

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sr. No.	Name of Noticee	PAN
1.	Aster Silicates Ltd. (now Shri Aster Silicates Ltd.)	AABCA6474E
2.	Mahesh Maheshwari	ACDPM5613L
3.	Namrata Maheshwari	AFGPM6835A
4.	Ambica Ceramics	AFGPM6835A
5.	Orbit Corporation	AQZPP1920D
6.	Shukan Enterprise	AAZPP0768M
7.	Karan Enterprise	AWSP9675Q
8.	Shreeji Machine Tools	AQSPP7982N
9.	Shree Ganesh Engineering Corporation	ASOPP2722N
10.	Krish Corporation	ARGPP2402G
11.	Arasuri Enterprise	AAZPP4676N
12.	Suraj Trading Corporation	AFFPM6604L
13.	Bhavi Trading Company	AAZPP0768M
14.	Chamunda Enterprise	ALAPC6731H

(The entities mentioned above are individually known by their respective name or Noticee No. and collectively referred to as "Noticees")

In the matter of Aster Silicates Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the Initial Public Offer (hereinafter referred to as "**IPO**") of equity shares of Aster Silicates Ltd. (now known as Shri Aster Silicates Ltd.) (hereinafter referred to as "**ASL/the Company**"). Facts unearthed during the said investigation pertaining to raising of funds by the *Company* through IPO and a scheme allegedly deployed by the *Noticees* for utilization thereof are as under:

- i. The *Company* came out with an IPO to raise INR 53.10 Crore by way of issue of 45,00,000 equity shares, at the price of INR 118 per share. The equity shares of the *Company* got listed on the two stock exchanges viz; BSE Limited (hereinafter referred

to as “BSE”) and National Stock Exchange of India Limited (hereinafter referred to as “NSE”) on July 28, 2010.

- ii. Vide the Prospectus dated June 30, 2010, the *Company* had disclosed the following as the proposed utilization of IPO and means of finance:

Table 1: Proposed Utilisation

Sr. No.	Particulars	Amount (INR in Lakh)
1	Expansion of manufacturing facilities	4,432.19
2	Additional Working Capital requirements	750.00
3	Public Issue Expenses	500.00
Total Cost of the Project		5,682.19

Table 2: Means of Finance

Sr. No.	Particulars	Amount (INR in Lakh)
1	Proceeds from IPO	5,310.00
2	Internal cash accruals	372.19
Total		5,682.19

- iii. The *Company*, vide its emails dated December 28, 2015, July 12, 2016 and an undated letter received by SEBI on May 23, 2016, provided the following break up of IPO proceeds utilization:

Table 3: Utilization of IPO proceeds

Sr. No.	Particulars	Upto 21.5.2010*	After 22.5.2010	Total Expenses	As per Prospectus
		(INR in Lakh)	(INR in Lakh)	(INR in Lakh)	(INR in Lakh)
1	Land Development and Civil Work	316.83	194.37	511.20	511.20
2	Purchase of Plant & Machinery	887.95	2,765.33	3,653.28	3,665.99
3	Deposit with Gujarat Gas		65.72	65.72	55.00
4	Additional Working Capital Requirement		556.47	556.47	750.00
5	Contingencies				200.00
6	Public issue Expenses	50.97	472.39	523.36	500.00
	Total	1,255.75	4,054.28	5,310.03	5,682.19

*May 21, 2010 is the date mentioned in the prospectus upto which certain amount was utilised towards the Objects of the IPO before the IPO. It was also mentioned that this amount would be recouped from the IPO proceeds.

- iv. The *Company* was asked to provide documents to substantiate the utilization of the IPO proceeds as per its claim including bills/ invoices and bank statements highlighting the transfer of money to the vendors. Upon perusal of the list of vendors / suppliers as provided by the *Company* vide its letter dated December 28, 2019, it is observed that 10 entities / accounts accounted for a majority of the payment (approx. 70.1%) out of the IPO proceeds. The details of the top 10 vendors / accounts to whom the payments were stated to have been made from IPO proceeds is as follows:

Table 4: Top 10 Vendors / Account

Sr. No.	Vendor Name	Amount (in INR)	% to total IPO proceeds
1	Neptune Enterprise	10,00,00,000	18.83%
2	Chamunda Enterprise	4,66,23,000	8.78%
3	Orbit Corporation	4,57,73,000	8.62%
4	Shukan Enterprise	4,05,28,203	7.63%
5	Karan Enterprise	3,30,00,000	6.21%
6	Shreeji Machine Tools	2,95,26,000	5.56%
7	Shree Ganesh Engineering Corportaion	2,78,25,000	5.24%
8	Krish Corporation	1,80,00,000	3.39%
9	Haren Chemical Agencies	1,57,74,833	2.97%
10	HDFC Share Appl. Refund Interest	1,52,51,500	2.87%
	Total	37,23,01,536	70.1%

- v. Upon analysis of submissions of the *Company*, fund flow, invoices submitted by the *Company* and replies of vendors etc., the following observations are made:
- The amount of INR 10 crore claimed to be transferred to Neptune Enterprise out of the IPO proceeds was noticed to be transferred to *Noticee No. 4*, an entity related to ASL. The entire amount of INR 10 Crore was thereafter, immediately transferred back to ASL by *Noticee No. 4*.
 - From the payments purported to have been made to vendors i.e., *Noticees No. 5* to *10* and to *Noticee No. 14*, the following pattern was observed wherein:

- Part of the payment received from ASL was transferred back to ASL via ASL's related entity i.e. *Noticee No. 4* or through conduits such as *Noticees No. 11 to 13*;
- Entire remaining amount was either immediately withdrawn from vendors' accounts in cash or transferred to third parties' accounts, from where the amounts were withdrawn in cash.
- The entire amount of INR 2.78 crore transferred to vendor (*Noticee No. 9*) was withdrawn in cash.
- ASL has stated that payments worth of INR 1.80 crore was made to *Noticee No. 10*. However, it was observed that only INR 1.55 crore was paid to *Noticee No. 10* while the rest of the money i.e. INR 0.25 crore, was actually paid to another vendor i.e. *Noticee No. 7*. It is observed that the entire amount i.e. INR 1.80 crore was subsequently withdrawn in cash by *Noticees No. 7 and 10*.

From the above, it is noticed that the *Company* has neither been able to provide sufficient documentary proof of transactions nor any explanation on the nature of business that was transacted with the aforesaid 7 vendors.

- c. With respect to HDFC Share Application Money Refund with Interest, it is noted from the Final Monitoring report on the IPO of ASL that there was a delay in the allotment due to an option given to the applicants to withdraw their bids. The withdrawal option given to the applicants was due to alleged non-disclosure of certain information (related to details of the pledged shares of the promoter, non-repayment of loans, non-disclosure of notices issued to the promoter and the company) in the RHP. The *Company*, upon SEBI's directions, had issued a public clarification providing an option to the applicants to withdraw their bids, if they wanted to. The period for the withdrawal option was kept for 10 days commencing from July 13, 2010 to July 23, 2010. Due to the above, there was a delay in the dispatch of refund to the applicants. Hence an interest of 15% for 15 days (amounting to INR 1,52,51,000) was paid to all the applicants. Thus, it is observed that the amount of INR 1.52 crore paid by the *Company* for payment of interest on the refund of application money out of the IPO funds was due to a

lapse on the part of the *Company*, hence the above expenditure has not been viewed as an utilisation of IPO proceeds as per the objects of the IPO.

- vi. Considering the suspicious pattern of fund flows with respect to almost all the top 10 vendors to whom the IPO funds have been disbursed who were apparently found out to be conduits for misutilisation of such funds and due to the non-delivery of summons to most of the said vendors / conduits, the details of their account opening and KYC were sought from such vendors' bankers. Based on the documents furnished by the said banks, an analysis of the KYC details of these vendor entities has been made and presented as below:

Table 5

Name of the Vendor/Conduit	Name of the Introducer	Account Opening Date	Name of the Bank	Branch	Status/Date of Closure
Vendors					
Ambica Ceramics (Noticee No. 4)	Mahesh A Maheshwari	23/11/2007	Kankaria Maninagar Nagrik Sahakari Bank Ltd.	Navrangpura Branch	21/07/2011
Chamunda Enterprise (Noticee No. 14)	Proprietor, Jolex Traders	05/07/2010	Sarvodaya Commercial Co-op Bank Ltd	Ashram Road	Non-Operative
Chamunda Enterprise (Noticee No. 14)	N.A.	09/04/2010	The Bhuj Mercantile Co-Op Bank Ltd	Ahmedabad	14/02/2011
Orbit Corporation (Noticee No. 5)	Proprietor, Jolex Traders	17/07/2010	Sarvodaya Commercial Co-op Bank Ltd	Ashram Road	Non-Operative
Orbit Corporation (Noticee No. 5)	N.A.	06/04/2010	The Bhuj Mercantile Co-Op Bank Ltd	Ahmedabad	23/10/2010
Shukan Enterprise (Noticee No. 6)	Proprietor, Archita Enterprises	04/08/2010	Adarsh Co-op Bank Ltd	Ashram Road	Non-Operative
Shukan Enterprise (Noticee No. 6)	Bhavi Trading	09/04/2010	The Bhuj Mercantile Co-Op Bank Ltd	Ahmedabad	Dormant
Karan Enterprise (Noticee No. 7)	- Proprietor, Archita Enterprises - Bhavi Trading Co.	21/12/2009	The Kukarwada Nag. Sah. Bank Ltd	Shahibag, Ahmedabad	Dormant since: 21/02/2011

Karan Enterprise (Noticee No. 7)	Bhavi Trading	06/02/2010	The Bhuj Mercantile Co- Op Bank Ltd	Ahmedabad	Dormant
Shreeji Machine Tools (Noticee No. 8)	Shivam Enterprise	03/07/2010	The Cosmos Co-op Bank Ltd.	Ashram Road	N.A.
Shreeji Machine Tools (Noticee No. 8)	No Introducer	03/07/2010	Adarsh Co-op Bank Ltd	Ahmedabad	25/11/2011
Shree Ganesh Engineering Co (Noticee No. 9)	Shri Ambika Engineering Works	26/03/2009	Sarvodaya Commercial Co-op Bank Ltd	Ashram Road	Non- Operative
Krish Corporation (Noticee No. 10)	Bhavi Trading	06/02/2010	The Bhuj Mercantile Co- Op Bank Ltd.	Ahmedabad	30/10/2010
Conduits					
Arasuri Enterprise (Noticee No. 11)	Shukan Enterprises	13/07/2010	The Cosmos Co-op Bank Ltd	Ashram Road	19/05/2012
Bhavi Trading Co (Noticee No. 13)	No Introducer	28/07/2010	Adarsh Co-op Bank Ltd	Ahmedabad	Non- Operative
Bhavi Trading Co (Noticee No. 13)	Proprietor, Jolex Traders	26/02/2009	Sarvodaya Commercial Co-op Bank Ltd.	Ahmedabad	Non- Operative
Suraj Trading (Noticee No. 12)	Proprietor, Jolex Traders	06/07/2010	Sarvodaya Commercial Co-op Bank Ltd.	Ashram Road	Non- Operative

vii. From the above details the following can be observed:

- a. Almost all the vendors/conduits have opened their accounts with Cooperative Banks at Ashram Road, Ahmedabad during July-August 2010 i.e., after the closure of the IPO and before the IPO proceeds were credited in ASL's bank account, which got credited on July 27, 2010.
- b. The aforesaid vendors' accounts were either closed or became non-operational soon after the receipt of funds raised through IPO.
- c. The vendors/conduits have different common introducers for opening of the above bank accounts.

viii. In view of the above, considering the lack of justification from the *Company* with supporting invoices for the above stated transactions, the unexplained manner in which funds were returned to the company and/or the unexplained cash withdrawals of significant amounts by the vendors/conduits from their accounts, it

is observed that the money claimed to have been utilised out of IPO proceeds for purchases from these vendors was not actually utilised in accordance with the objects of the IPO as disclosed in the prospectus. Based on analysis carried out as above, the details of the non-utilisation of IPO proceeds by ASL are found to be as under:

Table 6: Non-Utilisation of IPO proceeds

Vendor / account name	Amount transferred to the vendors by ASL in INR	Amount returned back to ASL (directly by vendors / by other entity) - in INR	Amount withdrawn as cash by entities (directly by vendors / by other entity) - in INR	Net amount which can be stated to be not utilised as per objects in prospectus - in INR
Neptune Enterprise*	10,00,00,000*	10,00,00,000	NA	10,00,00,000
Chamunda Enterprise	4,66,23,000	2,20,00,000	2,46,23,000	4,66,23,000
Orbit Corporation	4,57,73,000	1,24,14,000	3,33,59,000	4,57,73,000
Shukan Enterprise#	4,05,28,203#	1,70,00,000	2,35,00,000	4,05,00,000
Karan Enterprise	3,30,00,000	1,00,00,000	2,30,00,000	3,30,00,000
Shreeji Machine Tools#	2,95,26,000#	1,52,00,000	1,23,39,045	2,75,39,045
Shree Ganesh Engineering Corporation	2,78,25,000	0	2,78,25,000	2,78,25,000
Krish Corporation	1,80,00,000	0	1,80,00,000	1,80,00,000
Refund interest payment	1,52,00,000	NA	NA	1,52,00,000
Total	35,64,75,203	17,66,14,000	16,26,46,045	35,44,60,045#

*Amount transferred to Ambica Ceramics and returned to ASL. No transfer was made to Neptune Enterprise.

Does not include INR 28,203 and INR 19,86,955 transferred by ASL to Shukan Enterprise and Shreeji Machine Tools, which neither returned to ASL nor withdrawn as cash. Hence no adverse inference drawn.

ix. Thus, it is noted that out of total IPO proceeds of INR 53,10,00,000/-, at least INR 35,44,60,045/- was not utilised in accordance with the objects of the IPO, as disclosed in the prospectus.

2. Based on the afore stated factual matrix revealed during the investigation, a common Show Cause Notice dated July 17, 2019 (hereinafter referred to as “SCN”) was issued to the *Noticees* alleging that the *Company* and *Noticees No. 2 and 3* had a pre-determined plan and have employed a manipulative device, in connivance with their related entity i.e. *Noticee No. 4* and vendors referred to as *Noticees No. 5 to 10, Noticee No. 14* and conduit entities referred to as *Noticees No. 11-13*, wherein the *Company* did not utilize INR 35.44 crore out of the IPO proceeds in accordance with the disclosed objects of the issue and have diverted the said amount for purposes other than those mentioned in the prospectus. It is also alleged that *Noticees No. 4 to 14* were parties to

the manipulative device employed by the *Company* for the diversion of the IPO proceeds. It is further alleged that *Notices No. 1 to 3* disclosed wrong information in the annual report claiming therein complete utilization of the IPO proceeds. Moreover, it is also alleged that the prospectus provided the wrong disclosures, as the *Company* never intended to utilize the IPO proceeds (INR 35.44 crore) for the objects stated in the prospectus and the same was diverted for purposes other than those mentioned in the prospectus.

3. The SCN alleged that by the aforesaid acts, the *Notices No. 1 to 3* have violated Sections 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with regulation 3 (a), (b), (c) and (d), 4(1), 4(2)(f), (k) and (e) of SEBI (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”). The SCN further alleged that *Notices No. 4 to 14* have violated Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

4. It is noted from the records that the SCN was delivered to the *Noticee Nos. 1 to 4 and 14* through SPAD, whereas for the rest of the *Notices*, viz., *Noticee Nos. 5 to 10, 12 and 13* the SCN was published in the newspaper and for *Noticee No. 11*, the SCN was served by affixing the SCN at the last known address. In response to the SCN, *Noticee No. 2* vide his letter dated August 12, 2019 on his behalf as well as on behalf of *Notices No. 1, 3 and 4*, submitted that he needs 4 to 6 weeks’ of additional time to submit a reply to the SCN. However, no reply was received from *Notices No. 1 to 4*.

5. Subsequently, a personal hearing in the instant matter was fixed on April 21, 2020 vide hearing notice dated January 10, 2020 which was informed to all the *Notices*. Pursuant to the publication of the said hearing notice in the newspaper, vide letter dated March 5, 2020 it was informed by Mr. Divyesh Desai that Hon’ble National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as “**NCLT**”), has vide its order dated October 1, 2019 ordered for liquidation of the *Company* and that he has been appointed as the liquidator of the *Company*.

6. Considering the facts and circumstances of the matter, another opportunity of hearing was granted in the instant matter on August 19, 2020. *Notices No. 1 to 3* were informed about the scheduled hearing via email while for the remaining *Notices*, the hearing date was published in the newspaper.

7. *Notices No. 2 and 3* vide their letter dated July 28, 2020 submitted their response to the SCN. Both the *Notices* have made similar submissions, which are summarized herein under:

- 7.1. The allegations framed in the SCN relate to the IPO, which was more than nine years ago which has prejudiced them in responding adequately to the allegations in the SCN since the documents/ facts pertaining to utilization of the funds post the IPO is not readily available.
- 7.2. In the present case, given that the IPO pertained to 2010 (i.e. more than nine years ago) and *Notices No. 2 and 3* having ceased to hold any position with or being associated with ASL, it is submitted that the facts of the present case do not in any manner constitute an 'emergent situation' or present an 'impending danger' to the security of the market which would necessitate a remedial or a preventive direction to be issued by the SEBI.
- 7.3. For practical and commercial reasons, ASL decided to increase the capacity at the Jagadia plant by 300 tonnes per day from 50 tonnes per day. In this regard, ASL secured a loan of INR 14 crores from SICOM Investments and Finance Limited (hereinafter referred to as "**SICOM**") and also obtained a sanction letter from the State Bank of India to the tune of INR 14 crore. In addition, ASL also took unsecured loans of INR 29 crores to complete major civil works at the plant in Jagadia. In fact, most of civil work was completed by July 2010 (including set up of plant and machinery). At the same time, ASL also decided to raise funds by way of a public issue.
- 7.4. It is submitted that the proceeds of the IPO have been utilized as per the prospectus. This has been verified by inspection carried by SEBI as well as independent valuer appointed by SICOM. To this effect, *Notices No. 2 and 3* have submitted a copy of the third-party valuation report dated March 19, 2012.
- 7.5. The SCN purports to conclude that the IPO proceeds were not utilized towards the objects stated in the prospectus, allegedly on the basis of the fund flow from ASL to the vendors, reversal of the same to ASL coupled with cash withdrawals. This is an entirely fallacious approach, given that the physical verification by the

third-party valuer (appointed by SICOM) has concluded that the items mentioned in the prospectus has actually been erected/ put up at the site.

7.6. In any event, ASL had begun work on the expansion of the unit even before the funds were received from the IPO. Ambica Ceramics, on behalf of ASL, extended the partial funds to the vendors, as a bridge loan to ASL. Upon receipt of IPO proceeds, the accounts between ASL and Ambica Ceramics were settled.

7.7. With respect to funds forwarded by Ambica Ceramics to ASL, the same were part of a different purchase-sale transaction of Soda Ash and Sodium Silicate, which had nothing to do with the IPO proceeds and the expansion of the unit.

7.8. In respect of the allegation of there being only a few invoices for partial amounts and no invoices for the remaining sums paid to the vendors, it is respectfully submitted that the sales invoices are in the possession of the Sales Tax Department or in custody of SICOM. *Noticees No. 2 and 3* do not have access to these. The fact of existence of these invoices is borne from the completion of expansion of the plant.

7.9. It is submitted that there is not an iota of evidence of linkage between *Noticees No. 5 to 14* with ASL and/ or *Noticee No. 2* or *Noticee No. 3* or that these entities are fronts of ASL.

7.10. Requirement of 'intention' is a pre-requisite to prove 'fraud' for violation of PFUTP Regulations and the fact that the plant was in fact expanded belies the point that there was an intent to play fraud on investor.

7.11. SCN issued to *Noticees No. 2 and 3* is pre-mature, given that allegations against ASL have not been established so far. It is a settled principle of law that prior to invoking the principle of vicarious liability against a Director/ officer of a company, the alleged violations of the law by the company have to be established in the first place. Neither any alleged violation of the law by ASL has been established, nor ASL has been found to be guilty of any offence.

7.12. The Hon'ble Supreme Court has held in the matter of *Sunil Bharti Mittal vs. Central Bureau of Investigation* that vicarious liability cannot be imposed unless first, it is statutorily provided for, and secondly, there is a specific act attributable

to an individual upon which such liability may be fastened. Neither PFUTP Regulations nor SEBI Act, imposes such strict vicarious liability.

7.13. *Notices No. 2 and 3* have placed reliance on the order of Hon'ble Supreme Court of India in the matter of *Gorkha Security Services vs. Government of NCT of Delhi & Ors.* and have contended that the SCN does not indicate the actions proposed and no specific measures or specific directions sought to be taken have been mentioned therein. Hence, the SCN ought to be discharged.

8. On the day of the scheduled hearing, liquidator of *Noticee No. 1* appeared. He informed that there was non-cooperation by the management (*Noticee No. 2*) of the *Company*. As various transactions by the *Company* were undertaken with Promoters, related parties / associates, to which no satisfactory reply was provided, the same was brought to the notice of Hon'ble NCLT. It was further submitted that an appeal under Section 70 of Insolvency and Bankruptcy Code, 2016 has also been filed for such non-cooperation and therefore no action should be initiated against the *Company*.

9. *Notices No. 2 and 3* appeared for the hearing through their authorized representative (hereinafter referred to as "**AR**"). Certain queries were raised to the AR, for which 6 weeks' time was granted to the said *Notices* to make post hearing submissions. The AR further informed that he was also appearing on behalf of *Noticee No. 4* and requested for 4 weeks' time to file a reply on behalf of *Noticee No. 4*. The request of the AR was acceded to and he was granted 4 weeks' time to make the submissions.

10. Since none of the vendors and conduits i.e., *Notices No. 5 to 14* had responded to the SCN and / or attended the hearing, an effort was made to find out alternate addresses of *Notices No. 5 to 14*, as it was noticed that *Notices No. 5 to 14* are firm (Partnership or sole proprietor), therefore, it was considered to have the SCN served on them through their partners or other mode. Pursuant to the same, another opportunity of hearing was granted to *Notices No. 5 to 14* on January 6, 2022. It is noted from records that none of the *Notices* attended the said hearing scheduled on January 6, 2022.

Consideration of Issues and Findings

11. I note from the records that out of the 14 *Notices*, *Notices No. 1, 4-14* have not filed any reply to the SCN, despite having provided sufficient opportunities. Further only *Notices No. 1-3* have availed the opportunity of the personal hearing granted to them.

Having heard the *Notices No. 2 and 3* on August 19, 2020, certain queries were asked to them, which they were required to respond to within six weeks. However, *Notices No. 2 and 3* have not submitted their response to the queries raised at the time of hearing. Moreover, the AR of the *Noticee No. 4* at the time of hearing sought additional four weeks' time to file a reply to the SCN. However, no reply has been received from *Noticee No. 4* till date. In the light of the aforesaid factual position, I proceed to adjudicate the matter, based on materials available on record and the written replies and submissions filed by a few of the *Notices*, the contents of which have already been highlighted in the preceding paragraphs. After going through all the material, as aforesaid, available on record, I find that essentially, following issues arise for determination in the present matter:

11.1. Whether ASL has not utilized the IPO proceeds as per the objects as stated in the Prospectus and has used/diverted the said amount for purposes other than those mentioned in the prospectus? Further, whether the investors were not provided with true and correct facts as the prospectus contained wrong disclosures to the extent that the Company never intended to utilize the IPO proceeds (INR 35.44 crore) for the objects stated in the prospectus?

11.2. If answer to the aforesaid question is in affirmative, whether *Notices No. 1 to 3* are responsible for the wrong disclosure in the annual report reporting about complete utilization of the IPO proceeds.

11.3. Whether the conduct of the *Notices* have resulted in violation of provisions of SEBI Act and PFUTP Regulations which warrants for issuing of directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act?

12. Before advertng to the aforesaid issues, I would like to first deal with certain preliminary issues raised by the *Notices*, in their submissions. The first such preliminary contention is that the present proceedings have been initiated after 9 years from the issuance of IPO which has prejudiced the ability of *Notices No. 2 and 3* to adequately respond to the SCN. In this regard, *Notices* have also cited various decisions of the Hon'ble Supreme Court of India and Securities Appellate Tribunal (hereinafter referred to as "**SAT**") on the question of delay. At the outset, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any action under the Act. For the purpose of ascertaining as to whether there

is any undue delay in the matter, it is the date when the alleged violation came to the notice of the SEBI would be the relevant point for initiating action and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. In the matter of *State of AP vs. N. Radhakrishnan* (1998) 4 SCC 154, Hon'ble Supreme Court while dealing with the issue of delay, has held that *it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case.*

13. The orders passed by Hon'ble SAT in *Libord Finance Ltd. vs. SEBI*, Appeal no. (165 of 2012 decided on March 31, 2008) and *HB Stockholdings Ltd. vs. SEBI* (Appeal no. 112 of 2013 decided on August 08, 2013), as relied upon by the *Noticees No. 2 and 3*, have been perused. It is noted that in *HB Stock Holding's* case (supra), the Hon'ble SAT held that delay is not fatal in each and every case. Further, in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014 decided on 16.12.2015), Hon'ble SAT while referring to its own decision in *HB Stock Holdings* case (supra) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held 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..."

14. In the present case, following is the chronology of the events that took place prior to the issuance of SCN on July 17, 2019 which are worth noticing:

Table 7

Sl. No.	Date	Particulars
1	May 22, 2015	Investigation was approved by SEBI <i>inter alia</i> with the focus to examine deviation of IPO proceeds, if any.
2	July 2015	Letter and Summons issued to the <i>Company</i> to seek details of utilisation of IPO proceeds.
3	September 2015	Summons to the Company Secretary for seeking bank statements showing transfer of money to parties for the expenses incurred.
4	November 2015	Summons issued to the <i>Company</i> for production of documents / information regarding utilisation of IPO proceeds.
5	January 2016	Summons issued to vendors to ascertain whether they have business relation with the <i>Company</i> .
6	February 2016	Final opportunity provided to the <i>Company</i> to provide the information in the matter.
7	April 2016	Site visit to the <i>Company's</i> factory site in Kheda.
8	May 2016	Bank Statements and account opening form of vendors sought from their respective banks.
9	June – August 2016	Summons sent to <i>Noticee No. 2</i> to furnish information in the matter.
10	September – October 2016	Fund trailing analysis done while simultaneously seeking information from respective banks for entities to whom payments were made after IPO.
11	December 2016	Summons issued to top 10 vendors and entities to whom payment was made immediately after credit of IPO proceeds.
12	September – October 2017	Summons issued to vendors and banks.
13	February – March 2018	Statement recoding of <i>Noticee No. 2</i> and summons issued to vendors, entities connected with the matter and statutory auditor.
14	April – July 2018	Re-examination of role of vendors who were apparently used for diverting the funds.
15	27/9/2018	Approval by the Competent Authority to initiate proceedings against the <i>Notices</i> .
13	17/7/2019	SCN issued to the <i>Notices</i> .

From the aforesaid table, it can be seen that in the facts and circumstances of the matter, there has been no delay on the part of SEBI, as SEBI on a periodic basis was in correspondence with either the *Company* or its vendors or banks or other entities involved in the matter, seeking details from them. The nature of the investigation was such that in order to arrive at a definitive finding, information from multiple sources had to be collected which in the given case, as seen from the table above, were not very cooperative. As noted above, the majority of vendors were untraceable and even the bank accounts opened into, which the amount from ASL was received were either closed or classified as 'in-active'. Consequently, information had to be gathered from independent sources which entailed certain lapse of time. Further, *Noticees* were given ample opportunities to submit their response to the queries raised by the investigating authority regarding utilization of proceeds. Therefore, in the peculiarity of the case, though the investigation was protracted, the same is not fatal to the matter as *Noticees* have themselves either not submitted any information or have submitted piecemeal information after several follow up reminders despite the fact that the *Noticees* were provided with several opportunities to present their case to the investigating authority. Under the circumstances as narrated above, I see no merit in the contention that there has been any delay in initiating action on the part of SEBI, more so, when it is noticed that SEBI Act does not provide any limitation period for initiating action for violations of provisions of SEBI Act as the rules, regulations, circulars issued thereunder and rather Section 11C of the SEBI Act expressly provides that SEBI may initiate investigation "**at any time**", if it has *inter alia* reasonable ground to believe that any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules or the regulations made or directions issued thereunder. Therefore, the contention of the *Noticees* based on delay is not tenable either in fact or in law, especially when the reason for delay, if any, is largely attributable to the *Noticees* themselves. Therefore, the *Noticees* should not be allowed to take shelter of delay as a ground for relief as any such delay in taking actions against them has happened due to their own mischievous acts.

15. *Noticees No. 2 and 3* have contended that considering that the IPO pertained to the year 2010 and the said *Noticees* are no longer connected with the *Company*, action under Sections 11 and 11B (1) of SEBI Act against them, is unwarranted. I have considered the

above objection taken by the *Noticees*. I note that initiating a specific proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the facts and circumstances of a case and just because the alleged violation was committed in a distant past cannot provide them with a shield against initiation of proceedings, appropriately applicable to the said violation, even if the persons who committed the violations are presently not connected with the *Company*. Further, as held by Hon'ble SAT in the matter of *Libord Finance Ltd. vs. SEBI, Appeal no. (165 of 2012 decided on March 31, 2008)*, any direction under Section 11B of SEBI Act would satisfy the test of a remedial measure, if it is intended to restore confidence in the integrity of the securities market. Any interpretation seeking to restrict the powers of SEBI under Section 11B of SEBI Act would be contrary to the plain reading of the provision and the well settled legal position that recognizes SEBI's powers to pass enforcement orders under Section 11B of SEBI Act. Moreover, the remedial nature of Section 11B of the SEBI Act does not obviate the need for pursuing enforcement proceedings by the regulator under the said Section, as the purpose of the proceedings under Sections 11 and 11B (1) of SEBI Act is not only to enforce remedial measures but also to prevent such violations from happening in future, by issuing suitable directions which act as a deterrent.

16. The power of SEBI to be exercised under Section 11 B of SEBI Act has been a subject matter of scrutiny in several judicial proceedings and it has been held that Section 11 of the SEBI Act empowers SEBI to take measure to protect the interests of the investors in securities and to promote the development of and to regulate the securities market by such measures as it thinks fit. The power is of a very wide nature and not hedged by any restriction, as observed by the Hon'ble High Court of Delhi in the matter of *M.Z Khan vs. SEBI* AIR 1999 Del. 164. The Hon'ble Court further observed that the true scope of Section 11B was subjected to examination by the Bombay High Court in *Ramrak-h R Bohra vs. SEBI* (1999) 33 CLA 243 (Born). In the said case the High Court observed that:

"Section 11 B is an enabling provision enacted to empower the SEBI to protect the interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations, inter alia, by brokers. Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative

object of providing a remedy for the mischief A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it”.

It is a settled legal position that the directions issued under Sections 11 and 11B of the SEBI Act, are preventive and remedial measures intending to correct or remove a defect or to prevent the occurrence of the said violations in future. Section 11B of the SEBI Act, entitles the Board to issue directions to any intermediary of the securities market or any other person associated therewith, in the interests of the investors or for orderly development of securities market. If the nature of the alleged act is such which is likely to affect adversely the securities market or the interest of the investors in general, it is open to the Board to issue directions under Section 11B of the SEBI Act as may be necessary to protect the integrity of the market and the interests of the investors and such directions may include a direction to restrain the delinquent from accessing the capital market, as well. Whenever such directions are issued, the object of such measure is not to punish the delinquent but to protect and safeguard the market and the interest of the investors. Even though the directions may result in penal consequences to the entity to whom those are issued but that would be only incidental to the primary purpose, object and intent behind issuing those directions to protect the securities market and the interest of the investors. If an order is passed imposing a penalty, the same may be punitive so far as the delinquent is concerned, nevertheless, it helps the Board in the regulation of the market in as much as it sends the right signals to others so as to have deterrence effect. This by itself is a regulatory measure. Therefore, I am not inclined to accept the above submissions of the Noticee and find that the instant proceedings are strongly maintainable.

17. Noticees No. 2 and 3 have also raised a plea that since the Company has not been found guilty of violations, the SCN issued to the aforesaid Noticees is pre-mature. The contention of the Noticees is no longer a res integra. The order of Hon’ble Supreme Court of India in the matter of *Aneeta Hada vs. Godfather Travels & Tours (P) Ltd.* (2012) 5 SCC 661 governs this area of dispute. The reliance placed by the Noticees is misplaced as the Hon’ble Apex Court has held following in the aforesaid matter:

“59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an

accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.”

Thus, from the above it can be observed that in order to proceed against a Director or any other person in charge of the company for the violation committed by the company, the company in the first place has to be prosecuted or arraigned as a violation so as to make the person in charge of its affairs vicariously responsible for the violations as alleged to have been committed by the company. It does not flow from the aforesaid order that only after having concluded that the company is accountable for the alleged violations, proceedings can be initiated against the director or any other person who is / was in charge of the company. The above contention is also not tenable considering the findings reiterated by the Hon’ble Supreme Court of India in the matter of *Dayle De’Souza vs. Government of India and anr.* (MANU/SCOR/42146/2021) holding that not proceeding against the company where it is either prohibited under a law or not practically possible, would not be a ground for a delinquent to take shelter under the fact that the company has not been proceeded with. In any event. in the instant matter, the *Company* is also one of the *Noticeses’* and thus, the condition precedent of prosecuting or alleging the offence against the *Company* has been met. Therefore, the submission of *Noticeses No. 2 and 3* is devoid of merit.

18. *Noticeses No. 2 and 3* have also objected to the SCN on the ground that the SCN does not indicate the actions proposed to be taken or any specific directions proposed to be issued against them. In this regard, they have placed reliance in the matter of *Gorkha Security Services*. On a perusal of the said judgment of the Hon’ble Apex Court, I find that the said case law is factually distinguishable and is not applicable to the present proceedings. In *Gorkha Security Services* case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of awarding public contract to such person. Further, in *Gorkha Security Services* case, the contractor was blacklisted for breaching the terms of the contract. On the other hand, the present SCN has been issued for breach of provisions of law. In *Gorkha Security Services* case, blacklisting was imposed by way of penalty, whereas in the instant proceedings, the purpose of issuing directions,

if found necessary, would be preventive and remedial in nature. In *Gorkha Security Services* Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter the provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and the securities market.

19. Keeping in view the above points that clearly distinguish the facts and circumstances of *Gorkha Security Services* case from the facts of the present proceedings, reliance placed by *Noticees* on *Gorkha Security Services* matter is misplaced. In this regard, it is further noted that the measures prescribed in sub-section (2) of Sections 11 read with 11(4) and 11B of SEBI Act are merely illustrative that may be taken by the Board in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). The Board has such powers and is duty bound to take measures in any manner as it may deem fit to prohibit, unearth and deal with fraudulent and manipulative acts in securities markets to protect the interests of investors. The SCN issued to the *Noticees* have spelt out clearly the provisions under which the desired preventive/remedial measures, if found necessary, would be issued. The SCN also clearly indicates the specific nature of violations that have been alleged against the respective *Noticees* in terms of different provisions of SEBI Act and PFUTP Regulations which if eventually found to be breached, would require issuance of suitable directions under specific provisions as mentioned in the SCN. Thus, it is manifest that the specific allegations were unambiguously conveyed to the *Noticees* and they were given opportunities for tendering their responses thereto. It is, therefore, incumbent on the part of the *Noticees* to explain their position with support of relevant evidence in response to various allegations made against them in the SCN. Only after examining and considering the explanation offered by the *Noticees* to various specific allegations levelled under the SCN, it would be imperative for the competent authority to determine as to if and what direction is required to be issued against the *Noticees*, depending on the gravity of violation committed by the *Noticees*. It is to be noted here that the provision of Sections 11, 11B of the SEBI Act vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be anticipated before-hand without considering the explanations of the

Notices. Therefore, it is incorrect to contend that the SCN should specify the exact nature of direction that may be issued to the *Notices* without taking into the consideration the explanation and evidence that may be produced by the *Notices* to prove their innocence. This would be wholly premature, presumptive and conjectural in nature. Hence, I do not find merit in the aforesaid submission of *Notices* No. 2 and 3.

20. In order to evaluate the charges made against the *Notices* on merit, it is relevant to first refer to the provisions of SEBI Act and PFUTP Regulations, that have been either allegedly violated by the *Notices* or are otherwise relevant for the present proceedings. The said provisions are reproduced hereunder for ready reference:

SEBI Act

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

Section 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

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

SEBI (PFUTP) Regulations, 2003

Prohibition of certain dealings in securities

Regulation 3. No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4 (1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

Regulation 4 (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves –*

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities;

21. The first issue to be addressed is as follows:

Whether ASL has not utilized the IPO proceeds as per the objects as stated in the Prospectus and has used/diverted the said amount for purposes other than those mentioned in the prospectus? Further, whether the investors were not provided with true and correct facts as the prospectus contained wrong disclosures to the extent

that the Company never intended to utilize the IPO proceeds (INR 35.44 crore) for the objects stated in the prospectus?

22. As noted in the beginning of the present Order, one of the allegations levelled against the *Company* is that the *Company* has not utilised the IPO proceeds as per the disclosed objects of the issue but has diverted the IPO proceeds for purposes other than those mentioned in the prospectus. The aforesaid allegation has been levelled against the *Company inter alia* on the basis of explanations furnished by the *Company* and / or its Managing Director pertaining to fund transfers, similarity in pattern of fund transfers, common traits amongst the vendors etc. there cannot be two opinions that money in the bank account of the *Company* raised from the IPO is fungible. Thus, before arriving at a finding with respect to the end use of the IPO proceeds, it is desirable to track the fund flow from the bank account of the *Company* received in the IPO and analyse the said fund flows in light of the explanations furnished by the *Company* and / or its Managing Director with supporting evidence to justify their explanations. To that effect I note that the IPO proceeds were transferred from the public issue account to *Company's* bank account as follows:

Table 8

Sr. No.	Date of transfer	Details of <i>Company's</i> bank account credited	Amount credited (in INR)
1.	27/7/2010	Credit in UBI- A/c 4355010100086632	51,20,00,000
2.	27/7/2010	Credit in UBI- A/c 4355010100086632	15,50,000
3.	17/8/2010	Credit in UBI- A/c 4355010100086632	637
4.	Total amount transferred to <i>Company's</i> bank account		51,35,50,637
5.	Amount paid towards IPO expenses		1,74,49,363
6.	Total (amount raised in IPO) = (4+5)		53,10,00,000

23. From the above table, I note that post July 27, 2010, the *Company* and / or its Managing Director has to explain with evidence that the amount raised through IPO were actually utilised by the *Company* towards achieving the objects as stated and disclosed in the prospectus. In this regard, it is observed from the prospectus that the *Company* had disclosed to have already incurred INR 1255.75 lakh towards expenditure on the expansion till May 21, 2010 (i.e. before the raising of IPO funds). The said deployment had been financed out of internal accruals (INR 372.19 lakh) and through unsecured

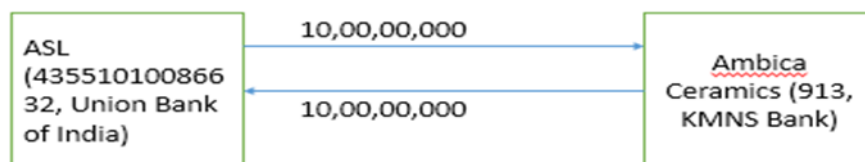
loan taken from Luniar Finstock Pvt. Ltd., Ahmedabad (INR 883.56 lakh). The amount of INR 1255.75 lakh was to be recouped from the public issue proceeds.

24. The *Company* and / or its Managing Director at the time of investigation had submitted a list of 9 vendors (mentioned at Table 4) who were reportedly paid against delivery of various goods and services rendered by them towards realising the objects of the issue. Further, it is submitted that the *Company* has paid INR 1,52,51,500 towards HDFC Share Application Refund Interest. By the aforesaid claims, the *Company* and / or its Managing Director have sought to explain the utilization of about 70% (INR 37,23,01,536) of the IPO proceeds. I now proceed to analyse the submissions of the *Company* with respect to each of the above noted vendors and the *Company's* transactions with them.

Vendor 1: Neptune Enterprise

25. The *Company* has submitted that it had made a payment of INR 10 crore out of the IPO proceeds to Neptune Enterprise for purchase of Plant and Machinery and has submitted copies of invoices and its ledger extracts regarding the payments made to Neptune Enterprise. However, it is noted that the *Company* has submitted invoices only for an amount of INR 46 lakh. The remaining invoices amounting to INR 9.54 crore (out of stated INR 10 crore) has not been provided by the *Company*. As noted above, though the *Company* claims to have paid INR 10 crore for purchase of Plant and Machinery, supporting invoices with respect to a meager amount of INR 46 lakh were furnished, which on the face of it are incomplete and too inadequate an evidence to justify transfer of INR 10 crore to the said vendor. One must bear in mind that issue under consideration pertains to a corporate body, whose securities are listed and the money realised by it through IPO is from investors at large. Under the circumstances, it is not only desirable but incumbent upon the *Company* to substantiate every rupee outflow / utilization of such IPO funds which was incurred towards achieving the objects as disclosed to the people. Further, the evidence (incomplete invoices) so far produced have to be backed by other verifiable documents pertaining to its commercial transaction with the vendor and to this effect only self-generated ledger accounts as submitted by the *Company* to justify the utilization of the IPO funds, cannot on a standalone basis be accepted as adequate evidence of such a high amount of transaction with the said vendor. Ledger backed by other documentary evidence

such as banking transactions, duly registered agreement / MoU with the vendor and correspondences (email or letter) with the vendor, proof of installation of Plants and Machinery, so purchased from the said vendor, etc., could have been considered as substantial evidence for justifying the utilization of IPS proceed. In the present matter, the *Company* has submitted a copy of its bank statement highlighting the payments made to Neptune Enterprise. Upon analysis of the said transactions, it is observed that there is no fund transfer made from the *Company* to Neptune Enterprise. The above stated amount of INR 10 crore was transferred by the *Company* to another entity named Ambica Ceramics (*Noticee No. 4*) on July 28-29, 2010 to its Kankaria Maninagar Nagrik Sahakari Bank account (A/c No.: 005111101000913). The investigation further finds that the above noted entity Ambica Ceramics (*Noticee No. 4*) is a connected entity of the *Company* since its proprietor, Mrs. Namrata M Maheshwari (*Noticee No. 3*) is the Whole Time Director of the *Company* and is the wife of the Managing Director of the *Company*, Mr. Mahesh Mahehwari (*Noticee No. 2*). It is also noticed that an amount INR 10 crore though initially claimed to have been transferred to Neptune was basically found to have been transferred by the *Company* to Ambica Ceramics i.e., its own connected entity and the said amounts were returned to the *Company* on July 29-30, 2010. The flow of transaction is summarised as below:

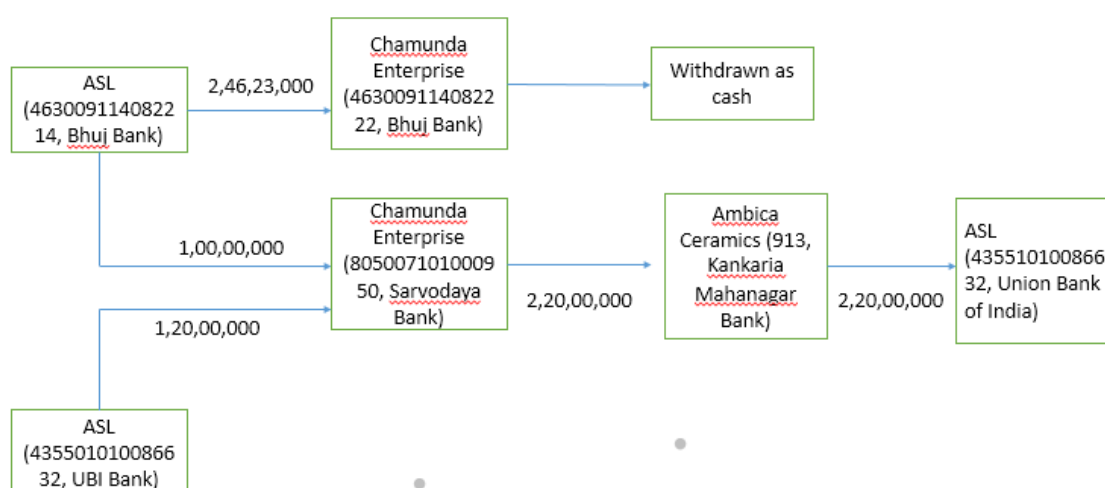


As noted above, the *Company* has claimed to have transferred the funds of INR 10 crore to Neptune Enterprise for purchase of Plants and Machinery. However, during the investigation, Neptune Enterprise has categorically denied having any business relation with the *Company* or having issued any invoices as claimed by the *Company*. Credence to the submission of Neptune Enterprise is led from the fact that the *Company* has neither submitted any correspondences with Neptune Enterprise nor any agreement / MoU nor any actual movement of funds to the said vendor with respect to purchase of Plant and Machinery. A commercial transaction which is worth INR 10 crore, as claimed by the *Company* is bound to leave a paper trail which is missing in the instant matter. In view of the aforesaid I find no merit in the submission

of the *Company* that it had transferred INR 10 crore to Neptune Enterprise from the IPO proceeds.

Vendor 2: Chamunda Enterprise (Noticee No. 14)

26. The *Company* has submitted that it has made a payment of INR 4.66 crore out of the IPO proceeds to Chamunda Enterprise for purchase of Plant and Machinery. The *Company* has submitted copies of invoices and ledger extracts regarding the payments supposedly made to Chamunda Enterprise. However, it is noted that the *Company* has submitted supporting invoices only for an amount of INR 2.197 crore out of INR 4.66 crore. As discussed in the preceding paragraphs, ledger extracts submitted by the *Company* in the absence of any corroborative verifiable documentary evidence cannot on a standalone basis / independently be accepted as evidence of transaction with the vendor. In the present matter, the *Company* has submitted copy of its bank statement as an evidence for the payments made to Chamunda Enterprise. However, upon analysis of the fund transactions, it is observed that out of INR 4.66 crore transferred by ASL to Chamunda Enterprise, an amount of INR 2.20 crore was immediately transferred by Chamunda Enterprise to Ambica Ceramics and then back to ASL, between October 9, 2010 to October 18, 2010. The remaining amount of INR 2.46 crore was withdrawn as cash from Chamunda Enterprise's bank account. The series of fund transactions are explained in the figure below:

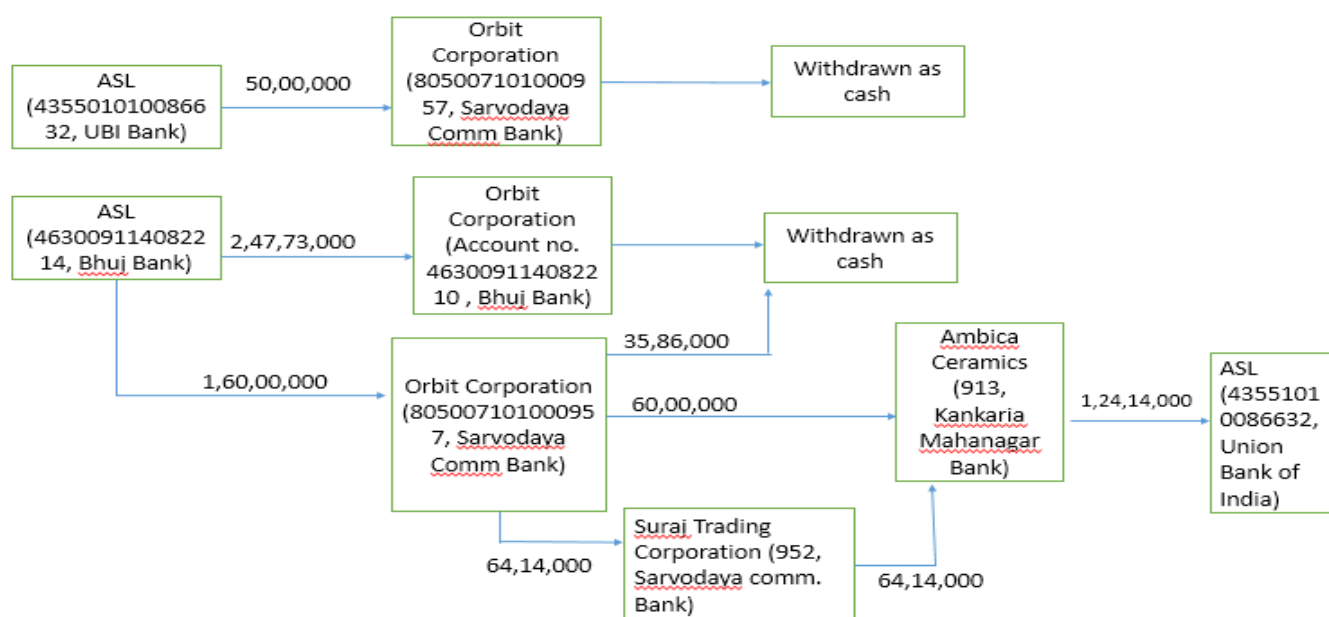


27. The *Company*, its Managing Director or even the vendor, Chamunda Enterprise (Noticee No. 14) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any

correspondence or agreement / MoU with respect to the purchase of Plant and Machinery between them or any due diligence carried out by the *Company* before entering into any transaction with Chamunda Enterprise nor do they have any documentary proof to prove that the goods were indeed delivered by Chamunda Enterprise to the *Company*. The absence of any one of the above noted specific evidence assumes significance, since I note that out of the money that was transferred by the *Company* to Chamunda Enterprise, a substantial portion (47.21%) was routed back to the *Company* via the connected entity of the *Company* i.e., *Noticee No. 4*, Ambica Ceramics and the remaining money was withdrawn in cash. Interestingly, *Noticee No. 2* at the time of investigation had submitted that the reason for the aforesaid transfer of funds was the payment made to Ambica Ceramics by the *Company* on the oral instructions of Chamunda Enterprise. The reason furnished above is again unacceptable, since from the bank statement, contrary to his claim, it is noted that the funds were actually transferred from Chamunda Enterprise to Ambica Ceramics. Another explanation furnished by Ambica Ceramics for the aforesaid fund transfer was that it was towards "Direct payment" to ASL. This explanation is quite vague and untenable and is not substantiated by any documentary evidence. Thus, from the above, it can be seen that neither the *Company* nor Chamunda Enterprise, is able to provide any significant documentary evidence pertaining to the transaction between them apart from the fund transfer, part of which has gone back to the *Company* and rest of it was withdrawn in cash for purposes best known to the *Noticees*. The justification provided by the *Noticees* is either contradictory to the factual position or is incomplete. Given the lack of paper trail for the commercial transaction, beginning from the point of first contact till the delivery of goods, absence of any prior commercial relationship between the *Noticees*, as per available record and subsequent transfer of significant amount of money back to the *Company* through a layered transaction, it casts a grave shadow on the utilization of the remaining portion of money which was withdrawn in cash, post transfer of money from the *Company* to Chamunda Enterprise. Hence, I find that the *Company* has not been able justify its transaction worth INR 4.66 crore with Chamunda Enterprise.

Vendor 3: Orbit Corporation (Noticee No. 5)

28. The *Company* has submitted that it has made a payment of INR 4.57 crore out of the IPO proceeds to Orbit Corporation for purchase of materials for land development, civil work as well for Plant and Machinery. The *Company* has submitted copies of invoices and ledger extracts to support the payments made to Orbit Corporation. However, it is noted that the *Company* has submitted purchase invoices only for an amount of INR 2.38 crore out of INR 4.57 crore. The issue of incomplete invoices has been dealt in preceding paragraphs. Further, as discussed in the preceding paragraphs, ledger accounts submitted by the *Company* in the absence of any corroborative documentary evidence cannot on a standalone basis / independently be accepted as evidence of transaction with the vendor. In the present matter, the *Company* has submitted copy of its bank statement as an evidence for the payments made to Orbit Corporation. Upon analysis of the fund transactions, it is observed that out of INR 4.57 crore so transferred by ASL to Orbit Corporation, an amount of INR 1.24 crore was immediately transferred by Orbit Corporation to Ambica Ceramics and then back to ASL. The remaining amount of INR 3.33 crore was withdrawn as cash from Orbit Corporation's bank account. The series of fund transactions is explained in the figure below:



29. The *Company*, its Managing Director or even the vendor, Orbit Corporation (*Noticee No. 5*) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence or agreement / MoU with respect to the purchase of materials for land development, civil work as well for Plant and Machinery between them. There is neither any evidence of any due diligence carried out by the *Company* before entering into any transaction with Orbit Corporation nor any documentary proof has been furnished so as to suggest as to when the materials for the aforesaid purpose were delivered by Orbit Corporation to the *Company*. In the absence of any specific evidence to justify the transaction and looking at the fact that the money that was transferred by the *Company* to Orbit Corporation, a significant portion (27.13%) was routed to the *Company* via the connected entity of the *Company* i.e., *Noticee No. 4*, Ambica Ceramics and the remaining money was withdrawn in cash for unexplained purposes, it cannot be accepted that the *Company* had a genuine business deal with Orbit Corporation. In this connection, I find that Orbit Corporation at the time of investigation had submitted as follows:

- 29.1. The amount received from ASL was payment received against sales of goods.
- 29.2. The amount transferred to Ambica Ceramics was payment for material purchased.
- 29.3. The cash withdrawn subsequent to the funds received from ASL was for the purpose of day to day operations as they need to make certain payments in cash.

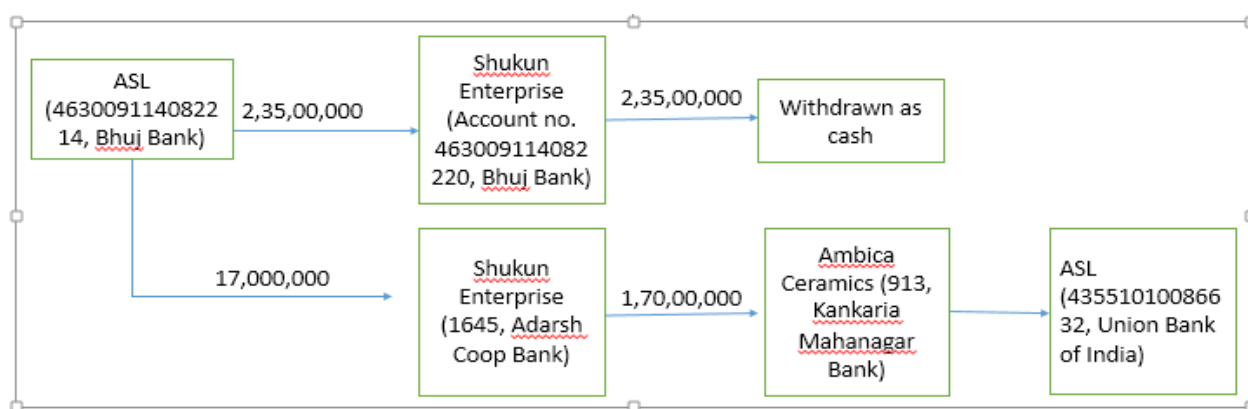
With respect to the first submission of Orbit Corporation, I note that the *Noticee No. 5* has not submitted any correspondences or agreement / MoU with the *Company* to support its claim of having sold any material for land development, civil work as well for Plant and Machinery. *Noticee No. 5* has also not submitted any proof of its expertise or history of dealing in the aforesaid materials. Thus, I find that the submission of the *Noticee No. 5* is a mere bald assertion without any corroborative evidence. Similarly, the submission of *Noticee No. 5* that it had purchased materials from *Noticee No. 4* remains as empty claim without any corroborative particulars as to what material was purchased, when was it purchased and when was it delivered to it, etc. No

correspondence for the said purchase transaction has been submitted either by *Noticee No. 5* or by *Noticee No. 4*. Thus, the submission of *Noticee No. 5* has no persuasive value. Lastly, the submission of *Noticee No. 5* that it had withdrawn cash for its day to day operations is a vague contention as *Noticee No. 5* has not demonstrated even by explaining its very nature of business which required deployment of INR 3.3 crore in cash over a short period of time. Further, there is nothing on record to show that such cash withdrawals by it were made over a long period of time and not made as an isolated act during the above noted period only. The *Noticee* has also not given details as to whom it had paid in cash and the reason / purpose for which payments of such large sums had to be made in cash. Therefore, the submission of the *Noticee* is devoid of any merit.

30. *Noticee No. 2* had submitted that the reason for the aforesaid transfer of funds from Orbit Corporation to Ambica Ceramics and further to ASL was “direct payment” from the transferor to the receiver. Additionally, Ambica Ceramics has also mentioned the reason for receiving INR 64,14,000 from Suraj Trading Co. as direct payments to Ambica Ceramics. As noted in the preceding paragraphs, the reasons furnished above are untenable as they are vague and are not substantiated by any cogent explanation or documentary evidence. Thus, from the above, it can be seen that neither the *Company* nor Orbit Corporation, is able to provide any documentary evidence pertaining to the transaction between them apart from the fund transfers, a significant portion of which has come back to the *Company*. No plausible justification has been furnished by either of the *Noticees* for the same. The justification furnished is either vague or is incomplete and incomprehensible. Given the lack of paper trail for the commercial transaction, beginning from the point of first contact till the delivery of goods, absence of any prior commercial relationship between the *Noticees*, as per available record and subsequent transfer of significant amount of money back to the *Company* through layered transaction(s), casts a shadow of doubt on the remaining portion of money which was withdrawn in cash, post transfer of money from the *Company* to Orbit Corporation. Hence, I find that the *Company* has not been able justify its transaction worth INR 4.57 crore with Orbit Corporation.

Vendor 4: Shukan Enterprise (Noticee No. 6)

31. The *Company* has submitted that it has made a payment of INR 4.05 crore out of the IPO proceeds to Shukan Enterprise for purchase of Plant and Machinery. The *Company* has submitted some copies of invoices and ledger account regarding the payments made to Shukan Enterprise. It is noted that the *Company* has submitted invoices only for an amount of INR 1.70 crore out of total payment INR 4.05 crore. As in the cases of preceding vendors, in case of this vendor also, the remaining invoices have not been provided by the *Company* nor any other evidence to corroborate the payment. In this case also, the *Company* has submitted a copy of its bank statement as a piece of evidence to substantiate its claim of the payments made to Shukan Enterprise. Upon analysis of the fund transactions, it is observed that out of INR 4.05 crore transferred by ASL to Shukan Enterprise, an amount of INR 1.70 crore was immediately transferred by Shukan Enterprise to Ambica Ceramics and thereafter transferred back to ASL. Further, in a *modus operandi* similar to earlier vendors, the remaining amount of INR 2.35 crore was withdrawn as cash from Shukan Enterprise's bank account. The series of fund transactions is explained in the figure below:



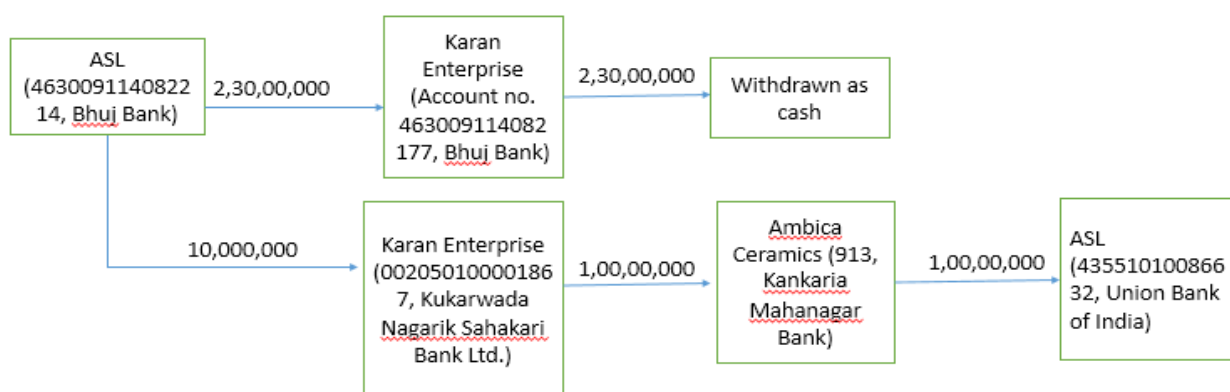
32. The *Company*, its Managing Director or even the vendor, Shukan Enterprise (Noticee No. 6) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence with respect to the purchase of Plant and Machinery between them nor any due diligence was carried out by the *Company* before entering into any transaction with Shukan Enterprise. There is no documentary proof to suggest as to when the goods were delivered by Shukan Enterprise to the *Company*. There is nothing on record to suggest as to how the *Company* came to know about the existence of Shukan Enterprise and

on what basis, it was decided to buy the Plant and Machinery from it. The absence of any one of the aforesaid specific details / evidence assumes significance, since from the money that was transferred by the *Company* to Shukan Enterprise, a substantial portion (41.97%) was routed back to the *Company* via the connected entity of the *Company* (i.e. *Noticee No. 4*) viz., Ambica Ceramics and the remaining money was withdrawn in cash for purposes not explained by the *Notices*. Furthermore, it is observed from the records that Shukan Enterprise has neither responded to summons issued to it at the time of investigation nor has submitted any reply to the SCN and / or availed the opportunity of personal hearing. Such misconduct on its part all the more raises suspicion on the genuineness of the commercial transaction undertaken by it with ASL.

33. *Noticee No. 2* at the time of investigation had submitted that the reason for the aforesaid transfer of funds from Shukan Enterprise to Ambica Ceramics was for “direct payments” and “on behalf of Aster Silicates Ltd.”. Similarly, the reason for the fund transfer from Ambica Ceramics to ASL was a “direct payment” from Ambica Ceramics to ASL. The reasons furnished above are untenable as they are ambiguous and are not substantiated by any documentary evidence. Thus, from the above, it can be seen that neither the *Company* nor Shukan Enterprise, is able to provide any documentary evidence pertaining to the transaction between them apart from the fund transfer. Even for the fund transfer, a substantial portion of money has been laundered back to the *Company*. No plausible justification has been furnished by the *Notices* for the same. The justification is either contradictory to the factual position or is incomplete. Given the lack of paper trail for the commercial transaction, starting from the point of first contact till the delivery of goods, absence of any prior commercial relationship between the *Notices*, as per available record, lack of cooperation with the Regulator by the vendor and subsequent transfer of significant amount of money back to the *Company* through a layered transaction, it casts a shadow of doubt on the remaining portion of money which was withdrawn in cash, post transfer of money from the *Company* to Shukan Enterprise. Hence, I find that the *Company* has grossly failed to justify its transaction worth INR 4.05 crore with Shukan Enterprise.

Vendor 5: Karan Enterprise (Noticee No. 7)

34. The *Company* has submitted that it has made a payment of INR 3.30 crore out of the IPO proceeds to Karan Enterprise for purchase of materials for land development and civil work as well for Plant and Machinery. The *Company* has submitted copies of invoices and ledger account extracts regarding the payments made to Karan Enterprise. It is noted that the *Company* has submitted invoices for an amount of INR 2.30 crore out of INR 3.30 crore. The remaining invoices have not been provided by the *Company* and this issue of submission of partial invoices has been dealt in preceding paragraphs. The *Company* has submitted copy of its bank statement as an evidence for the payments made to Karan Enterprise from which, it is observed that out of INR 3.30 crore transferred by ASL to Karan Enterprise, an amount of INR 1 crore was immediately transferred by Karan Enterprise to Ambica Ceramics and thereafter transferred to ASL. The remaining amount of INR 2.30 crore was withdrawn as cash from Karan Enterprise's bank account. The series of fund transactions is explained in the figure below:



35. The *Company*, its Managing Director or even the vendor, Karan Enterprise (Noticee No. 7) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence with respect to the purchase of Plant and Machinery between them or any due diligence ever carried out by the *Company* before entering into any transaction with Karan Enterprise. There is no documentary proof as to when the goods were delivered by Karan Enterprise to the *Company*. Furthermore, it is observed from the records that Karan Enterprise has neither responded to summons issued to it at the time of investigation nor has submitted any reply to the SCN and / or availed the opportunity

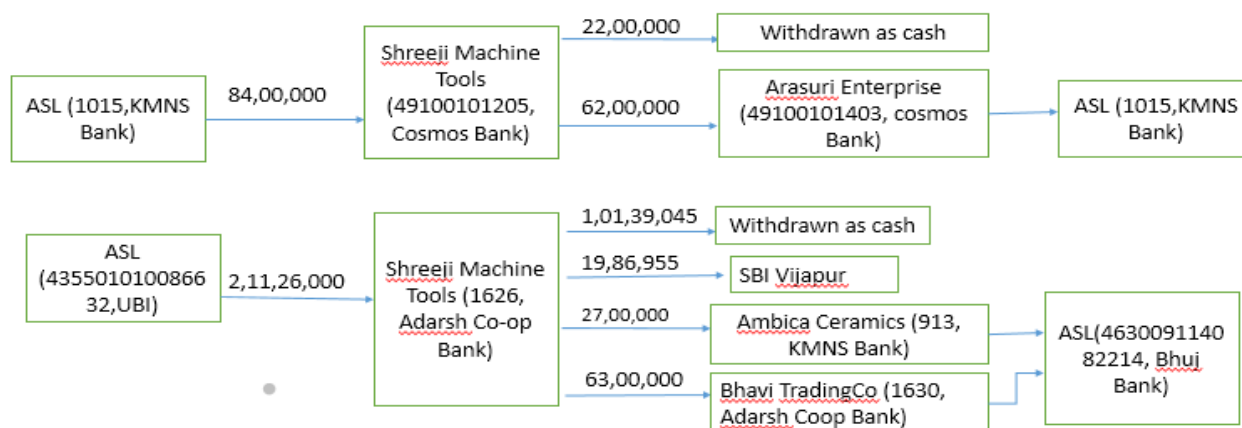
of hearing. If a company which had transacted with ASL for INR 3.30 crore, does not cooperate with the Regulator nor furnishes any written explanation for the impugned transaction inspite of being provided with several opportunities, it is bound to raise suspicion on the genuineness of the commercial transaction undertaken by it with ASL.

36. Noticee No. 2 at the time of investigation had submitted that the reason for the aforesaid transfer of funds from Karan Enterprise to Ambica Ceramics was “Aster has given to Ambica on behalf of Karan”. The reason furnished above is unacceptable as from the bank statement, it is noted that the funds were actually transferred from Karan Enterprise to Ambica Ceramics and then to ASL. Further, Ambica Ceramics has submitted that the reason for the fund transfer from Ambica Ceramics to ASL was “direct payment” from Ambica Ceramics to ASL which is again a vague and empty claim, not substantiated by any documentary evidence. Thus, from the above, it can be seen that neither the *Company* nor Karan Enterprise, is able to provide any documentary evidence pertaining to the transaction between them apart from the existence of the fund transfer and cash withdrawal, as noted above. As in the case of other vendors, discussed in the preceding paragraphs, the justification furnished by the *Company* and its Managing Director is either contradictory to the factual position or is incomplete and there is lack of cooperation from the vendor, I find that neither the *Company* nor the vendor has been able to justify the transaction worth INR 3.30 crore with Karan Enterprise.

Vendor 6: Shreeji Machine Tools (Noticee No. 8)

37. The *Company* has submitted that it has made a payment of INR 2.95 crore out of the IPO proceeds to Shreeji Machine Tools for purchase of Plant and Machinery. The *Company* has submitted copy of ledger account regarding the payments made to Shreeji Machine Tools. As discussed in the preceding paragraphs, ledger submitted by the *Company* in the absence of any corroborative documentary evidence cannot on a standalone basis / independently be accepted as evidence of transaction with the vendor. Upon analysis of the fund transactions from the bank statement submitted by the *Company*, it is observed that out of an amount of INR 2.95 crore transferred by ASL to Shreeji Machine Tools, an amount of INR 1.62 crore was transferred by Shreeji Machine Tools to ASL through certain other entities including Ambica Ceramics. Of

the remaining INR 1.33 crore, an amount of INR 1.23 crore was withdrawn as cash from Shreeji Machine Tools's bank account. The series of fund transactions is explained in the figure below:



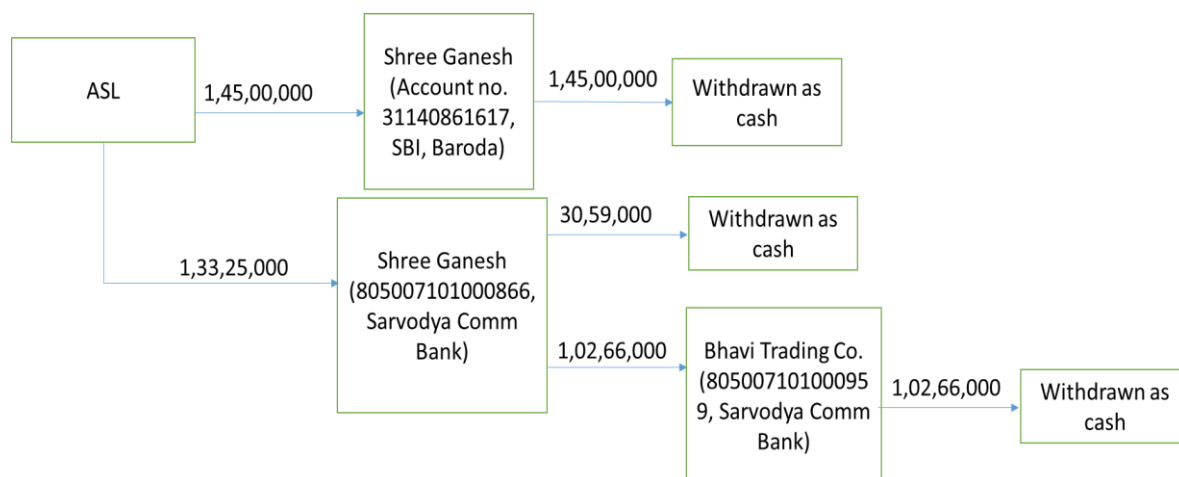
38. The *Company*, its Managing Director or even the vendor, Shreeji Machine Tools (*Noticee No. 8*) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence with respect to the purchase of Plant and Machinery between them or any due diligence carried out by the *Company* before entering into any transaction with Shreeji Machine Tools nor any documentary proof has been produced to suggest that the goods were delivered by Shreeji Machine Tools to the *Company*. In the absence of any one of the aforesaid detail / evidence which would corroborate its claim of having a commercial transaction with the *Company* and more so the fact that the vendor stopped responding to the summons issued to it at the time of investigation and has not submitted any reply to the SCN nor has availed the opportunity of hearing, the genuineness of the commercial transaction undertaken by it with ASL, becomes seriously questionable. Moreover, the two intermediaries / conduits via which Shreeji Machine Tools had transferred money to the *Company*, namely Arasuri Enterprise and Bhavi Trading Company, were also non-cooperative with SEBI and did not furnish any information pertaining to their transaction with *Noticee No. 8*. Such an approach from the vendor and other conduit parties, further strengthens the suspicion about the genuineness of the so called commercial transaction undertaken by *Noticee No. 8* with ASL.

39. *Noticee No. 2* at the time of investigation had submitted that the reason for the aforesaid transfer of funds from *Noticee No. 8* to Ambica and then to ASL was “direct

payment” from transferor to receiver. Such a reason furnished by *Noticee No. 2*, is untenable as it neither throws any clarity nor the same is substantiated by any documentary evidence. Thus, from the above, it can be seen that neither the *Company* nor Shreeji Machine Tools, is able to provide any documentary evidence pertaining to the transaction between them apart from the fund transfer which shows that a significant portion of money has come back to the *Company* through layered transactions. No plausible justification has been furnished by the *Noticees* for the same. The justification so provided is either vague or is incomplete. Under the circumstances, I find that the *Company* has not been able justify its transaction worth INR 2.95 crore with Shreeji Machine Tools.

Vendor 7: Shree Ganesh Engineering Corporation (*Noticee No. 9*)

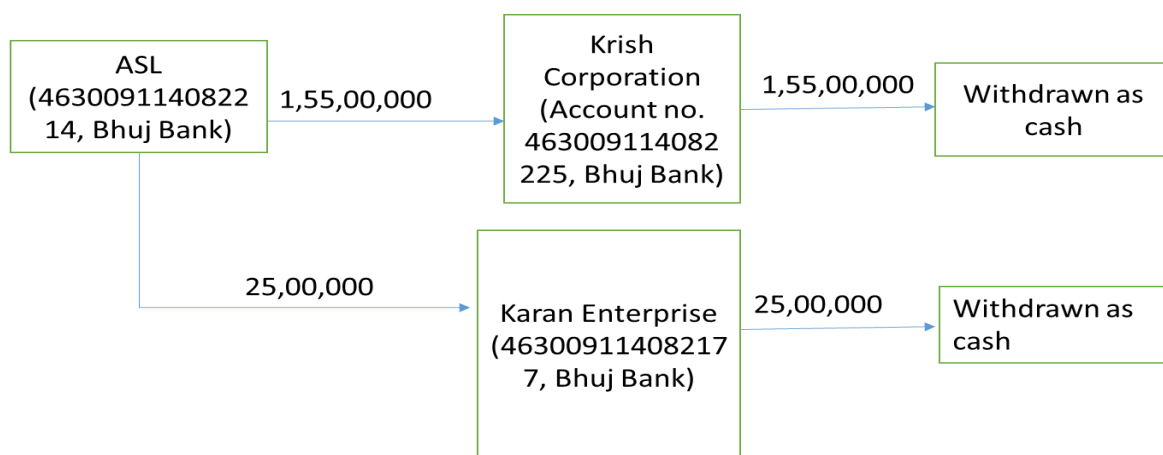
40. The *Company* has submitted that it has made a payment of INR 2.78 crore out of the IPO proceeds to Shree Ganesh Engineering Corporation for purchase of Plant and Machinery. The *Company* has submitted copy of ledger account in support of the payments made to Shree Ganesh Engineering Corporation which can barely be construed as a verifiable corroborative documentary evidence to prove the transaction with the vendor. The *Company* has submitted copy of its bank statement as an evidence for the payments made to Shree Ganesh Engineering Corporation. Upon analysis of the fund transactions, it is observed that out of an amount of INR 2.78 crore transferred by ASL to Shree Ganesh Engineering Corporation, an amount of INR 1.75 crore was immediately withdrawn as cash. The remaining amount of INR 1.02 crore was transferred by Shree Ganesh Engineering Corporation to Bhavi Trading Company, which was also immediately withdrawn as cash. The series of fund transactions is explained in the figure below:



41. The *Company*, its Managing Director or even the vendor, Shree Ganesh Engineering Corporation (*Noticee No. 9*) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence with respect to the purchase of Plant and Machinery between them or any due diligence ever carried out by the *Company* before entering into any transaction with Shree Ganesh Engineering Corporation nor any documentary proof has been submitted to suggest as to when the goods were delivered by Shree Ganesh Engineering Corporation to the *Company*. The absence of any one of the aforesaid detail / evidence coupled with the fact that from the funds that was transferred by the *Company* to Shree Ganesh Engineering Corporation, the entire money was withdrawn in cash, makes it clear that the said transaction was nothing but a sham transaction. Furthermore, it is observed from the records that Shree Ganesh Engineering Corporation has neither responded to summons issued to it at the time of investigation nor has submitted any reply to the SCN and / or availed the opportunity of hearing. Moreover, like Shreeji Machine Tools, Shree Ganesh Engineering Corporation has also transferred money to Bhavi Trading Company, which has been withdrawn in cash. Such similar *modus operandi* of transferring the money received by Bhavi Trading Company, in the given facts and circumstances of the matter cannot be called as a business coincidence and rather it further strengthens the suspicion about the genuineness of the commercial transaction undertaken by *Noticee No. 9* with ASL. Keeping the aforesaid facts in view, I am constrained to conclude that the *Company* has not been able justify its transaction worth INR 2.78 crore with Shree Ganesh Engineering Corporation.

Vendor 8: Krish Corporation (*Noticee No. 10*)

42. The *Company* has submitted that it has made a payment of INR 1.80 crore out of the IPO proceeds to Krish Corporation for purchase of Plant and Machinery. The *Company* has submitted copies of invoices and ledger account regarding the payments made to Krish Corporation. It is noted that the *Company* has submitted invoices for an amount of INR 1.55 crore out of INR 1.80 crore stated to have been paid. The remaining invoices have not been provided by the *Company* and this issue has been addressed in preceding paragraphs. The *Company* has submitted copy of its bank statement as an evidence for the payments made to Shree Ganesh Engineering Corporation from which, it is observed that out of an amount of INR 1.80 crore transferred by ASL to Krish Corporation, an amount of INR 25 lakh was actually transferred to Karan Enterprise (i.e. *Noticee No. 7*) and not to Krish Corporation. This amount was then withdrawn by Karan Enterprise in cash. Hence, only the funds amounting to INR 1.55 crore were transferred to Krish Corporation as against the *Company's* submission of having transferred INR 1.80 crore. In any case, it was observed that this amount was entirely withdrawn in cash by Krish Corporation. The series of fund transactions, as described above, is explained in the figure below:



43. Like in the case of the other vendors, the *Company*, its Managing Director or even the vendor, Krish Corporation (*Noticee No. 10*) have not submitted any documentary evidence to show that there existed any kind of prior commercial relationship between them or any correspondence with respect to the purchase of Plant and Machinery between them or any due diligence ever carried out by the *Company* before entering into any transaction with Krish Corporation. There is no documentary proof to indicate as to when the goods were delivered by Krish Corporation to the *Company*.

In the absence of any one of the aforesaid detail / evidence coupled with the fact that the money that was transferred by the *Company* to Krish Corporation, was entirely withdrawn in cash and going by the records that Krish Corporation has neither responded to summons issued to it at the time of investigation nor has submitted any reply to the SCN and / or availed the opportunity of hearing, I have to observe that aforesaid transaction with Krish Corporation was again a sham transaction, to divert the IPO funds in a dubious manner.

44. From the above discussion, I note that there is a commonality in the flow of fund from the *Company* to the vendors and a common *modus operandi* is seen while carrying out the aforesaid so called commercial transactions and further in the conduct of the *Noticees*. The same are delineated below:

44.1. Part of the payment received from ASL is returned to ASL via ASL's related entity i.e. the *Noticee No. 4* and / or through other conduit entities.

44.2. Remaining amount is either immediately withdrawn from vendors' accounts in cash or transferred to third parties' accounts, from where the amounts is withdrawn in cash.

44.3. Majority of fund transactions were for purchase towards Plant and Machinery, however, there is no details as to the specification of such Plant and Machinery nor any evidence to substantiate any such purchases from any of the vendor.

44.4. Considering the facts stated above and also the fact that the *Company* is engaged in manufacturing activities, it is expected of a listed entity to enter into commercial transactions with proper documentation / contracts to justify such transactions with the vendors, involving huge amounts, so as to protect its own interest and that of the innocent investors from whom the *Company* had mobilized funds *via* the IPO. But in the instant case the *Company* did not even bother to execute the basic documents delineating the terms and conditions of the transaction, before parting with such large sums of shareholders' money to those vendors, when it was incumbent on the *Company* to protect the hard earned money of the shareholders and to take all legal measures and due diligence, so as

to deal with any eventuality of default by the counterparty (vendors) to such transactions.

44.5. Apart from the bank transfers, the *Noticees* have not been able to produce any independently verifiable documentary evidence which could show that there actually existed some business /commercial relationship between the *Company* and the vendors, even prior to the alleged transactions. The *Company* has tried to impress upon the point that it was the long standing relations with the vendors and the reputation of these *Noticee*-vendors which were the basis for parting with such huge sum of money for purchasing Plant and Machinery from them, even without inviting any competitive bids/quotations from other such vendors. But as the facts of the transactions and money transfers with each of the vendors would suggest, none of those transactions, is substantiated by any kind of evidence and rather the funds have been transferred by the *Company* in a dubious manner.

44.6. It has been further noticed that the *Company* has submitted wrong information with respect to Neptune Enterprise and Krish Corporation. The *Company* has claimed to have transaction with Neptune Enterprise to the extent of INR 10 crore, however, the investigation finds that there were no transactions with Neptune Enterprises and the amount was instead transferred by ASL to an entity (*Noticee No. 4*) connected to its Managing Director (*Noticee No. 2*). Similarly, with respect to its claim of having transferred INR 1.80 crore to Krish Corporation towards purchase of Plant and Machinery, it has been observed that out of the above amount of INR 1.80 crore, INR 25 lakh were transferred to another entity i.e., Karan Enterprise (*Noticee No. 7*), however, the invoice for the above INR 25 lakh shows that the amount was paid to Krish Enterprise. It is also noted that no justification has been advanced with respect to the afore noted erroneous and false claims made by the *Company*.

44.7. *Noticee No. 4*, Ambica Ceramics, a related entity of the *Company* has also submitted vague and incomplete submissions with respect to its transactions with the *Company* and the vendors.

44.8. Vendors are either not reachable or have not cooperated with SEBI and have also not submitted any reply to the SCN nor have attended hearing in the instant proceedings.

44.9. As noted from Table 5, the vendors and the conduit entities have similar traits when it comes to choosing introducers for opening of bank account, or a specific bank and also with respect to operational period of their respective bank account.

45. *Notices No. 2 and 3* have contended that on the basis of the fund flows, it would be incorrect to allege that the IPO proceeds were not utilized as per the objects in the prospectus, more so when the *Notices* have submitted a third party valuation report and SEBI had done site inspection, in this regard. To such an averment, I note that the existence of Plant and Machinery is not an irrefutable proof that the IPO proceeds were optimally and adequately utilized to construct the same. The SCN has made a charge that IPO proceeds have not been utilised in accordance with the objects as disclosed in the prospectus by the *Company*. To that extent, the *Notices* have to demonstrate that after the credit of IPO proceeds in the bank account of the *Company*, the same was transferred to various vendors who have actually supplied the materials and goods to achieve the objects of the issue. The evidence that *inter alia* could come in aid of the *Notices* to substantiate their transactions are not only the evidence of fund transfers to the respective vendors but more importantly the documentary evidence substantiating beyond doubt the commercial transactions between the *Company* and the vendors, the evidence of execution of any contract or service agreement, particulars of the service provided along with date of initial contact and date of delivery, expertise of the vendors to supply the goods / services, due diligence, if any done by the *Company*, prior commercial history of the *Company* with the vendors, if any etc. In the instant matter, the banking transactions, as noted in preceding paragraphs pertaining to the payment made to several vendors only show that the amount of fund transferred to the vendors. At the same time, I can't be oblivious of the fact that invariably a part of the funds transferred to a vendor, has come back to the *Company* via a layered transaction through the connected entity of the *Company* and / or some conduit entities and wither the entire remaining amount or a major portion thereof, has invariably been immediately withdrawn in cash for

which no plausible explanations have been submitted by any of the *Noticees*. In the absence of any satisfactory explanation to the above unexplained transactions, I find no reason to accept those transactions as genuine commercial transactions, merely on the face value. Credence to my adverse observation is further led by the fact that the bank accounts of the vendors were found to be opened only in July - August, 2010 i.e. immediately after the closure of IPO and they have become non-operative / dormant soon after the receipt of funds from the *Company* and subsequent withdrawal of the same in cash. Opening of those vendors' bank accounts around the IPO time where majority of vendors had common introducers also leads towards a strong inference that these vendors did not have long history of operations and the closure / non-operation of those bank accounts soon after, show that they were opened for a very specific purpose. I also note that from the list of vendors provided by the *Company* who were supposedly used for procuring of Plant and Machinery for the proposed expansion of the *Company*, the vendor to whom the highest amount of IPO proceeds was transferred viz., Neptune Enterprise (INR 10 crore) has point blank denied the claim of the *Company* stating that it had no business relations with the *Company* at any point of time. The claim of Neptune Enterprise is also corroborated by the fact that no fund transaction is reflected in the accounts of the *Company* with Neptune Enterprise. This finding when seen in light of the fact that from the remaining list of top 8 vendors (in terms of transfer of IPO proceeds) provided by the *Company*, 4 vendors were not reachable, 1 vendor did not respond to the summons inspite of receipt of summons and the remaining 2 vendors submitted incomplete information, it becomes clear that none of the vendors', was able to corroborate the claims of the *Company*, surprisingly rather half of the top 8 vendors were incommunicado including all the 3 conduit entities via which the funds were transferred to the *Company*. Thus, in the peculiar facts and circumstances of the matter where *Noticees No. 2 and 3* have not been able to demonstrate that the work / goods and services towards achieving the objects of the issue was done through the vendors to whom the IPO proceeds were transferred, the submission of the *Noticees* with respect to third party valuation and construction at the site, assumes no creditability and is not acceptable. In this respect, it is reiterated that the charge against the *Noticees* in the SCN is non-utilisation of the proceeds towards achieving the objects stated in the prospectus of the *Company*. Hence, it is incumbent upon the *Company* and the persons responsible for managing

its affairs to not only show the transfer of funds but also to demonstrate persuasively that the IPO proceeds were actually utilised appropriately. In the instant matter, *Noticees No. 2 and 3* are taking shelter under the bank statement to show the transfer of funds to the vendors, however, conveniently have preferred to either remain silent or have not furnished sufficient evidence to satisfy the nature of Plant and Machinery, so purchased from the respective vendors. There is also no answer or explanation from the *Noticees* as to how the majority of the vendors who have received funds from ASL towards goods and services have been found to have transactions with *Noticee No. 4* and how such funds transferred to the account of *Noticee No. 4* were remitted to the account of the *Company* from the account of the *Noticee No. 4*. There is nothing on record to suggest the due diligence, if any, carried out by the *Company*, before a decision was taken to transact with the respective vendors, who are found to have had no past history of either trading with the *Company* or having no background of dealing in materials and yet it is not known as to what became the basis for the *Company* to enter into those transactions. Under the circumstances, I find that the explanation submitted in the form of only bank statements to justify the utilization of IPO proceeds fall far short of satisfaction and the suspicion surrounding the existence and *bona fide* of such vendors and their business activities, further gets reinforced when one finds that the *Noticees* have done very little to prove and justify these transactions.

46. The contention of the *Noticees No. 2 and 3* that *Noticee No. 4* had extended partial funds to the vendors for the expansion of the unit prior to receipt of IPO proceeds as a bridge loan on behalf of ASL and upon receipt of IPO proceeds the accounts between ASL and *Noticee No. 4* were settled, is untenable for the following reasons: Firstly, in the prospectus it was disclosed by the *Company* that the initial expenditure which was incurred by the *Company* was financed through Internal Accruals and by taking unsecured loans from Luniar Finstock Pvt. Ltd., Ahmedabad. There was no mention of any bridge loan facility availed by the *Company* from its connected entity, *Noticee No. 4* which was supposedly used to pay to the vendors. Secondly, the vendors with whom the *Company* had placed the orders prior to IPO are different from the list of vendors provided by the *Company* post IPO i.e. at the time of investigation. Thirdly, if the vendors to whom the *Company* has paid huge sums of money post receipt of IPO

proceeds, were also paid prior to IPO, then the name of the said vendors, should have also been disclosed in the prospectus, particularly in the table of vendors with whom orders were placed prior to IPO but no such names have been disclosed in the prospectus. Fourthly, the *Noticees* have not submitted any bank statement showing fund transfer to any of the vendors made prior to receipt of IPO proceeds for utilization of same for the purchase of Plant and Machinery that required repayment, out of IPO proceeds. Lastly, as noted from the fund trail post receipt of IPO proceeds, except in one instance where the funds have flown from the *Company* to *Noticee No. 4* which as claimed by the *Company* was to Neptune Enterprise, in all other instances funds have always flown from *Noticee No. 4* to the *Company*, which again contradicts the submission of the *Noticees*.

47. *Noticees No. 2 and 3* have submitted that the reason for not furnishing invoices for the full amount of payments made for the aforesaid vendors is that the sale invoices are either in possession of the Sales Tax Department or in custody of SICOM. However, no explanation has been furnished by the *Noticees* as to why invoices for only part payments were taken by the Sales Tax Department and SICOM while for the remaining amount, the invoices are still left with the *Company*. Moreover, even if the claim of *Noticees* is to be accepted, they have not demonstrated that they had made any effort to retrieve the invoices or its photocopies from either the Sales Tax Department and SICOM or from the vendors. Thus, the submission of the *Noticees* falls short of merit.
48. *Noticees No. 2 and 3* have contended that there is no evidence of linkage between *Noticees No. 5 to 14* and the *Company* and / or with *Noticees No. 2 and 3*. In this regard, as have been noted in detail in the preceding paragraphs, certain factors and common features, sufficiently show the connections that *Noticees No. 5 to 14* share with the *Noticees No. 2 and 3*. Some of such common features pertain to receipt of funds by *Noticee No. 4* from the accounts of such vendors to whom funds were initially transferred by ASL for purchasing Plant and Machinery. The fact that no due diligence was ever carried out before entering into transaction with such *Noticee-vendors*, coupled with the fact of receipt of funds by these vendors, show that the person behind each of these vendors was well known to the *Noticees No. 2 and 3*. There is also commonality in opening of bank accounts by the vendors and the kind of bank with which it was opened. Further, majority of the vendors had common introducers

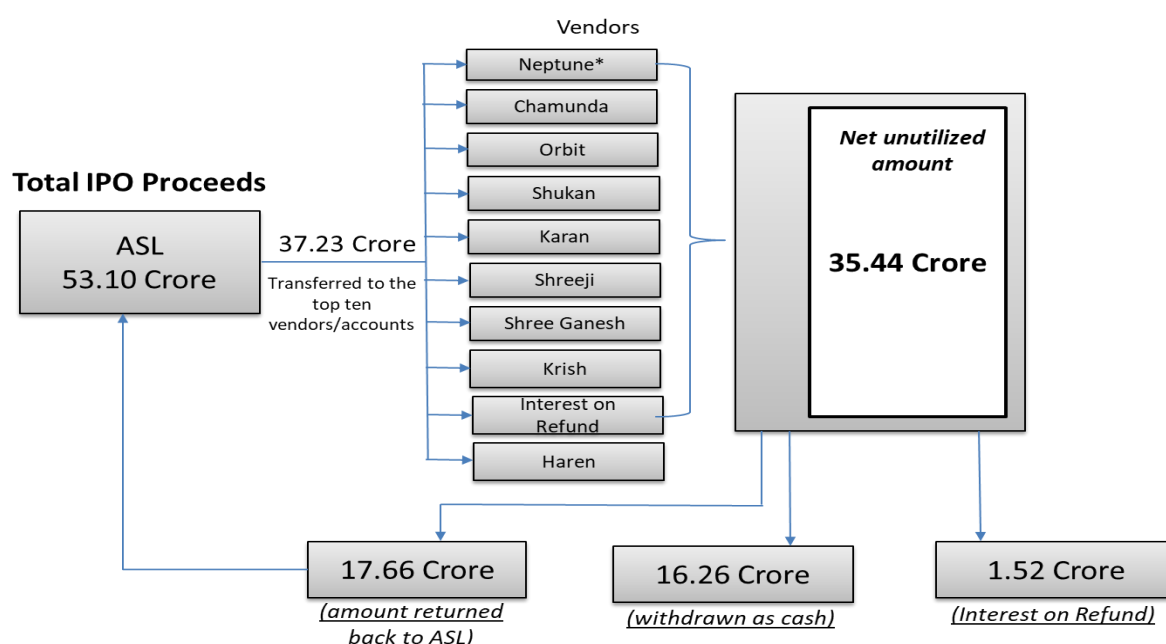
who introduced them for opening bank accounts. Moreover, as noted from the pattern of funds trail that was seen subsequent to transfer of funds from the *Company*, the funds were either transferred back to the *Company* through the *Noticee No. 4* or was withdrawn in cash. All the *Noticee-vendors'* bank accounts were observed to be dormant or closed after the conclusion of the aforesaid transactions with ASL and none of those vendors appeared or cooperated either during investigation or during the instant proceedings. From the above facts including the pattern of funds flow noticed as illustrated above, establishes a clear linkage between the vendors and *Noticees No. 2 and 3* as well as the *Company*, therefore, the submission of the *Noticees No. 2 and 3* claiming a lack of evidence of linkage amongst the *Noticees* is untenable.

49. I note that an amount of INR 1,52,51,000 was transferred from the *Company's* one account (account no. 435501010086632, UBI bank) to the *Company's* refund account (account no. 00062300000499, HDFC Bank) on July 23, 2010 and subsequently was refunded to the bidders. It is noted from the Final Monitoring report on the IPO of ASL that there was a delay in the allotment due to an option given to the applicants to withdraw their bids. The withdrawal option was given to the applicants due to alleged non-disclosure of certain information (related to details of the pledged shares of the Promoter, non-repayment of loans, non-disclosure of notices issued to the Promoter and the *Company*) in the RHP. In the light of the allegations about such non-disclosures, the *Company* had issued a public clarification and gave an option to the applicants to withdraw their bids, if they wanted to. The period for the withdrawal option was given for 10 days, from July 13, 2010 to July 23, 2010. Due to this, there was a delay in the dispatch of refunds to the applicants. Consequently, 15% interest was paid to all the applicants for 15 days amounting to INR 1,52,51,000, for the delay in dispatch of refund.

50. The aforesaid amount of INR 1.52 crore was paid by the *Company* from the INR 5 crore which it had earmarked for Public Issue expenses related to the IPO as detailed in the prospectus. The *Company* has submitted at the time of investigation that it had incurred a total expense of INR 5.23 crore for Public Issue expenses related to the IPO. In this regard, it is noted that INR 1.52 crore which was paid by the *Company* towards payment of interest due to delay in issuing refunds was caused by the *Company's* lapse in not disclosing material information in the RHP, hence the said expenditure cannot

be treated as part of Public Issue expenses. It was incurred by the *Company* not towards the Public Issue expenses but for not being diligent in making disclosures in the RHP. Therefore, it is held that the aforesaid amount of INR 1.52 crore cannot be categorized under Public Issue expenses as the same was not utilised as per the objects of the issue.

51. In view of the aforesaid discussion, the details of the non-utilisation of IPO proceeds by ASL, can be depicted as follows:



* Actually paid to Ambica

52. I therefore, hold that out of the total IPO proceeds of INR 53,10,00,000, a sum of INR 35,44,60,045 was not utilised in accordance with the objects of the issue, as disclosed in the prospectus. Since a part of the IPO proceeds was not utilised for purposes as disclosed in the prospectus, it leads to a compelling conclusion that the said IPO proceeds were utilised for things / purposes other than that were disclosed in the prospectus which in fact amounts to diversion of IPO proceeds.

53. All the aforesaid factual details pertaining to the transactions made between the *Company* and the vendors and / or the conduit entities after the credit of IPO proceeds into the *Company's* bank account as a result of which either the proceeds of IPO have come back to the *Company* or has been withdrawn in cash, coupled with the lack of any documentation to support the existence of any genuine commercial transaction between the *Company* and the vendors and / or the other conduit entities for which no justifiable explanations have been furnished, either by the *Company* or by the

recipient vendors and / or the conduit entities of such funds, constrain me to conclude that the *Company* and the vendors and / or the conduit entities have not been able to repudiate the charges made in the SCN against them for having employed a manipulative device whereby the proceeds of IPO were not properly deployed towards the objects stated to the public at large through the prospectus.

54. I find that post receipt of the IPO proceeds, funds were immediately transferred by the *Company* to the vendors under the pretext of making the payment against purchase of materials for which no sufficient invoices were furnished by the *Company* or its Directors (*Notices No. 2 and 3*). It has also been observed that a part of the funds transferred to each of the vendors has travelled back to the *Company* through its connected entity i.e. *Noticee No. 4* for which also no plausible justifications have been advanced by any of the concerned *Notices*. It has also been seen in almost all the instances that the balance amounts were immediately withdrawn in cash from the accounts of those vendors to whom the *Company* had transferred substantial amount in the name of commercial transactions that were never substantiated. It is further seen that one such vendor, Neptune Enterprise even denied having entered into any business transaction with the *Company*. Further, the remaining vendors and conduit entities had opened their bank accounts during the period July-August 2010 i.e. after the closure of the IPO and before the credit of IPO proceeds in ASL's bank account on July 27, 2010. Interestingly, these accounts were either closed or have become non-operational soon after the IPO proceeds were transferred into these accounts and then either the funds were transferred back to the *Company* or encashed in cash from these accounts, as narrated in earlier paragraphs. The commonality among the vendors does not end there. The vendors / conduit entities have common introducers for opening of the bank accounts which opened in some non-descript / cooperative banks. It is also apparent that the vendors and the conduit entities with which the *Company* as per materials available on record had no prior commercial engagement, majority of these vendors are not reachable while few of them have submitted partial information. This coupled with the fact that the vendors and the conduits have opened their bank accounts in such non-descript banks around the same time when the IPO proceeds were credited to the bank account of the *Company* and soon thereafter became dormant / non-operational after being used to transfer the funds received

from the *Company* back to the *Company* via layered transaction or for withdrawing in cash, on a preponderance of probability basis lead to an irresistible inference that the proceeds realised from the IPO were not utilised properly to achieve the objects stated in the prospectus of the *Company*. The commonalities in the transactions as noted above strongly indicate that transactions with the vendors and the conduit entities were an eyewash and appeared to be executed only to escape the eyes of law. To put it differently, in the peculiar facts and circumstances of the matter as noted above, I am constrained to find that the *Company* has failed to bring before me sufficient evidence to demonstrate that it had entered into those transactions with the above noted vendors to utilise the IPO proceeds for the objects stated in the prospectus, hence, to that extent I hold that the *Company* has made wrong disclosures in the prospectus / offer document of the IPO.

55. To sum it up, I observe that the *Company* has not been able to provide any acceptable justifications so as to defend itself against the charges made in the SCN and to demonstrate that the funds raised in the IPO have been indeed utilised for the objects disclosed in the prospectus and the explanations so far offered with respect to transfer of funds to various vendors showing utilization of IPO proceeds, carries no strength to dilute the charges in the SCN in any manner.

56. I in this regard find it relevant to refer to and rely upon the observations made by the Hon'ble Delhi High Court in the matter of *SEBI vs. CRB Capital Markets Ltd.* (date of decision: December 05, 2019), wherein the Hon'ble High Court has held that: "*Clearly, given the manner in which fraudulent acts are undertaken under deceit and camouflage, if done with the affairs of a company/trust etc., the standards of proof required to prove such fraudulent conduct would necessarily be less stringent.*"

57. In conclusion, I observe that the SCN has been successful in establishing the charge that the *Company* while acting in collusion with other *Noticees* has employed a pre-determined device to divert the IPO proceeds for purposes other than those mentioned in the prospectus. By playing such a subterfuge, the *Company* has tried to create a smokescreen to suggest that the funds transferred to various vendors / conduit entities were meant for expansion of its manufacturing facilities by way of utilization of the IPO proceeds. However, the *Company*, the vendors and the conduit entities have not been able to provide any plausible explanation with documentary

evidence for the fund transfers which happened amongst them post credit of IPO proceeds into the *Company's* bank account. The *Company* has also not been able to show that it had any prior business agreement with these vendors i.e. before its IPO and had placed any orders for Plant and Machinery with these vendors. On the contrary, from the list of names of vendors with whom the *Company* had actually placed order for procuring Plant and Machinery prior to IPO and the tentative list of vendors provided by the *Company* in its prospectus from whom the *Company* had intended to procure Plant and Machinery, do not feature any of the vendors to whom the *Company* has, post receipt of IPO proceeds transferred huge sums of money in the name of buying Plant and Machinery. The pattern of flow of funds, the commonality amongst vendors including their non-cooperation with SEBI and lack of any documentary evidence to show the existence of any commercial transaction whatsoever, are self-evident of the fact that bulk of IPO proceeds were diverted by the *Company* to the aforesaid vendors for no justifiable reasons. It also explains as to why the *Company* failed to deploy the IPO proceeds towards the objects of IPO thereby betraying the faith and trust of those genuine investors, who had subscribed to its shares under the IPO trusting the IPO documents and the wrong disclosures made therein by the *Company*. The turn of events also amply explains as to why the *Company* and other *Noticees* have been unsuccessful to produce any concrete reasons or any tangible evidence to justify the transfers of such huge sums of money out of IPO proceeds, including justification for transfer of funds from the conduit entities back to the *Company* and the withdrawal of funds in cash by the vendors and / or conduit entities. The fraudulent, deceitful and manipulative device employed by the *Noticees* to divert the IPO proceeds for purposes other than the purposes / objects declared in the prospectus, becomes manifest when one vendor to whom 18.83% of IPO proceeds (INR 10 crore to Neptune Enterprise) was claimed to have been remitted, has denied having done any transaction with the *Company*. Clearly, such specious claims of utilization of IPO proceeds remained far away from the actual utilisation of those IPO proceeds which could only be an “assumed reality” for the shareholders who, whole heartedly supported the *Company's* public issue with the expectation of a good performance and good management of their investment from the *Company*.

58. In view of the aforesaid findings based on pattern of fund flow and absence of any documentary evidence pertaining to the proclaimed commercial transactions with the vendors and the conduit entities, I observe that the *Notices No. 1 and 4 to 14* have, while acting pursuant to a pre-determined plan, have violated Sections 12 A(a), (b) and (c) of SEBI Act read with regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.
59. After concluding above that the *Company* along with the other *Notices No. 4 to 14* have failed to exhibit that the IPO proceeds were utilised towards the disclosed objects of the issue as stated in its prospectus it follows that the disclosure made by the *Company* in its Annual Report wherein it has stated that it has completely utilized the IPO proceeds as disclosed in its prospectus, is also false and misleading.
60. In the light of the above findings, there is no doubt left in my mind that the *Notices No. 2 and 3* have to be held liable for the misdeeds of the *Company* by virtue of their post and position held by them in the *Company* during the relevant period (*Notice No. 2* is the Chairman and Managing Director while *Notice No. 3* is the Executive Director / Whole Time Director), which is not a disputed fact. It is an obvious fact that all the acts involving the afore noted illicit transfers / diversion of IPO proceeds which were executed in the name of incorporated entity i.e., the *Company* are done by the natural persons who were controlling the affairs of this artificial juristic person (company) in the capacity of its CMD and Executive Directors. A company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Director and in case of default, he / she has to face the consequences thereof. The Directors of a company are persons appointed to manage and direct the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks. A Director who is part of a company's Board shall be responsible and liable for all the acts carried out by the

and in the name of a company. Therefore, a Whole Time / Executive Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company.

In this case, the intricate plan, as observed in the preceding paragraphs have been devised by the *Noticees* apparently to circumvent the regulatory framework and as the materials before me and conduct of the *Noticees* clearly indicate, such a devious plan to divert the IPO proceeds for purposes other than the purposes stated in the prospectus, was apparently the brainchild of the Directors of the *Company*, who were controlling its affairs by virtue of their executive positions / directorships. It is noted that various courts have upheld the liability of the Directors of a company for the violations committed by such company. For illustration, in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152* the Hon'ble Supreme Court of India held that: "33. *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.*" In my considered view, the facts and circumstances governing the present case are strongly suggesting a dubious plan based on which through various concocted transactions and transfer of IPO proceeds, efforts have been made to show due utilization of IPO proceeds towards the objects as disclosed in the prospectus, while in reality substantive portions of the IPO proceeds were transferred / diverted for purposes other than the purposes disclosed in the prospectus and instead, were diverted for some other oblique reasons and the same has been ostensibly perpetrated by *Noticees No. 2 and 3*, being Directors of the *Company* (who are also Promoters of the *Company* [48.33% post issue capital]) in collusion with other *Noticees* i.e. *Noticees No. 4 to 14*. Therefore, *Noticee nos. 2 and 3* have also to be held responsible and liable for the plan executed by the *Company* with the active help of other *Noticees No. 4 to 14*, to divert the IPO proceeds for purposes other than those

disclosed in the prospectus. In view of the said discussion, I find that the *Notices No. 2 and 3* have also violated Sections 12 A(a), (b) and (c) of SEBI Act read with regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

61. It is thus clear the *Company* has made wrong disclosures in the prospectus and the Annual report regarding the utilization of IPO proceeds. In this respect the findings of the Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd. vs. SEBI* decided on February 20, 2008, are squarely applicable to the facts of the present matter, wherein the Hon'ble Tribunal has held that "*an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator*"

62. Further, the Hon'ble SAT in the matter of *Brooks Laboratories Ltd. vs. SEBI* decided on March 21, 2018 has held that "*Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus.*"

63. I note that SEBI has adopted a disclosure based regulatory regime. Under this framework, issuers and intermediaries are not only expected but are required to disclose relevant details about themselves, their products, all material developments in their business affairs, all their conduct and activities having any bearing with the securities market, so that the investors are able to take an informed investment decisions based on such disclosures. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure based regulatory regime is the need for the issuers of securities to disseminate true and complete information to the potential investors in respect of the issuer and the security being issued by it to enable the potential investors to make their own informed investment decisions. Any access to the securities market for

listed / to be listed issuers is always conditional upon such disclosures. The disclosure based regime also imposes a sacrosanct responsibility on the issuers of securities to ensure of the accuracy and completeness of the information disclosed by them.

64. In the case of an IPO made by a company, all the information about the company have to be made available to the knowledge of the public/investors in the form of offer document / prospectus and subsequently the company has to publish its Quarterly Financial results as well as its Annual Reports that informs the investors about company's performance in the preceding quarters / year. The public/investors make their initial decision to invest in the company based on the prospectus and their subsequent decision to stay invested in the company *inter alia* depends on the information published in the Quarterly Financial results and yearly performance, as disclosed in the Annual Report of the company. The public disclosure of information related to the company in the prospectus and in its Quarterly / Annual Reports is not a mere ritual or formality but serves as a vital source of information dissemination to the public at large. Therefore, the importance of the above mentioned documents and other corporate announcements / filings of material facts / developments in so far as they help the public for taking an informed investment decision cannot be undermined.

65. In this regard, while appreciating the consequences of not making fair and true disclosure or concealing material information from the shareholders or utilising resources for purposes other than the objects as shared and disclosed to the stakeholders, the Hon'ble SAT in the matter of *V. Natarajan vs. SEBI*, Appeal No. 104 of 2011, has held as follows:

"... We are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated... These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false

or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities...”

66. In the extant matter by virtue of not making true and correct disclosure with respect to intended utilisation of IPO proceeds in the prospectus and in its Annual Report, the *Company* and its two Directors, *Noticees No. 2 and 3*, have kept the investors in the dark who were not able to take an informed investment decision *qua* the *Company*. In other words, by not complying with the regulatory obligation of making true and correct disclosures, the *Company* and its two Directors, *Noticees No. 2 and 3* have misled the investors which is detrimental to the interest of investors in securities market and such misconduct on their part has amounted to violation of Sections 12A (a), (b) and (c) of SEBI Act read with regulations 3 (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations.

67. Here it will be appropriate to refer to the order of the Hon’ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, Sebi* decided on April 26, 2013 wherein the Hon’ble Court has while dealing with the concept of market abuse in securities market has held as follows:

“... ‘Market abuse’ impairs economic growth and erodes investor’s confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abuser.

...

A word of caution:

43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country’s economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India’s securities market. Message should go that our country will not tolerate “market abuse” and that we are governed by the “Rule of Law”. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and ‘market security’ is our motto. People with power and money and in management of the

companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."

68. I note that Section 11 of SEBI Act confers a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such an object, it has been authorised to take such measures as it thinks fit. Thus, the power to take all measures as may be necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble of SEBI Act has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed, which apart from bringing transparency and fairness amongst other things, aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. By diverting the IPO proceeds and by failing to make true and correct disclosures in the prospectus and in the Annual report, not only the investors were defrauded and misled, but such acts on the part of the *Noticees*, have also impaired the integrity of the securities market. In view of the same and considering the seriousness of the violations committed by the *Noticees*, I find that it becomes necessary for SEBI to issue appropriate directions against them.

69. Before proceeding further, I note from records that liquidation proceedings have been initiated against the *Company* and the Official Liquidator of the *Company* has taken charge of the assets of the *Company*. The Official Liquidator has initiated the liquidation process of the *Company* and as per available records the Official Liquidator has already auctioned some of the assets of the *Company*. Thus, in the given situation, passing any directions against the *Company* would be infructuous.

Directions

70. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, pass the following directions:

- 70.1. *Notices No. 2 to 14* are hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for a period of 5 years.
- 70.2. *Notices No. 2 to 14*, are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period a period of 5 years.
- 70.3. *Notices No. 2 and 3* are hereby restrained from holding post of Director, any managerial position or associating themselves in any capacity with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 3 years.
- 70.4. Obligation of the debarred *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid debarred *Notices* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
- 70.5. It is further clarified that during the period of the aforesaid restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze.
71. The Order shall come into force with the immediate effect.
72. A copy of this order shall be forwarded to the *Notices*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Date: April 29, 2022
Place: Mumbai

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA