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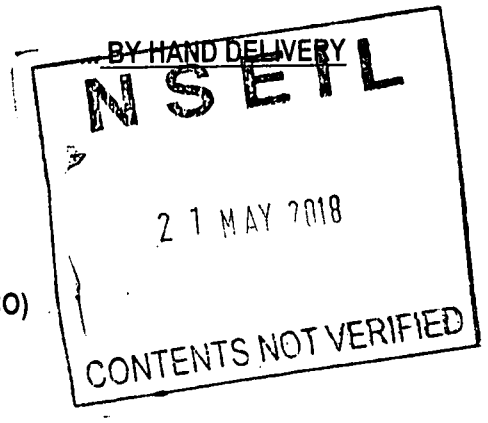
May 18, 2018

HCA/SKA/HD/KT/RS **4810**

BY HAND DELIVERY



National Stock Exchange of India Limited (NSE)
Exchange Plaza,
Bandra Kurla Complex,
Bandra East,
Mumbai – 400051.
Email id: Kupadhyay@nse.co.in

Kind attention: Mr. Kautuk Upadhyay (LISCO)

Dear Sirs,

Re: Your email dated May 02, 2018, bearing the caption "Compliant against company - Everest Kanto Cylinder Limited", forwarding undated complaint submitted by Mr. Dinesh Bhalotia ("Mr. Bhalotia") against Everest Kanto Cylinder Ltd.

1. We are concerned for our client, Everest Kanto Cylinder Limited (**"our client"** or **"EKC India"**) on whose behalf and instructions, we address you as under:-

2. Our client has placed in our hands (i) your email dated May 2, 2018 forwarding a copy of Mr. Bhalotia's undated Complaint (without annexures) (hereinafter referred to as **"the Complaint"**); (ii) our client's email dated May 7, 2018 addressed to you requesting for a copy of the annexures referred to in the Complaint; and (iii) your email dated May 11, 2018.

3. We address this letter to you on behalf of our client in reply to the frivolous allegations stated in the Complaint.

4. At the outset, our client denies all statements and allegations stated in the Complaint and nothing that is not specifically denied shall be deemed to be admitted herein.

5. For ease and convenience, we have segregated and enumerated the allegations stated in the Complaint and have provided the responses to each corresponding allegation, in a tabular form, which is annexed herewith as **Annexure 'A'**

6. With respect to Mr. Bhalotia's employment with our client, we may briefly state the relevant facts, which are pertinent to be noted:
   (a) Mr. Bhalotia was appointed as 'Head Finance' at the Mumbai office of EKC India with effect from October 16, 2017 and he was assigned the duty of managing cash flow, allocating resources, conducting analyses,

R.S.

recommending budgets, assisting in financial management tasks, supporting the accounts team etc. In December 2017, Mr. Bhalotia was appointed as the Chief Financial Officer ('**CFO**') of EKC India;

(b) After being employed with EKC India, Mr. Bhalotia informed the management that he was keenly interested in handling, managing, supervising and closing the sale deal of EKC Industries (Tianjin) Ltd. ("**EKC China**") (i.e. EKC India's wholly owned subsidiary incorporated in China), which was at that time already under-way. Upon persistent insistence by Mr. Bhalotia, EKC India allowed him to handle, manage and close the sale deal of EKC China;

(c) Soon thereafter, Mr. Bhalotia started creating complications and refused to co-operate and/or work together with the consultants engaged by EKC India, and failed to fulfill his duties as the CFO;

(d) Despite Mr. Bhalotia's misconduct, EKC India co-operated with Mr. Bhalotia and afforded him an opportunity to mend his ways. However, there was no change in the behavior and conduct of Mr. Bhalotia. The management of EKC India was compelled to reduce the involvement of Mr. Bhalotia in the day to day operations of EKC India;

(e) Mr. Bhalotia without any notice to EKC India, abruptly stopped attending office from April 10, 2018;

(f) EKC India contacted Mr. Bhalotia and requested him to attend office; however, Mr. Bhalotia did not accede to the request.

