prevailed only provides for vicarious liability of the directors for the acts of the company, but for criminal offences only.

10. Noticee no. 7 vide his merit based reply dated July 25, 2019, written submissions dated October 1, 2019, Supplementary submissions dated July 20, 2020 and at the time of personal hearing held on September 24, 2019 has raised the following key contentions to the allegations in the SCN. I note that Noticee no. 8 vide his merit based reply dated August 19, 2019, additional reply dated August 3, 2020 and at the time of personal hearing held on September 24, 2019, has also raised the following key contentions to the SCN, which are similar to the contentions raised by Noticee no. 7:

- a. Noticee no. 7 was an independent director in BPML from June 22, 2010 to August 16, 2011. Noticee no. 7 was the director in BPML for just over a month after it became a listed company. The Noticee no. 8 was appointed as an independent director on the board of BPML on June 8, 2010 and he resigned from the board of BPML on March 21, 2013 and since then he has not been associated with BPML in any capacity whatsoever.

- b. In the facts of the present case, it is submitted by Noticee no. 7 and 8 that they may not be held liable for the alleged fraudulent acts undertaken by BPML and its management, which were neither undertaken by, nor known to the Noticee no. 7 and 8 and on the contrary, were behind their back. It is submitted by the said Noticees that they cannot be held liable and / or accountable for the alleged fraudulent acts of BPML and/or its internal management. On this ground alone the proceedings initiated should be dropped against the Noticee no. 7 and 8.
- c. Section 11 and 11B of the SEBI Act have been used by SEBI variously to issue an extremely wide range of direction, purporting to act in the interest of the investors and the securities market. The SCN does not give any notice in clear terms of the direction it proposes to issue.
- d. Although the SCN alleges fraud by BPML and its directors (para 17 of SCN), no charge of violation of SEBI (PFUTP) Regulations, 2003 has been made against the Noticee no. 7 and 8. With abundant caution, it is submitted that Noticee no. 7 and 8 are victims of the fraud by BPML and its management.
- e. The Prospectus only prohibited deployment of IPO proceeds in equity/equity related instruments. The type of liquid instruments that were specifically mentioned in 'Interim Use of Funds' were inclusive or illustrative in nature and not exclusive. Therefore, the Prospectus itself contemplated deployment of IPO proceeds in various liquid instruments including ICD's. ICD's fall well within the genus of investment avenues set out in the said section of 'interim use of funds'.
- f. In these circumstances, we respectfully submit that the due diligence (adopting board process) that the Noticees as independent directors were required to exercise, was duly exercised by them. The ICD's were interest bearing liquid instruments. In this case it was represented to all independent directors that such ICD's were liquid and could be recalled by a mere 7-days notice, and that in meantime they will bear interest @ 15% p.a. At this point in time, we had no cause as independent directors to disbelieve the Chairman of BPML or to distrust the misrepresentation made to us and the professional management and suspect that these were intended to be diverted. In the said circumstances, it is submitted that we acted bona-fide and in the best interests of the shareholders of BPML. For the said reasons,

it is submitted that deployment of the proceeds by BPML as deposits with group companies was not contrary to the terms of the Prospectus.

- g. As required by the ICDR Regulations, 2009, Noticee no. 8 signed the Prospectus. But, just for this reason the Noticee no. 8 ought not to be held liable for the actions or omissions of the promoters and management of BPML or failure on part of BPML to execute the project and set up the stated Evolve Centres.
- h. It is submitted that there was no mis-declaration in the Prospectus. The deployment of the proceeds of BPML as deposits with group companies was not contrary to the terms of the Prospectus. This is what was represented to the Independent Directors.
- i. It is submitted that no liability whatsoever is attributable to the Noticee no. 7 and 8 in their capacity as an independent directors in BPML, as alleged in the SCN. It is submitted that the SCN does not make any allegation attributing any knowledge, action or omission on the part of Noticee no. 7 and 8 with respect to subsequent transaction in securities of BPML and the only allegation made against Noticee no. 7 and 8 is that they participated in the board meeting held on July 11, 2011, which permitted the IPO proceeds to be extended as ICD's to the group companies of BPML. The SCN fails to appreciate the fact that BPML and its management undertook the fraudulent activity without any knowledge of Noticee no. 7 and 8 and that too even before the subject matter was brought to the board in the board meeting on July 11, 2011, for approval for parking the IPO proceeds as ICD's.
- j. It is submitted that the position of an independent director is very different from a Whole Time Director or an Executive Director. He is not expected to set out on an independent probe of the factual assertions made to him by the management. He is not expected to suspect every assertion or representation made by the management of the company. This is even more particularly so when there is nothing which would put him on notice of any irregularities or illegality. His role is to bring an objective independent approach to the board and guide the company. An independent director cannot ought not to be blamed for a fraud or irregularity, especially when he has no knowledge whatsoever of the same.

- k. It is submitted that the events described in the SCN are more than eight years old. The Noticee no. 7 and 8 have no access to any of the documents of BPML and therefore are unable to affectively defend themselves. In light of inter alia Chaman Lal Case and HD Stockholdings Case, such inordinate, unnatural and unexplained delay in the initiation of the proceedings, has caused severe prejudice to the Noticee's right to defend, which is in violation of the principles of natural justice. In the instant case the delay is writ large on the record since alleged period of violation of 8 years ago. Hence, the SCN must be quashed on these grounds alone.
- l. It is submitted that continuing with purportedly remedial proceedings eight years after the alleged default, renders these proceedings punitive in nature and character. No useful purpose would be served when adjudication proceedings have already been initiated in respect of the same cause of action. The conduct of Noticee during this period has been blemishless and therefore to invoke section 11 and 11B of SEBI Act, 1992 and subject the Noticee to unspecified and purportedly remedial direction is untenable.
- m. Noticee no. 7 submits that: 1) As per SCN ICD's were issued on July 6, 2011 i.e. even prior to the impugned board meeting. 2) The Noticee resigned from the board of BPML on August 16, 2011 i.e. within 40 days from the IPO. Thus, the Noticee was not informed or involved in the utilization of the funds. 3) Even prior to his resignation, the Noticee was not part of a board meeting held on August 12, 2011. The same is evident from the minutes of such meeting. 4) The Noticee was neither involved in the issuance of the ICD's, nor part of the Project Monitoring Committee, constituted by BPML to monitor utilization of funds of IPO. 5) Being an independent director, the Noticee's name is included in the Audit Committee. However, post the IPO, the Audit Committee met for the first time on September 8, 2011 i.e. after the Noticee had resigned from BPML.
- n. Noticee no. 7 and 8 have submitted that the Ministry of Corporate Affairs vide its recent Circular dated March 2, 2020 has clarified that Section 149(12) of Companies Act, 2013 expressly provides that an independent director can only be held liable in respect of such acts of omission or commission by the Company which occur with his knowledge, attributable through board processes, and with his consent or connivance or where he

had not acted diligently. He should not be held liable for any criminal or civil proceedings unless the said criteria are met. The said Circular further reiterated that monitoring day-to-day compliances of a company is not the responsibility of the independent directors and hence they cannot be held liable for acts which are beyond their control.

11. I note that Noticee no. 6 vide his merit based reply dated October 24, 2017 and July 15, 2019 and at the time of personal hearing held on July 25, 2019, has raised the following key contentions to the SCN:

- a. I was independent director in BPML from June 8, 2010 to May 22, 2013. As an independent and non-executive director, my role was very limited. I was not involved in day to day management and affairs of BPML. I did not have any kind of material or pecuniary relationship with BPML, its promoters, directors, senior management, or its holding companies, its subsidiaries, or its associates, which may effect my independence as directors. I was not related to promoters at all.
- b. It is submitted that just because I attended the board meeting dated July 11, 2011, wherein the impugned board resolution was passed, I cannot be held liable for the alleged violations, if any, committed by BPML. I attended the said board meeting being an independent director and moreover in the said board resolution dated July 11, 2011, it is nowhere mentioned that ICD's can be placed with related parties. It is also submitted that as per the provisions of the Companies Act, it is settled law that only 'Officers in Default' can be held liable or can be penalised for any violations by the company. In the present case I cannot be termed as 'Officer in Default', as per the provisions of Companies Act for the alleged wrong doing by BPML.
- c. There is no single averment against me or any fact which substantiate the allegation that I was having any knowledge of the transactions mentioned in the SCN.
- d. If there is any fraud committed on the market, then those six intermediate entities who supported the price of BPML on the listing day, should also be made party to the SCN. Making me as party to the SCN just because I was

an Independent director is not justified. I am not a party to the alleged diversion of IPO proceeds in the securities market.

- e. It is submitted that the resolution passed in the board meeting dated July 11, 2011 was after taking account the fact that adverse market conditions were not conducive to open new Evolve Centres. It was resolved to give inter-corporate deposit for a valid consideration after complying with all the applicable laws. It is denied that the financial obligation shown by BPML as being advances for fulfilling the objects of the issue was fraudulent. I humbly deny that I have any role to play in the financial obligation referred therein in the SCN.
- f. It is submitted that during the board meeting dated July 11, 2011, the board was informed that the IPO proceeds can legally be placed in the ICD's in view of the clause 'interim use of funds' as mentioned at para 28 of the RHP as they bear interest and they are liquid in view of the recall duration of one week.

