CG Power and Industrial Solutions Limited
Registered Office:
CG House, 6th Floor, Dr Annie Besant Road, Worli, Mumbai 400 030, India
T: +91 22 2423 7777 F: +91 22 2423 7733 W: www.cgglobal.com
Corporate Identity Number: L99999MH1937PLC002641

Smart solutions.
Strong relationships.

Our Ref: COSEC/130/2020-21

October 30, 2020

By portal

The Corporate Relationship Department
BSE Limited
1st Floor, New Trading Ring
Rotunda Building,
Phiroze Jeejeebhoy Towers,
Dalal Street, Mumbai 400 001
Scrip Code : 500093

The Assistant Manager – Listing
National Stock Exchange of India Ltd.
Exchange Plaza, Bandra-Kurla Complex,
Bandra (East),
Mumbai 400 051

Scrip Id : CGPOWER

Dear Sir/ Madam,

Subject: Intimation/Disclosure pursuant to Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

1. Reference is drawn to the stock exchange disclosure of the Company dated August 19, 2019 where the company has disclosed the findings of the Phase I report dated August 5, 2019 submitted by a law firm.

2. Pursuant to Regulation 30 of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"), as amended *vide* SEBI notification dated October 08, 2020, we would like to inform you that the Company is now in receipt of the Final Report - Phase I investigation dated October 28, 2020 ("**Report**"), received by the Company on October 29, 2020, from the law firm, shared with the Board of Directors on even date. Hon'ble Justice Mr. T. S. Thakur (Retd.) (former Chief Justice of India), who was appointed as the Head of Investigation by the Company to monitor the said investigation, has also provided to the Board his report upon review of the findings and conclusions recorded in Report by the Law Firm ("**Observations**").

3. The Report is voluminous and the Board of Directors has taken receipt of the Report on record in its meeting held on October 29, 2020. The Board will promptly share the same with all relevant regulatory and enforcement agencies including the Securities and Exchange Board of India ("**SEBI**") and the Serious Fraud Investigation Office ("**SFIO**") as well as the auditors of the Company.

4. Since the matter is already under investigation by various regulatory and enforcement agencies including SEBI and SFIO, and since various aspects remain *sub-judice*, the Board is unable to provide any specific comments in relation to the contents of the Report. However, the Board confirms that there are no additional financial implications, over and above the disclosures already made by the Company. This was also confirmed by the law firm with regard to the transactions covered in the Report, in view of the fact that the financial impact of the nine transactions covered in the Report also

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form part of the financial statements of the Company for the year ended March 31, 2019 and March 31, 2020.

5. Enclosed herewith is a copy of the Observations. For the purposes of this disclosure, the Company has redacted names of individuals and entities in order to preserve their privacy.

6. It may be noted that none of the disclosures made herein should be deemed to construe as admission of any fact or liability by the Company and the Company reserves all its rights under law and/or in equity to contest the same. The Company continues to review the Report and will undertake all necessary steps and requisite legal actions to protect its interests, as may be required.

The Company continues to remain committed to cooperating with the regulatory authorities/investigation agencies, as may be required, to ensure compliance with law as well as to protect and enhance stakeholder value.

The Board meeting held on October 29, 2020, commenced at 06:25 p.m. (IST) and concluded at 07:21 p.m. (IST).

We would appreciate if you could take the same on record.

Thanking you

Yours faithfully,
For **CG Power and Industrial Solutions Limited**

Alen Ferns
Company Secretary and Compliance Officer

CG Power And Industrial Solutions Limited * Mumbai - 400 030. *

Encl: As above

Justice TS Thakur
Former Chief Justice of India

I have gone through the Draft Final Report of investigation conducted by Vaish Associates Advocates, Mumbai and the related record, accompanying the same. Before I deal with the conclusions arrived at by the Investigators, a summary of the facts in the backdrop of which the entire exercise was entrusted to and undertaken by the Investigators will be useful.

FACTUAL BACKDROP

Crompton & Greaves Power & Industrial Solutions Ltd., hereinafter referred to as CG, is a reputed Company incorporated under the provisions of Companies Act 1956. A Committee called 'Operations Committee' set up for revival of the company's business appears to have noticed five different transactions which were ostensibly entered into without proper authorisation and were apparently not appropriately recorded in the Financial Statements of the Company. The Operations Committee was of the view that these transactions needed to be investigated and accordingly brought the same to the notice of the Audit Committee. In the course of audit, one of the joint statutory auditors ( ) advised the Board of Directors of the Company that four more transactions also deserved to be investigated. A total of nine transactions were thus identified by the Operations and Audit

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Committees for an investigation into their genesis. These transactions have been described as under:

> *"3.1.1 transaction in relation to the sale of Nashik Property to BGPEL and execution of certain documents on behalf of CG in relation to the loan facilities availed by BGEPL and from . L;*
>
> *3.1.2 transaction in relation to the sale of Kanjumarg Property to BGEPL and execution of certain documents on behalf of CG in relation to the loan facility availed by BGEPL from L;*
>
> *3.1.3 cheques issued by CG in relation to the loan availed by AHL from L;*
>
> *3.1.4 term loan of Euro 44 million loan availed by CG Singapore from B which has been guaranteed by CG, and subsequent remittance to Avantha International Assets B.V;*
>
> *3.1.5 term loan of USD 40 million availed by CG Middle East from Bank which has been guaranteed by CG UBV;*
>
> *3.1.6 outstanding trade receivable aggregating to INR 108 crores from the Identified Customers as mentioned in the Letter;*
>
> *3.1.7 outstanding advances to vendors in CG Singapore as mentioned in the Letter;*
>
> *3.1.8 outstanding advances to vendors in CG Middle East as mentioned in the Letter; and*
>
> *3.1.9 INR 229 crores paid to PSOL as mentioned in the Letter."*

Investigation into the transactions was entrusted by CG to Vaish Associates Advocates, 106, Peninsula Centre, Dr. S.S. Rao Road, Parel, Mumbai with instructions to examine whether the same were valid from the point of view of Legal Compliances, Corporate Governance and Accounting Practices & Procedure.

Vaish Associates in turn sought the assistance of Deloitte in terms of an engagement letter dated 30th May 2019 and an addendum dated 2nd June 2019 in which the agreed scope of work assigned to Deloitte was as under:

> *"a. Assistance in a fact finding review of identified specific transactions involving loans obtained and/ or Inter-Corporate Loans (ICL) given by the Beneficiary (8 nos.) ("Specific Transactions") with an objective to ascertain:*
>
> *- In connection with Loans obtained by the Beneficiary:*
> - *o Purpose of the loan*
> - *o Authorization taken*
> - *o End user of the loan*
> - *o Disclosures made in relation to the said loan in the financial statements*
> - *o Identification of relationships with such entities from whom loans are obtained, if any*
>
> *- In connection with the ICL issued by the Beneficiary:*
> - *o Purpose of the grant of the ICL*
> - *o Compliance with internal policies of the Beneficiary*
> - *o Review of evaluation report, if any, of the borrowers undertaken by the Beneficiary*
> - *o Authorizations for the issuance of the ICL*
> - *o Pattern, if any, of grant of the ICLs by the Beneficiary and payment thereof*
> - *o Loan agreements in place with respect to ICLs issued by Beneficiary*
> - *o End use of the ICL, to the extent of information made available by the Beneficiary*
> - *o Disclosures made in the financial statements of the Beneficiary*
> - *o Identification of relationships with such entities to whom ICLs are issued*
> - *o Identification of sources of funds utilized by the entities to whom ICLs were issued to repay such ICL, to the extent of information made available by the Beneficiary."*

Deloitte submitted a Report on the basis of a fact-finding review of the specific transactions in line with the agreed scope of work assigned to it by Vaish Associates. Vaish Associates also submitted a report dated 5th August 2019 to the Company described as Phase-I Report.

In December 2019, the Board decided to nominate me as Head of the Investigation for purposes of overseeing and guiding the same. In a few preliminary conferences held between me and the Investigating Team the Procedures and Methodologies that the Investigators would adopt were discussed. While doing so care was taken to ensure that the Investigators provided a fair opportunity to all those concerned with the transactions to present their respective versions thereby preventing any prejudice to anyone concerned with the transaction.