(g) In the first week of May, 2018, Mr. Bhalotia issued a threat by way of submitting the defamatory, unsubstantiated and unjustified Compliant against EKC India and its management with the Stock Exchanges;

(h) On May 8, 2018, EKC India was constrained to terminate the services of Mr. Bhalotia on the grounds of (i) gross misconduct, (ii) breach of obligations (iii) refusal to comply with the reasonable and lawful directions of his superiors (iv)criminally intimidating our client and its management (v) unprofessional behavior and (vi) failure to report to work /non-attendance;

(i) Upon receiving the termination notice, Mr. Bhalotia has through his Advocate demanded and attempted to extort approximately Rs.70 iacs under the guise of amicably resolving the issue. Further, the legal notice also issues a threat to our client, stating that if a positive response is not elicited within 48 hours, then these allegations (which are absolutely false and outright denied by EKC India) would be disseminated and publicized through various media sources.

7. Our client has recently learnt that Mr. Bhalotia was previously terminated from the post of CFO even by his erstwhile employer in March 2017. You may want to examine the reasons the said termination.

8. We request you to grant an opportunity to our client by fixing a personal hearing enabling our client to defend the frivolous and baseless allegations made in the Complaint.

Yours faithfully,
FOR M/s. CRAWFORD BAYLEY & CO.

(SANJAY ASHER)
Senior Partner
Telephone: + 91 22 2266 3353
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Email: sanjay.asher@crawfordbayley.com

Encl: a/a

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Annexure A

Sr. No.	Allegations	Answers
1.	EKC has misappropriated and siphoned off funds of the shareholders and lenders in violation of FEMA	• Everest Kanto Cylinders Ltd ("**EKC India**") has not misappropriated any funds of the shareholders or any stakeholders. Further, EKC India is not in breach of any provisions of Foreign Exchange Management Act, 1999 ("**FEMA**") in connection with the alleged misappropriation or siphoning of funds. • Only a "bald" statement of allegation is made. No specifics are provided.
2.	Assets which are parked in overseas subsidiaries are being siphoned off by the promoters of EKC	• The overseas subsidiaries have been formed in complete compliance with the provisions of FEMA. • The annual accounts of the overseas subsidiaries are audited by the auditors of the respective subsidiaries. Thereafter, the statutory Auditor of EKC India audits the consolidated financial statements of EKC India and its subsidiaries. No assets of the subsidiaries are being siphoned off. All assets of the subsidiaries are in possession of the subsidiaries. Promoters neither have any direct or indirect use of the assets nor are in possession of the assets. • Only a bald statement of allegation is made without any specifics. • The sale of shares by EKC India in EKC Industries (Tianjin) Ltd. ("**EKC China**") is in compliance with the laws of China and the relevant provisions of Master Circular relating to overseas investments under FEMA. All the Annual Performance Reports have been filed from time to time on compliance with the provisions of FEMA.
3.	EKC Industries (Tianjin) Co. Limited ("**EKC China**") (WOS of EKC India) entered into Sale Agreement along with Sale Purchase Agreement with the prospective buyer Youyuan Office Union (Tianjin) Co. Ltd. ("**Buyer**") on 15th September, 2017 for sale of govt. allotted, leasehold land and factory building which was non-operational for more than 5 years for RMB 90mn amounting to Rs.95 crores. In order to avoid tax, EKC India sold 100% shareholding in EKC China to the Buyer. EKC did not obtain prior permission of RBI/China Urban Development Approval until 31st March 2018	• The Agreement dated 15th September, 2017, is not a binding agreement and has not been approved by the Board of Directors of EKC India. Thus, the Agreement has no legal effect or force. EKC India has not taken any action for the sale of the leasehold land held by EKC China based on this Agreement dated 15th September, 2017. Since the Agreement has no binding effect, there arose no occasion to obtain permission or approval from any Government authority, based on this Agreement. • It is denied that the factory at China was non-operational for more than 5 years. The sale figures exclusively with respect to goods manufactured by EKC China in the F.Y. 2012-2013 was Rs.5600lacs, F.Y.2013-2014-Rs. 5400lacs, FY 2014- 2015 –Rs.3440 lacs, F.Y.

R.S.

