

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved : 03.8.2021

Date of Decision : 26.8.2021

Misc. Application No.791 of 2021

And

Appeal No.479 of 2020

Mohandas Shenoy Adige
2, Pearl Condominium,
Plot -163, Sector-28,
Vashi, Navi Mumbai – 400703.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan,
Bandra Kurla Complex,
Mumbai – 400 051.

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. KRCV
Seshachalam, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr.
Sagar Hate, Advocates i/b Vissha Law Services for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b. ELP for
the Respondent.

With

Misc. Application No.791 of 2021

And

Appeal No.510 of 2020

Anoj Menon
Flat No.20, 2nd Floor,
Shanti Kunj, Plot no.279,
Road no.31, Sion East,
Mumbai – 400 022.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Mumbai – 400 021.

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanvilkar, Ms. Faranaaz Karbhari and Mr. Rahul Jain, Advocates i/b. Alpha Chambers, Advocate for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b. ELP for the Respondent.

**With
Misc. Application No.795 of 2021
And
Appeal No.342 of 2021**

Yashovardhan Birla
Birla House, 21 Mount Pleasant Road,
Malabar Hills, Mumbai – 400006. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051. ...Respondent

Mr. J. P. Sen, Senior Advocate with Mr. Vaibhav Ghoghare, Advocate i/b Mr. Shourya Tanay, Advocate for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b ELP for the Respondent.

**With
Misc. Application No.791 of 2021
And
Appeal No.84 of 2021**

Upkar Singh Kohli ...Appellant
202, Chinar,
21st TPS Road,
Bandra West, Mumbai-400050.

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Mumbai. ...Respondent

Mr. Piyush Raheja, Advocate with Mr. Sahil Gandhi, Mr. Feroze Patel, Mr. Jigar Shah, and Ms. Dimple Vora, Advocates for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashmi Dalmia and Mr. Karthik Narayan, Advocates i/b ELP for the Respondent.

**With
Misc. Application No.792 of 2021
And
Appeal No.509 of 2020**

Venkateshwaralu Nelabhotla
F.No.202, Windsor Castle, St.No.6,
Uma Nagar, Kundanbagh, Begumpet,
Hyderabad-500016.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan,
Bandra Kurla Complex,
Mumbai – 400 021.

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Ankit Vijaywargiya and Ms. Yugandhara Khanwilkar, Advocates for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashmi Dalmia and Mr. Karthik Narayan, Advocates i/b ELP for the Respondent.

**With
Misc. Application No.793 of 2021
And
Appeal No.512 of 2020**

Rajesh Shah
4-B, Pleasant Palace,
Friends Colony, N.S. Road No.5,
JVPD Scheme, Vile Parle (West),
Mumbai – 400056.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No.C-4A,

G Block, Bandra Kurla Complex,
Mumbai.

...Respondent

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Mr. Sahil Gandhi, Mr. Feroze Patel, Mr. Jigar Shah and Ms. Dimple Vora, Advocates for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b ELP for the Respondent.

**With
Misc. Application No.794 of 2021
And
Appeal No.24 of 2021**

Dr. Abhijit Prabhakar Desai
1501, Matoshree Heights,
15th Floor, D.L. Vaidya Road,
Dadar West, Mumbai -400028.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhawan, Bandra Kurla Complex,
Mumbai – 400 051.

...Respondent

Mr. Shyam Mehta, Senior Advocate with Mr. Aditya Bapat, Advocate i/b. Deepakar Livingston for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b. ELP for the Respondent.

**CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member**

Per: Justice Tarun Agarwala, Presiding Officer

1. This group of appeals are against a common order dated 23rd October, 2020 passed by the Whole Time Member ('WTM' for short) and are being taken up

together. By the impugned order, the appellants, being Directors of the Company known as Birla Pacific Medspa Ltd. have been restrained from accessing the securities market directly or indirectly, in any manner and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a period of two years.

2. The facts leading to the filing of the present appeal is, that the Company came out with red herring prospectus on 18th March, 2011 which was followed by prospectus on 29th June, 2011 at the time of its Initial Public Offer ('IPO' for short) with the following objects of the issue, namely:

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).
3. The proceeds of the IPO were to be utilised in the following manner:

(in lakhs)

Sr. No.	Particulars	Amount
1.	Capital Expenditure for Setting up 55 centres 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

4. The prospectus also indicated that pending utilisation, the IPO proceeds could be invested in liquid instruments. The relevant extracts of the interim use of funds as stipulated in the prospectus is extracted hereunder:

“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.”

5. The prospectus also stated that a project monitoring committee would be constituted which will monitor the use of the IPO proceeds.
6. The Company issued 6,51,75,000 equity shares of Rs.10/- per share. The total proceeds received by the Company were Rs.65.17 crores.
7. The project monitoring committee which was constituted held a meeting on 1st July, 2011 and resolved to deploy the funds in Inter Corporate Deposits ('ICDs' for short) with group companies. Similar resolution was also made by the Board of Directors in its meeting held on 11th July, 2011. The extracts of the minutes of the meeting of the Board of Directors of the Company is extracted hereunder:

“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 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 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.”

8. It was alleged that the Company made misstatement in the prospectus and that the IPO proceeds were diverted and misutilised by the Company and that some amount of the IPO proceeds 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.

9. Accordingly, an investigation was carried out for violation of the securities laws which ultimately led to issuance of a show cause notice dated 27th March, 2017. The WTM has summarised the charge in the show cause notice in para 23 and for facility the same is extracted hereunder:

“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 Crores 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 proceed."

10. In para 24, the WTM has found that the show cause notice levels allegation on three fronts which is mentioned in para 23(a), (b) and (c). It was also indicated that separate adjudication proceedings have been initiated by SEBI with respect to the charges mentioned in para 23(a) and 23(b) and, consequently, concluded that the present proceedings, in the present case, was confined to the charges mentioned in para 23(c), namely, to determine whether the Company and its Directors while authorising the issue of ICDs in the board meeting of 11th July, 2011 have violated the provisions of Regulations 57(1), 60(4)(a) and 60(7)(a) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as '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.

11. It was alleged that the Company had no plan from the very inception to utilise the money as per the prospectus and that the Company had played a fraud upon the IPO subscribers who had trusted the management with their money to be utilized as per issue objectives.

12. The WTM after considering the material evidence on record came to the conclusion that the principal evidence recording misstatement made in the prospectus was on the basis of the minutes of the meeting of the Board of Directors dated 11th July, 2011 vis-à-vis the clause relating to interim use of funds in the prospectus. The WTM found that the prospectus indicated that the IPO proceeds could be temporarily invested in interest bearing liquid instruments including deposits with banks, mutual funds etc. but could not invest the money in ICDs which was not specifically stated in the prospectus. The WTM found that the IPO proceeds invested in ICDs was not a liquid

instrument and that investment in ICDs was not contemplated in the prospectus.

13. The WTM further concluded that the IPO proceeds were to be utilised to set up evolve centres as per the prospectus but within 12 days of the signing of the prospectus it was revealed that setting up of Evolve Centres was deferred owing to adverse macro-economic conditions prevailing in the country, and such deferring of main object clause of issue on the pretext of unfavourable macro-economic conditions and thereby deploying the IPO proceeds in the ICDs of group companies shows that the disclosures made in the prospectus lacked in material particulars and were untrue and inadequate and, therefore, violative of Regulation 57 and 60 of the ICDR Regulations.

14. The WTM further came to the conclusion that the resolution dated 11th July, 2011 passed by the Board of Directors included the word 'corporate' for temporary utilisation of funds and such inclusion of the word 'corporate' was deliberate and in violation of the term

‘for utilisation of the IPO proceeds as an interim measure’ under the prospectus and, therefore, again concluded that the insertion of the word ‘corporate’ in the board resolution dated 11th July, 2011 indicates that the disclosures made in the prospectus were deliberately lacking any material particulars and were inadequate.

15. On account of the aforesaid, the WTM concluded that such misstatement in the prospectus of the Company was deliberate and part of a larger design to come out with IPO of the Company and fund the operations of its group companies through ICD’s and siphoning off money from genuine investors.

16. We have heard Mr. Somasekhar Sundaresan, Advocate assisted by Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi, Mr. Sagar Hate, Mr. J. P. Sen, Senior Advocate assisted by Mr. Vaibhav Ghoghare, Mr. Piyush Raheja, Advocate assisted by Mr. Sahil Gandhi, Mr. Feroze Patel, Mr. Jigar Shah and Ms. Dimple Vora, Mr. Ankit

Vijaywargiya and Ms. Yugandhara Khanwilkar, Mr. Gaurav Joshi, Senior Advocate assisted by Mr. Piyush Raheja, Mr. Sahil Gandhi, Mr. Feroze Patel, Mr. Jigar Shah and Ms. Dimple Vora, Mr. Shyam Mehta, Senior Advocate assisted by Mr. Aditya Bapat, Advocate for the appellant and Mr. Chander Uday Singh, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates for the respondent.

17. The appellants are Non-Executive Director and Non-Executive Independent Director. One of them is a Director and one is the Managing Director of the Company.

18. The appellants admittedly were signatories to the resolution of 11th July, 2011. Their contention was that they had a limited role to play and were not involved in the day to day affairs and the running of the Company.

19. Long drawn arguments were made by the appellants and equally long drawn arguments were

made by the learned counsel for the respondent. In fact, the arguments stretched to those violations which are part of consideration before the Adjudicating Officer and an effort was made to prejudice the mind of the Tribunal by making forays into the allegations which are subject matter of consideration before the Adjudicating Officer and were not relevant to the issue in hand. The respondent invited our attention, taking us threadbare into the details with regard to the issues involved in the prospectus as well as went into the details of the profile of each of the Director, the constitution and the members of the project managing committee. It was contended that the Company and its Directors have deliberately made incorrect disclosures and such misstatement in the prospectus was deliberate and part of a larger design to come out with an IPO and divert the IPO proceeds to group companies through ICDs.

20. Having heard the learned counsel for the parties and having perused the relevant clauses of the

prospectus with regard to the interim use of funds and having perused the resolution of the Board of Directors dated 11th July, 2011, we are of the opinion that the finding given by the WTM that there is a misstatement in the prospectus which was done deliberately from the very inception in order to misuse the IPO proceeds and divert the IPO proceeds through ICDs to group companies is perverse and based on surmises and conjectures which a prudent person cannot arrive at. It is settled law that a finding must be based on some facts but in the instant case the facts which has been brought on record shows that there is no misstatement in the prospectus and, therefore, the question of having some ulterior design from the very inception to divert the proceeds through ICDs is in our opinion stretching it a bit too far. If the IPO proceeds were not utilized in the manner stated in the prospectus it does mean that the subsequent action taken by the Company indicates that there was a misstatement in the prospectus. At best one could come to the conclusion that there was a

violation of the terms and conditions of the prospectus with regard to the use of funds.

21. The interim use of funds in the prospectus clearly indicates that the IPO proceeds could be temporarily invested in interest or dividend bearing liquid instruments including deposits with bank, mutual funds etc. The word “including” after the word “instruments” is only illustrative in nature and is not exhaustive. It is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute or where it is intended that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative and not exhaustive. The word ‘including’ is a term of extension. It imports addition and is generally used to enlarge the meaning of the preceding words. Therefore, it could include any other debt instrument such as ICDs. “Liquid instrument” means an

instrument which is easily tradable, ie, an instrument which is available at the drop of a hat. An instrument which can be securely, and quickly exchanged for legal tender or which can be converted to hard cash or which can be readily converted to cash. The mere fact that the word “ICDs” was not indicated specifically in the interim use of funds in the prospectus does not mean that the interim use of funds cannot be deployed in the ICDs and can only be deployed to such instruments which were indicated in the prospectus.

22. In ***P.G. Electroplast vs. SEBI, in appeal no.281 of 2017 decided on 25th June, 2019*** the appellant, in the said case, had disclosed in the prospectus that the Company intended to invest the IPO proceeds in an interest bearing instrument. The Company subsequently invested the IPO proceeds in ICDs which was objected by SEBI. This Tribunal held that non mention of ICDs in the prospectus was only technical and it cannot be a case of misstatement.

23. In our view, merely because the word ‘ICD’ was not mentioned in the interim use of funds in the prospectus does not become a case of misstatement in the prospectus nor does it become a deliberate part of larger design to come out with an IPO and, thereafter, funding the operations of its group company through ICDs thereby siphoning of the money from the genuine investors. In our opinion, the word ‘liquid instrument’ is wide enough to include ICDs. *In South India Corporation Pvt. Ltd. v. Kamarajar Port Ltd. & Ors. Manu/TN/0971/2016*, the Madras High Court observed that inter corporate deposit is a liquid asset.

24. The finding that because the word ‘corporate’ was included in the resolution of the Board of Directors dated 11th July, 2011 indicates that the prospectus lacked material particulars is patently erroneous as we have held that liquid instruments includes ICDs and, therefore, there was no misstatement in the prospectus. Consequently, the prospectus did not lack material particulars. Further, the resolution of 11th July, 2011

was not in contradiction or in violation of the terms indicated in the prospectus but only clarified the deployment of the IPO proceeds on a temporary basis. Such clarification in our opinion was in consonance with the use of the word 'liquid instruments' given in the prospectus.

25. The finding given by the WTM for usage of the word 'corporate' in the resolution of the Board of Directors to indicate that the disclosures so made lacked material particulars and were untrue and inadequate and further that such misstatement in the prospectus was deliberate and part of a larger design to come out with an IPO and divert the IPO proceeds through ICDs to group companies from the very inception is patently perverse apart from being based on surmises and conjectures. In our opinion, a subsequent event/decision by the Company cannot lead to an adverse inference being drawn nor can it lead to a conclusion that the prospectus of the Company was misleading the subscribers. Such finding is based on

no evidence. If a statement made in the prospectus is not adhered to by the Company it does not become a misstatement. At best it can be a case of the Company violating the terms and conditions of the prospectus. Thus, the finding that the disclosures made in the prospectus were deliberately lacking in material particulars and were inadequate is patently erroneous.

26. In this regard, the provision of Regulation 57(1), 60, Schedule 8 are extracted hereunder:

“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. A perusal of the aforesaid provisions indicates that the offer document is required to contain all material disclosures to enable the investors/subscribers to take an informed decision and that such disclosure must be prompt, true and fair. In the instant case, the disclosures made in the prospectus were material disclosures which were true, fair and adequate. There is no finding of the WTM that the disclosures made in the prospectus were not true and fair or were inadequate. The use of the word ‘corporate’ in the resolution of the Board of Directors dated 11th July, 2011 does not make the prospectus untrue or inadequate. In our view, the resolution of the Board of

Directors was in accordance with the disclosures made in the prospectus. The usage of the word 'corporate' in the resolution does not dilute the statement made in the prospectus. In fact, it only clarifies it. Thus, there is no breach of Regulation 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.

28. In view of the aforesaid, the contention raised by the learned counsel for the appellant that they were denied inspection of documents in violation of the principles of natural justice or on the issue that the proceedings were initiated belatedly or on the issue that the appellants being Non-Executive Director/Non Independent Executive Director no liability could be fastened upon them as they had a limited role to play in affairs of the Company need not be gone into as we are satisfied that the appellants did not commit any breach of the ICDR Regulations nor made any misstatement in the prospectus.

29. For the reasons stated aforesaid, the impugned order in so far as it relates to the appellants cannot be sustained and is quashed. All the appeals are allowed. In the circumstances of the case, parties shall bear their own costs. All the misc. applications are accordingly disposed of.

30. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

26.8.2021
RHN