12. Noticee no. 11 has not filed any reply to the SCN. At the hearing dated August 22, 2019, Noticee no. 11 had made the following key submission:

- a. He was acting as Alternate Director to Shri William Lai Leong Chong, who was designated as non-executive, non-independent director in BPML. He was the group corporate counsel of Yash Birla Group. All policy and financial decisions for BPML were taken by Noticee no. 2 and 4 and he had no role to play in the day to day management of the affairs at BPML. He had no knowledge of the irregularities of IPO fund deployment at BPML.

13. I note that Noticee no. 12 vide his merit based reply dated October 11, 2019, additional reply dated July 17, 2020 and at the time of personal hearing held on August 22, 2019, has raised the following key contentions to the SCN:

- a. I joined Yash Birla Group as fresher Company Secretary in July 2008. I was made Company Secretary in Birla Machining and Tooling Ltd. in July 2008. In June 2010, I was internally transferred to BPML. During my tenure at BPML, I used to report to Noticee no. 11 who was the Yash Birla Group

corporate counsel. All the instructions for day to day operations used to come from Noticee no. 11. Noticee no. 11 used to report to Noticee no. 2 and 4. Noticee no. 4 was the group head for the Yash Birla Group and he looked after the finances for the Yash Birla Group of companies. The use and transfer of funds was looked after by Noticee no. 2 and 4 and I had absolutely no role in it. I was never involved in any operational or financial transaction of BPML in whatsoever manner.

- b. The information contained in the Prospectus was neither misleading nor false in any respect. As regards, signing the Prospectus for the IPO of BPML, I signed it on instructions of Noticee no. 11. At the time of signing the Prospectus, I was under the bona fide impression that what was being done was legal and that the said IPO proceeds was going to be used for the purpose mentioned in the Prospectus. I did not have any knowledge of the misutilization of the said funds nor did I have any role to play in the misutilization of IPO proceeds by BPML as alleged in the SCN.
- c. I never signed any cheques pertaining to IPO proceeds. I also never signed any cheque pertaining to any ICD's after the IPO proceeds were received. Noticee no. 4, Noticee no. 11 and Mr. Ashish Mahendrakar were the signatories to the Bank Account of BPML opened for the purpose of IPO of BPML.
- d. The ICD's approved by the board of directors of BPML in their meeting held on July 11, 2011 were in line with the interim use of funds as mentioned in the Prospectus.
- e. As can be seen from Form-32, filed for my resignation, my tenure as an employee of BPML was very limited i.e. till March 13, 2012. Within this short tenure, I had taken a leave of 15 days in August 2011 for my engagement and for one month in January 2012 for my marriage.
- f. I had no knowledge or any intention of misappropriation of IPO proceeds. I had completely ceased my association with the company upon my resignation. I was never part of the management team which took part in the day to day operations of BPML.
- g. I should not be liable for any of the allegations as mentioned in the SCN for the sole reason of being a signatory to the Prospectus, where the Prospectus was signed by me in good faith under the bonafide impression

of legality for what was stated in the Prospectus and as a statutory requirement stating signature of Company Secretary without any knowledge or inclination of participation in the alleged fraud.

Consideration of Submissions and findings thereon:

14. I have perused the allegations made in the SCN and submissions made in the replies, written submissions and during the personal hearing. Before dealing with various contentions raised by the Noticees regarding merits of the case, it would be appropriate to deal with preliminary objections raised by some of them.

Re: Delay

15. Noticee no. 3, 7, 8, 9 and 10 have raised a preliminary objection to the issuance of SCN in the present matter. It is the case of the said Noticees that the inordinate delay in the issuance of SCN in the present matter has prejudicially affected their rights to put forward an effective defense and thus has resulted in violation of the principles of natural justice. I note that Noticee no. 3, 7, 8, 9 and 10 have been provided with all the documents that have been relied upon in the SCN. Noticee no. 3, 7, 8, 9 and 10 have filed their detailed replies and Noticee no. 7, 8, 9 and 10 have filed written submission, raising all possible contentions in their defence. I also note that Noticee no. 3, 7, 8, 9 and 10 has not specifically pointed out any document which it could not retrieve due to delay in initiation of proceedings which has impacted its defence in the present proceedings or has rendered the same ineffective. Hence, I do not find merit in the contention of the Noticee no. 3, 7, 8, 9 and 10 that efflux of time has affected their ability to retrieve evidence to defend themselves.

16. I further note that investigation in the present matter was initiated by SEBI in April 2012. Investigation involved examining the following tranches: 1) IPO bidding and Allotment Analysis, 2) Trading Price-Volume Analysis, 3) Broker and Client Concentration Analysis, 4) Analysis for Synchronized trades and Self-trades, 5) LTP, First Trades, Circular or Reversal trade Analysis, 6) Listing Day Trading

Analysis and 7) Utilization of IPO Proceeds and Fund Flow Analysis. In order to carry out the aforesaid tranches of investigation, the following activities were involved: 1) Examination of trades of various entities, 2) collecting data from various sources such as exchanges, depositories, banks, Income Tax Dept, etc. 3) Examination of funds flows, 4) Seeking responses from various delinquent entities, etc. and thereafter, various dots were connected to get the complete picture and thus, investigation was concluded on January 12, 2016. I note that in the instant case, investigation was hampered intermittently sometime in August 2014 when BPML stopped responding to request for information from SEBI, for which separate adjudication proceedings for non-compliance of summons have been initiated by SEBI against BPML. After conclusion of investigation, SCN dated March 27, 2017 was issued and served upon the 12 Noticees in the matter. Inspection of documents by those Noticees seeking inspection, concluded in the year 2017 and first date of personal hearing was given to the Noticees on April 25, 2018 before another WTM of SEBI. I note that certain other dates of personal hearing were also granted to some of the Noticees before the said WTM of SEBI. However, in the meantime, due to re-allocation of cases amongst the various quasi-judicial authorities of SEBI, the matter was placed before the undersigned for determination in June, 2019 and in compliance with the principles of natural justice, it was decided to give fresh hearing opportunity to all the Noticees before the undersigned. The personal hearing in the matter before the undersigned began on July 25, 2019 and concluded on October 18, 2019. I note that Noticee no. 5 had applied for settlement of the proceedings initiated by the present SCN, in terms of SEBI (Settlement Proceedings) Regulations, 2018. Thus, though the personal hearings in the matter were concluded, however, in terms of Regulation 8(1) of SEBI (Settlement Proceedings) Regulations, 2018 and because of common SCN against all the Noticees, the passing of the final order in respect of the Noticees including Noticees other than Noticee no. 5, was kept in abeyance, till the disposal of the settlement application of Noticee no. 5. The Settlement Application of Noticee no. 5 came to be rejected by SEBI on October 5, 2020. In the meantime, since considerable time had lapsed since the conclusion of the last hearing in the matter, hence, in cognizance of the principles of natural justice, all the Noticees herein were called upon (vide email dated July 10, 2020 or July 14, 2020) and provided with another opportunity to file any additional reply/ written

submissions, if so desired by them. I note that Noticee no. 7, 8 and 12 have availed the said opportunity and filed additional reply/submissions. Noticee no. 9 and 10 had sought additional time till August 20, 2020 to file their additional replies/submissions, however, I note that no additional reply/submissions have been filed by them till the date of this order. I note that Noticee no. 9, 10 and 3 had sought another opportunity of personal hearing in the matter on the ground that since more than six months had lapsed after the conclusion of the last personal hearing hence, a fresh hearing would help in refreshing the memory. I note that such request for personal hearing by the said Noticees was not acceded to, as personal hearing for the said Noticees was already complete and their replies/additional submissions were already on record. Granting another opportunity of personal hearing to the said Noticees would have led to a vicious circle of personal hearings without reaching a logical end to the present proceedings.

17. In view of the discussion in the previous para, I note that there is no 'unexplained delay' that would vitiate the entire proceedings per se. Notwithstanding the same, I also note that there is no provision in the SEBI Act, 1992 which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. In **Ravi Mohan & Ors. v. SEBI and other** connected appeals decided on August 08, 2013, Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as '**SAT**') while referring to its own decision in **HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012)** decided on August 27, 2013 and decision of Hon'ble Supreme Court in **Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.)**, observed as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter

beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”

The observations made by Hon’ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of **Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017)** decided on April 04, 2018. Further, I note that, while all relevant information relied on for crystallizing the allegations against the Noticee no. 3, 7, 8, 9 and 10 have been provided to them, the said Noticees have failed to specifically identify any document which it could not retrieve due to delay in initiation of proceedings which has impacted its defence in the present proceedings or has rendered the same ineffective, In view of the above, I am unable to accept the preliminary submissions made by the Noticee no. 3, 7, 8, 9 and 10, regarding delays and subsequent laches in issuance of SCN in the instant proceedings.