		2015-2016- Rs.980 lacs and F.Y. 2016-2017- Rs.1133 lacs.
4.	SPA -2 was entered into in April 2018 for sale of the leasehold land allotted for special purpose which is illegal and against the national interest. SPA -2 also deals with incorporation of another companies in China based on planning paper provided by Consultant Mr. H. Puri	• Sale Purchase Agreement was executed on 15th April, 2018 ("**SPA**") between EKC India, EKC Dubai and the Buyer primarily for the sale/transfer of (i) EKC India and EKC Dubai's shareholding in EKC China (ii) business (iii) assets (iv) business license and government permits and (v) management rights. In short, EKC China is being sold as a going concern. • The transaction is subject to obtaining approvals from the concerned authorities of the Chinese Government i.e. Market and Quality Supervision Committee, Commerce Bureau Tianjin, Commission of Commerce etc. The SPA also provides for approval to be obtained from the Shareholders, Board of Directors, and other regulatory authorities. • The parties have not yet reached the stage of obtaining approvals from the government authorities. Approvals and permissions will be obtained from the authorities after approval is obtained from the shareholders. The SPA has been approved by the Board of Directors. EKC India has communicated the execution of the SPA to the Stock Exchanges vide its letter dated 15th April, 2018. • The allegation of the Complainant that the SPA was entered into purely for the sale of the leasehold land being the asset of EKC China is false and baseless. The allegation is merely a "conjecture" or a "surmise". It is denied that the SPA deals with incorporation of other companies based on the suggestions of Mr. H. Puri as alleged. • Consultant Mr. H. Puri, had suggested avenues for another transaction then under discussions, which were not connected with the sale of EKC China. • Thus, such allegations of EKC India's actions being illegal or against the national interest are not only baseless and malafide, but also defamatory. No specific details are provided to deal with the allegation.
5.	The transaction is a pure land transfer deal at premium which is clear from the initial Sale Agreement and SPA-1, wherein it was recorded that the machines would be removed, labourers and employees will be retrenched etc	• As mentioned above in Sr. No. 3, the document referred to as SPA-1 is not a binding agreement and has no legal force. The sale of EKC China is only governed by SPA dated 15th April, 2018; • We repeat that EKC China is being sold as a going concern and thus, there arises no occasion for only selling the land or removal of machinery

R.S.

		etc. and any allegation with respect to the same is denied.
6.	EXIM Bank sanctioned borrowings in 2016 to the tune of Rs.30 crores for a non- operational factory in China without visiting the factory, which was siphoned off without lenders approval/permission;	• EXIM Bank had sanctioned a foreign currency term loan to EKC India in April 2012 for USD 5 million only, for the specific purpose of "*onward lending to EKC China*", towards meeting its working capital requirements. • The above term loan was for a period of 2 years i.e. 2014. In 2014, the term loan was renewed for another two years i.e. until 2016 and in the year 2016, the term loan was renewed till June, 2018. • Thus, it is incorrect to state that EXIM Bank sanctioned Rs.30 crores in 2016. As stated hereinabove, the term loan was merely renewed in the year 2016. • EKC India has utilised the funds received from EXIM Bank for the specific purpose towards onward lending to EKC China, and has not siphoned off without lenders approval/ permission, as claimed. It is denied that there was any siphoning off of the amount borrowed from EXIM Bank. • In fact, EKC has been repaying EXIM Bank at a steady pace since September 2016. EKC has already repaid sum of approximately USD 3.7 million only to EXIM Bank, and will complete repayment of the remaining term loan by June, 2018. • It may also be mentioned that EKC has never objected to or rejected any proposal by EXIM Bank for visiting the factory. • It is denied that the factory owned by EKC China was non-operational. The factory is currently operational and has been generating sales revenue.
7.	Out of 79993 sq meters of land allotted, 28912 sq. meters land was illegally sold and money has been siphoned to another place	• It is denied that EKC China illegally sold land allotted to it or siphoned the proceedings from such sale; • EKC China purchased 79993.84 sq. meters of leasehold land from Tianjin Hi-tech Industrial Park Wuqing Development Area General Company (hereinafter referred to as "**UDA**") through an Investment Agreement in the year 2006. This land (asset) was purchased for setting up a factory for EKC China. • Since EKC China was not utilising the entire portion of land acquired by it, EKC China surrendered about 21995.2 sq. meters to UDA, in August 2014, for payment of compensation. The said transaction has been documented; • Further, a small portion of about 6955.2 sq. meters was sold by EKC China to a third party in

R.S.