In the course of investigation, the Investigators not only gathered additional documentary information from CG, but also established contact with the past and present directors and employees of CG and its Creditors (Banks and non-banking financial institutions). The Investigators established communications even with identified third parties and statutory auditors of CG. Personal interviews with past and present directors and employees whose tenure coincided with the review period were also conducted and information in relation to the transactions obtained from them. Statements of the concerned Directors and employees, past and present, were also recorded. More importantly, the investigators reached out to Mr. , Mr. and Mr. , all former Directors on two separate occasions. All of them either personally or through their attorneys declined to participate in the in-person meetings proposed by the

Investigators or to cooperate with the ongoing investigation despite a written assurance that the Investigators will adopt a fair and transparent process. A questionnaire was also sent to them to enable them to respond in writing if they so desired. All the three individuals named above, however, either did not respond or declined to participate. So also Mr. , former ; CG, Ms. former Director of CG did not participate in the in-person meeting requested by the Investigators. Ms. , however, responded to the questionnaire sent to her in the form of a non-specific statement. Mr. and Mr. , came forward to participate in an in-person interview and got their statements recorded but did not agree to sign the same.

The Investigators also took steps to help CG to cause issuance of data preservation notice to its employees. The forensic data exercise (computer disc, mobiles, e-mails, servers, data back up etc.) was however undertaken by Deloitte. Additional searches on the raw imaged e-mail data with specific focus on the specified transactions were also run by the Investigators, apart from random review of imaged data to identify potential red flags and indications / evidence of malpractices such as incriminating correspondence, manipulated records or any other irregularity.

The Board of Directors of the Company also authorised a forensic investigation into the transactions by Deloitte who undertook that exercise and submitted a report to the Investigators. The Investigators have on the

basis of their own investigations and on the basis of the report submitted by Deloitte submitted their Final Report in which they have dealt with each one of the 9 specific transactions and recorded their findings and conclusions which may be summarised as under:

1. **Transaction No. 1**

SALE OF NASHIK PROPERTY TO BGEPL

(i) *From Mr. , Mr. , Mr. , Mr. , representing CG and Mr. , Mr. and Mr. representing were aware about the structuring of the specified transaction involving sale of Nashik Property to BGEPL. This is evident from multiple e-mails exchanged between them during the period from October to December 2015The discussions also included the permission of SPV, selection of underlined CG assets to be mortgaged etc. Mr. and Mr. appear to have attended meeting with senior management during March 2016 i.e. around the time transaction was being discussed and finalised.*

(ii) *BGEPL and Acton were incorporated only to facilitate the transactions. Certain employees of CG (Mr. , Mr. and Mr. were involved in the finalisation of terms of loan of a sum of INR 200 crores to be availed by BGEPL from . E-mails exchanged in this regard support that conclusion.*

(iii) *Request letter from CG dated March 26, 2016 to for guarantee was backdated. That is because the letter was finalised only in May 2016 but purported to have been issued on March 26, 2106. Mr. and Mr. were aware of the same as is evident e-mails referred to by the investigators.*

(iv) *Mr. approved the transfer of INR 145 crores from CG to , towards advance against property purchase in May 2016. , Ms. and Ms. were aware of the outflow of funds from CG to . It can be seen from the e-mails sent by them on the subject.*

(v) *Mr. approved the transfer of funds from CG to Acton in August, 2016 and the said funds were placed in mutual fund under 'lien' for repayment of monies owed by BGPPL to . During August 2016 a sum of INR 53 crores was advanced by CG to Acton by Mr. . A sum of Rs.51.57 crores was utilised by Acton for investment in Mutual Fund and a lien was marked on these mutual funds in favour of . Certain employees of the CG were aware of the flow of funds from CG and thereafter to . Funds as is referred to by the investigators in their report.*

(vi) *In relation to appropriation by of INR 51.57 crores of mutual fund units, for the purpose of accounting, Acton and in the month of*

October, 2016, were in discussions to execute an agreement. Further, certain representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. and Mr.) were aware of the same.

(vii) Certain employees of the Company (i.e. Mr. , Mr. and Mr.) became aware either of the proposed transaction between CG and BGEPL relating to Nashik.

(viii) Property or the loan sanctioned by to BGEPL against Nashik Property of CG, prior to execution of the transaction documents. Further, Mr. and Mr. consulted Legal with respect to the documentation for the transaction. It is pertinent to note that underlying piece of land for the captioned transaction was changed from Kanjurmarg Property to Nashik Property during March, 2016.

(ix) The employees or representatives of CG (i.e. Mr. , Mr. , Mr. and Mr.) were either involved in the drafting and finalization of the letter of awareness to be issued by Mr. or were aware of the same.

(x) Mr. was appraised about various facilities extended by to CG Group by Mr. and Mr. was a part of discussion about the BGEPL loan during the meeting with BGEPL on September 11, 2017.

(xi) Certain representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. and Ms.) were aware about the loans of BGEPL from and interest calculation thereon. Further, Mr. and Mr. from CG were coordinating to gather details of the payments made by CG to BGEPL and accounting thereof in the books of accounts of CG and as such were aware about BGEPL loan and interest payments to BGEPL. Furthermore, Mr. was aware about BGEPL loan and interest payments to BGEPL in October, 2018.

(xii) Certain employees of the Company (i.e. Mr. , Mr. , Mr. and Ms.) were either involved in incorporation of BGEPL and Acton OR were aware about the incorporation of BGEPL and Acton through an external consultant.

(xiii) Certain employees of the Company (i.e. Mr. , Mr. and Mr.) were coordinating with external consultant for the secretarial compliances of BGEPL and Acton. Further, certain employees (i.e. Mr. and Mr.) were aware about the secretarial compliances being handled by an external consultant.

(xiv) Mr. (of CG), who was a non-authorized signatory for Acton was provided internet banking access to operate Acton's bank account with Bank. Further, Mr. , Mr. and Mr. (of CG) had viewer access to the bank account to BGEPL's account with Bank.

(xv) The representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. , Mr. and Ms.) interacted with representatives of Bank for the banking services of Acton and BGEPL. Further, the representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. and Mr.) were the authorized signatories to manage Acton's bank account and Mr. Mr.

, Mr. and Mr. were the authorized signatories to manage BGEPL's bank account.

(xvi) Mr. , was authorized to approve the payments to the vendors from Acton and BGEPL. Further, Mr. had also granted rights to Mr. to approve payments from Acton and BGEPL to the regular vendors.

(xvii) Mr. was coordinating with the statutory auditor of Acton and BGEPL for the statutory audit. Further, Mr. was involved in the accounting/ book keeping of BGEPL and Acton.

(xviii) Mr. was involved in the preparation and Mr. was involved in finalizing the sales invoices of BGEPL with respect to sale of certain products. Further, Mr. approved the purchases from BGEPL on behalf of PSOL.

(xix) A mortgage consent letter was probably issued by CG in favour of MIDC to create a collateral security on Nashik Property. The supporting documents thereto were signed by Mr. and Mr.

(xx) Certain representatives of one of the statutory auditors of CG, appears to be involved in the finalization of the accounts for BGEPL and Acton. Further, certain representatives of were aware about the recoverable/ payable balance outstanding between CG, Acton and BGEPL. It is pertinent to note that was the statutory auditor of CG for the FY 2017-18.

(xxi) The title documents for Nashik Property were probably in 's possession and the employees of the Company (i.e. Mr. Mr. and Mr.) were aware of this.

(xxii) During the month of May, 2018, Mr. and Mr. were aware of the fund flow and ultimate utilization of funds with respect to the captioned transaction.

(xxiii) Interest payments to BGEPL from August/ September, 2018, were routed through and such routing of funds was denied by in November, 2018. Further, Mr. , Mr. and Mr. were aware of the demand notice for interest with respect to the BGEPL's loan from in December, 2018. Furthermore, Mr. was involved in negotiating the rate of interest with representatives of with respect to BGEPL's loan from . Moreover, Mr. was aware and involved in the interest computation for BGEPL's loan from

(xxiv) Mr. and Mr. had approved the request of routing of payment of INR 15 crores to BGEPL for the interest commitments of BGEPL for the loan availed from through third parties and to capitalize these payments in the books of accounts of CG.

(xxv) It appears that Mr. , Mr. and Mr. had committed to during their discussions in Delhi that either CG or would service the interest on facilities extended to BGEPL by

(xxvi) The representatives and employees of CG (i.e. Mr. , Mr. , Mr. , Mr. and Mr.) continued to discuss the captioned transaction as well as became aware of the end use of the funds between May - June, 2019.