Re: Inspection of documents:

18. I note that Noticee no. 1 and 2 have raised a preliminary objection that they have not been provided with the complete inspection of all the relevant documents by SEBI, as were requested by them vide their letter dated January 25, 2019. It is the case of these Noticees that the inspection of documents as provided by SEBI is incomplete and this has prejudiced their right and effected their ability to put forth an effective defence against the allegations made in the SCN. I note that Noticee no. 1 and 2 were granted an opportunity of inspection of documents on August 20, 2019, on which day Noticee no. 1 failed to avail the opportunity of inspection of documents or seek another date for inspection of documents. I also note that a purported authorized representative of Noticee no. 2 could not be granted the inspection of documents on August 20, 2019, because he had failed to furnish ‘authorization letter’ from Noticee no. 2. However, upon a request received from Noticee no. 2, another opportunity of inspection of documents was provided to Noticee no. 2 on September 20, 2019, on which date the authorized representative of Noticee no. 2, was provided with the inspection of documents. Despite providing the inspection of documents that are relied upon by the SCN, Noticee no. 2 has contended that all documents have not been provided to him which were enumerated in his letter dated January 25, 2019. I note that the letter dated January

25, 2019 was written jointly by Noticee no. 1 and 2 seeking inspection of documents in the proceedings before adjudicating officer (AO proceedings). I note that while the AO proceedings may be dealing with the three broad allegations, the present SCN is dealing with only the issuance of ICD's and subsequent diversion of funds, which is one of the three broad allegations. Thus, I note that while many of the documents sought by Noticee no. 1 and 2 may be relevant and relied upon by the AO SCN but the same may not be relevant or even relied upon in the present SCN. My observations on the documents sought by Noticee no. 1 and 2, vide their letter dated January 25, 2019, are as under:

Sr. No.	Document Sought	Observation
1	Complete copy of material considered by SEBI/ WTM while ordering of Appointment of Designated Authority for investigation in the matter including relevant file notings.	Not relevant and not relied upon by the SCN in the present matter. Hence, the request for inspection of such documents is untenable.
2	Documentary evidence and source of data alongwith full data on the basis of which table appearing at Page 9 of AO SCN has been prepared.	The table at Page 9 of AO SCN is arrived at after analyzing the listing day trade data in the scrip of BPML. The table may be relevant for the AO proceedings but it is not relevant to the present proceedings. The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents is untenable.
3	Copy of bank account statement of Jalan Cements, Marutinandan, Orbit and Rupak Trading, evidencing the receipt of funds from the bank account of BPML and payment of same to GRD Securities.	These documents were part of Annexure III to the AO SCN and have been provided to Noticee no. 2 at the time of inspection of documents. Further, the present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN.
4	Documentary evidence / basis of alleging that Jalan Cements, Marutinandan, Orbit and Rupak Trading has transferred funds to GRD Securities for their trading in the scrip of BPML.	The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents is untenable.
5	Complete trading carried out by Jalan Cements, Marutinandan, Orbit, and Rupak Trading alongwith the ledger account maintained with their broker for the Investigation Period.	The trading details of Jalan Cements, Marutinandan, Orbit, and Rupak Trading is part of Annexure 4 to the SCN and the client ledger of these entities of their account maintained with GRD Securities is part of Annexure 6 to the SCN. The copies of Annexure 4 and 6 were already annexed to the present SCN and served upon Noticee no. 1 and 2. I note that, unlike the annexures to the AO SCN, it is not the case of Noticee no. 1 and 2 that any of the Annexures to the present SCN were missing. Further, the present SCN merely makes a reference to the finding of the investigation in regard to the trading by these entities on the listing day, but does not rely on this finding at

		the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents is untenable.
6	Documentary evidence / basis of making observation against Jalan Cements, Marutinandan, Orbit, and Rupak Trading in para 13 and 14 of AO SCN.	The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents in the present proceedings is untenable.
7	Documentary Evidence / basis of allegation that Sanjukta Vanijya and Darshan Tradelink had aided and abetted BPML in routing and diversion of funds.	The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents in the present proceedings is untenable.
8	Documentary evidence / basis of alleging that BPML had facilitated purchase of its own securities out of IPO Proceeds.	The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents in the present proceedings is untenable.
9	Documentary evidence / basis of alleging that BPML had failed to utilize the IPO proceeds as per objects of the issue and had diverted IPO proceeds to various other entities (para 18 of AO SCN)	This is an inference drawn on the basis of the analysis of the facts and evidence examined in the previous paras of the SCN for which necessary annexures have been made to the SCN. Request for inspection of documentary evidence in this regard, is vague and inexecutable.
10	Copy of bank account statement of J.C. Enterprises, Laxmi Trading Company, N P Enterprises, and New Fashion	These documents were annexed as Annexure V to the AO SCN and Annexure 8 to the present SCN. They have been inspected by Noticee no. 2 at the time of inspection of documents. Further, the present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN.
11	Copy of KYC documents of N P Enterprises as received from Bank	The present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN. Hence, the request for inspection of such documents is untenable.
12	Documentary evidence / basis of alleging that the entities mentioned in para 24 of AO SCN were related to each other by way of having one or more common directors.	Annexure VI to the AO SCN provided extract of MCA Portal records evidencing common directorship. These documents were inspected by Noticee no. 2 during inspection. Further, the present SCN merely makes a reference to this finding of the investigation but does not rely on this finding at the time of framing charges at para 38 of the SCN.
13	Documentary evidence/ basis of alleging that BPML had no plans to utilize the money as per disclosure made in the prospectus and that BPML played fraud on IPO subscribers who had trusted management of BPML with their money to be utilized as per objects of the issue (para 26 of AO SCN)	This is an inferential allegation drawn on the basis of the analysis of the facts and evidence examined in the previous paras of the AO SCN hence, request for inspection of documentary evidence in this regard, is vague and inexecutable.
14	Copy of all the complaints received against us by SEBI /NSE/ banks in this regard.	The request is vague and it is a roving and fishing inquiry by Noticee no. 1 and 2. All the documents that have been relied upon by the SCN in this regard have already been provided
15	Copy of all materials collected by SEBI during the course of Investigation.	

16	Copy of all correspondence (letters, email, office memos, etc.) carried out with the Stock Exchange, Depositories, banks and any other authority in this regard by SEBI.	to Noticee no. 1 and 2. Apart from those documents, there is no other document which has been relied upon and not been provided to these Noticees.
17	Documentary evidence/ basis of allegation that Noticee no. 2 and 1 have violated the provisions of Reg. 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) of SEBI (PFUTP) Regulations, 2003 r/w Section 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992.	This is an inferential allegation being drawn on the basis of the facts and evidence gathered during the investigation and forms part of the final charges being framed against the Noticees. Hence, the request for inspection of documentary evidence in this regard is vague and inexecutable.
18	Copy of the complete Investigation Report along with its Annexures.	All the findings of the investigation on the basis of which charges have been framed in the present SCN, have been reproduced in the SCN. Hence, the request for copy of the investigation report alongwith its Annexures is untenable.

19. From the above table, I note that majority of the requests for documents being placed by Noticee no. 1 and 2 are irrelevant for the purposes of these proceedings as the ultimate charge framed in the SCN is not based on inferences drawn from the documents of which inspection is sought by the Noticee no. 1 and 2. Hence, the insistence of Noticee no. 1 and 2 for providing inspection of such documents which ultimately are not being relied upon by the present SCN and may only be relevant for the AO SCN, is untenable.

20. Noticee No. 2 has relied upon the order of Hon'ble Supreme Court in appeal by PWC (Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that the Hon'ble SAT in the matter of Shri B. Ramalinga Raju vs. SEBI (SAT Appeal No. 286 of 2014) while dealing with a similar contention based on the aforesaid order of the Hon'ble Supreme Court had observed as follows:

"21.Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants."

21. I note that many of the documents sought for inspection by Noticee no. 1 and 2 are roving and fishing inquiry without seeking any specific document or considering the relevance of those documents for the purpose of these proceedings. In this regard, I note that the Hon'ble SAT, in the matter of Reliance Commodities Ltd vs. NSDL and SEBI, in its order dated July 23, 2019, has observed as under:

“2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant. The appeal is accordingly disposed of. Misc. Application No.189 of 2019 is also disposed of.”

22. In view of the observations made at para 18 to 21, I note that all the documents that have been relied upon by the present SCN have already been provided to Noticee no. 1 and 2 and the inspection of those documents have also been provided to Noticee no. 2. I also note that the inspection of other documents as being sought by Noticee no. 1 and 2 vide their letter dated January 25, 2019 is either vague, inexecutable, unjustified, irrelevant or merely a roving and fishing inquiry and hence, untenable. Therefore, I find that no prejudice has been caused to Noticee no. 1 and 2 to prepare their defence and furnish a merit based reply. From the conduct of Noticee no. 1 and 2, I find that they are delaying the conclusion of these proceedings by masquerading it as 'Right to an effective Defence' in order to evade from the adverse consequences of these proceedings or delay its outcome. I note that Noticee no. 1 and 2 could have raised their concerns in respect of unsatisfactory 'inspection of documents' being granted by SEBI at the time of personal hearing which was scheduled for them. However, Noticee no. 1 and 2 chose to conveniently ignore the opportunity of personal hearing granted to them and even ignored to file any merit based reply in the present proceedings. In view of the above, I am of the opinion that no further opportunity of personal hearing and no further opportunity to file reply can be granted to Noticee no. 1 and 2. Thus,

I shall now proceed against Noticee no. 1 and 2 on the basis of material available on record.

23. Coming to the merits of the case, I note that the facts stated in the SCN indicate a broad scheme of wrongdoings by BPML, that originates with making misleading statements in the Prospectus in respect of objects of the IPO and interim use of funds and ends at diverting the IPO proceeds by giving it to third parties under the pretext of works contract, giving of ICD's to group companies and channeling IPO funds through intermediate entities for supporting the price of its own scrip on the listing day. The findings of the investigation as narrated in the SCN can broadly be summarized on the following three fronts:

- a. IPO proceeds worth Rs. 14 Crores¹ were diverted and mis-utilized by BPML, to support the price of its own shares on the listing day. The proceeds were channeled through two layers of entities.
- b. IPO proceeds worth about 33.4 Crores were disbursed to certain entities under the pretext of advances towards work contracts for IPO objectives, but in fact, no substantial work contracts were executed, rather the funds disbursed remained unreturned to BPML and thus it is alleged that the said proceeds were mis utilized and siphoned off.
- c. Proceeds of IPO worth about Rs. 31 Crores were disbursed to group companies as ICD's which was in stark contrast to the objects of IPO or the interim use of funds as stated in the Prospectus. The Prospectus permitted interim deployment of proceeds as investment in liquid instruments only and did not permit such deployment of funds as ICD's. Thus, it is alleged that the act of approving the deployment of funds as ICD's in the board meeting dated July 11, 2011, tantamounted to mis-statement in Prospectus and diversion and mis utilization of IPO proceeds.