		April 2015.This transaction has been documented and requisite statutory permissions were obtained and in compliance with the regulations and laws of China. • Thus, the sale of 28912 (21995 + 6955) sq. meters of land by EKC China was in compliance with all the applicable legal laws.
8.	EKC India has incorporated another subsidiary named Long You (Tianjin) Int. for siphoning off funds, in violation of RBI/FEMA	• Long You (Tianjin) International Trading Company is not a subsidiary of EKC India as alleged. EKC India has no stake in Long You (Tianjin) International Trading Company in any manner whatsoever. • EKC India commercially deals with Long You (Tianjin) International Trading Company to import machineries, consumables, furniture etc. from China. The import price is duly paid by EKC India along with the applicable customs duty through normal banking channels. • The imported inventory are disclosed in the books of EKC India which are duly audited. • Thus, the allegation of siphoning off funds through Long You (Tianjin) International Trading Company or violation of RBI or FEMA regulations is false and baseless.
9.	More than 200 crores have been invested by EKC India in China by utilizing the funds of the lenders and more than 80% will be written off on account of the funds being siphoned off.	• It is denied that Rs.200 crores have been invested in EKC China by EKC India. It is further denied that the funds of the lenders were utilized by EKC India to invest into EKC China or that 80% of the investment will be written off on account of any funds being allegedly siphoned off • In the Financial Years 2006-07 and 2007-08, EKC India had invested approximately Rs.69 crores only (USD 16.67 million only) by way of capital in EKC China. The source of the investment was through Foreign Currency Convertible Bond and Preferential Equity Allotment etc.; • Form ODI (Overseas Direct Investment) and the Annual Performance Report has been filed. The details of the infusion of funds by way of capital, being Rs. 19.75 crores (approximately USD 4.33 million) invested in FY 2006-07, and a sum of Rs. 49.49 crores (approximately USD 12.33 million) invested in FY 2007-08 are mentioned in the Annual Performance Report. • In 2007- 2008 and 2012, EKC China borrowed approximately Rs.40 crores (approximately USD 9.25 million) from EKC India for running its operations. In the year 2014-2015, EKC China repaid approximately Rs.37 crores (approximately USD 5.98 million) to EKC India. As on date, as per the prevalent exchange rate, the outstanding balance loan amount along with interest is

R.S.

		approximately Rs.45 crores (approximately USD 6.6 million); • The aforesaid amounts have not been invested by EKC India by utilizing the funds of the lenders; • With respect to the write off, EKC India has already made a provision for Rs.65 crores in its books of accounts for the period 30th September, 2014 to 30th September, 2017, towards potential losses which could be faced due to EKC China's operations. The provision has been duly accounted in the audited books of accounts maintained by EKC India.
10.	Conversion of loans into equity and shifting of machineries are being conducted at EKC China in an illegal manner, for laundering of funds;	• It is denied that the conversion of loans into equity or shifting of machineries are being conducted in an illegal manner; • EKC India and EKC Dubai granted loans to EKC China. • In principle approval has been obtained from the Commerce Bureau, Tianjin for converting the loans into equity; • EKC India has applied for NOC from EXIM Bank and Yes Bank for conversion of loans into equity in May, 2018 and the same is awaited; • Machineries of EKC China have not been shifted.
11.	More than 100 crores are reflected as receivables invested in EKC China by EKC India and outstanding for more than 3 years, which have not been reported to RBI in violation of FEMA and warrants action under Section 147 of the Companies Act, 2013;	• it is denied that more than Rs.100 crores is outstanding as receivables by EKC India from EKC China or there has been a violation or that an action is warranted under Section 147 of the Companies Act, 2013 as alleged. • Currently, a sum of approximately USD 7,866,700 is receivable by EKC India from EKC China towards trade receivables (net of payables), loan and interest thereon.
12.	Shareholding of promoters are pledged with YES Bank which has not been intimated to SEBI/Exchanges in violation of LODR;	• It is denied that the pledge created by YES Bank has not been intimated to the Exchanges as alleged. The said allegation is frivolous and baseless. • The promoter group of EKC India pledged 29.99% of their shareholding with YES Bank in the year 2012, 2013 and 2017; • EKC India has at all times disclosed the creation of the pledge of the promoters' shareholding with YES Bank to the stock exchanges as per the prescribed form and in compliance with SEBI Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.
13.	In Gujarat, one factory of EKC is located in Special Economic Zone where the goods are being imported 100% duty free on the pretext of export. EKC planned to trade in Castor Oil, but has only been doing so on paper. Illegal exports are shown	• It is denied that exports are illegal or paper transactions to claim import benefit. • Kandla Special Economic Zone granted permission to EKC India to export Castor Oil in the year 2014.