(xxvii) It appears that Mr. consent was taken prior to sharing the bank statements of BGEPL and Acton with us during the Phase I of the investigation as it contained certain payments made to Mr.

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[redacted]. This probably refers to INR 5.85 crores which was paid to Mr. [redacted] from BGEPL and Acton, as identified in the Deloitte Report. Further, Mr. [redacted] was apprising Mr. [redacted] on the progress of the Phase I of the investigation.

The investigators have on the basis of the above findings and upon a comprehensive review of the interviews / depositions of the employees, directors and other individuals referred to by them in the report, drawn the following conclusions in regard to transaction No. 1 relating to the sale of Nashik Property to BGEPL:

5.1.5 ***CONCLUSION***

5.1.5.1 *The transaction of assignment, sale, transfer, conveyance and grant of all rights, title and interest of CG in respect of Nashik Property to BGEPL appears to be structured with the objective of raising advances by CG for the purpose of remittance of such advances by CG to companies/ entities outside the CG Group for the benefit of promoter or its group companies. The advance received by the Company from BGEPL was subject to interest at the rate of 15% per annum. However, the monies made available by the Company in turn to AHL and Acton were without any interest, thus, causing undue loss to the Company as it was forced to bear the interest on advances received from BGEPL while it in turn did not receive any corresponding interest on the monies so onward lent to AHL and Acton. There are no approvals of the Board in respect of the said transaction with BGEPL. Further, there are **no specific approvals** of the RAC/ Board for the remittance of INR 145 crores to AHL and INR 53 crores to Acton. Moreover, in terms of Section 185 of the Act, CG was prohibited **directly or indirectly** from advancing any loan, including any loan represented by a book debt, to AHL as Mr. [redacted] was a director in both CG and AHL and AHL was accustomed to act in accordance with his directions as he was the majority shareholder of AHL.*

5.1.5.2 *Our observations regarding various non-compliances with the relevant provisions of the Act, the ROP and the SEBI related regulations are as contained in Clause 5.1.3 of the Phase I Report.*

5.1.5.3 *Further, Section 447 of the Act defines 'fraud' but states that the definition is for the purpose of the said section. 'Fraud' is referred to in Sections 134, 143 and Schedule IV of the Act but there is no specific definition of 'fraud' applicable to these provisions. In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the*

said definition is restricted in application only to Section 447. The basic element of fraud is an ***'intention to deceive'****, whether or not there is any wrongful gain or wrongful loss. The aforesaid transactions were undertaken without approval of the Board/ RAC as well as the efforts made to avoid disclosure in the audited financial statements, in our view, injure the interests of CG and its public shareholders. In view of the lack of co-operation of some persons/entities involved as mentioned hereinabove, only a regulatory authority can compel such persons to confirm and/or disclose the true nature and purpose of the advances made by CG as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose, the authorities will have to investigate this matter further.*

2. Transaction No.2:

Sale of Kanjurmarg Property of CG to BGEPL

The investigators have in the final report examined the genesis of the above transaction and on the basis of the material assembled by them in the course of investigation, recorded the following findings of facts in regard to the same:

i. *Multiple e-mails were exchanged amongst representatives of , and CG discussing the timelines for disbursement of two facilities by - one to PSOL of INR 200 crores[1] and another to BGEPL of INR 190 crores. A part (INR 190 crores for BGPPL + INR 15 crores for PSOL) of both these facilities from (to PSOL and BGEPL) was ultimately used to fund Avantha Group companies' outstanding's with . It was noted that the disbursement tranches of the said facilities were conditional to the buyout of outstanding of BGPPL's term loan of INR 190 crores. Further, Mr. , Mr. and Mr. were either involved in the structuring of the transaction relating to Kanjurmarg Property or were aware of the end use of the funds. Furthermore, Mr. of CG during February, 2017 became aware of the disbursement plan for INR 200 crores advanced to BGEPL by*

ii. *The representatives/ employees of the Company (i.e. Mr. Mr. and Mr. were involved during January, 2017, in finalization of the corporate guarantees to be issued by AHL for the loan facilities availed by BGEPL and PSOL from .*

iii. *Mr. had approved the transfer of INR 192 crores from CG to Acton as an advance for sourcing of material from Acton. Further,*

during February, 2017, certain employees of CG (i.e. Mr. , Mr. , Ms. and Mr.) became aware of the funds being transferred from CG to Acton.

iv. During July, 2017, certain employees and representatives of CG (i.e. Mr. , Mr. , Mr. and Mr.) were aware of buyout of loan of BGPPL by Acton. Further, Mr. shared the relevant documents with respect to the assignment of term loan of INR 250 crores of BGPPL to Acton during December, 2017, with Mr. (Associate).

v. Mr. was appraised about various facilities extended by to CG Group by Mr. and Mr. was a part of discussion about the BGEPL loan during the meeting with BGEPL on September 11, 2017.

vi. Certain representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. , Mr. and Ms.) were aware about the loans of BGEPL from ABFL and interest calculation thereon. Further, Mr. and Mr. from CG were coordinating to gather details of the payments made by CG to BGEPL and accounting thereof in the books of accounts of CG and as such were aware about BGEPL loan and interest payments to BGEPL. Furthermore, Mr. was aware about BGEPL loan and interest payments to BGEPL in October, 2018.

vii. Certain employees of the Company (i.e. Mr. , Mr. , Mr. and Ms.) were either involved in incorporation of BGEPL and Acton OR were aware about the incorporation of BGEPL and Acton through an external consultant.

viii. Certain employees of the Company (i.e. Mr. , Mr. and Mr.) were coordinating with external consultant for the secretarial compliances of BGEPL and Acton. Further, certain employees (i.e. Mr. and Mr.) were aware about the secretarial compliances being handled by an external consultant.

ix. Mr. (of CG), who was a non-authorized signatory for Acton was provided internet banking access to operate Acton's bank account with Bank. Further, Mr. , Mr. and Mr. (of CG) had viewer access to the bank account to BGEPL's account with . Bank.

x. The representatives of the Company (i.e. Mr. Mr. , Mr. , Mr. , Mr. and Ms.) interacted with representatives of Bank for the banking services of Acton and BGEPL. Further, the representatives of the Company (i.e. Mr. , Mr. , Mr. , Mr. and Mr.) were the authorized signatories to manage Acton's bank account and Mr. , Mr. , Mr. and Mr. were the authorized signatories to manage BGEPL's bank account.

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xi. Mr. was authorized to approve the payments to the vendors from Acton and BGEPL. Further, Mr. had also granted rights to Mr. to approve payments from Acton and BGEPL to the regular vendors.

xii. Mr. was coordinating with the statutory auditor of Acton and BGEPL for the statutory audit. Further, was involved in the accounting/ book keeping of BGEPL and Acton.

xiii. Mr. n was involved in the preparation and Mr. was involved in finalizing the sales invoices of BGEPL with respect to sale of certain products. Further, Mr. approved the purchases from BGEPL on behalf of PSOL.

xiv. Certain representatives of one of the statutory auditors of CG, appears to be involved in the finalization of the accounts for BGEPL and Acton. Further, certain representatives of were aware about the recoverable/ payable balance outstanding between CG, Acton and BGEPL. It is pertinent to note that was the statutory auditor of CG for the FY 2017-18.

xv. The title documents for Kanjurmarg Property were probably in possession and the employees of the Company (i.e. Mr. , Mr. and Mr.) were aware of this.

xvi. During the month of May, 2018, Mr. and Mr. were aware of the fund flow and ultimate utilization of funds with respect to the captioned transaction.

xvii. Interest payments to BGEPL from August/ September, 2018, were routed through and such routing of funds was denied by in November, 2018. Further, , Mr. and Mr. were aware of the demand notice for interest with respect to the BGEPL's loan from in December, 2018. Furthermore, Mr. was involved in negotiating the rate of interest with representatives of with respect to BGEPL's loan from . Moreover, Mr. was aware and involved in the interest computation for BGEPL's loan from .

xviii. Mr. and Mr. had approved the request of routing of payment of INR 15 crores to BGEPL for the interest commitments of BGEPL for the loan availed from through third parties and to capitalize these payments in the books of accounts of CG.

xix. It appears that Mr. , Mr. and Mr. had committed to during their discussions in Delhi that either CG or would service the interest on facilities extended to BGEPL by .

xx. The representatives and employees of CG (i.e. Mr. , Mr. , Mr. , Mr. and Mr.) continued to discuss the captioned transaction as well as became aware of the end use of the funds between May - June, 2019.

xxi. It appears that Mr. consent was taken prior to sharing the bank statements of BGEPL and Acton with us during the Phase I of the investigation as it contained certain payments made to Mr. This probably refers to INR 5.85 crores which was paid to Mr. from BGEPL and Acton, as identified in the Deloitte

Report. Further, Mr. [redacted] was apprising Mr. [redacted] on the progress of the Phase I of the investigation.