24. I note that while the SCN levels allegations on all the three fronts, however, charge as framed at para 38 of the SCN, is with respect to the issue mentioned at para 23 (c) above. For the issues mentioned at para 23(a) and 23(b), separate Adjudication

¹ Rs. 14 Crore were received back by BPML.

Proceedings have been initiated by SEBI. Therefore, the limited purpose of these proceedings is to determine whether BPML and its directors who authorized the issue of ICD's in the board meeting dated July 11, 2011, i.e. Noticee no. 1 to 11, and the Company Secretary of BPML i.e. Noticee no. 12, have violated provisions of Regulations 57(1), 60(4)(a) and 60(7)(a) of ICDR Regulations, 2009 and Clause 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57(2)(a) of ICDR Regulations, 2009.

25. Learned counsel appearing for Noticee no. 9 and 10, has contended that the charging provisions invoked in the SCN are non-commensurate and incoherent with the facts of the case and on this ground alone the SCN is unsustainable. It is his case that the SCN has been issued without attempting to apply the facts and circumstances of the case to the ingredients of the charges invoked therein and thus, it makes the charges in the SCN vague, ambiguous and totally unsustainable in law and on the facts. I note that the SCN alleges that Noticee no. 1 to 12 have violated provisions of Regulations 57(1), 60(4)(a) and 60(7)(a) of ICDR Regulations, 2009 and Clause 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57(2)(a) of ICDR Regulations, 2009.

26. Before advertent to the said contention made by the Noticee no. 9 and 10, it would be appropriate to refer to the provisions of ICDR Regulations, 2009 violations of which have been alleged in the SCN and the relevant extract whereof is reproduced hereunder:

Relevant extract of provisions of ICDR Regulations, 2009:

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.

.....
Public communications, publicity materials, advertisements and research reports.

60 (1).....

(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;

.....
.....

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

.....
....

SCHEDULE VIII

Disclosures in Offer Document, Abridged Prospectus and Abridged Letter of Offer

PART A

Disclosures in Red Herring Prospectus, Shelf Prospectus and Prospectus

.....

.....
(2) An issuer making a public issue of specified securities shall make the following disclosures in the offer document. However, an issuer making a fast track issue of specified securities may not make the disclosures specified in Part B of this Schedule in the offer document. Further, an issuer making a further public offer of specified securities may not make the disclosures specified in Part C of this Schedule, in the offer document, if it satisfies the conditions specified in para 2 of that Part:

.....
.....

(XVI) Other Information:

(A)

(B) Declaration:

1.

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

27. It is the case of Noticee no. 9 and 10 that the SCN fails to prove or even point out that there has been any failure on part of BPML to make prompt, true and fair disclosures of all material developments relating to business and securities of the issuer, during the time from registering the Prospectus with the Registrar of Companies (RoC) to the allotment of securities, thus indicating that the allegation of violation of Regulation 60 (4)(a) of ICDR Regulations, 2009 is unsustainable. I note that Regulation 60(4)(a) requires issuer to make prompt, true and fair disclosure of all material developments, 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, which take place during the time from registering the Prospectus with the Registrar of Companies (RoC) to the allotment of securities. However, I note that SCN does not point out any such material development relating to the business of BPML or its subsidiary or group company during the time from registering the Prospectus by BPML with the Registrar of Companies (RoC) to the allotment of securities by BPML which BPML has failed to disclose in accordance with Regulation 60(4)(a) of ICDR Regulations, 2009. Thus, I agree with the contention raised by Noticee no. 9 and 10 that the allegation of violation of Regulation 60 (4)(a) of ICDR Regulations, 2009 is not sustainable in the facts of the present case.

28. Similarly, regarding Regulation 60(7)(a) of ICDR Regulations, 2009, Noticee no. 9 and 10 have argued that it is not specified in the SCN as to how any advertisement or research report issued by the issuer was not truthful, fair or was manipulative, deceptive, untrue or misleading. I note that Regulation 60(7)(a) of ICDR Regulations, 2009 requires that any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading. I note that the SCN does not even mention of any specific advertisement or research report issued by BPML let alone the pointing out of any untrue, unfair, manipulative, deceptive or distorted statements in such

advertisement. Therefore, I find merit in the contention of Noticee no. 9 and 10 that no violation in respect of Regulation 60(7)(a) of ICDR Regulations, 2009 is made out in the facts of the present case.

29. Now the question for determination before me is that whether the Noticees have violated Regulation 57(1), Regulation 57(2)(a) read with Clause 2 (XVI) (B) (2) of Part A of Schedule VIII, of ICDR Regulations, 2009. I note that the SCN alleges that since, the Noticees authorised the issue of ICD's in the board meeting held on July 11, 2011, which was in direct contradiction to the statements made in Prospectus with respect to the 'Objects of the Issue', 'interim use of funds' and 'Risk Factors', hence, they have not made all material disclosures and also made disclosures which were not true and adequate. Therefore, Noticees have been alleged to have violated Regulations 57(1), 57(2)(a) read with Clause 2 (XVI) (B) (2) of Part A of Schedule VIII of ICDR Regulations, 2009. I note that Regulation 57(1) mandates making of all material disclosures in the offer document which are true and adequate so as to enable the investors to take an informed investment decision. Consequently, it is alleged by the SCN that Noticee no. 2 to 12 being signatory to the Prospectus, by wrongly certifying that the statements made in the Prospectus are true and correct, have violated Regulation 57(2)(a) read with Clause 2 (XVI) (B) (2) of Part A of Schedule VIII of ICDR Regulations, 2009.

30. For better appraisal of the issue at hand, the relevant extract of Prospectus and the minutes of the board meeting is reproduced herewith:

Extract of the prospectus dated June 29, 2011:

SECTION III – RISK FACTORS

20. The deployment of the issue proceeds is entirely at the discretion of the Management / Company and no independent agency has been appointed to monitor its deployment.

.....A Project Monitoring Committee has been formed consisting of 2 independent directors and the Managing Director. This Committee will monitor the implementation of the project as well as the use of proceeds of the Issue. In addition, the audit committee of the Board,

comprising of 3 independent and one non-independent directors, will also be monitoring the use of proceeds of the Issue. Thus the utilization of IPO proceeds will be monitored in all by 5 independent directors and hence there will not be any conflict of interest. We will disclose the details of the utilisation of the Issue proceeds, including interim use (emphasis is mine), under a separate head in our financial statements for fiscal 2011, 2012 and 2013, specifying the purpose for which such proceeds have been utilized as per the disclosure requirements of our listing agreements with the Stock Exchanges in India.....

SECTION-V - OBJECTS OF THE ISSUE

The objects of the issue are:

- 1) To meet the capital expenditure towards establishing 55 outlets of Evolve Medspa across various cities and places.
- 2) To meet expenses towards brand promotion.
- 3) To meet the working capital requirements for running the above centres.
- 4) To meet Issue related expenses.
- 5) To enlist our Company's Shares on Bombay Stock Exchange Limited (BSE)

(in lakhs)

Sr. No.	Particulars	Amount
1.	Capital Expenditure for Setting up 55 centers across the country	4950.00
2.	Working Capital Requirements	70.00
3.	Brand Promotion	600.00
4.	Issue Expenses	650.00
5.	Contingencies	123.75
6.	Preliminary & preoperative expenses	123.75
	Total	6517.50

Schedule of Implementation:

(Rs. In Lakhs)

Sr. No.	Particulars	2011-12	2012-13	2013-14	Total
	No. of Centres	15	15	25	55
1.	Capex for setting up of centres	1350.00	1350.00	2250.00	4950.00
2.	Working Capital Requirements	34.95	35.05		70.00
3.	Issue Expenses	650.00	0.00	0.00	650.00

4.	Contingencies	33.75	33.75	56.25	123.75
5.	Preliminary & Pre operative Expenses	33.75	33.75	56.25	123.75
6.	Brand Promotion	200.00	200.00	200.00	600.00
	Total Fund utilization	2302.45	1652.55	2562.50	6517.50

Interim Use of Funds:

The management, in accordance with the policies set up by the Board, will have flexibility in deploying the proceeds received from the Issue. Pending utilization for the purposes described above, we intend to temporarily invest the funds in interest or dividend bearing liquid instruments including deposits with banks and investment in mutual funds and other financial products such as capital protected funds, derivative linked debt instruments, other fixed and variable return instruments, listed debt instruments and rated debentures. Such investments would be in accordance with any investment criteria approved by the Board of Directors from time to time. Issue proceeds shall not be utilized for equity/ equity related instruments.

Extract of the Minutes of the Meeting of the Board of Directors of BPML, held on July 11, 2011:

4. INVESTMENT OF THE SURPLUS PROCEEDS FROM THE INITIAL PUBLIC ISSUE OF THE COMPANY

The Chairman informed the Board members that it is proposed to invest the surplus proceeds from the Initial Public Issue of the Company. As per the prospectus the Board has authority to deploy the proceeds received from the Issue in interest or dividend bearing liquid instruments including deposits with banks and investment in mutual funds, corporates (emphasis is mine) and other financial products such as capital protected funds, derivative linked debt instruments, other fixed and variable return instruments, listed debt instruments and rated debentures, except for equity/ equity related instruments. After brief discussion, following resolution was passed:

“RESOLVED THAT the surplus proceeds from the Initial Public Issue of the Company be invested in interest or dividend bearing liquid instruments including deposits with Banks & investment in Mutual funds units, corporates (emphasis is mine) and other financial products.

RESOLVED FURTHER THAT Shri P.V.R. Murthy - Director, Shri Venkateshwarlu Nelabholta - Director and Shri Saharsh Daga - Authorised Signatory be and are hereby severally authorized to sign all documents and to do all such act, things and deeds as may be necessary on behalf of the Company in connection therewith.”

5. INVESTMENT IN INTER CORPORATE DEPOSITS

The Chairman further informed the Board that due to adverse macro-economic factors prevailing in the economy, setting up of additional Evolve Medspa Centers in various cities across the country have been delayed. Hence, it is proposed that till the economic conditions become favorable, the funds of the Initial Public Issue be deployed by way of Inter Corporate Deposits to its group companies. The Chairman further informed the Board that such Inter Corporate Deposits will be given to the group companies @ interest rate of 15% p.a. and shall be repayable on demand by giving 7 days notice. The draft Agreement for giving along with the terms and conditions was placed before the Board. The Board discussed the matter and thereafter passed the following resolution:

“RESOLVED THAT in accordance with the provisions of Section 372A and other applicable provisions, if any, of the Companies Act, 1956, approval of the Board of Directors be and is hereby accorded for making Loan, Investments or giving Security, Guarantee of upto Rs.60,00,00,000/- (Rupees Sixty Crores only) to its group companies, notwithstanding that the aggregate amount of all investments, loans, securities and guarantees will not exceed sixty per cent of the aggregate of paid up capital and free reserves of the Company.

RESOLVED FURTHER THAT any investments, loans, securities and guarantees given so far to group companies be and are hereby ratified and approved.

RESOLVED FURTHER THAT Shri Abhijit Desai - Managing Director, Shri P.V.R. Murthy - Director and Shri Saharsh Daga - Authorised Signatory of the Company be and are hereby severally and jointly authorized to take all decisions and to do all such acts, deeds and things as may be required to be done for making Loan, Investments or giving Security, Guarantee as approved by the Company in the Meeting."

31. In order to substantiate the charge of misstatement in Prospectus, the SCN has relied on three findings of investigations carried out by SEBI, viz: 1) Out of total amount of Rs. 31.54 crores issued as ICD's to group companies, BPML has received back ICD's totalling only Rs. 13.01 crores as on November 07, 2014. 2) ICD's worth Rs. 18.54 crore remain unpaid along with unpaid interest which amounts to Rs. 6.32 crore. 3) BPML received interest of only Rs. 7,83,000 from these ICD's. I note that none of the Noticees herein have disputed the aforesaid three findings of the investigation.

32. In order to substantiate the charge of misstatement in Prospectus, the SCN has relied on the contents of the Prospectus and the minutes of the meeting of the board of directors of BPML held on July 11, 2011, as the principal evidence. I note

that none of the Noticees have disputed the contents of the Prospectus or contents of the minutes of the meeting of the board of directors held on July 11, 2011 or their respective attendance in the said meeting (except Noticee no. 5 who has disputed his attendance in the alleged board meeting).

33. A perusal of the object clause of the Prospectus shows that one of the principal object of the IPO was to set up 55 Evolve Centers across the country. Further, as per the disclosure about "Interim Use of Funds", pending utilization for the objects of the issue, BPML intends to temporarily invest the funds in interest or dividend bearing liquid instruments including deposits with banks and investment in mutual funds and other financial products such as capital protected funds, derivative linked debt instruments, other fixed and variable return instruments, listed debt instruments and rated debentures. From the perusal of the minutes of the board meeting held on July 11, 2011, it is revealed that setting up of Evolve Centers was allegedly deferred owing to adverse macro-economic conditions prevailing in the country, i.e. within 12 days of signing of prospectus by the Noticee no. 2 to 12 and in the interim, funds of IPO were allowed to be deployed in the ICDs of the group companies of BPML, i.e. an instrument which was not contemplated/disclosed in the interim use of funds section in the Prospectus, as an instrument for investment. Allegedly deferring of main object clause of issue within 12 days of signing of prospectus under the pretext of unfavorable macro-economic conditions and thus in the interim deploying the IPO proceeds in the ICDs of group companies which was not disclosed as a mode for interim use of funds, shows that the disclosures made in the prospectus lacked in material particulars and were untrue and inadequate. I further note that the resolution passed in the impugned board meeting at Agenda no. 4 mentions the word 'corporates', thereby enabling the deployment of IPO proceeds for interim use, into deposits with corporates as well. However, I find that the word 'corporates' was never part of the text of the section 'interim use of funds' in the prospectus dated June 29, 2011. Thus, I find that the disclosures made in the Prospectus were deliberately lacking in material particulars and were inadequate. I further note that in the impugned board meeting, at Agenda item no. 5, the board had resolved to give 'guarantees' and provide 'security' to group companies which was never stated or even conceived as a possibility in the Prospectus either in the 'Risk Factors' section or in the 'Objects of the issue' or in

the section on 'Interim use of funds'. Thus, I find that to that extent investors were misled through misrepresentation in Prospectus.

34. Some of the Noticees have contended that since ICD's were 'liquid assets' and also repayable on demand within 7 days, they qualified for investments as contemplated in the 'interim use of funds' section of Prospectus. In this regard, I note that ICD's are not 'liquid assets' and ICD's certainly do not qualify to be 'financial instruments' as contemplated in the Prospectus. I note that the 'interim use of funds' para in the Prospectus talks about "interest or dividend bearing liquid instruments including deposits with banks and investment in mutual funds and other financial products such as capital protected funds, derivative linked debt instruments, other fixed and variable return instruments, listed debt instruments and rated debentures". Thus, I find that a plain reading of the 'interim use of funds' para indicates financial products that are tradeable in the market i.e. they are transferable to third parties for easy liquidity. I note that ICD's by their very construct are nothing but a private lending and borrowing arrangement between two corporates. Such instrument may be repayable on demand by the investee on being so asked by the investor (in the present case within 7 days) but that does not make such instrument a liquid instrument. Such 'repayable on demand' within a given time creates an obligation on the corporate receiving funds by such ICDs, to repay. It does not ensure mitigation of risk by the depositor thereof by transferring the ICD to a third party in case of failure to honor the obligation by the borrower. Liquidity signifies the ability of an instrument of being bought and sold in the market to third parties, without any involvement of the issuer of the instrument. ICDs do not possess the ability to be transferred to third parties within a market, without the express consent of the investee. Thus, it lacks liquidity. Hence, ICD's do not qualify as 'liquid instruments' as mentioned in the Prospectus. Further, merely because the ICD's were repayable on demand in 7 days does not ascribe liquidity to ICD's. I note that liquidity is a special feature of a financial product that is not possessed in all products and that is why the Prospectus had specifically mentioned about investment in 'liquid instruments'. I note that while interpreting the 'interim use of funds' section in the Prospectus, it should be considered from the perspective of an ordinary investor who proposes to invest his funds in the company. I note that, had the 'interim use of funds' section in the Prospectus specifically mentioned the

possibility of investments in 'ICD's to group companies', there would have been different response to the IPO. Therefore, the contention of the Noticees in this regard is untenable.

35. Some of the Noticees have also contended that 'Risk Factors' section of the Prospectus clearly disclosed that IPO proceeds can be deployed by the management of BPML in the ICDs of the group companies of BPML. To appreciate the said contention of the Noticees, it would be appropriate to refer to the disclosures made in the 'Risk Factors' section of the Prospectus which is reproduced hereunder:

5. In the past, our company has given short term interest-free unsecured loans to group companies.

We have provided interest-free unsecured loans to our group companies during the six month period ended 31st March 2010. Although, the said loans have since been fully repaid to us, the provision of interest-free unsecured loans by us to our group companies in future might adversely affect our operations and imply opportunity costs on us besides possibility of loss of principal and interest. However, in the past, we have provided only short term loans to group companies which were repayable on demand. The details of such unsecured loans extended and recovered are as under:
.....

As on date, no amount of short-term interest-free, unsecured loan to group companies is outstanding. Presently, the management of the company does not have any intention of providing such loans to any group company, except in the event of any exigency.

36. A perusal of the aforesaid Risk Factors reveals that BPML had assured to the prospective investors that presently it did not intend to give any unsecured loans to the group companies of BPML unless an 'exigency' arises. Firstly, I note that said clause in the Risk Factors section of the Prospectus of BPML contemplates exigency on the part of group company calling for giving of loan by BPML to such group company. It does not contemplate exigency on the part of BPML for extending such loans. Further, I note that board of directors of Noticee no. 1 decided in the board meeting held on July 11, 2011 to defer the setting up of 55 Evolve centers as disclosed in the object of issue section of Prospectus, within 12 days of signing of prospectus dated June 29, 2011, under the pretext of adverse macro-economic conditions. I note that such a conduct of members of the board of

directors with respect to its decision to postpone the development of Evolve Centers under the pretext of adverse macro-economic conditions, did not reflect any circumstances of 'exigency' upon the group companies of BPML. In view of the above, I find that the contention raised by the Noticees in this regard, is untenable.