K.S.

	on paper to claim import benefit, related papers and firm R.P.K Agrotech Exports Pvt. Ltd.	Pursuant to such permission being granted, EKC India physically exported Castor Oil from the Kandle SEZ; • Castor Oil is physically exported by EKC India, after obtaining the requisite permissions • The details of the exported shipments containing Caster Oil and the sales revenues are duly documented and audited, and thereafter incorporated and reflected in the Audit Report prepared by EKC India's statutory auditor. • Further, the filling, packing and /export of each shipment of Castor oil is supervised, sampled and verified before exporting, by Geo-chem Laboratories Pvt. Ltd. ("**Geo-Chem**"), an International inspection and testing company. On completion of each export, Geo-Chem prepares a report regarding the quality, quantity, testing analysis, shipment and delivery details with respect to the relevant exported shipment. This report for each shipment is sent to the respective buyer of Castor Oil, for their information and satisfaction. • EKC India engaged R. P. K. Agrotech Exports Pvt. Ltd. on commission basis as the Broker to obtain export orders for Castor Oil.
14.	WIP figures are inflated and the accounts are manipulated and misleading	• It is denied that the Work in progress (WIP) figures are inflated or the accounts are manipulated as alleged; • The Internal Auditors and Statutory Auditors of EKC India both annually visit the factory/plant and verify the work in progress and inventory, which is duly documented; • Physical verification of the inventory is carried out regularly in the month of March/ April since the last 12 years.
15.	Manipulations in managing transfer pricing transactions in order to evade tax;	• It is denied that the transfer pricing transactions are manipulated; • In the Transfer Pricing Audit Report, PWC has opined that the EKC India has maintained proper information and documents in respect of the international and domestic transactions which are at arm's length as provided in the Income-Tax Act, 1961.
16.	Internal Financial Control is not in place thereby violating Section 134 and Section 143 of the Companies Act, 2013. Formalities are only fulfilled through paper work	• It is denied that the Internal Financial Control of EKC India is not in place or only through paper work as alleged. The Internal Financial Control has always been in place. • The Independent Auditor has in the Annual Report of 2016-17 opined that EKC India has put in place adequate internal financial controls over financial reporting.

R. S.

		• The Internal Financial Control audit is being conducted by Walker Chandiok & Co. LLP. •
17.	Independent Directors and Women Directors are appointed only on paper. The directors come to attend and sign the board meeting without having any knowledge of the company operations	• It is denied that the Independent Directors and Women Directors are only appointed on paper or attend board meetings without having any knowledge as alleged; • The Independent Directors and Women Director appointed by EKC India are highly knowledgeable and renowned individuals who are aware of EKC India's operations through their participation in the company's board meetings. • Brief profiles of EKC India's independent and woman director is provided hereunder: • **Brief Profile of Mr. Mohan Jayakar** Mr. Mohan Jayakar, is a renowned advocate and the senior partner in M/s. Jayakar & Partners and heads the entire operations of the Mumbai branch of the firm. He has a vast experience of around 36 years in various aspects of law and specializes in customs, central excise and foreign exchange matters, including Writs and Criminal procedures. He has been a member of the Managing Committee of CEGAT Bar Association. He was a member of shipping committee of the Bombay Chamber of Commerce and a member of the panel of Arbitrators of Bombay Incorporated Law Society. • **Brief Profile of Mrs. Uma Acharya** Ms. Uma Acharya, is a legal professional with an experience of more than 7 years in the field of law with specialisation in civil, property, securities market and arbitration. She has worked with the National Stock Exchange of India Limited (NSEIL) as a Manager, Investor Services Cell - Arbitration Department and monitoring the activities of 14 regional offices across India. • **Brief Profile of Mr. M. N. Sudhindra Rao** Mr. M.N. Sudhindra Rao is a Chartered Accountant by profession having experience of 33 years in the Manufacturing Sector. He has spent the first 25 years of his career with the B. K. Birla Group of Companies and was the Joint President of Century Enka Limited when he left and joined Reliance ADAG group as the Business Head of their Wind Business and was with the ADAG group for six years. He is currently the CEO of Polygenta Technologies Limited

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18.	Mr. M.N. Sudhindra Rao, full time employee of Polygenta Technologies is the Audit Committee Chairman who acts at the behest of the Promoters. Mr. Rao assists in maintaining dummy internal audit and advising manipulations in related party transactions to evade tax;	• It is denied that Mr. M.N. Sudhindra Rao acts at the behest of the Promoters or assists in maintaining dummy internal audit or advising manipulations to avoid tax as alleged; • Mr. Rao is a Chartered Accountant by profession, currently the CEO of Polygenta Technologies Limited, having 33 years of total experience. • Mr. Rao was appointed as the Chairman of the Audit Committee of EKC India in November, 2015, taking into account his financial expertise. Even as on date, Mr. Rao is the Chairman of the Audit Committee. • In any case, EKC India has engaged K.P. Dodecha & Co. as the Internal Audit Firm since the Financial Year 2006 onwards. The financial documents of EKC India and its subsidiaries are duly audited, thereby eliminating the risk of manipulations as alleged.
19.	Statutory Auditor M/s. Walker Chandiok (Grant Thornton) is paid more than 1 crore annual fees to implement the financial crimes	• It is denied that the Statutory Auditor are paid more than 1 crore as alieged; • EKC India has engaged reputed auditor M/s. Walker Chandiok (Grant Thornton) as its statutory auditor and makes payment to them for the professional services provided; • EKC has paid a sum of approximately Rs. 60 lakhs in the Financial Year 2016-17, and a sum of approximately Rs. 80 lakhs in the Financial Year 2016-17, to M/s. Walker Chandiok, for conducting audits, and other services. • Thus, the allegation levied against EKC and M/s. Walker Chandiok is malafide, baseless and defamatory.
20.	Mr. Kishore Thakkar was designated as a CFO of EKC India in November, 2015 without being the employee of the company and has been drawing salary as a consultant.	• It is true that Mr. Kishore Thakkar was appointed as the Chief Financial Officer of EKC India vide Board Resolution dated 6th November, 2015 based on the recommendation of the Nomination and Remuneration Committee, in compliance with Section 179 of the Companies Act, 2013. • Section 203 of the Companies Act, 2013 deals with the appointment of Key Managerial Personnel (KMP) which includes a Chief Financial Officer (CFO). The only statutory requirement for being appointed as a CFO is to be a whole- time KMP. Mr. Kishore Thakkar fulfills the said requirement. • Thus, statutorily, it is not necessary for Mr. Kishore Thakkar to qualify as an employee to be appointed as the CFO of EKC India. • Mr. Kishore Thakkar was the CFO of EKC India from November 2015 to December 2017. As on date, Mr. Kishore Thakkar is not the CFO.

R.S.

21.	Plant heads in Tarapur and Kandla are not employees of EKC and are drawing salary as professional charges;	• We are assuming that the Complainant is referring to Mr. Anil Khamkar and Mr. Manoj Jain as the Plant Heads of Tarapur and Kandla factory respectively; • Mr. Khamkar has been working with EKC India for the last 20 years and retired as the Chief Operating Officer in the year 2014, on attaining 58 years of age. Thereafter, Mr. Khamkar has been working as the Plant Head of the Tarapur Factory and is paid consultancy fees on retainer basis. • Mr. Manoj Jain is in charge of the factory in China and oversees the operations of the plant in Kandla, Gandhidham. Mr. Jain is on the rolls of EKC China and is paid consultancy fees on retainer basis. Mr. Jain has not been appointed as the Plant Head of Kandla.
22.	ICICI Bank has black listed EKC for illegal diversion of funds and have sought an exit;	• It is denied that ICICI Bank has black listed EKC for illegal diversion of funds or sought an exit as alleged; • To the contrary, ICICI Bank has in November, 2017 renewed the facilities availed by EKC India.
23.	SBI has alleged illegal practices and may recall the funds.	• It is denied that SBI has alleged illegal practice or recall funds as alleged.

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