The investigators have also referred to the depositions of the employees of CG and others examined in the course of investigation and finally come to the following conclusion:

5.2.5 ***CONCLUSION***

5.2.5.1 *This transaction of sale of Kanjurmarg Property to BGEPL appears to be structured with the objective of raising advances by CG for the purpose of remittance of such advances by CG to company/ entity outside the CG Group for the benefit of the promoter or its group companies. The advance received by the Company from BGEPL was subject to interest at the rate of 15% per annum. However, the monies made available by the Company in turn to Acton were without any interest, thus, causing undue loss to the Company as it was forced to bear the interest on advances received from BGEPL while it in turn did not receive any corresponding interest on the monies so onward lent to Acton. There are no approvals of the Board in respect of the said transaction with BGEPL. Further, there are no specific approvals of the RAC/ Board of CG for the remittance of INR 192 crores to Acton.*

5.2.5.2 *Our observations regarding various non-compliances with the relevant provisions of the Act, the ROP and the SEBI related regulations are as contained in Clause 5.2.3 of the Phase I Report.*

5.2.5.3 ***Further, Section 447 of the Act defines 'fraud' but states that the definition is for the purpose of the said section. 'Fraud' is referred to in Sections 134, 143 and Schedule IV of the Act but there is no specific definition of 'fraud' applicable to these provisions. In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an 'intention to deceive', whether or not there is any wrongful gain or wrongful loss. The aforesaid transactions were undertaken without approval of the Board/ RAC as well as the efforts made to avoid disclosure in the audited financial statements, in our view, injure the interests of CG and its public shareholders. In view of the lack of co-operation of some persons/ entities involved as mentioned hereinabove, only a regulatory authority can compel such persons to confirm and/or disclose the true nature and purpose of the advances made by CG as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose, the authorities will have to investigate this matter further.***

3. TRANSACTION No. 3:

CHEQUES ISSUED BY CG IN FAVOUR OF L

The Investigators have in regard to this transaction arrived at the following findings:

i. *The Comfort Letter dated November 4, 2015 furnished by CG to , inter-alia, stated as follows (emphasis supplied):*

"At my/our request you, Bank Limited ("Bank") have granted Avantha Holding Limited (the "Borrower") credit facilities of Rs. 5,000,000,000/- (Rs. Five hundred crore only) for the purpose of as defined in facility letter ref. no. /DEL/FL/832/2015-16 ("the Facility") and the same has been availed by the Borrower.

We hereby confirm that the Borrower is our subsidiary/ group company/ associate sister concern/ joint venture.

It is our policy that the banks which deal with our group companies/ our subsidiaries/ associates/ sister concerns/ joint ventures are not put to any financial loss or embarrassment. We, therefore, shall take all the necessary steps and do whatever is necessary in order to ensure the repayment by the Borrower of its indebtedness to you under the Facilities as and when the same becomes due and payable. We irrevocably unconditionally and absolutely promise and assure you that we shall ensure due and prompt payment/ repayment of the Facilities by the Borrower and we shall make sure that the said promise and assurance is upheld in letter and spirit, if situation arises we shall infuse necessary monies in such form and manner in the Borrower for ensuring the aforesaid commitment of prompt payment/ repayment by the Borrower.

***We agree and undertake to pay the amount as and when outstanding on due date to your Bank**. We also indemnify your Bank against all losses, claims, damages arising out of granting/ sanctioning the said facilities."*

ii. *By the Comfort Letter, CG had agreed to pay the outstanding amount due from AHL as and when the same becomes due and payable. The said Comfort Letter is backed up by post dated cheques*

of INR 210 crores issued by CG. The said arrangement is effectively a guarantee whereby CG has agreed to discharge the liability of AHL "by taking all steps and doing whatever is necessary in order to ensure the repayment by the Borrower of its indebtedness". The import of the letter is extremely wide and even contemplates a situation whereby CG shall infuse monies into AHL to enable the repayment of the outstandings.

iii. *Further, the Comfort Letter contemplates that AHL (Borrower) is CG's subsidiary/ group company/ associate sister concern/ joint venture. However, it is pertinent to note that AHL does not fall in any of the abovementioned categories of the company.*

iv. *Under section 126 of the Indian Contract Act, 1872, CG would be considered 'surety', AHL will be the 'principal debtor' and shall be the 'creditor'. Although, the Comfort Letter is not stamped with the requisite stamp duty, courts have held[2] that a guarantee could, even in the absence of a stamped document duly registered would be enforceable in law. An unstamped document is an inchoate instrument and may be admissible as evidence in a court of law provided the deficient stamp duty and penalty thereon is duly paid.*

v. *The Comfort Letter was signed by Mr. in his capacity as director of CG and the same was furnished to . Upon review of secretarial records of the company, we note that the minutes of the board meetings do not contain any board approval, much less a discussion, in in the context of issuance of the Comfort Letter to*
(Emphasis supplied)

vi. *In this instant case, the Comfort Letter will be akin to a guarantee. Accordingly, the Company will be construed to be in violation of the following provisions of the Act and the LODR:*

Violation of Section 186 of the Act

a. *In terms of Section 186(4) of the Act, CG was required to disclose to the members in the financial statement the full particulars of the guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the guarantee or security. It appears to us that CG has not made requisite disclosures with respect to such Comfort Letter in accordance with Section 186(4) of the Act.*

b. *Section 186(2) of the Act prohibits a company from giving any loan to any person or other body corporate; giving any guarantee or provide security in connection with a loan to any other body corporate or person; and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more. Further, Section 186(3) of the*

Act provides that where the aggregate of the aforesaid investment loan, guarantee security provided so far along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the aforesaid limits, no investment, loan, guarantee or security shall be given or provided, unless previously authorized by a special resolution passed in a general meeting. In the event, CG has breached the aforesaid limits at any time during the previous financial years, CG would be in violation of Section 186(2) and 186(3) of the Act.

c. In terms of Section 186(13) of the Act, if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than INR 25,000 (Indian Rupees Twenty Five Thousand only) but which may extend to INR 5,00,000 (Indian Rupees Five Lakh only) and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than INR 25,000 (Indian Rupees Twenty Five Thousand only) but which may extend to INR 1,00,000 (Indian Rupees One Lakh only).

Violation of Section 185 of the Act

a. A company is prohibited from giving any guarantee in connection with any loan taken by a director or 'any other person in whom director is interested'. The explanation to Section 185 of the Act (prevailing at the time of execution of the transaction) states that the expression, 'any other person in whom director is interested' includes any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together. Mr. was a director of CG on the date of issuance of such Comfort Letter as well as when the Cheque(s) were replaced. We understand that Mr. held more than 25% of the shares of as on the date of issuance of such letter. Therefore, CG would be in violation of Section 185(1)(b) of the Act.

b. If a company contravenes the provisions of this section (whether old or new), the company shall be punishable with fine which shall not be less than INR 5,00,000 (Indian Rupees Five Lakh only) but which may extend to INR 25,00,000 (Indian Rupees Twenty Five Lakh only) and every director or the other person to whom guarantee is given in connection with any loan availed by him or the other person, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than INR 5,00,000 (Indian Rupees Five Lakh only) but which may extend to INR 25,00,000 (Indian Rupees Twenty Five Lakh only).

Compliance of relevant provisions of the SEBI related regulations

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a. *Schedule III of Part B of LODR, inter alia, provides that on giving of guarantees or indemnity or becoming a surety for any third party, the listed entity shall make disclosure to the stock exchanges based on application of the guidelines of materiality. The listed entity is required to consider the following criteria for determination of materiality of events/ information:*

- *the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or*
- *the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;*
- *in case where the criteria specified in sub-clauses a. and b. are not applicable, an event/ information may be treated as being material if in the opinion of the board of directors of listed entity, the event/ information is considered material.*

b. *Further, the listed entity shall first disclose to the stock exchanges of such event as soon as reasonably possible and not later than 24 hours from the occurrence of event or information, provided that in case the disclosure is made after 24 hours of occurrence of the event or information, the listed entity shall, along with such disclosures, provide explanation for delay.*

c. *In our opinion, the aforesaid arrangement is likely to be a material event. We understand that in the instant case, no such disclosure was made to the stock exchanges by CG. The penalty for non-disclosure is provided in Section 23A of SCRA which contemplates a penalty of INR 1,00,000 (Rupees One Lakh only) for each day during which such failure continues or INR 1,00,00,000 (Indian Rupees One Crore only), whichever is less for each such failure.*

vii. *Hence, the Company will be construed to be in violation of the provisions of Section 129(1) of the Act as the financial statement of CG did not give a true and fair view of the state of affairs of the company*

viii. ***Issuance of cheques*** *- Additionally, CG has issued a duly stamped declaration for submission of cheque(s) executed on November 4, 2015 in favour of . The declaration for submission of cheque(s) was signed by Mr. As the per the said declaration, the details of cheques ("Cheques") issued by CG to , are as under[3]:*

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Sr. No.	Cheque No.	Cheque Date	Name of the Bank	Amount in INR	Signatories to Cheque
1.	324285	May 29, 2016	Bank	10 Crores	Mr. and Mr.
2.	009728	May 29, 2016	Bank	25 Crores	Mr. and Mr.
3.	324284	May 29, 2016	Bank	25 Crores	Mr. and Mr.
4.	009729	May 29, 2016	Bank	25 Crores	Mr. and Mr.
5.	000701	May 29, 2016	Bank	25 Crores	Mr. and Mr.
6.	009726	May 29, 2016	Bank	15 Crores	Mr. and Mr.
7.	009730	May 29, 2016	Bank	15 Crores	Mr. and Mr.
8.	009732	May 29, 2016	Bank	15 Crores	Mr. and Mr.
9.	000702	May 29, 2016	Bank	15 Crores	Mr. and Mr.
10.	000703	May 29, 2016	Bank	10 Crores	Mr. and Mr.
11.	009731	May 29, 2016	Bank	10 Crores	Mr. and Mr.
12.	009727	May 29, 2016	Bank	10 Crores	Mr. and Mr.
13.	000704	May 29, 2016	Bank	10 Crores	Mr.

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Sr. No.	Cheque No.	Cheque Date	Name of the Bank	Amount in INR	Signatories to Cheque
					and

ix. *The aforesaid Cheques were issued/ signed by Mr. . of CG and Mr. CG, without complying with the ROP applicable at that point of time.*

x. ***Violation of ROP*** *- As per the ROP (Section 2.17), it is stipulated that "any external payment instrument must be signed off by 2 (two) signatories (i.e. 1 (one) signatory must always be from the finance department and the other from a non-finance department) of CG. However, Mr. and Mr. (signatories to all 13 (thirteen) Cheques) were part of the corporate finance department of CG, therefore the same appears prima facie to be a violation of the ROP.*

xi. *Thereafter, CG has issued another declaration for submission of cheque dated July 22, 2016 which has been signed by Mr. in favour of . As per the said declaration, the details of cheque issued by CG to are as under:*

Cheque No.	Cheque Date	Name of the Bank	Amount in INR	Signatories to Cheque
153452	October 30, 2017	Bank	210 Crores	Mr. and Mr.

xii. ***It is also pertinent to note that we had formally written to . under due authorization from the CG Board vide resolution dated September 30, 2019. However, we have not received any response from them.***

xiii. *We have also reached out to the relevant persons/ entities associated with the Group including Mr. Mr. and Mr. However, all of these individuals have declined to co-operate with the ongoing investigation.*

xiv. ***Further, we had issued a transaction confirmation letter pertaining to the captioned transaction to inviting them to join the investigation. However, they have declined to co-operate and participate in the ongoing investigation.***

The Investigators have on the basis of the above findings come to the following:

5.3.5 ***CONCLUSION***

5.3.5.1 *Our observations regarding the captioned transaction contained in our Phase I Report stand. Additionally, our observations regarding non-compliances of:*

i. *Section 185 (Loan to directors) and Section 186 (Loan and investment by the company) under the Act;*
ii. *Section 2.17 of the ROP; and*
iii. *Schedule III of Part B of LODR*

are contained in Section 5.3.3 of the Phase I Report.

5.3.5.2 *The aforesaid arrangement appears to be structured for securing the repayment obligations of an Avantha group company by providing cheques as a security, and a Comfort Letter thus, providing an effect of a guarantee. The underlying supporting documents for the said arrangement have been prepared/ finalized by (a) Mr. , (b) , (c) Mr. and (d) Mr.*

5.3.5.3 *On the basis of review of ESI, additional documents, inputs received during personal interviews and secretarial records of the Company, we find that the issuance of cheques were not brought to the notice of the Board or RAC and further there were no specific Board approvals for the same.*

5.3.5.4 *In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an* ***'intention to deceive'*** *to gain undue advantage whether or not there is any wrongful gain or wrongful loss.*

5.3.5.5 *From the above, it appears that loan facility was availed in an unlawful manner by the people involved in furnishing the documentation to which resulted into assumption of a contingent liability in the books of accounts of CG. Although, we have made an attempt to reach out to , however we did not receive any response from them. From the ESI review, it appears that the cheques were issued under the instructions of Mr. , however, it would need to be verified further with to establish whether additional people/ entities are involved. Notwithstanding the individual involvement, this transaction, in our view, injure the interests of CG and its public shareholders. In view of lack of co-operation of some persons/ entities involved as mentioned hereinabove, only a regulatory authority can compel them to confirm and/ or disclose the true rationale behind such arrangement. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate this matter further.*

4. Transaction No. 4

5.4 EUR 44 MILLION BORROWING BY CG SINGAPORE FROM [redacted]B AND GUARANTEED BY A CORPORATE GUARANTEE FROM CG

In regard to transaction No.4 the Investigators have recorded the following findings for their conclusions:

i. ***Purpose of the CG IBV's EUR 44 Million Facility*** *- The remittance of the proceeds from the EUR 44 Million facility availed by CG IBV to AIA has resulted in the usage of funds which was contrary to the purposes for which the said facility was approved.*

   a. *After the date of the facility agreement between CG IBV and [redacted]B i.e., May 9, 2017, emails[4], containing a remittance application form dated May 19, 2017 (signed by Mr. [redacted] and Mr. [redacted]) to transfer EUR 44 Million to AIA have been shared between various individuals including Mr. [redacted] Mr. [redacted], Mr. [redacted] and Mr.*

   b. *The facility agreement between [redacted] and CG IBV for the said facility stipulates the purpose of the borrowing for 'financing the general corporate purposes including working capital, of the Borrower Group' i.e., CG IBV and its subsidiaries. However, the funds have been remitted to AIA, which is not an entity forming part of the CG Group.*

ii. ***Draft Loan Agreement between CG IBV and AIA***

   a. *There are several email exchanges[5] in September-October 2017 inter se CG personnel as well as with individuals associated with the [redacted] group, containing a draft loan agreement between CG IBV and AIA dated May 19, 2017.*

   b. *The amount indicated in the draft agreement is EUR 44 Million and the objective as stated in the agreement is 'temporary financial support...to meet corporate objectives' and the terms of such loan agreement provide for simple interest of EURIBOR + spread of 3.25% per annum on a simple interest basis. Additionally, waiver of interest on settlement has also been*

discussed in emails[6] between Mr. and personnel from the Group i.e., Mr. [7] (– Group) and Mr. [3] – AHL).

d. The discussions around the draft agreement occur during October 2017 but the agreement itself is back-dated as of May 2017. Therefore, this appears to be an attempt to provide a justification for the remittance to AIA. Since, we have not come across an executed copy of this agreement, it is unclear whether such an agreement has been executed.

iii. **Identical Facility Documentation viz. EUR 44 Million Facility at CG IBV and CG Singapore**

a. From mid-October 2017 onwards, Mr. and Mr. have commenced exchanging emails with LLP, London (a law firm representing for the facility) containing drafts of the facility agreement and the deed of guarantee pertaining to the EUR 44 Million facility to be obtained by CG Singapore from . Mr. and Ms. are marked on internal emails and have observed that the proposed facility documents are largely identical with the documentation already in place for the CG IBV EUR 44 Million facility[9]. In the course of the exchange of emails and drafts with , Mr. reiterates to stating that "Except Agent related clauses, we insist the documents should be replica to the earlier executed version of the documents."

b. **From the emails and the perusal of the documentation for both the EUR 44 Million facility availed by CG IBV and subsequently by CG Singapore, it is clear that the documentation and the commercial intent is virtually identical. Our observations on the facility agreement for the EUR 44 Million facility availed by CG Singapore contained in Section 5.4.2 of the Phase I Report equally apply to the facility agreement that was in place for the EUR 44 Million facility at CG IBV as well. The aforesaid as well as the pattern of flow of funds (remitting the facility proceeds to AIA, and repayment of the facility prior to the end of the quarter and re-availing of the facility) are identical across both the facilities and**

form the common thread demonstrating the interconnected nature and purpose of both facilities i.e., at CG IBV and CG Singapore.

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c. *From the email records[10] and interviews[11] held with Ms. and Mr. , we understand that (i) the treasury team had already obtained the signatures of the other two directors (i.e., Mr. and Mr.) and contacted Ms. from the corporate secretarial department, on account of the treasury team's lack of direct access to the resident director in Singapore.*

d. *In the end, the corporate secretarial team appears to have been involved solely for purposes of obtaining the signatures of the resident director of CG Singapore. Therefore, it appears that the usual and standard practice of involving the corporate secretarial department for launching of resolutions was bypassed or circumvented, albeit unsuccessfully.*

e. *From the interview held with Ms. , we also understand that the corporate secretarial team periodically calls for copies of all resolutions passed by subsidiaries during the respective quarter, for purposes of placing such resolutions before the board of CG India in the ensuing board meeting.*

f. *Since the facility availed by CG IBV was not included in the list of outstanding facilities disclosed to the CG Board, and the CG Singapore facility appears to be essentially an extension of the CG IBV facility, it appears highly probable that (i) the persons authorizing the availing of the CG Singapore facility did not wish to involve corporate secretarial department in order to avoid the resolution and the proposed facility being disclosed to corporate secretarial team and consequently, the Board of CG and/or recorded in the minutes of the board meetings, and (ii) on account of the secretarial department's inadvertent involvement, the resolution came to be disclosed in the list of resolutions passed by CG's unlisted overseas subsidiaries, in the board meeting of CG held on February 12, 2018 and the facility at CG Singapore being disclosed in the list of outstanding facilities from the subsequent quarter. However, it is pertinent to note that:*

- *there is no approval from the board of CG India or CG Singapore authorizing the remittance of the proceeds of the facility to AIA;*
- *The facility does not appear in the audited financial statements of CG Singapore for the year ended March 2018 for reasons already discussed in the Phase I Report;*

and

- *The process and requirements outlined in the CG Board resolution dated November 9, 2017 as well as the provisions of the ROP, were summarily ignored, as stated in the Phase I Report.*

g. *From the above, it is abundantly clear that the EUR 44 Million facility at CG Singapore was availed to facilitate the repayment of the EUR 44 Million facility availed by CG IBV and in effect, the CG IBV facility was merely transplanted to the books of CG Singapore from CG IBV and the receivables from AIA also consequently shifted from CG IBV's books to CG Singapore. It is also relevant that there was a loan agreement between CG Singapore and AIA being contemplated as a justification for the transaction[13]. However, we have not come across either a draft or an executed copy of the proposed loan agreement between CG Singapore and AIA.*

h. *It may also be noted that while the board resolution of CG Singapore dated December 6, 2017 authorised the directors of CG Singapore, severally, to execute the transaction documentation, the utilization request from CG Singapore has been executed by Mr. as well as Mr. . This is unusual because Mr. was added only as a signatory to the bank accounts of CG Singapore and was not appointed as a director of CG Singapore. Therefore, not only was Mr. not authorized to execute documentation pertaining to the facility, but also appears to have accepted[15] the utilization request without demur or protest.*

i. *Lastly, Mr. , a director in CG IBV also appears to be associated with AIA as he has executed the remittance instruction form on behalf of AIA.*

j. *As observed in our Phase I Report, it is now clear that this was a pre-meditated strategy to avoid disclosure of the facility as well as the application of funds of the facility in the audited financial statements of CG Singapore (and consequently, in the consolidated accounts of CG).*

Based on the above, the Investigators have recorded the following conclusion:

5.4.5 ***CONCLUSION***

5.4.5.1 *Our observations regarding non-compliances with relevant provisions of the Act and the RoP are as contained in Section 5.4.3 of the Phase I Report.*

5.4.5.2 *From the above, it is clear that the EUR 44 Million facility was availed with the ultimate end objectives of repayment of the dues of Avantha group with [redacted]. It is also clear that this arrangement was a mutually agreed structure between [redacted] the [redacted] group and the involvement of the identified personnel from CG. The provisions of the RoP as well as the conditions stipulated by the board resolution of CG India dated November 9, 2017, were disregarded. Additionally, while the board was kept aware of the availing of the facility, the assumption of liability by the CG Group by availing the facility and its usage towards the benefit of Avantha group was undisclosed and consequently, unapproved by the board of CG. A liability of EUR 44 Million along with interest was foisted upon the public shareholders of CG, for the sole benefit of the entities controlled or associated with the promoters.*

5.4.5.3 *Section 447 of the Act defines 'fraud' as follows (but states that the definition is for the purpose of the said section):*

"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

5.4.5.4 ***'Fraud' is referred to in Sections 134, 143 and Schedule IV of the Act but there is no specific definition of 'fraud' applicable to these provisions. In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an 'intention to deceive', whether or not there is any wrongful gain or wrongful loss.***

5.4.5.5 ***From the above, the remittance of the funds outside the CG Group in violation of the terms of the facility agreement and without approval of the board as well as the efforts made to avoid disclosure in the financial statements, in our view, injure the interests of the shareholders. In view of lack of co-operation of some persons/ entities involved as mentioned***

hereinabove, only a regulatory authority can compel them to confirm and/or disclose the true nature and purpose of the advances made by CG Singapore as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate this matter further.

5. Transaction No. 5

5.5 USD 40 MILLION FOREIGN CURRENCY TERM LOAN BY CG MIDDLE EAST FROM [redacted] BANK, INDIA AND GUARANTEED BY A CORPORATE GUARANTEE FROM CG IBV

In regard to Transaction No 5, the Investigators have on review of the material assembled by them recorded the following:

5.5.5 ***CONCLUSION***

5.5.5.1 *Our observations regarding non-compliances with relevant provisions of the Act and the RoP are as contained in Section 5.5.3 of the Phase I Report.*

5.5.5.2 *From the above, it is clear that the USD 40 Million facility was availed with the ultimate end objectives of remittance to an Avantha Group company, possibly for the repayment of the dues of Avantha Group with [redacted] Bank. On account of the simultaneous sanction and disbursal and the fact that the definitive documentation for the facility was only executed in July 2018, it is reasonably clear that this arrangement was a pre-agreed transaction between [redacted] Bank and the Avantha Group with the involvement of the identified personnel from CG. The provisions of the RoP as well as the conditions stipulated by the board resolution of CG India dated May 26, 2017 (and reiterated in the November 9, 2017 board resolution) were disregarded. Additionally, the fact that (i) the resolutions passed in support of the transaction were not placed before the CG Board, (ii) the facility was not disclosed in the periodic reporting by the treasury to the CG Board, and most importantly, (iii) the non-disclosure of the facility and the guarantee in the audited financial statements of CG Middle East and CG IBV, respectively, has led to the assumption of liability by the CG Group for the ultimate benefit of Avantha Group, without any knowledge of and/or approval whatsoever by the CG Board. A liability of USD 40 Million alongwith interest (which is also higher than the interest rates available to CG for its overseas borrowings) was foisted upon the public shareholders of CG, for the sole benefit of the entities controlled or associated with the promoters.*

5.5.5.3 *Section 447 of the Act defines 'fraud' as follows (but states that the definition is for the purpose of the said section):*

> *"fraud" in relation to affairs of a company or any body corporate , includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;*

5.5.5.4 *'Fraud' is referred to in Sections 134, 143 and Schedule IV of the Act but there is no specific definition of 'fraud' applicable to these provisions. In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an 'intention to deceive', whether or not there is any wrongful gain or wrongful loss.*

5.5.5.5 *From the above, the availing of the facility and remittance of proceeds to a non-CG entity, devoid of proper approvals from the CG Board and/or disclosures, as well as the consequent non-disclosure in the financial statements of the liability undertaken by CG for the sole benefit of promoter group entities, in our view, injures the interests of the shareholders. In view of lack of co-operation of some persons/entities involved as mentioned hereinabove, only a regulatory authority can compel them to confirm and/or disclose the true nature and purpose of the advances made by CG as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate this matter further.*

6. Transaction No. 6

5.6 OUTSTANDING TRADE RECEIVABLES AGGREGATING TO INR 108 CRORES FROM IDENTIFIED CUSTOMERS

As regards specified transaction No. 6, the Investigators have come to the following:

5.6.5 ***CONCLUSION***

5.6.5.1 *This transaction appears to be ostensibly fictitious purchase and sale transactions undertaken to reduce the liability of (i) PSOL towards the loan availed by it from the Company; and (ii) AHL towards the loan and advances availed by it from PSOL.*

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5.6.5.2 *The underlying supporting documents for the abovementioned transactions have been prepared/ finalized subsequent to the date of the relevant transaction.*

5.6.5.3 *Our observations regarding various non-compliances with the relevant provisions of the Act, the ROP and the SOP are as contained in Clause 5.6.3 of the Phase I Report*

5.6.5.4 *Further, the Company and PSOL will be construed to be in violation of the provisions of Section 129(1) of the Act as their respective financial statement did not give a true and fair view of the state of affairs of the company owing to reduction of liability of (i) PSOL towards the loan availed by it from the Company; and (ii) AHL towards the loan and advances availed by it from PSOL.*

5.6.5.5 *Section 447 of the Act defines 'fraud' but states that the definition is for the purpose of the said section. 'Fraud' is referred to in Sections 134, 143 and Schedule IV of the Act but there is no specific definition of 'fraud' applicable to these provisions. In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the other provisions of the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an **'intention to deceive'**, whether or not there is any wrongful gain or wrongful loss. In our view, the aforesaid transactions were undertaken without the approval of the Board/ RAC to show reduction of receivables by CG from PSOL in the financial statement of CG and similarly reduction of receivables by PSOL from AHL in the financial statement of PSOL, which in our view, injure the interests of CG and its public shareholders. In view of the lack of co-operation of some persons/entities involved as mentioned hereinabove, only a regulatory authority can compel such persons to confirm and/or disclose the true nature of these transactions. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose, the authorities will have to investigate this matter further.*

7. Transaction No. 7

5.7 OUTSTANDING ADVANCES TO VENDORS IN CG SINGAPORE

The Investigating team has on the basis of the material to which it has referred in detail in its report come to the following:

5.7.5 ***CONCLUSION***

5.7.5.1 *Our observations regarding non-compliances with relevant provisions of the RoP are as contained in Section 5.7.3 of the Phase I Report.*

5.7.5.2 *Our observations regarding the Mirabelle Agreement contained in our Phase I Report stand. Additionally, the review of the ESI and the personal interviews have established that the Mirabelle Agreement was prepared after receipt of the notice under Section 143 of the Act from as a business justification to support the advances from CG Singapore and was backdated to make it appear as a genuine service agreement.*

5.7.5.3 *The ad-hoc nature in which such remittances were made from CG Singapore to Mirabelle and the multiple attempts at creating a sustainable business justification capable of withstanding audit scrutiny or otherwise, clearly indicate that the advances to Mirabelle were without any sound business justification.*

5.7.5.4 *Considering that Mr. had instructed Ms. to carry out remittances of funds received from CG Singapore and indicated to her that the payments were for "year end purposes", we have attempted to reach out to him on multiple occasions but he has rejected our request for an in-person meeting as well as our request to respond in writing to a questionnaire. Similarly, we have also attempted to contact Mirabelle, however, the communication has remained undelivered. In view of lack of co-operation of some persons/entities involved as mentioned hereinabove, only a regulatory authority can compel the persons/entities involved to disclose the true nature and purpose of the advances made as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate this matter further.*

8. Transaction No. 8

5.7 OUTSTANDING ADVANCES TO VENDORS IN CG MIDDLE EAST

The Investigating team has similarly come to the following conclusions based on the material available on record:

5.7.5 ***CONCLUSION***

5.7.5.1 *Our observations regarding non-compliances with relevant provisions of the RoP are as contained in Section 5.8.3 of the Phase I Report.*

5.7.5.2 *Our observations regarding the various service agreements/supply agreements/invoices/credit notes as contained in our Phase I Report stand. Additionally, the review of the ESI and the personal interviews have established that supporting documentation (including the various service agreements/ supply agreements/ invoices/ credit notes) were prepared after receipt of the notice under Section 143 of the Act from as a business justification to support the advances from CG Middle*

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East and was backdated to make it appear as genuine service/ supply agreements on the basis of an elaborate rationale.

5.7.5.3 *The ad-hoc nature in which such remittances were made from CG Middle East to the Identified Vendors and the questionable business justification indicate that the advances to the Identified Vendors by CG Middle East were without any sound business justification. Additionally, there is also lack of supporting documentation in respect of the advances to Ballarpur International B.V.*

5.7.5.4 *Considering that Mr. has also played a role in the remittances of funds from CG Middle East, we have attempted to reach out to him on multiple occasions but he has rejected our request for an in-person meeting as well as our request to respond in writing to a questionnaire. Similarly, we have also attempted to contact the Identified Vendors to which the remittances have been made. However, the communications have either been returned undelivered, or if delivered, have not been responded to. In view of lack of co-operation of some persons/entities involved as mentioned hereinabove, only a regulatory authority can compel the persons/entities involved to disclose the true nature and purpose of the advances made as well as their end-use. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate.*

9. Transaction No. 9

5.8 INR 229 CRORES PAID TO PSOL

The Investigating team has recorded the following conclusion in regard to this transaction on the available material.

5.8.5 ***CONCLUSION***

5.8.5.1 *Our observations regarding the captioned transaction contained in our Phase I Report stand. Additionally, our observations regarding non-compliances of:*

i. *Section 129 (Financial Statement) under the Act;*
ii. *Section 2.9 (d) of the ROP; and*
iii. *Schedule III of Part B of LODR*

are contained in Section 5.9.3 of the Phase I Report.

5.8.5.2 *From the above, it is clear that the said transaction was structured and*

negotiated by AHL for securing the repayment obligations of ... by entering into a Put Agreement. Further, there are no RAC/ Board approvals in the secretarial records of CG Group for (a) entering into such Put Agreement with AHL, and and (b) providing corporate guarantee to L by CG Middle East.

5.8.5.3 *From the above observations, it appears that Put Agreement, which was signed by Mr. on behalf of CG, was executed pursuant to an unauthorised and/ or forged Board resolution for the sole benefit of the entities forming part of the promoter group.*

5.8.5.4 *In our view, the definition of 'fraud' as given in Section 447 of the Act can be used for determining fraud under the Act even though the said definition is restricted in application only to Section 447. The basic element of fraud is an 'intention to deceive' to gain undue advantage whether or not there is any wrongful gain or wrongful loss. From the above, it appears that loan facility was availed in an unlawful manner by the people involved in furnishing the documentation to which resulted into assumption of a contingent liability in the books of accounts of CG. Although, we have made an attempt to reach out to , however we did not receive any response from . From the ESI review, it appears that the persons involved may have been (a) Mr. from AHL and (b) Mr. , however, the Company will need to verify this further with L to establish whether additional people/ entities are involved.*

5.8.5.5 *Notwithstanding the individual involvement, this transaction, in our view, injure the interests of CG and its public shareholders. In view of lack of co-operation of some persons/ entities involved as mentioned hereinabove, only a regulatory authority can compel them to confirm and/ or disclose the true rationale behind such arrangement. Hence, to constitute a fraud on CG and its public shareholders, intention to deceive will have to be established based on preponderance of the probabilities and for this purpose the authorities will have to investigate this matter further.*

The Investigators have made certain observations on certain specific issues in paragraphs 7.1 to 7.7.5 of their final report. In these paragraphs the Investigators have commented about the infirmity in the resolution of RAC dated 30th August 2016 with respect to transactions with related parties for the quarter April 2016 to June 2016. The Investigators have opined that Mr. and Mr. have not approached the Board / RAC in a timely manner to inform them about the steps threatened by the banks

for withdrawal of the credit facility to CG thereby jeopardising its liquidity. The minutes of RAC meeting held on August 2016 do not, in the opinion of the Investigators capture such granular details. The Investigators have based on the interviews with the concerned members of the RAC and the material available on record and on the basis of the appraisal of the Secretarial record provided to them by the Company, review of the mails of the identified parties and the statements made during the interviews with the directors, come to the conclusion, that the advancement of INR 145 crore to AHL during May 2016 and the transactions between CG and BGEPL in relation to Nashik property were neither disclosed to the RAC nor duly ratified by it. The Investigators further found that the background information / facts provided to both law firms approached for legal opinion were not identical. So also, legal opinion issued by [redacted] & Co was neither shared with the RAC members prior to the meeting nor tabled at the RAC meeting. The Investigators have found that the approval of the RAC was a conditional approval and subject to the final approval of the Board. The approval of funds by CG as loans and advances to AHL could not therefore be legitimate since no Board approval was eventually granted. The Investigators have in this regard referred to an e-mail dated 19th October 2016 from Mr. [redacted] to Mr. [redacted] and others and opined:

> *"Basis the aforesaid e-mails, it is pertinent to note that in the said e-mails there is no reference of any approval of the Board but only to the approval of the RAC dated August 30, 2016. Hence, this further reinforces our*

> ***understanding that there was no approval of the Board for granting any loans/ advances to AHL in terms of Section 179, Section 186(5) of the Act read with Para 3.1 of the RPT policy of the Company."***

Investigators have also found that certain borrowings availed by CG or subsidiaries were not included in the Treasury Report which was presented to the Board. Discrepancy in the amount of loans to AHL mentioned in the Audited Finance Statement / Un-audited Finance Statement / Un-audited NHL loans and reports for the relevant period have also been highlighted by the Investigators. Investigator have come to the conclusion that Financial Statements of CG raise a doubt as to their accuracy and reliability and thereby give rise to an impression that accounts of CG and its subsidiaries may have been prepared in a fraudulent manner. This, however, can be conclusively determined only after the Books of Account of CG and its subsidiaries are reopened pursuant to the order of National Company Law Board, Bombay Bench dated March 5, 2020 passed in CP4127/130/2019.

The Investigators have also come across certain unauthorised and fake Board Resolution. In Para 7.4 of the final report submitted by the Investigators; the basis of such fake resolutions has been elaborated. Based on its review and examination of records, the Investigators have opined:

> *"7.4.10 In our view, such unauthorised and/or forged resolutions could result in cause of action under Indian Penal Code ("IPC"). As per Section 163 of the IPC, "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery".*

7.4.11 Further as per section 465 of the IPC, any person who commits forgery shall be punished with imprisonment of either description for a term which may extend to 2 (two) years, or with fine, or with both."

The Investigators have also during the course of the review of e-mail noted the prevalence of a practice whereby funds or liquidity assets of CG were routinely used for meeting liabilities of various entities forming part of Avantha Group. The Investigators have observed that CG Group has been used as "Cash Cow" to reduce the financial exposure or liabilities of Avantha Group. They have further held that apart from few remittances which form part of the transactions examined in Section 5 of their report, there are several other e-mails that show such remittances and/or approval of remittances. The Investigators have proposed a more detailed examination of the practices and the implications thereof,

The Investigators have also found fault with the by-passing of Corporate, Secretarial and Legal Departments of the Corporate business team in par 7.6 of its final report. It has also faulted Executive roles / action taken by Non-executive promoter directors of the Company. The Investigators have in particular referred to Mr. and Mr., in that connection in para 7.7 of the Final Report.

Having reviewed the procedure adopted by the Investigators in undertaking and completing the investigation and having gone through the final report submitted by them, and also keeping in view the findings recorded

by Deloitte, I am of considered opinion that the Investigators have carried out a fairly comprehensive exercise and shown complete fidelity to the task assigned to them. Having said that any review of the procedure and the ultimate outcome of the exercise would primarily address three concerns viz.

(i) Whether the Investigators have taken care to assemble relevant material and information from all possible sources and quarters;

(ii) whether the Investigators have taken care to give an opportunity to all those likely to be affected by any finding recorded by them to present their view, and

(iii) whether the findings and conclusions drawn by the Investigators are reasonable having regard to the nature of the transactions and the material available to them.

I shall accordingly deal with these concerns as seriatim:

(i) **Have the Investigators taken care to assemble information relevant to the transactions from all possible sources?**

The Investigators have, as noticed above, taken pains to collect information relevant to the specified transactions from different sources, like, the present and past employees of the Company,

including senior management personnel of the Company. They have established contact and recorded the statements of these employees wherever they were willing to cooperate. They have similarly established contact with third parties directly or indirectly concerned with the transactions in question. They have collected E-mails exchanged between the employees inter se and with those outside the Company. Having said that, one must remember that the investigation conducted in this case was a domestic exercise which has no statutory flavour whatsoever. The Investigators had fact finding no power to compel attendance of any individual for participation in the investigation nor could the Investigators compel the individuals concerned to answer questions or furnish information in their possession. That is precisely why the Report of the Investigators refers to the refusal of several individuals to cooperate with the ongoing investigation. The Investigators had therefore to complete the task under a severe handicap which could have left certain areas un-explored. That is so particularly in regard to the trail of money that went out of CG. While the Investigators have been able to trace the flow of huge amounts of money from CG to other companies, the ultimate purpose for which the amount may have been utilized or the beneficiaries of such utilization could not be traced because

of non-cooperation and/or participation of the said companies. It is here that the Report of the Investigators leaves ample scope for the Statutory Authorities concerned to pick up the threads and take the matters to their logical conclusion wherever the facts so demand. Subject to what is said above, the Investigators have in my opinion done whatever was feasible in so far as the collection of relevant documentary and oral evidence, is concerned.

(ii) **Whether Investigators have taken care to give an opportunity of presenting their version to all those likely to be affected by any finding?**

For any investigation to inspire confidence, it is important that the Investigators are objective in their approach and act fairly and without any pre-conceived notions about the matter in issue. This would in turn demand that all such individuals and entities as are likely to come under scrutiny of the Investigators or as are likely to be prejudiced by any finding or observation of the Investigators have an opportunity to explain their position by presenting their version. Whether or not the individuals concerned avail of the opportunity is a different matter. What is

important that the Investigators comply with the principles of natural justice, while conducting the investigation?

In the instant case, the Report submitted by the Investigators refers to the opportunities granted by them to all those concerned or connected with the transactions including Mr. and other senior management personnel. The Report also refers to the questionnaires issued to these individuals to enable them to answer the queries in writing if they were not inclined to participate in an interview for recording their statement. The fact that the individuals concerned declined to come forward and offer their version despite an assurance from the Investigators that their approach, procedures and methodologies are absolutely fair and objective, does not in my opinion affect the credibility of the exercise undertaken by the Investigators. The Report cannot, therefore, be faulted on that score.

(iii) **Are the findings record / conclusions arrived at reasonable?**

Procedural safeguards apart, any investigation must culminate in findings and conclusions that are reasonable in as much as such findings and conclusions are supported by evidence in the opinion of a person reasonably instructed in law. The Investigators must

in other words apply their mind to the evidence and record their findings / conclusions only if the same are supported by reliable evidence.

In the case at hand, the Investigators have not only discussed the material assembled by them in the course of the investigation but given reasons why a particular finding or conclusion has been arrived at. The report submitted by Deloitte also figures in the course of these discussions in the final Report of the Investigators. The final Report of the Investigators has discussed the E-mails and other documentary evidence, as also the depositions/ disclosures made during interviews with the present and former employees of the company and other individuals who came forward to share information. Suffice it to say, that the Report is self-explanatory and articulates the process of reasoning that has led to the findings and conclusions arrived at by the investigators.

I must in conclusion say that the Investigators' Report is subject to the caveats and disclaimers set out therein. One such caveat is that the Investigators have recorded their findings only on the basis of the information provided to them. It is made clear that information if any held back from the Investigators can impact the findings and conclusions drawn by them. The

Investigators were in my opinion justified in flagging these aspects as the entire exercise conducted by them was so heavily dependent upon the voluntary sharing of information by the concerned quarters. The Investigators as mentioned earlier having no power to compel the disclosure of such information. It is common ground that not all the information which the Investigators had desired was made available or shared with them. The Investigators were, therefore, right in keeping the window open for any disclosure made at any subsequent stage upsetting any one or more of the findings recorded by them. Subject to the caveats, disclaimers and qualifications set out in the Report, the Investigators have in my view done a fairly satisfactory job and presented a Report which can be a good beginning for the Company to take corrective steps wherever necessary and for the Statutory Authorities concerned to take the process to its logical conclusion, wherever there is a room or occasion for them to do so.

Justice T.S. Thakur
(Former Chief Justice of India)