37. I note that Noticee no. 5 to 11 have contended that they were non-executive/independent directors of BPML and were thus not involved in the day to day affairs of BPML. It is contended that while passing the impugned board resolution dated July 11, 2011, they relied on the representations made by the executive management of BPML and they had no means to know the wrongdoing by the executive management of BPML. These Noticees have contended that they are the victims of the fraud perpetrated by the executive management of BPML. In this regard, I note that the allegations made in the SCN pertains to those matters pertaining to BPML which are dealt at board level and it is not necessary that a director must be involved in the day to day affairs of the company, in order to be held responsible for such acts. Therefore, the contention of the Noticees that they were not involved in the day to day affairs of BPML is not tenable. Regarding the contention of the Noticees that they had no means to know about the wrongdoings of executive management of BPML, I note the following:

- (i) From the quarterly, half yearly and annual financial statements, as disclosed by BPML to the stock exchange i.e. BSE, which are available on the website of BSE, for the FY 2011-12 and 2012-13, I find that each of these financial statements contained a report on the progress of utilization of IPO Proceeds. As per the disclosure made by BPML, in its Prospectus, the said Statement of Utilization of IPO Proceeds, was to be disclosed as a part of the financial statements of BPML. Accordingly, Statement of Utilisation of IPO Proceeds became part of the financial statements of BPML and as such was required to be approved by the board of directors of BPML, as its financial statement, in accordance with Clause 41 of the equity listing agreement, as applicable at that time. I note that in the present case, each of the financial statements alongwith the 'Statement on Utilization of IPO Proceeds' therein, was approved by the board of directors in their meetings.

I note that in each of the statements of utilization, capital expenditure on setting up of Evolve Centers, IVF Centers, Integrated Wellness Centres, etc. was continuously being shown as incurred whereas in the board meeting held on July 11, 2011, the object of setting up of Evolve Centers was postponed due to alleged prevailing unfavourable macro-economic conditions. Despite this board member approved the statement of utilisation of IPO proceeds without questioning them especially in view of their resolution dated July 11, 2011 with respect to deferring of setting up of evolve centres. If it is to be believed that the payments were made merely as advances to various parties for setting up of those Centers, but even for such advances, BPML failed to produce any evidence (such as agreement, proposals, bills or receipts, etc.) before SEBI during investigation. Further, I note that the Statutory Auditor of BPML for FY 2012-13, had made a specific remark in his Annexure to Audit Report dated May 23, 2013 (as shown in the Annual Return of BPML for FY 2012-13), that sufficient audit evidence was not available to verify the end use of money raised by public issue as disclosed in the notes to the financial statements relating to FY 2012-13.

- (ii) I note that, in July 2011, the board of directors had granted permission to BPML to deploy upto 92% (Rs. 60 crores) of the money raised through IPO as ICD's to group companies, as interim use of funds, citing not so good macro-economic conditions for setting up of new Evolve Centers. However, I find that none of the Statements of Utilization of IPO Proceeds disclosed during the FY 2011-12 and 2012-13, which were vetted and approved every time by the board of directors of BPML as part of the quarterly, half yearly and annual financial statements of BPML, ever reflected any interim deployment of funds as ICD's. It becomes more serious in the wake of the fact that there was an assurance given under the section 'Risk Factors' of the Prospectus to the effect that details about 'interim use of funds' would be disclosed alongwith the use of utilisation of IPO proceeds.
- (iii) From the Annual Report of BPML for the FY 2011-12 and 2012-13, as available on BSE website, I note that Noticee no. 4, 6 and 9 were members of the Audit Committee of BPML during the said Financial Year. I note that

in accordance with Clause 49(II)D5A of the erstwhile Listing Agreement, it was the specific responsibility of the Audit Committee to review the 'statement of utilization of funds raised through public issue'. I also note that the Prospectus of BPML had also comforted the investors in the 'Risk Factors' section, that since there is no outside monitoring agency appointed, among others, the Audit Committee shall be monitoring the utilization of issue proceeds in accordance with its terms of reference. I note that the Audit Committee had regularly, reviewed the quarterly financial results of the BPML of which statement of Utilization of IPO proceeds also forms a part. Hence, I am unable to accept the argument presented by Noticee no. 6 and 9 that they did not have any knowledge of the diversion of funds committed by the executive management of BPML. From the 'Statements of utilization of IPO Proceeds' as forming part of the quarterly financial statements of BPML for the quarter ended September 2011, December 2011 and year ended March 2012, I note that, despite assurance in the 'Risk factors' section of the Prospectus, no separate disclosures were provided for the interim deployment of funds of BPML. Further, I do not find that any specific remarks were raised by the members of the Audit Committee in this regard.

- (iv) I note that the Prospectus of BPML had comforted the investors in the 'Risk Factors' section, by stating that since there is no outside monitoring agency appointed to monitor the utilization of IPO proceeds, hence, BPML has set up a Project Monitoring Committee to monitor the implementation of the project as well as utilization of the issue proceeds. From the Annual Report of BPML for the FY 2011-12 and 2012-13, as available on BSE website, I note that Noticee no. 3, 8 and 9 were members of the Project Monitoring Committee of BPML during the said Financial Year. I note that Noticee no. 8 ceased to be a member of the Project Monitoring Committee w.e.f. September 30, 2012 and Noticee no. 3 ceased to be a member w.e.f. from August 9, 2012. I note that two formal meetings of the committee were held during FY 2012-13, and Noticee no. 3 and 8 were present in both the meetings. In view of the above, I find that it was the specific responsibility of Noticee no. 3, 8 and 9, apart from the responsibility of Audit Committee, to

monitor the deployment of IPO proceeds (including deployment in ICD's which was approved by the board in July 2011) as well as to monitor the implementation of the setting up of the Evolve Centers. From the 'Statements of utilization of IPO Proceeds' as forming part of the quarterly financial statements of BPML for the quarter ended September 2011, December 2011, June 2012 and year ended March 2012, I note that, despite assurance in the Prospectus, no separate disclosures were provided for the interim deployment of funds of BPML. I also note that, in the 'Objects of the Issue' section of the Prospectus, BPML had presented a schedule of implementation of the objects, in which it was scheduled to establish 15 Evolve Centers by March 31, 2012. However, as investigation had observed that, no new Evolve Centers were ever established by BPML after the IPO. I note that it was the specific responsibility of the Projects Monitoring Committee, according to the Prospectus, not just to monitor the utilization of the issue proceeds but also to monitor the implementation of the project. I note that Noticees no. 3, 8 and 9 did not raise any remarks/concerns about the non-establishment of any Evolve Centre, before the board of directors or Audit Committee or the Statutory Auditor or any regulatory authority.

- (v) Further, the 'Statement of Utilization of IPO Proceeds' forming part of the quarterly and annual financial statements of BPML, indeed reflected capital expenditure being incurred on setting up of Evolve Centres, but was it not a pertinent question to raise by the members of the Project Management Committee to the executive management of BPML, as to why not a single Evolve Centres came to be established until the quarter ended June 2012 against the promise of more than 15 such Centres by March 2012. Furthermore, even for such capital expenditure which was purportedly incurred by BPML, BPML failed to produce any evidence (such as agreements, proposals, bills or receipts, quotations, etc.) before SEBI during investigation. I note that it is not the case of Noticee no. 8 and 9 that they have raised their remarks/concerns about the irregularity in utilization of issue proceeds before the board of directors or Audit Committee or the Statutory Auditor or any regulatory authority. Even the Statutory Auditors in

its Audit Report for FY 2011-12 have not mentioned about any concerns being voiced by the members of the Project Management Committee. Hence, I am unable to accept the argument presented by Noticee no. 8 and 9 that they did not have any knowledge of the diversion of funds committed by the executive management of BPML. The questions that begs attention is that, was it not the specific responsibility of Noticee no. 8 and 9 to monitor the interim deployment of IPO proceeds as ICD's which was approved by the board in July 2011, as well as to monitor the implementation of the setting up of the Evolve Centers.

- (vi) The statement of utilization of IPO proceeds was vetted by the Audit Committee before being placed to the board for approval. However, in terms of Clause 41(II)(a) and (e) of the equity listing agreement, as applicable at that time, the financial statements including the statement of utilisation of IPO proceeds, were required to be approved by the board of directors. It is a double check mechanism that is contemplated to be followed. So, while the Audit Committee acts as the first level of vetting, the board of directors acts as the second level of scrutiny.

38. In view of the observations made in para 37(i) to (vi) above, statement of utilisation of IPO proceeds which continued to be approved by the board of directors of BPML, as part of the financial statements, till the quarter ending June, 2012, was showing capital expenses being incurred by BPML for setting up of Evolve Centers whereas the said decision of setting up of Evolve Center was already deferred by the decision taken in the board meeting held on July 11, 2011. Despite that Noticee no. 2 to 11 did not raise their concerns in the meeting of the board or reported the flaws to the Statutory Auditor or the relevant regulatory authorities. The ignoring of this apparent and glaring anomaly without raising any objection/ concerns shows that the said Noticees were all acting in furtherance of their common plan to conceal the misutilisation of IPO proceeds. This common plan existed since inception i.e. the date of signing of Prospectus, making misstatements in the Prospectus, passing of board resolution dated July 11, 2011 to defer the implementation of the issue objects under the pretext of unfavorable macro-economic conditions, extending ICDs to group companies of BPML without making

the relevant disclosures in statement of utilization of IPO proceeds and showing progress on setting up of Evolve Centers in statement of utilization of IPO proceeds. The conduct of Noticees subsequent to signing of Prospectus of BPML shows that misstatements made in the Prospectus of BPML was deliberate and were part of series of acts which were taken by the Noticees to divert proceeds of IPO of BPML. I note that except Noticee no. 7, all other director Noticees were member of the board of BPML till quarter ending June, 2012. In view of these facts, I find that the members of the board of directors of BPML had knowledge of the irregularity and the inconsistency in the deployment of IPO proceeds by BPML. Hence, I am not inclined to accept the contention of Noticee no. 2 and 5 to 11 that there were no means that they could have been aware about the irregularity in IPO fund utilization.

39. In view of the aforesaid findings, I note that the statements made in the Prospectus in respect of and relating to the 'Objects of the Issue', 'Interim Use of Funds' and 'Risk Factors' were untrue and inadequate on material terms. The fact that funds of IPO proceeds would be deployed as ICD's to group companies of BPML as against the setting up of Evolve Centers was never disclosed in the Prospectus. In fact, the Prospectus never contemplated that funds would be deployed as ICD's to group companies within five days from the receipt of IPO proceeds without any event of exigency. I find that such misstatement in Prospectus of BPML was deliberate and part of a larger design to come out with IPO of BPML and fund the operations of its group companies through ICD's and siphoning off money from genuine investors. I note that had the possibility of deployment of IPO proceeds in ICD's of group companies of BPML in 5 days from receipt of funds from IPO, been disclosed in the Prospectus or even expressed as a possibility in the Prospectus, the IPO of BPML would have elicited a different response from the securities market. I note that the investors of BPML were misled because of the untrue and materially inadequate disclosures in the Prospectus.

40. I note that Noticee no. 6, 7, 8, 9 and 10 have cited a catena of judgements to emphasize that the liability of non-execute/ independent directors is not pari passu with that of an executive director. It is their case that non-executive/ independent

directors cannot be held vicariously liable for the acts of BPML, unless it is shown that they were in-charge of and responsible for the conduct of the business of BPML. I note that the allegations in the SCN do not charge the said Noticees as being vicariously liable for the acts of BPML, rather the SCN is very clear about the allegation that, being the signatories to the Prospectus, the said Noticees have made certain statements therein which were untrue and/or the Prospectus failed to make all material disclosures which, if made, could have enabled the investors to make an informed decision. Thus, the SCN does not propose to hold Noticee no. 2 to 11 vicariously liable for acts of BPML. I note that, the SCN has made a reference to the impugned board meeting dated July 11, 2011, which was attended by Noticee no. 2 to 11 as members of the board of directors and the SCN has also made reference to the findings of the SEBI investigation that about 60% of the ICD's given to group companies of BPML remain unpaid, only to establish that the misstatements and failure to make material disclosures in Prospectus, was deliberate and part of pre-planned scheme to mislead the investors. Therefore, I note that the role of Noticee no. 2 to 11, as members of the board of directors who attended the impugned board meeting dated July 11, 2011, has been called into question by the SCN and their role as the executive/non-executive/independent director of BPML, is not in question. It is clarified that while the role of Noticee no. 2 to 11 has been examined in the pre-paras, such examination is independent of their individual designation as executive/ non-executive/ independent director. The examination is only limited to their role as a member of the board of directors of BPML or its board committee(s), wherein the impugned board resolutions dated July 11, 2011 were approved and ratified, or wherein the 'Statement of Utilization of Issue Proceeds' were continuously being approved without any questions being asked or objections being raised.

41. I note that Noticee no. 7 and 8 herein have relied upon the MCA circular dated March 2, 2020, emphasizing that an independent director can only be held liable in respect of such acts of omission or commission by the company which occur with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. I note that the said MCA circular dated March 2, 2020, cannot be applicable to the facts of the present case as the present matter relates to the violations that took place in FY 2011-12, at which time

the said circular was not in operation. Without prejudice to the argument about inapplicability of the said MCA circular, I note that even if the principles laid out by the said circular were to be applied to the facts of the present case, I find that Noticee no. 7 and 8 are yet liable. It is iterated that what is brought out in the pre-paras is the knowledge of the members of the board of directors, through board processes, about the irregularities in IPO fund deployment by BPML and its resultant misutilization, and the active silence of the members of the board of directors of BPML, the members of the Audit Committee and the members of the Project Management Committee while consciously approving the Financial Statements of BPML (which also includes the 'Statement of Utilization of IPO Proceeds') without raising any alarm/ concerns/ objections, shows connivance on their part in the pre-planned scheme to misutilize the IPO proceeds by making misstatement in the Prospectus.

42. I note that Noticee no. 2 has also raised the contention that being the non-executive director on the board of BPML, he was not involved in the day to day management of the affairs at BPML and that he resigned from the board of BPML on February 14, 2013, after which date he had no material/pecuniary relationship with the other directors, its promoters or senior management of BPML. I am not inclined to accept the contention of Noticee no. 2. From the Annual Reports of BPML for the FY 2011-12 and 2012-13, I note that for the FY 2011-12 and 2012-13, Noticee no. 2 was identified as one of the Key Management Personnel in accordance with AS-18 under the head 'Related Party Disclosures' forming part of the 'Notes to Financial Statements'. The definition of *Key Management Personnel* as per AS 18 is reproduced below:

Key management personnel - those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise.

43. Thus, I find that though Noticee no. 2 was designated as non-executive director of BPML, but considering the authority and control being exercised by Noticee no. 2 over the affairs of BPML, the Statutory Auditor of BPML and the board of directors

of BPML, found it appropriate to identify him as one of the Key Management Personnel of BPML. I note that it is not the case of Noticee no. 2 that he had objected to such identification as 'Key Management Personnel'. Furthermore, I also note that Noticee no. 2 was one of the promoters of BPML and the Chairman of BPML during the Financial Years 2010-11, 2011-12 and 2012-13. As the Chairman of BPML, Noticee no. 2 was the Chair at the board meeting held on July 11, 2011 wherein the impugned board resolutions authorizing the deployment of IPO proceeds as ICD's to group companies of BPML was approved. Further, the role of the members of the board of directors of BPML in approving the 'Statement of Utilization of IPO Proceeds' and their imputed knowledge about the irregularities in IPO fund deployment by BPML and its resultant misutilization, has already been brought out in the pre-paras.

44. The short case of Noticee no. 3 is that though he was the Managing Director in BPML, but his duties were only limited to the management and operation of Evolve Centre of BPML and aspects related thereto, and that he was not involved in the financial and policy decisions of BPML, which according to him was always handled by the Yash Birla Group. However, I do not find merit in this contention of Noticee no. 3. In fact, there is ample evidence to show that he was directly involved in the financial functions of BPML. I note that all the financial statements (which also includes the Statement of Utilization of IPO Proceeds) of BPML from quarter ended September 2011 to June 2012 were signed by Noticee no. 3. Noticee no. 3 was also signatory alongwith Noticee no. 4, to the Certificate which is issued by the Chief Executive Officer and the Chief Financial Officer pursuant to Clause 49 of the Listing Agreement on the Audited Financial Statement of BPML for the year 2011-12. I note that he was also the member of the Project Monitoring Committee of the board which was specifically tasked with the responsibility, not just to monitor the utilization of the issue proceeds but also to monitor the implementation of the projects. All of the above, clearly indicates his involvement not just in the financial functions of BPML but also in the monitoring and deployment of IPO proceeds. I note that Noticee no. 3 has not disputed his attendance in any of the board meeting of BPML or the meetings of the Audit Committee and Project Management Committee of BPML, as indicated in the Annual Report of FY 2011-12 and 2012-13. In order to show the specific role and responsibility that was to be assigned to

him as Managing Director of BPML, Noticee no. 3 has annexed with his reply, the copy of an unsigned Joint Venture Agreement dated April 15, 2018, which purportedly was executed between him, Birla Wellness and Healthcare Pvt. Ltd. and Pacific Healthcare Holdings Pvt. Ltd. Without going into veracity of such an agreement, as observed above, charge in the SCN on Noticee no. 2 to 11 is with respect to their role as a member of the board of directors of BPML regardless of their individual designation as managing director/executive director/independent director. I find that for his role as member of the board of directors and as member of the Project Management Committee, as discussed in the pre-paras, and also his role as the Managing Director of BPML and the only executive director on the board of BPML until his resignation in September 2012, I find that he had all the knowledge of the financial irregularities and IPO fund misutilization at BPML. Despite all this, Noticee no. 3 did not raise any concern before board, audit committee or the statutory auditor which shows that Noticee no. 3 was part of the which involved making of wrong disclosure in the Prospectus, deferring the issue objects implementation and siphoning off the IPO proceeds through making interim investment of the IPO proceeds in the ICDs of the group company of the BPML and through advances for making Evolve Centers.

45. I note that Noticee no. 5 has cast doubt on the veracity of the record of his attendance in the impugned board meeting dated July 11, 2011. According to him no other corroborating evidence in the form of 'Attendance Register' or 'Notice with Agenda' had been produced by the SCN to prove his attendance in the impugned board meeting. Hence, according to him, no consent or knowledge of authorization of investment in ICD's can be attributed to Noticee no. 5 without effectively proving his presence in the alleged board meeting. I note that, without providing any evidence in support of his contention, Noticee no. 5 has merely made a bald statement questioning the veracity of the minutes of the board meeting held on July 11, 2011, which clearly mentions about his attendance in the said board meeting. Further, from the Annual Report of BPML for the FY 2011-12, I find that six board meetings (including the impugned board meeting held on July 11, 2011) were held by BPML in FY 2011-12 and Noticee no. 5, in the said Annual Report, is shown to have attended all the six board meetings of BPML. I note that Annual Report of BPML is a publicly available record. Further, it is also not the case of Noticee no.

5 that he has disputed the contents of the Annual Report at any time before the management or the board of directors of BPML. Thus, I find that the attendance of Noticee no 5 in the impugned board meeting dated July 11, 2011 has been proved beyond doubt.

46. I note that Noticee no. 7 had resigned from the board of BPML on August 16, 2011 i.e. about 40 days from the IPO. Thus, it is his case that he was not informed or involved in the utilization of the funds. Noticee no. 7 submits that even prior to his resignation, he was not part of a board meeting held on August 12, 2011. I note that, Noticee no. 7 was member of the Audit Committee but only upto August 16, 2011. However, post the IPO, the Audit Committee had met for the first time on September 8, 2011 i.e. after Noticee no. 7's resignation from BPML. In view of the aforesaid facts, I am of the view that the case of Noticee no. 7, falls on a different footing as compared to the role of other director's of BPML. I note that unlike other members of the board of directors of BPML, Noticee no. 7 cannot be imputed with the conduct of remaining silent despite having the knowledge of the irregularities in utilization of IPO proceeds by BPML, so as to be considered being part of the scheme of making deliberate misstatement in the Prospectus. Thus, unlike the other members of the board of directors of BPML, no case is made out against Noticee no. 7 for making deliberate untrue and materially inadequate disclosures in the Prospectus.

47. The short case of Noticee no. 12 is that she being the Company Secretary of BPML upto March 13, 2012, she had no role to play in the financial and policy decisions of BPML. I note that the role of Noticee no. 12 in the financial and policy decisions of BPML, is not into question before me, rather, what is up for consideration before me, is that whether Noticee no. 12 is liable for misstatements in the Prospectus of BPML. I note that Noticee no. 12 was one of the signatories to the Prospectus and she was also present in the impugned board meeting dated July 11, 2011, wherein the decision to deploy upto 92 % of the IPO proceeds as ICD's to group companies was taken. As brought out in the previous paras, the deployment of funds in ICD's of group companies by BPML, within four days from the receipt of the funds, was never contemplated in the 'interim use of funds' or the 'Objects of the Issue' by the Prospectus. I note that, until her resignation in March 2012, Noticee no. 12 was

acting as the secretary to the Audit Committee of BPML which had met three times upto February 2012, during the FY 2011-12. Further, as also brought out in the previous paras, the Statement of Utilization of IPO proceeds for quarter ended September 2011 and December 2011 (as forming part of the quarterly and half yearly financial statements) which were approved by the board of directors and the Audit Committee, were inconsistent with the decision of the board dated July 11, 2011. In view of the above, I find that acting as the secretary to the board of BPML and as secretary to the Audit Committee of BPML, Noticee no. 12 had knowledge about the irregularities in the IPO fund deployment by BPML. I note that it is not the case of Noticee no. 12 that she had raised her concerns about the irregularity in IPO fund deployment before any of the regulatory authorities or the Statutory Auditor or the Audit Committee of BPML. In view of the above, I find that Noticee no. 12 is liable for making untrue statements and failing to make adequate material disclosure in the Prospectus. However, I also note that though she had knowledge about the irregularities in the IPO fund deployment by BPML, but by virtue of her position as the Company Secretary of BPML, she did not possess the decision making power to approve the resolutions in the board meetings, which otherwise was possessed by the members of the board of directors of BPML. On the other hand, it is also a fact that she had signed the Prospectus of BPML. Thus, I am of the view that the case of Noticee no. 12, falls on a different footing as compared to the role of the members of the board of directors of BPML.

48. Noticee no. 5 and 7 have relied on the judgement and order of Hon'ble SAT in the matter of ***P. G. Electroplast Ltd. v. Securities and Exchange Board of India (Appeal No. 281 of 2017 decided on August 2, 2019)***, wherein according to Noticee no. 7, the present bench of the Hon'ble SAT had termed the specific non-disclosure of ICD's in the 'interim use of funds' section of the prospectus as a case of 'partial non-disclosure of material information' and a mere technical violation. I note that the aforesaid decision of the Hon'ble SAT is factually distinguishable on the following grounds:

- a. In the aforesaid case it was alleged that the board of P G Electroplast had approved the interim deployment of funds as ICD's and this development was not disclosed in the RHP and the prospectus. The events took place

before the signing of the prospectus. The Hon'ble SAT had found that the said development was intimated to the merchant banker and it was the failure of the merchant banker to incorporate this disclosure in the RHP and Prospectus and thus the Hon'ble SAT considered it to be a technical violation. Whereas in the instant case, the board resolution to invest the money from IPO into ICD's of group companies was taken by the board of BPML post the issuance of prospectus dated June 29, 2011 and also after the receipt of money from IPO. Thus, as is brought out in the pre-paras the non-disclosure of the fact that upto 92% of IPO funds could also be deployed as ICD's to group companies within 12 days from signing of the Prospectus rather than the same being used in the setting up of Evolve Centres, was deliberate and part of a pre-planned scheme. Therefore, the signatories to the prospectus in the P G Electroplast case were given benefit of doubt by Hon'ble SAT, since the failure to make the relevant disclosure was found to be the fault of the merchant banker.

- b. Certain ICD's in P G Electroplast case were meant to act as bridge loan i.e. the ICD's were taken before the IPO and IPO proceeds were used to repay the ICD's.
- c. ICD's in P G Electroplast case were deployed with third parties which ultimately came to be used for manipulating the price of the scrip on listing day. Whereas, all the ICD's in the instant case were given to fund the operations of the group companies, some of which were repaid with interest, while around 60% of it were never repaid but siphoned off. I note that, in the present case, had the 'interim use of funds' section in the Prospectus specifically mentioned the possibility of investments in 'ICD's to group companies', the IPO of BPML would have elicited a different response from the stock market and also from the intermediaries such as research analysts, investment advisors, rating agencies, etc. Therefore, I find that the non-disclosure in the present case was material and the investors were denied a fair opportunity to make an informed decision.

49. With regards to the non-disclosure of ICD's in the 'interim use of funds' section of the prospectus in the P G Electroplast Case, the Hon'ble SAT while deciding the

Appeal no. 144 of 2014 vide its order dated August 30, 2016, had observed as follows:

“40. We note that even though the Prospectus did state that the Appellant would be investing the IPO proceeds in high-quality interest bearing liquid instruments, the expression ‘ICD’ is absent from the disclosure. The Appellant should, therefore, have fairly disclosed the abovesaid relevant information, if not material, regarding ICDs in the RHP and Prospectus filed with the Respondent.”

50. I note that while around 75% of the IPO proceeds were promised to be utilized in setting of Evolve Centers under the ‘Objects of the Issue’ section of the Prospectus, no such Centers ultimately came to be set up. Similarly, while 15 Evolve Centers were promised to be set up by end of March 2012, but not even a single Evolve Center was set up by that time. On the contrary around 50 % of the IPO Proceeds were deployed as ICD’s to group companies, out of which 60 % of ICD’s were never returned back to the Company. Thus, I find that, the statements in Prospectus relating to ‘Objects of the Issue’ were not true. Further, vide a board resolution dated July 11, 2011, BPML had approved and ratified a decision to deploy around 92% of its IPO Proceeds in ICD’s of group companies. This decision was taken on the pretext that the macro-economic conditions were not appropriate (which apparently was not an exigency) for setting up of new Evolve Centers and this decision was taken within 12 days from signing of prospectus and four days after receipt of IPO proceeds, however, the section on ‘interim use of funds’ never contemplated anything about deployment of IPO proceeds in ICD’s of group companies without any exigency. Thus, the Prospectus was materially deficient on this disclosure in the ‘interim use of funds’ section, which if had it been made, would have aided the investors in making a more informed decision. The ‘Statement on Utilization of IPO Proceeds’ forming part of the quarterly, half yearly and annual financial statements of BPML, never contained disclosure in respect of interim use of funds, despite being promised in the ‘Risk Factors’ section of the Prospectus. Thus, the Prospectus contained untrue statements to that extent. I note that Noticee no. 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12 were the signatories to the Prospectus of BPML and further, as brought out in the pre-paras, the members of the board of directors of BPML and its Company Secretary had the knowledge through board processes, about the irregularities in IPO fund deployment by BPML and its

resultant misutilization. In view of the above, I find that Noticee no. 1 and the signatories to the Prospectus i.e. Noticee no. 2, 3, 4, 6, 8, 9, 10, 11 and 12, have violated Regulations 57(1), Regulation 57(2)(a) r/w Clause 2 (XVI) (B) (2) of Part A of Schedule VIII, of ICDR Regulations, 2009.

Directions:

51. In view of the aforesaid findings, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11A and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 107 of the ICDR Regulations, 2009, hereby direct that:

- (i) Noticee no. 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11 are hereby restrained from accessing the securities market directly or indirectly, in any manner whatsoever, and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (2) years from the date of coming into force of this order;
- (ii) Noticee no. 12 is hereby restrained from accessing the securities market directly or indirectly, in any manner whatsoever, and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months from the date of coming into force of this order;
- (iii) The proceedings against Noticee no. 7 are disposed of without any directions.

52. The order shall come into force with immediate effect.

53. A copy of this order shall be sent to the Noticees, recognised Stock Exchanges and Depositories, RTA's of mutual funds for information and necessary action at their end.

sd/-

ANANTA BARUA

WHOLE TIME MEMBER

Date: October 23, 2020

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA