onelife
one solution

Date: 2nd December, 2014

Department of Corporate Services
Bombay Stock Exchange Limited
P.J Towers, Dalal Street
Fort, Mumbai- 400 001

National Stock Exchange of India Ltd
Exchange Plaza
Bandra-Kurla Complex
Bandra, Mumbai- 400 051

Respected Sir,

Sub: Adjudicating order of SEBI .

Kindly find enclosed Adjudicating order of SEBI under Rule 5 of Securities Exchange Board of India (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 received by us on 2nd December, 2014.

Kindly take this in your records and acknowledge the same.

Thanking You,

Yours truly,
For **Onelife Capital Advisors Limited**

Chief Financial Officer
Encl :as above

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange Board of India

Recd 02/12/14
Time - 2 PM

Enquiry and Adjudication Department
Enquiry and Adjudication Division-05
Tel.: 022-2644 9552.
E-mail-sakkeenapv@sebi.gov.in

EAD-5/ASK/SPV/ 33963 /2014
December 01, 2014

Through Hand Dilivery

Onelife Capital Advisors Limited
96-98 Mint Road,
Mumbai 400001

Sub: Adjudication Order in the matter of Onelife Capital Advisors Limited

1. Please find enclosed a copy of Adjudication Order dated November 28, 2014 passed under rules 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995 & Securities Contract (Regulation) (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005 (Rules) in respect of adjudication proceedings conducted in the matter of One life Capital Advisors Limited .

2. The same is being forwarded to you in terms of the provisions of rules 6 of the Rules for information and compliance.

3. Please acknowledge receipt of the Adjudication Order.

Sakkeena P V
Asst General Manager

Encl: Copy of Adjudication Order dated November 28, 2014

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/100-102/2014-15]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 and UNDER SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of

1. Onelife Capital Advisors Limited
(PAN- AAACO9540L)

2. Pandoo Naig
(PAN-ACNPN2800J)

3. TKP Naig
(PAN-ABIPN2653D)

In the matter of Onelife Capital Advisors Limited

BACKGROUND

1. Onelife Capital Advisors Limited (Noticee No.1/company/OCAL) came out with an Initial Public Offering (IPO) of its shares to raise ₹. 36,85,00,000 through the issue of 33,50,000 equity shares of ₹. 10 with a premium of ₹ 100/- through 100% book building route. The IPO opened for subscription on September 28, 2011 and closed on October 04, 2011 and was oversubscribed by 1.53 times even though

it was graded "1" (CARO IPO rating of 1) that suggests poor fundamentals. The shares of OCAL were listed on October 17, 2011 on the Bombay Stock Exchange Limited (BSE) and the National Stock Exchange Limited (NSE). Shri Pandoo Naig (Noticee No. 2) and Shri TKP Naig (Noticee No. 3) were the Managing Director (MD) and the Executive Chairman of the company respectively. Hereinafter, Noticee Nos. 1-3 are collectively referred as "Noticees".

2. Securities and Exchange Board of India (SEBI), on noticing suspicious transfer of the proceeds of IPO of OCAL to certain entities, conducted investigation into the matter of IPO. The investigation, *inter alia* revealed that, OCAL had made mis-statements in its Red-Herring Prospectus (RHP)/Prospectus, had failed to disclose certain material developments in the (RHP)/Prospectus and had also utilized the IPO proceeds for purposes other than the objects stated in the RHP/Prospectus. It was also revealed that OCAL had transferred ₹ 15.55 crores (42% of the IPO proceeds) to Fincare Financial and Consultancy Services Private Limited (Fincare) a sum of ₹. 12 crore (32% of the IPO proceeds) to Precise Consulting & Engineering Private Limited (Precise) and a sum of ₹ 7.7 crore (21% of the IPO proceeds) to KPT Infotech Private Limited (KPT). It was further revealed that the Noticees did not comply with the summons issued by the investigating authority (IA).

3. SEBI has, therefore, initiated adjudication proceedings

(i) against the Noticee Nos. 1-3 under the SEBI Act, 1992 (SEBI Act) to inquire into and adjudge under section 15A(a) of the SEBI Act, the alleged violations of provisions of section 11C (5) of SEBI Act; under section 15HA of the SEBI Act, the alleged violation of the provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations

3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations); under section 15HB of SEBI Act, the alleged violation of provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (ICDR Regulations).

(ii) Against Noticee No.1, under section 23 A(a) of Securities Contract (Regulation) Act, 1956 (SCRA), the alleged violation of the provisions of clause 43A(1), (3) and 49 (IV) (D) of the Listing Agreement.

APPOINTMENT OF ADJUDICATION OFFICER

4. Shri Piyoosh Gupta was appointed as Adjudication Officer (AO), vide order dated November 12, 2012 under section 15-I of the SEBI Act read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (SEBI Adjudication Rules) and under section 23-I of Securities Contract (Regulation) Act, 1956 (SCRA) and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (SCRA Adjudication Rules) to inquire into and adjudge the aforesaid violations allegedly committed by the Noticees. Consequent upon the transfer of Shri Piyoosh Gupta, the undersigned was appointed as the AO vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Separate Show Cause Notices dated October 25, 2013 (SCN) were issued to the Noticees in terms of Rules 4 of SEBI Adjudication Rules and SCRA Adjudication Rules to show cause as to why an inquiry should not be held against them in respect of the violations alleged to have been committed by them.

6. Subsequently, it was informed by the concerned department of the SEBI that the Noticees have filed consent applications for settling the proceedings initiated by the aforementioned SCNs.

7. In response to the SCNs, vide letters dated July 02, 2014 and September 03, 2014, the Noticees requested for certain documents. Vide letters dated July 31, 2014 and September 30, 2014, the Noticees were informed that the documents relied upon in the present proceedings have already been made available to them along with the SCNs. Certain documents sought by the Noticees, which were not made available to the Noticees along with the SCNs were furnished to the Noticees along with the said letters. In the meanwhile, it was informed by the concerned department of SEBI that the consent applications filed by the Noticees were rejected and the Noticees were also informed of the same vide letter dated September 02, 2014. Thereafter, the Noticees were advised to appear for personal hearing on September 23, 2014 when Shri Vinay Chauhan, Advocate and Shri Pandoo Naig (Noticee No.2), Managing Director of the Noticee No.1 appeared as Authorised Representatives (ARs) on behalf of all the three Noticees and made oral submissions and further requested one week's time for filing additional submissions.

8. During the hearing, ARs filed reply dated September 23, 2014 filed on behalf of the company (Noticee No.1). Subsequently, Notice Nos. 2 & 3, vide letters dated September 24, 2014, inter alia, submitted that they were adopting the reply of the company dated September 23, 2014. Vide letter dated October 07, 2014, the Noticee No.1 filed additional submissions.

9. Though separate SCNs were issued to the Noticees, a common order is being passed since the allegations levelled against the Noticees emanated from common set of facts and also in view of the fact that Noticee Nos. 2 & 3 have adopted the reply filed by the company (Noticee No. 1).

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the documents available on record, written and oral submissions made by the Noticees. The issues that arise for consideration in the instant case are:

a. Whether the Noticees have violated the provisions of Section 11C (5) of the SEBI Act?

b. Whether the Noticees have violated the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations?.

c. Whether the Noticees have violated the provisions of section 12A (a), (b), (c) of SEBI act and regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations?.

d. Whether the Noticee No.1 has violated the provisions of clause 43A(1), (3) and 49 (IV) (D) of the Listing Agreement?

e. Do the violations, if any, on the part of the Noticees attract penalty under sections 15 A(a), 15HA & 15HB of the SEBI Act and section 23A(a) of SCRA?

f. If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act and section 23J of SCRA?

11. The relevant provisions of the aforementioned section and Regulations and Clauses are as under:

SEBI Act

Section 11C (5) - Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

Section 12A - No person shall directly or indirectly-

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

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

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

PFUTP Regulations

3 Prohibition of dealing in securities.

No person shall directly or indirectly -

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices.

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

(2)Dealing in securities shall be deemed to be a fraudulent or unfair trade practice if it involves fraud and may include all or any of the following, namely:-

.....

.....

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

.....

.....

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

ICDR Regulations

"Manner of disclosure in the offer document.

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation(1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(b)the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof"

Clause 2(VIII)(G) and (XVI) (E) (2) of Part A of Schedule VIII read with regulation 57 (2) (a).

2 (VIII)(G) - Sources of financing of funds already deployed : The means and sources of financing, including details of bridge loan or other financial arrangement, which may be repaid from the proceeds of the issue.

2 (XVI) (B) (2) - The signatories shall further certify that all disclosures made in the offer document are true and correct.

Public Communications, publicity materials, advertisements and research reports.

60 (1)... ...

(2)..... .....

(3)... ... ...

(4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:

(a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;

(b) ... .

(c)..... .....

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

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

Listing Agreement.

Statement of deviations in use of issue proceeds.

Clause 43A. (1) The company agrees to furnish to the stock exchange on a quarterly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document.

(2).....

(3) The information mentioned in sub-clause (1) shall be furnished to the stock exchange along with the interim or annual financial results submitted under clause 41 and shall be published in the newspapers simultaneously with the interim or annual financial results, after placing it before the Audit Committee in terms clause 49.

Clause 49 (iv) (D) Proceeds from public issues , rights issues , preferential issues.

When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses/applications of funds by major category (capital expenditure, sales and marketing, working capital, etc.), on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company.

Furthermore, where the company has appointed a monitoring agency to monitor the utilization of proceeds of a public or rights issue, it shall place before the Audit Committee the monitoring report of such agency, upon receipt, without any delay. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

12. Before dealing with the charges and allegations leveled against the Noticees on merits, I first deal with the preliminary issues raised by them with regard to not making available to them certain documents including complete investigation report and not granting opportunity of cross - examination of Officer of Additional Controller of Stamps Office.

13. In this regard, I note that all the documents relied upon in the instant proceedings were made available to the Noticees through the aforesaid SCNs and subsequent letters dated July 31, 2014 and September 30, 2014. As regards the specific contention of the Noticees that complete investigation report was not made available to them, I note that the findings of the investigation containing the details of the facts and allegations which were relevant to the Noticees/ on which SEBI had placed reliance were furnished to the Noticees along with the SCNs. In this regard, it is pertinent to mention the observation made by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Mayrose Capfin Private Limited vs SEBI (decided on 30.03.2012) wherein SAT observed thus:".....*the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count....".*

14. Regarding the issue of not making available Officer of Additional Controller of Stamps Office for cross examination, it is noted that the statement of the said officer was not recorded during investigation nor was he called as a witness during the investigation. Further, I do not find any reason for disbelieving the contents of the letter issued by the Additional Controller of Stamps Office. In view of the same, I find that no prejudice is caused to the Noticees by not making available the said officer for cross - examination.

In the light of the above, I am convinced that principles of natural justice have been duly complied with in the instant proceedings and no prejudice has been caused to the Noticees.

Now I proceed with the matter on merits.

FINDINGS

Issue No.1. Whether the Noticees have violated the provisions of Section 11C(5) of the SEBI Act?.

15. I note that in the Prospectus of OCAL, at internal risk factor no. 7, it was mentioned that an income tax demand notice dated December 28, 2010 of about Rs. 17.5 crore was received by Mr. Pandoo Naig, the Managing Director (MD) of the company. It was alleged in the SCN that two separate summonses both dated December 08, 2011 under Section 11C (5) of SEBI Act, 1992 were issued to the company and its MD Mr. Pandoo Naig requiring their personal appearance before the Investigating Authority (IA) along with a copy of the said income tax demand notice giving the details and nature of underlying transactions by December 9, 2011. The said summonses were duly served on OCAL and its Managing Director. They failed to appear before the IA nor did they furnish the details summoned vide the said summons. Therefore, another summons dated December 23, 2011 was issued to Shri Pandoo Naig, MD of OCAL to personally appear on December 26, 2011 before the IA with the required details. However, Shri Pandoo Naig failed to appear before the IA and also did not furnish the required details. Therefore, it was alleged that by not appearing before the Investigation Authority and not providing the details of the income tax demand notice as sought by SEBI vide summonses dated December 08, 2011 and December 23, 2011, the

Noticees have violated the provisions of Section11C(5) of the SEBI Act.

16. In response to the said allegation, the Noticees have submitted that the M D of the company was in receipt of the said Demand Notice from Income Tax and the same was disclosed in the Prospectus. It was contended that vide both the impugned summons, only certain documents were sought and no personal appearance of the Noticees before the IA was required. They further submitted that information regarding income tax notice was furnished vide letters dated December 12,& 14, 2011.

17. On perusal of material on record and submissions of the Noticees, I note that vide summons dated December 08, 2011, the Noticees were summoned to furnish copy of income tax demand notice and order for an amount of Rs. 17,57,64,665/- dated December 28, 2010 served to Mr Pandoo Prabhakar Naig giving complete details of the transactions for which said income tax demand notice was made including the period of transactions latest by 5.30 pm on December 08, 2011. I perused the letters dated December 12 & 14, 2011 of the Noticees and I find that the Noticees did not furnish complete details of the transactions for which said income tax demand notice was made including the period of transactions nor did they give any reason to the investigating authority for not being in a position to furnish the details summoned.

18. Further, another summons dated December 23, 2011 was issued to Shri Pandoo Naig whereby he was summoned to furnish to SEBI by December 26, 2011, the complete details of transactions and also the period for which income tax demand notice and order dated

December 28, 2010 was served. In this regard, I find that the Noticee No.2 admittedly did not furnish any response to the said summons.

19. I am of the view that full details regarding the said income tax notice was very crucial because the amount of income tax demand of Rs. 17.57 crores was around 47% of IPO proceeds and details such as the period for which such demand was outstanding, nature of transactions, value of transactions, period of the said liability etc were of high importance. I find that non- furnishing of the said information to the I. has hampered the investigation to a great extent. In this context, reliance is placed on the observations of Hon'ble SAT in its Order dated January 07, 2009 in the matter of DKG Buildcon Private Limited Vs SEBI wherein it stated that "..... *It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market".* In view of the same, I find that the Noticee No.1 failed to comply with the summons dated December 08, 2011. Noticee No.2 & 3 being MD and Executive Chairman of Noticee No.1 respectively cannot escape liability for failure to comply with the summons issued to Noticee No.1. I also find that Noticee No. 2 failed to comply with both the summonses dated December 08, 2011 and December 26, 2011.

20. In view of the above, I hold that Noticees failed to comply with the provisions of section 11C (5) of the SEBI Act making them liable for penalty under section 15A (a) of the SEBI Act.

B. Issue No. 2:- Whether the Noticees have violated the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations?.

21. It was observed that RHP of OCAL was registered on September 21, 2011 and the prospectus was filed on October 10 with RoC. The shares of OCAL were allotted on October 12, 2011. It was alleged in the SCN that OCAL failed to make certain disclosures in the RHP/Prospectus, failed to make available to the investors the material developments that took place subsequent to the filing of RHP/Prospectus and made material misstatements in the prospectus.

22. I note that the following developments took place subsequent to the filing of RHP:

i) Board Meeting dated September 30, 2011:

OCAL held a board meeting on September 30, 2011 i.e. during the period when issue was open for subscription and after the date of filing of RHP with RoC. Following has been observed from the minutes of the said meeting.

(a) Fincare and Precise were declared to be appointed to work for development of Portfolio Management Services (PMS) business for OCAL.

(b) Fincare and Precise were claimed to have already identified locations for offices for PMS business and rent/license fee for the premises was urgently required to be paid.

(c) Finder fee for the mandates referred by Fincare and Precise to OCAL were also claimed to be due. It was also mentioned that the money had to be paid urgently to them for payment of rent/ license fee and finder fee and they could not wait till IPO proceeds were received by OCAL. In view of the urgency of requirement of funds, the board of OCAL approved of availing short term loans.

(d) The Board also approved payments to be made to Fincare and Precise towards two objects to the issue i.e. *"Development of Portfolio Management Services" and "General Corporate Purposes".*

(e) The Board also decided to take short term loans from Mercury Fund Management Co. Ltd., and their associates to the extent of Rs. 11.50 crore for meeting the urgent requirement of making payments to Fincare and Precise for the two objects of the issue, i.e. development of PMS services and General Corporate Purposes.

(f) Shri Pandoo Naig, Managing Director of OCAL was authorized by the Board to make payments to Fincare and Precise for setting up of branches of PMS division, finder fees and meeting their short term fund requirements to the extent of Rs. 15 crore to Precise and Rs. 20 crore to Fincare.

ii) Appointment of Fincare and Precise

OCAL in its replies dated December 01 & 05, 2011 as submitted to the IA had submitted that it had entered into two agreements with Precise and Fincare for appointing them for development of PMS. These agreements were entered on October 01, 2011 and October 05, 2011 respectively, as

per submissions of OCAL. It was further observed that the dates of the said agreements were after the date of RHP but well before the date of prospectus i.e. October 10, 2011 and date of allotment of IPO shares i.e. October 12, 2011.

iii) Fund transfers made:

(a) From the bank account statement of OCAL, it was seen that Rs. 5 crore was received by it from Prudential Group by October 08, 2011 which was substantial development before date of prospectus.

(b) It was further observed from the bank account statement of OCAL that Rs. 5 crore was transferred to Precise by October 08, 2011 i.e. before the date of prospectus

23. In this regard, it was observed that the board meeting took place on September 30, 2011 i.e, during the period between the date of filing of the RHP i.e, September 21, 2011 and the date of filing the prospectus i.e, October 10, 2011. In fact, it took place when IPO was open for subscription by applicants and before allotment of securities made on October 12, 2011. The decisions were taken in the said board meeting towards appointment of two specific agencies namely Precise and Fincare in pursuit of one of the objects of the issue i.e, PMS, to avail short term loans making payments to the said agencies for their services. OCAL had also entered into agreements with Precise and Fincare, well before the date of prospectus. OCAL availed short term loans from prudential group and made payments to the said vendors. The said loan was paid out of IPO proceeds. However, no disclosures in this regard were made through public advertisements nor updated in the prospectus filed with the RoC on October 10, 2011.

24. In response to the said allegations, the Noticees have submitted that the Board of Directors resolution dated September 30, 2011 or actions taken pursuant thereto not amounted to any "material developments", the said Board Meeting was held in the ordinary course of business and there was no deviation from the objects of the issue and the funds were used only for and towards the disclosed objects and for the benefit of the company. The Noticees have also contended that ICDR Regulations and Listing Agreement do not require disclosure of each and every decision and every single event. They require disclosure of only 'material developments'. In this case, the above developments were not 'material' but routine and were consistent with the objects of the IPO. Further, in order to invoke regulation 60(4)(a) it should also have been established that the said material developments had a 'material effect' on the issuer.

25. I note that in terms of regulation 60(4) (a) of ICDR Regulations, an issuer making an IPO, as in this case, is obligated to 'make prompt, true and fair disclosure of all material developments' which 'may have material effect on the issuer' and take place between date of registering the RHP with RoC and the date of allotment of shares in the IPO. The disclosure in this regulation has to be promptly made by issuing a public notice in all news papers in which pre-issue advertisement was made.

26. There is no dispute in the fact that those developments took place after the filing of the RHP. Those developments included appointment of specific agencies by the company in furtherance of the objects of the issue for which funds were raised in the IPO and this undoubtedly had a direct bearing on the IPO of the company. Further, availing short term loans to the tune of Rs 11.50 crore for making advance

payment to those specific agencies whose appointment decision was taken subsequent to the filing of RHP and ultimate paying off the said short term loans from the IPO proceeds were all matters having direct impact on the financials of the company and therefore are of material significance to investors while making investment decisions in the IPO of the company. Therefore, the contention of the Noticees that those developments were not material is devoid of merit.

27. In view of the above, I find that the aforesaid developments are undoubtedly important and material having an impact on the investment decisions of the applicants in the IPO and thus required prompt disclosure to the investing public. Since these material developments had happened after the registration of RHP and the opening of the issue, the same ought to have been disclosed to the investors through public advertisements and updated in the prospectus. However, no disclosures in this regard were made through public advertisements nor updated in the prospectus filed with the RoC on October 10, 2011. Hence, I find that the Noticees have violated the provisions of relevant regulations of ICDR Regulations in this regard.

28. It was also observed that there were certain other misstatements/non-disclosures in the RHP/prospectus filed by the company, thereby the Noticees have violated the relevant provisions of ICDR Regulations. The same is discussed as under:

28.1. The extract of page no. 32 of the prospectus dated October 10, 2011 is reproduced herewith:

"We intend to use part of net proceeds towards such growth plans and opportunities. We intend to deploy the proceeds of this

Issue aggregating to ₹ 89.76 Million for general corporate purposes including but not limited to strategic initiatives, partnerships, joint venture, loan repayments/prepayments and meeting exigencies which our Company in the ordinary course may not foresee etc. The management, in response to the competitive and dynamic nature of the industry, will have the discretion to revise its business plan from time to time and consequently the funding requirements and deployment of funds may also change. As of the date of this Prospectus, our Company has not entered into any letter of intent or any other commitment for any such acquisition/investments or definitive commitment for any such strategic initiatives. The Board of Directors of our Company will review various opportunities from time to time."

The above extracts pertain to the utilization of fund designated as General Corporate Purposes (GCP). From the above, it was revealed that the funds under GCP were supposed to be used for strategic initiatives or unforeseen circumstances. It is alleged in the SCN that as on October 10, 2011 i.e. date of prospectus, it was not decided as to how IPO proceeds designated as GCP were going to be utilized was not correct.

In this regard, investigation revealed that it was explicitly mentioned in RHP/ Prospectus (point no. 17 at page no. 28) that no bridge loan against IPO proceeds has been was taken by OCAL. Hence the decision to take short term loan and to make payment to Fincare and Precise was significantly different from what was stated in RHP/Prospectus and was an important information for the investors. Thus, it was alleged that same amounts to material misstatement in the RHP/Prospectus.

28.1.1. The Noticees, in this regard, contended that funds under GCP could be used for variety of activities and the said head has been very widely worded and is in the nature of residuary provision. Under the said head the funds could also be utilized for partnerships, joint venture, loan repayments/prepayments. The GCP funds have been used for the repayment of short term loans which is very much permitted under the said objects and is not in the nature of acquisition/investment or definitive commitment for any strategic initiative. I find that the funds under GCP were supposed to be used for strategic initiatives or unforeseen circumstances. Going by the disclosures in the prospectus filed by the company with RoC on October 10, 2011, it was not decided as to how IPO proceeds designated as GCP were going to be utilized. In this regard, I find that by the date of filing of prospectus, the factual position is that the company had already taken short term loans to the tune of Rs. 11.5 crore. The company also decided and knew of the fact that it was going to utilize the funds earmarked for GCP for repaying short-term loans already availed. This stands in total contrast to what was disclosed in the prospectus and therefore clearly amounts to misstatements in the prospectus. Therefore, I find no merit in this argument of the Noticees.

28.2 The extract of page no. 33 of the prospectus dated October 10, 2011 under the head "funds deployed" are reproduced herewith:

We have not incurred any expenditure for the above mentioned objects as of date."

The above extracts pertain to use of funds for all the objects of the issue. However, from bank account statement of OCAL and its replies dated December 01, 2011 and December 05, 2011, it was observed that OCAL had transferred funds to the tune of Rs.2 crore for development of PMS (one of the objects of the issue) and Rs.3 crore as finder fee to Precise by October 08, 2011 i.e. before the date of prospectus i.e. October 10, 2011. It was alleged in the SCN that the transfer of funds as mentioned above, was not disclosed in the prospectus.

It was observed that in the RHP/Prospectus that the Noticees had not incurred any expenditure as against the issue proceeds and contrary to what was stated in the prospectus, the Noticees have transferred funds to Precise and Fincare under different heads.

28.2.1 In response to the allegation, the Noticees have contended that both the said payments were not in the nature of expenditure and were advance payments and as such were not disclosed. In this regard, I find that the company had made payments to the tune of Rs. 5 crores to Precise and Fincare for development of PMS and payment of finder fee. I also find that these amounts were spent as on October 08, 2011 i.e, before the date of filing of Prospectus with RoC on October 10, 2014. Further, these payments were admittedly made towards furtherance of the objects of the issue. I also note that the company has reiterated that it bonafide transferred the funds to Precise and Fincare for the services rendered by them. It is thus evident that the company on one hand made payments towards the objects of the issue, that too before the date of filing of prospectus and on the other hand disclosed in the prospectus that "*we have not incurred any expenditure for the above mentioned objects as of date*". This again amounts to material mis-statement in the prospectus.

3.3 The extract of page no. 33 of the prospectus dated October 10, 2011 under the head "interim use of funds" are re-produced herewith:

> *"Pending utilization of the Net Proceeds for the purposes described above, the Company intends to temporarily invest the funds in interest bearing liquid instruments including deposits with banks and investments in money market mutual funds and other financial products and investment grade interest bearing securities as may be approved by the Board."*

As per the IPO proceeds utilization schedule at page no. 33 of the prospectus, the IPO proceeds were to be utilized by OCAL by the end of financial year 2014 in a phase-wise manner. Pending utilization of net proceeds, the funds with OCAL were to be invested in interest bearing liquid instruments, as mentioned above. However, from the bank account statement of OCAL, it is observed that almost all the IPO proceeds have been utilized by OCAL within two months. OCAL made advance payments to the tune of Rs. 35.24 crore of IPO proceeds to 3 entities viz. Fincare (Rs. 15.54 crore), Precise (Rs 12 crore) and KPT Infotech (Rs 7.7 crore).

It was revealed that by transferring almost the entire IPO proceeds, OCAL also lost the interest in short term on such huge amount. Thus, it was alleged that as OCAL had channeled the IPO proceeds in different directions, the utilization schedule furnished in the offer documents and interim use of funds as mentioned in prospectus amounted to misstatements made by OCAL.

28.3.1 In response, the Noticees have contended that merely because the proceeds of issue was utilized within two months no adverse inferences can be drawn against it. The Noticees have admittedly availed short term loans to the tune of 11.5 crore which they used for making payment to Precise and Fincare for furtherance of issue objects, even before the date of filing of prospectus. The Noticees have also submitted that the said short term loans were to be paid out of the IPO proceeds. Going by the quantum of the short term loans availed, it is evident that more than 30% of the issue proceeds have already been committed and that too before the date of prospectus. This would clearly indicate that the company was on the fast track mode of committing and utilizing issue proceeds. Even the entire IPO proceeds was utilised within 2 months which was not disputed by the company and it cannot be said that company did not know of its commitments that were to follow in the next two months. While this was so, it was disclosed in the prospectus under schedule of implementation that IPO proceeds were to be used by the end of financial year 2014 and pending utilization, the funds will be invested in interest bearing liquid instruments. Thus, this disclosure made by the company was not truly reflective of the company's plans and commitments and clearly amounts to material misstatements.

28.4 Under the object of issue, "Purchase of corporate office", the RHP dated September 21, 2011 and Prospectus dated October 10, 2011 mentions that the Company had entered in an MOU to purchase new office premises at Mumbai with Masala Gruh Properties Limited (Masala Gruh) and the company expected to receive possession of this premise in fiscal 2012.

In this regard, it was observed that the said MoU was entered on December 14, 2010 with a token amount of Rs. 1 lac and as per the

terms of the said MoU, 'in any event whatsoever if the MoU was not followed by a definitive agreement signed beyond June 13, 2011, the MoU was to be construed as fully cancelled'. It was further observed that the MoU which was valid up to June 13, 2011 and then alleged to be extended was eventually terminated within a few days of listing and a fresh MoU was entered by OCAL with Fincare on November 01, 2011 for purchase of office property. As on date of filing the prospectus there was no valid contract for purchase of property and that by choosing not to disclose these facts in the RHP/prospectus, the same has been deliberately suppressed.

28.4.1 In response to this allegation the Noticees have contended that the tenure of MoU was mutually extended by the parties vide letter dated June 2, 2011 for 6 months i.e. December, 2011. It may be noted that legally such understanding/ arrangements to extend MOU can be made by executing correspondence also. Therefore, on the date of filing of RHP/Prospectus the MOU was alive and the disclosure made was accurate. I perused the MoU dated December 14, 2010 entered into between OCAL and Masala Gruh which was relied upon by the Noticees for the purpose of disclosure in the offer document. As per the terms of the said MoU, it needed to be followed by a definitive agreement by June 13, 2011 failing which the MoU would be construed as cancelled. The Noticees have stated that the tenure of MoU was mutually extended by the parties vide letter dated June 02, 2011 for 6 months. As such, I find that the validity of MoU between OCAL and Masala Gruh stood extended and was valid as on the date of the filing of RHP/Prospectus. In view of the above, I do not find any material mis-statement with regard to the existence of MoU.

28.5 The extract of point no. 3 under the heading "Capital Structure" in section II of the Prospectus are reproduced below:

"The funds that were received from issue of these shares was utilised in setting up the business viz. long term working capital expenses. A part of the funds received from this allotment has been advanced to one of our promoter group companies and a part invested in another group company. This advance and investment aggregate to Rs. 94.45 million."

This allegation relates to issue and utilization of paid up capital brought -in by the promoters of OCAL in year 2010. It was observed that in 2010, Rs 9.95 crore was introduced as paid-up capital by promoters. In the above declaration in RHP/ Prospectus, it was seen that the company had declared to utilize the same for setting up of business as long term working capital and a part has been transferred to promoter entities as advance and investment. However, a part, as stated in the statement accounted for 94.5% of the paid- up capital introduced. Out of approximately Rs 10 crore, only Rs 51 lacs remained with OCAL to be used as long-term working capital. Thus, it was revealed that there was hardly any genuine need of issuing paid-up capital by OCAL as just a small portion of the same was retained by OCAL.

28.5.1 The Noticees have submitted that with regard to build up of capital structure, clear cut upfront disclosures have been made in the Prospectus. It has been clearly spelled out that out of approximately Rs. 10 Crore, part of the same has been advanced to group company and part has been invested in another group company and that the same aggregates to 94.45 million. When it has already been disclosed that out of the total capital brought of around Rs 10 Crore brought in, 94.45 million is being deployed as advances and investment in group companies, nothing remained to be disclosed. I note that it was

disclosed in the prospects that the funds that were received from issue of these shares was utilized in setting up the business viz. long term working capital expenses and a part has been advanced to promoter group entities. In this regard, I find that out of 9.95 crores introduced by the promoters, only Rs. 51 lacs was retained by the company to be used for working capital purposes and a substantial sum of Rs 9.45 crore was invested in/advance to promoter group entities. I also find that the said disclosure quantifies the amount of Rs. 9.45 crore (94.45 million) advanced to/invested in promoter group entities. Hence, I do not find any material non- disclosure/ mis-statement in the prospectus in this regard.

[illegible] It was mentioned in the Prospectus of OCAL, at internal risk factor no. 7, an income tax demand notice dated December 28, 2010 of about Rs. 17.5 crore was received by Mr. Pandoo Naig. Details such as the period for which such demand was outstanding, nature of transactions, value of transactions, period of the said liability etc. were not mentioned in the risk factor.

[illegible] In response to the said allegation, the Noticees have contended that the M D of Noticee was in receipt of the said Demand Notice from Income Tax and the same was disclosed in the Prospectus. I perused the relevant portion of the prospectus and also the relevant income tax demand notice. I find that the company has substantially disclosed the details of the income tax notice including the amount of demand in the said notice. As seen from the said income tax notice, the IT demand pertains to A.Y. 2008-09. The same was, however, not mentioned in the prospectus. Therefore, I find that there is lapse on the part of the Noticees to that extent.

29. In view of the above discussion, I conclude that there were non-disclosures /mis-statements in the RHP/Prospectus filed by the Noticees. I also conclude that there were certain material developments that took place subsequent to the filing of RHP which were neither updated in the Prospectus nor informed to the investors through advertisements. As such, any issue related advertisements issued by the company inviting the attention of the investors to the offer document would automatically render themselves to be mis-leading and deceptive.

30. Therefore, I hold that the Noticees have violated the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations.

Issue No. III:- Whether the Noticees have violated the provisions of section 12A (a) (b) (c) of SEBI Act and regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations?.

31. It was alleged in the SCN that the company had diverted the IPO proceeds by channeling the same through various directions. It was revealed that the IPO proceeds were transferred by OCAL to Precise, Fincare and KPT which were further found to have transferred to certain other entities. The specific roles played by Precise, Fincare and KPT along with the Noticees in the alleged fund diversion was brought out in the SCN as discussed in the following paragraphs.

i. Precise:

- OCAL had stated that it had appointed Precise for carrying out the activities stated in the RHP under object to issue viz. Development of Portfolio Management Services. The Noticees have stated that they had entered into MOU dated October 1, 2011 with Precise for the said purpose.

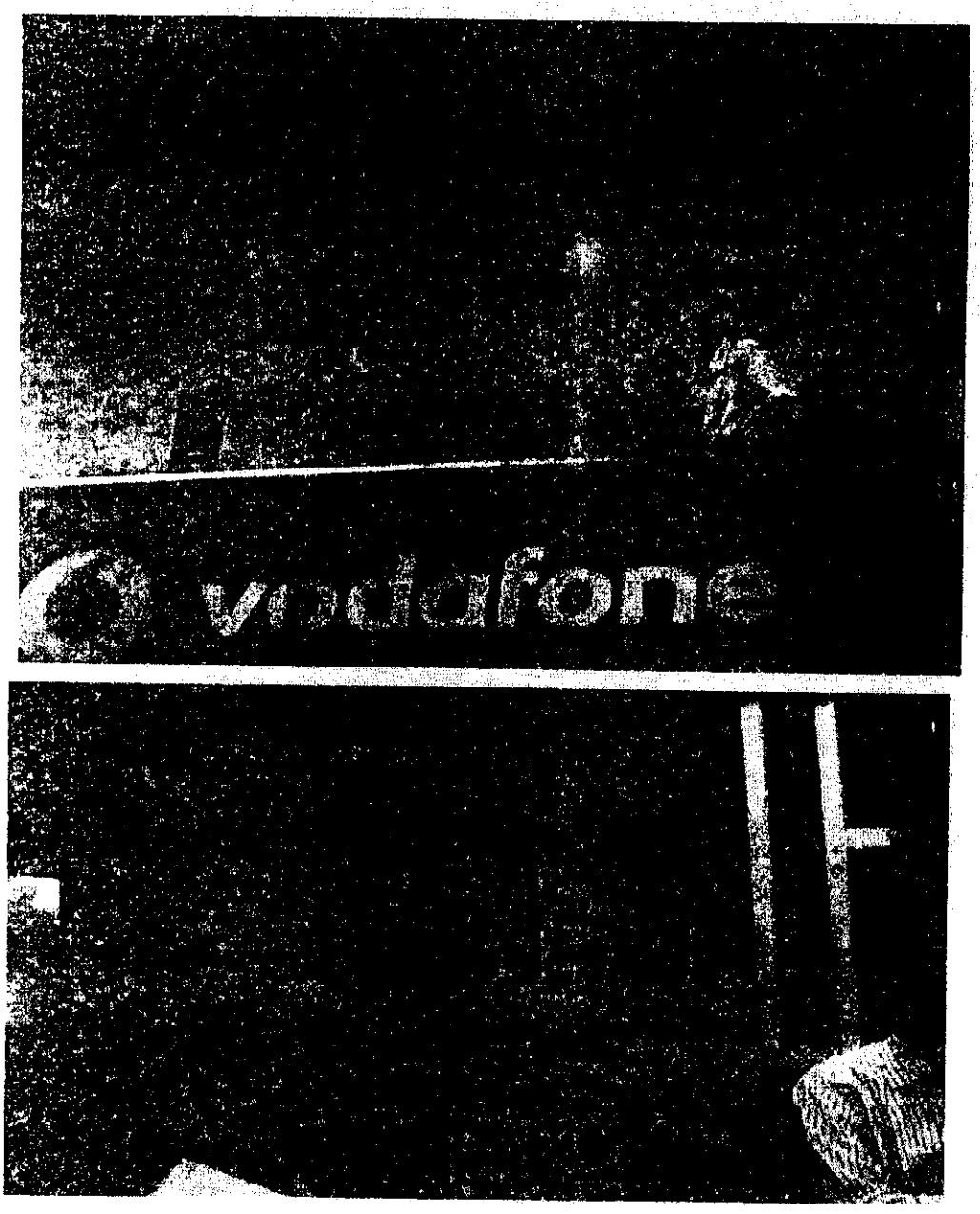
- As per the MoUs signed by OCAL with precise, it had office at E-2, Sainath Wadi, Nari Seva Sadan Road, Ghatkopar (W), Mumbai and was in the business of Engineering and Consultancy since several years. It had extensive working relations with a lot of small and medium enterprises which is a key focus area of OCAL. Precise also had submitted that it had been operating from the above mentioned address at E-2, Sainath Wadi, Nari Seva Sadan Road, Ghatkopar (W) since 2009. When the office of Precise, at above mentioned address, was visited by SEBI officials, the following observations / points were noted:

  (a) Interiors of the office appeared to be done afresh.
  (b) There were no employees, other than office peon, available in the office.
  (c) There was not even sitting arrangement for any employees over there.
  (d) There were hardly any files and any other stationery visible at the office.

(e) The name of Precise i.e. Precise Consulting and Engineering Private Limited was printed as a poster and then pasted on the shutter of the shop.

(f) The poster on which the name of the Precise was printed appeared to be new.

(g) After the full name of Precise, word "Center" (in devnagari) was written as can be seen in pictures below:



- The office of Precise was looking like a make-shift office. For a company functioning from the same premises for the last two years, an extra word written after its name on the entry gate of the company seemed highly unlikely and might affect the credibility of the company in the eyes of outsiders.

- SEBI asked Precise to furnish the "Leave and License Agreement" for the said premises. The said agreement, submitted by Precise, was not registered. It was executed on a non-judicial stamp paper of Rs 100 on December 01, 2009. On confirming with Additional Controller of Stamps, Mumbai, it was found that the said stamp paper was issued by General Stamp Office, Mumbai to Thane Treasury only in September 21, 2011, i.e. approximately 2 years after the purported date of agreement.

- As per Income Tax Returns for F. Y 2009-2010 and 2010-2011 of Precise, its Gross Total Income was shown as Nil. However, from the bank account statement with Akola Urban Co-op Bank Ltd., of Precise for the period from April 01, 2009 to November 22, 2011, it was observed that there were many high value transactions.

- MCA filings showed that Precise had filed its annual return for F. Y. 2008-09 on December 15, 2011 and for F. Y. 2009-10 and 2010-11 on December 14, 2011. Precise and the company had submitted that as on December 15, 2011 Precise was not in the defaulter list, the updated filing with MCA was done on December 14, 2011 and December 15, 2011 only. Further the registered address of Precise with MCA was updated only in 2012. Thus, it was noticed that when the company entered into

agreements with Precise for PMS and finder fee, it was in the "defaulters" list of MCA website.

- To project Precise as a credible and capable business partner, the company had submitted that Precise had provided 4 IPO mandates totaling issue size of Rs. 207 crore. As per the Noticees, the mandates would have fetched a fee of Rs. 7 crore to the company. The Noticee had also submitted that it was liable to pay a finder fee equal to 40% of its earning from the said mandates to Precise. The issue size of Paramount Printpackaging Ltd., (PPPL) was mentioned as Rs. 95 crore. The finder fee payable to Precise was calculated to be Rs. 3.4 crore.

- The investigation revealed that the actual size of the IPO of PPPL was only Rs. 45.83 crore and the issue expenses were Rs. 5.54 crore only. Thus, it was observed that the IPO size of PPPL was inflated by the company to justify transfer of Rs. 3 crore to Precise, which the Noticees claimed to be finder fee for the IPO mandate of PPPL. The agreement in this regard bears signature of Mr. Pandoo Naig, Noticee No.2. As per said finder fee agreement, the finder fee payable by OCAL was Rs. 60 lakhs only as against purported finder fee of Rs. 3.4 crore claimed to be payable to Precise for the same mandate.

- The non-judicial stamp papers of Rs. 100 used for the said finder fee agreements of Precise for IPO of PPPL and Trim Plastics Private Limited were issued from General Stamps Office, Mumbai only in the year 2011. However OCAL and Precise have submitted that the said agreements were executed on January 20, 2010. Thus, it was observed that the finder fee agreement dated January 20, 2010 for the IPO

mandate of PPPL entered between OCAL and Precise was forged and had been prepared post facto to justify the fund transfers to Precise in the guise of finder fee.

- Out of IPO mandates of four companies claimed to have been provided by Precise to OCAL, three companies namely PPPL, Parapack and Trim Plastics had common directors and hence were related entities.

ii. Fincare

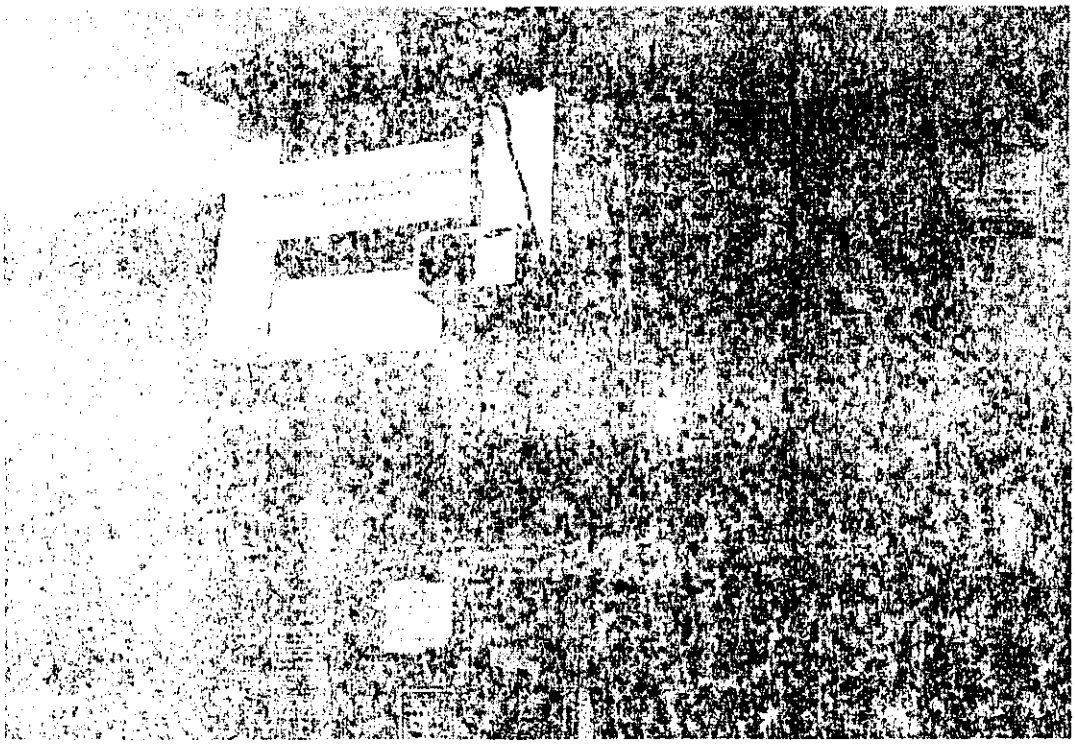
- With regard to Fincare, the company stated that it had appointed Fincare for carrying out the activities stated in the DHP under objects to issue viz. *"Development of Portfolio Management Services"*. OCAL had stated that they had entered into MoU with Fincare on October 5, 2011 for the said purpose.

- As per the MoU mentioned above, Fincare had its office at Premises No 1, Rammanohar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084 and had expertise and connections in networking with Merchant Banking Organization, Stock Broking Companies, Portfolio Management Companies, Corporates, High networth Individuals, and Government bodies and strong liaison capabilities. In addition to above MoU, on November 01, 2011, another agreement was entered between OCAL and Fincare, for the "Purchase of Corporate Office" through Fincare.

- The office of Fincare, at above mentioned address, was visited by SEBI officials. During the visit to Fincare, following observations were noted:

a. Interiors of the office appeared to be done afresh.
b. There were no employees, other than office peon, available in the office.
c. There was not even sitting arrangement for any employees over there.
d. There were hardly any files and any other stationery visible at the office.
e. The board of Fincare appeared to be new.

- The office of Fincare was like a make-shift office and hardly resembled a regular office which had been operating since February 2009. The photographs of Fincare are attached below:



- As per the submissions of Fincare it had been operating from the premises for more than two years, however, the same was updated with MCA only in December, 2011. The Leave and License agreement was executed on a non-judicial stamp paper of Rs 100, however, it was not registered. The date of execution mentioned of the said agreement is February 19, 2009. In this regard, it was revealed that the Additional Controller of Stamps, Mumbai had confirmed that the said stamp paper was issued by General Stamp Office, Mumbai to Treasury only in September 2011, approximately 2 years after the purported date of agreement.

- The income-tax returns of Fincare for 2009-10 and 2010-11 were filed on December 22, 2011 after SEBI initiated the investigation in the said matter. As per ITR for Financial Year (F.Y) 2009-2010 and 2010-2011 of Fincare, as submitted by it to SEBI, the Gross Total Income of Fincare is shown Nil.

From MCA filings it was also observed that Fincare filed its annual return for F. Y. 2008-09, F. Y. 2009-10 and 2010-11 on December 15, 2011. When SEBI investigation was taken up in the matter, Fincare was shown as a dormant company on MCA website.

- OCAL and Fincare had submitted that Fincare had provided 6 IPO mandates totaling issue size of Rs. 676 crore. As per OCAL, the mandates would fetch a fee of Rs. 33.1 crore to OCAL. On a sample basis, offices of two companies viz. Renaissance Corporation Limited (Renaissance) and Strategic Marketing Services Private Ltd (SMSPL) were visited by SEBI (icials. During the visit to Renaissance, it was observed that a single office, with an area of around 1050 square feet was housing three companies including Renaissance. Surprisingly no employee of Renaissance was found at that address. In case of SMSPL, it was observed that its office was situated in a building which is a housing co-op society. The office was a 2 BHK flat with an approximate area of 900 square feet. There was sitting arrangement of around 8-10 persons. On enquiring about nature of business of the company, it was told that the company supplied small gift items such as caps, bags, coffee mugs etc for corporate gifting and this was their major business. It was also noted that the address provided on the mandate for another company Baba Shyam Vyapar Private Ltd. (BSVPL), claimed to be provided to OCAL by Fincare, was the same as SMSPL and even the directors for both the companies are same.

- Fincare had not done any business with any other company before it did business with OCAL. However, letters of Fincare

dated February 07, 2012 and February 15, 2012 stated that Fincare had been acting as real estate broker and commission agent for the last two years. However, from the bank account statement of Fincare for the year 2008-09 and 2010-11 (HDFC Bank) it is observed that there has been no inflow/ outflow of funds throughout the year. In 2009-10 there was a cash deposit of Rs 1 Lakh which was also immediately transferred. The Bank statement of Fincare up to June 2011 does not resemble bank statement of an active company.

- Fincare had identified two commercial / office spaces that met the criteria specified by OCAL and had entered into MoU/ Term Sheets with the owners of the said premises. As per the agreement between OCAL and Fincare regarding development of PMS, it was nowhere mentioned that Fincare will enter into MoU with owners of the offices identified for PMS for OCAL. It was also noted that as per the list of location provided by Atherstone Capital Markets Limited (ACML), the Book running Lead Manager (BRLM) to the issue, OCAL planned to open offices at 4 locations viz Bandra, Borivli, Kalinga Corner and Ghatkopar in Mumbai. Investigation revealed that Fincare had identified two office in Andheri. However, Andheri was not mentioned as a prospective location for PMS office of OCAL as per the list provided by ACML to SEBI. Both offices, identified by Fincare, were located in the same Co-operative Society in Andheri, which was not having any business sense. Further, Fincare had received money in advance from OCAL for development of PMS but still had not paid any money to the owners of said [illegible] even after entering into MoU with the owners

- Further, OCAL had made payment of Rs. 7 crore to Fincare on November 1, 2011 for making arrangement for purchase of premises for corporate office of OCAL from Masala Gruh. However, it was observed from the RHP/ Prospectus that OCAL had initially entered into an agreement with Masala Gruh directly, for purchase of premises for corporate office, which was terminated later and that they had entered into a fresh agreement with Fincare on November 1, 2011 for arranging to buy the Corporate office premises from the same entity i.e Masala Gruh for OCAL. Investigation revealed that there was no insistence by OCAL on Fincare either for purchase of property from Masala Gruh or for return of funds. On the contrary, OCAL had approved of the work carried out by Fincare and appreciated Fincare in its letter dated December 15, 2011 to SEBI.

- The investigation revealed that the bank account of Fincare was opened in Indian Bank, King Circle branch on June 02, 2011. It was observed from the bank statement of the said account that there was a receipt of Rs. 51.61 crore on the same day i.e. date of opening of account and an amount of Rs. 50.60 crore was subsequently transferred. Investigation revealed that the said amount of Rs. 51.61 crore was received from Onelife Gas Energy and Infrastructure Limited (OGEIL), a promoter entity of OCAL and transferred Rs 50.6 crore to Sparc Pesticides Pvt. Ltd. (SPPL). In this regard, it was revealed that Fincare had provided two agreements for the loans taken from SPPL and OGEIL. However, the agreements for loans entered into between Fincare and SPPL were executed on a letter head of Fincare as against stamp

paper without containing the purpose for which the loan was taken. The investigation revealed that the amount involved was also much less than claimed Rs 51.61 crores.

- Fincare received a total of Rs. 15.54 crore from OCAL for "development of PMS" (Rs 2.5 crore), "purchase of corporate office" (Rs. 7 crore) and towards finder fee (Rs. 6.04 crore). Further on enquiring about the utilization of the money received from OCAL, Fincare submitted that the amount of Rs. 7.83 crore had been invested in diamonds. Fincare had submitted invoices in support of its claim of purchase of diamonds from two entities viz Sainath Corporation and Venus Publicity (Sainath and Venus). Regarding Sainath and Venus, it was revealed that Sainath was registered as wholesale trader of raw silk (cloth trading) and Venus was registered as a consultancy firm (Provident and Insurance services) and both of them were not diamond sellers. Investigation further revealed that Sainath was owned by one Shri. Ganechlal Madanlal Shah, who also owns Mahak Enterprises. It was also revealed that Precise had purchased diamonds from Mahak Enterprises. Thus, it was alleged that the funds received by Fincare and Precise from OCAL had further gone to common entities. During the visit of SEBI officials, it was observed that the addresses of Venus and Sainath were residences and not shops as claimed by Fincare. Thus, it was alleged that Fincare had made false claim of buying diamonds and provided false invoices to justify diverse fund transfers to Sainath and Venus.

- Further, it was revealed that OCAL had used "exception clause" in almost all the agreements signed with Precise and

Fincare which was very rare and used only in exceptional circumstances. In all the agreements of OCAL with Fincare and Precise such as finder fee agreements and PMS agreements, there was a clause of payment in advance, if need be. However, in most of the cases, the same clause has been used and advance payments have been made. Similarly, in the prospectus it was mentioned that the fund utilization schedule might not be strictly adhered to and subsequently a marked difference was observed in the actual fund utilization by OCAL.

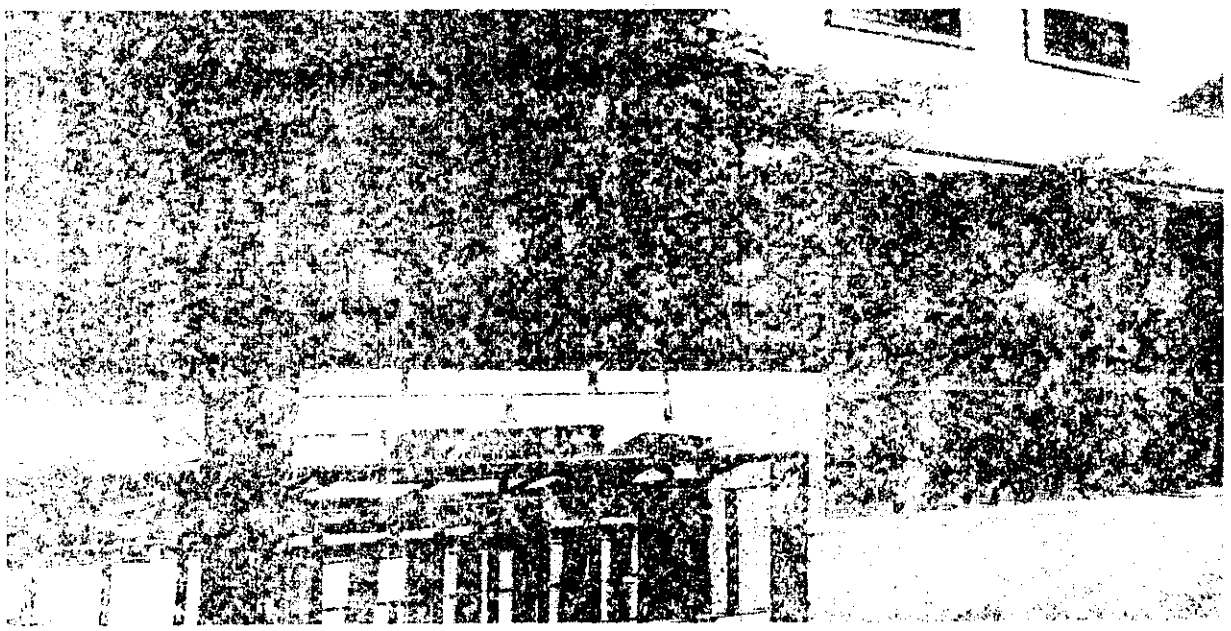
III. KPT

- Regarding KPT, it was revealed that OCAL had transferred Rs. 7.7 crore to KPT for the purpose of "brand building". It was further revealed that OCAL had not entered into any MoU with KPT for the same. Thus, it was observed that OCAL had transferred such a huge amount of investor money to KPT without signing an MoU.

- As per the MCA Website, the address of KPT was 41- Suraj, Om Nagar, Opp. Golden Silver Apartment, Subhanpura, Vadodara. The names of the directors of KPT were Shri Ashokkumar Fulabhai Patel and Shri Pritesh Ashokkumar Patel. Investigation revealed that the amount of Rs 7.7 crore received from OCAL by KPT was transferred to Shri Ashokkumar Fulabhai Patel. From the bank statement of Mr Ashokkumar Fulabhai Patel, it was observed that out of Rs. 7.7 crores received from OCAL, an amount of Rs. 7.2 crores was transferred to M/s Chenaji Narsingji. The investigation

revealed that the said funds were used for purchase of gold in the name of Mr. Ashok Fulabhai Patel.

- When SEBI investigation team visited the above given address of KPT, it was noticed that the address was of a duplex located in a residential society and the said duplex was locked. On enquiring, neighbors stated that the duplex was of Shri. Ashok Fulabhai Patel and he had shifted to Mumbai 9-10 months ago and since then the duplex was closed. Further, when asked about KPT and business of Shri. Ashokbhai, the neighbors stated that he used to deal in stock market and about KPT, the neighbors stated that they did not know anything. Photos of said duplex showing name of Shri Ashokbhai in the name plate were taken and the same are as below:



- Thus, it was revealed that when the funds were transferred to KPT, no business activity was being done from the address of KPT as available on MCA website and bank statement of

KPT. Thus, it was observed that OCAL had not exercised any due diligence while transferring the funds to KPT. OCAL had given all the money in advance without executing any MoU / agreement with KPT. Thus the funds were given by OCAL to Shri Ashokkumar Fulabhai Patel under the garb of transfer of funds to KPT towards the object of the issue i.e. brand building.

32. Thus, it was observed that the three entities viz. Precise, Fincare and KPT were used by OCAL for diversion of IPO proceeds. In response to the allegations of IPO proceeds diversion to Precise, Fincare and KPT, the company, while generally denying that it had channeled the IPO proceeds through various directions as alleged, made the following submissions specifically regarding Precise, Fincare and KPT:

I. Precise:-

- The role of Precise was that of an Introducer. In so far as Precise is concerned, the ability of precise was reflected in 4 IPO mandates involving a total issue amount of 207 crores. Therefore net worth, and office premises of precise were of peripheral importance to the Noticee.

- As per information available to the Noticees, Precise and its directors were having good financials. The Noticees have specifically contended that as on 31.3.2011 the total income of Precise was ₹ 3, 09,79,844/ and as on 31.3.10 the same was ₹ 2,94,38,650/. Further, as on 31.3.2011 Precise was having reserves and surplus of ₹ 1,57,56,067/- and as on 31.3.2010 the same was ₹ 1,37,89,916/. Similarly, as on 31.3.11 the combined net worth of the directors of Precise

was around ₹ 2 crores. Further , the main director of Precise , i.e. Mr. Daxesh Patel has been in business for more than 15 years and has been active in the engineering and consultancy business and is well networked in the business circles.

- The allegation of inflating the finder fee is baseless and completely contrary to the factual position. The company had signed a debt mandate for providing debt arrangement syndication for PPPL dated 10.01.2011 for an amount of Rs. 60 crore including the IPO mandate of ₹ 45.83 crore. This debt mandate also entitles Precise a referral fee of 40% of the fee received by the company.

- The company had executed the agreement with precise on January 20, 2010 and the stamp paper was taken from the stamp vendor as usual. Immediately after receiving the Notice from SEBI alleging that the Stamp paper was forged, the company has filed a criminal complaint with Azad maidan Police.

- Merely because, three companies introduced by Precise have common directors and are related entities, no adverse inference can be drawn.

E. Fincare

- The role of Fincare was that of an Introducer. In so far as Fincare is concerned, the ability of Fincare was reflected in 6 IPO mandates involving a total issue amount of ₹ 207

peripheral importance. Further, the companies whose IPO mandates undertaken by the company were sound companies having good business and were genuinely in need of raising funds for the purpose of their business.

- Fincare has got clear track record for the last 18 years and it has got a good net worth.

- The company was in need of office premises and after considering various offers, had shortlisted the premises of Masala Gruh. After entering into the MoU, Masala Gruh informed the company that it is not in position of fulfilling the terms of the MoU and requested for cancellation of the same.

- The loan given by OGEIL to Fincare was in the ordinary course of business and the said transaction has taken place much before the IPO of the Noticee.

III. KPT :-

- The payments to KPT were made bonafide in the furtherance of the objectives of the issue as disclosed in the prospectus.

- The Noticee was not aware of the alleged subsequent transfer of funds by KPT or the subsequent utilization of amounts by KPT, i.e. investment in gold etc, and it had no control over the same.

- It is denied that OCAL had not exercised any due diligence while transferring the funds to KPT as alleged. It is submitted that based on the representation of the directors of KPT, it had given funds to KPT for brand building. One of the directors of KPT was having vast experience in brand building and had good contacts in media.

- In so far as non execution of MoU is concerned it was submitted that since SEBI had passed ex parte order, MoU which was made and was pending execution could not be signed.

37. Before going into the allegations of diversion of IPO proceeds viz-a-viz reply of the Noticees, I note, regarding the proceeds of IPO, it was stated in the RHP/ Prospectus that the issue proceeds were proposed to be used for following mentioned objects.

Sr No	Particulars of object	Amount (in crore)	% vis-à vis
1	Development of Portfolio Management Services	11.570	31.42
2	General Corporate Purposes	8.870	24.59
3	Brand Building	7.70	20.94
4.	Purchase of Corporate Office	7.00	19.00
5	Issue Expenses	1.050	2.85
	Total	36.050	100

As per the schedule of implementation disclosed in the RHP/Prospectus, almost all the IPO objects were to be completed by FY 2014.

Sr. No.	Particulars	Expected date of Commencement	Expected date of Completion
1.	Purchase of Corporate Office	Q1 FY 2012	Q2 FY 2012
2.	Development of Portfolio Management Services	Q1 FY 2012	Q2 FY 2014
3.	Brand Building	Q1 FY 2012	Q2 FY 2014
4.	General Corporate Purposes	Q1 FY 2012	Q2 FY 2014
5.	Issue Expenses	Q1 FY 2012	Q2 FY 2012

The Deployment of net proceeds towards the objects of the Issue, as per RHP/Prospectus was to take place in a staggered manner over a period of 3 years up to 2014.: (₹. In crore).

Sr. No.	Objects	Amount	Estimated schedule of utilization of Net Proceeds for fiscal		
			2012	2013	2014
1.	Purchase of Corporate Office	7.00	7.00	-	-
2.	Development of Portfolio Management Services	11.58	2.89	5.21	3.47
3.	Brand Building	7.70	2.90	2.90	1.90
4.	General Corporate Purposes	8.98	8.98	-	-
5.	Issue Expenses	1.60	1.60	-	-
	Total	36.85	23.37	8.11	5.37

34. In the RHP/Prospectus, it was further stated that pending utilization of the net proceeds for the purposes described above, in the interim, the proceeds will be temporarily invested in interest bearing liquid instruments including deposits with banks and investments in money market mutual funds and other financial products and investment grade interest bearing securities as might be approved by the Board of OCAL.

35. It was also observed that the IPO proceeds were received in the Indian Bank account of OCAL on October 14, 2011 and most of the IPO fund was further transferred as per the table below within a very short span of time:

Date of transfer of funds	Transferred to	Amt (RS Cr)
14/10/11-21/10/11	Prudential Group	11.50
14/10/11 and 01/11/11	Fincare	13.05
14/10/11-21/10/11	Precise	3.00
19/10/11-16/12/11	KPT Infotech Pvt. Ltd	7.7
	Total	35.25

36. OCAL submitted that on October 08, 2011, they took a loan of ₹.11. 5 crore from Prudential group for making advance payment of ₹. 9. crore to Precise and of ₹. 2.5 crore to Fincare towards development of PMS business and payment of finder fee. The said loan of ₹.11.5 crore was paid out of IPO proceeds.

37. I note that the actual utilization of IPO proceeds as submitted by OCAL was as per the table below:

Transferred to	Amt (RS Cr)	Reasons cited by company
Fincare	15.55	a) For development of PMS business and payment of "finder" fee.(Rs. 8.54 cr) b) Purchase of Corporate Office (Rs. 7 cr)
Precise	12.00	Advance for setting of PMS business and payment of finder fee
KPT Infotech (KPT)	7.7	Brand building
Total	35.25	

38. Out of ₹ 35.25 crores mentioned above, ₹ 9.05 crores was paid as 'finder fee', ₹ 11.5 crores towards setting up offices for development of PMS, ₹ 7 crores for purchase of corporate office and ₹ 7.7 crores for brand building.

39. Dealing with the allegation of diversion of IPO proceeds to Precise, I find that the company had employed Precise to identify and set-up offices for its PMS and for procuring IPO mandates. Precise had received total ₹12 crore from OCAL i.e, ₹ 9 crore towards development of PMS and ₹ 3 crore towards finder fee. Regarding Precise, I find the following:

- As per Income Tax Returns for F. Y 2009-2010 and 2010-2011 of Precise the Gross Total Income of Precise was 'Nil'.

- From MCA website it was noted that Precise had filed its annual return for F. Y. 2008-09 on December 15, 2011 and for F. Y. 2009-10 and 2010-11 on December 14, 2011 and its name was mentioned in the defaulter list on MCA website.

- The office premises at 'E-2, Sainath Wadi, Nari Seva Sadan Road, Ghatkopar (W)' from where precise claimed to be operating since 2009, was a make-shift office with no sufficient employees.

- The "Leave and License Agreements" with regard to the above office premises and finder fee agreements were and created *post-facto* by mentioning false date on the said stamp paper and were therefore forged. This is clear from the fact that the said agreements were entered on non-judicial stamp papers of Rs 100 and were dated December 01, 2009. It was later

confirmed from the Additional Controller of Stamps, Mumbai, that the said stamp papers were issued by General it Stamp Office, Mumbai to Thane treasury only in September 21, 2011 (i.e. approx 2 year after the purported date of agreement).

The specific submissions of the Noticees regarding the financial credentials of Precise and the work experience of its director are not tenable. I perused the income tax returns and auditor's report of precise and find that the submissions made by the Noticees regarding income of precise i.e, ₹ 3, 09,79,844 for F.Y 2010-11 and ₹ 2,94,38,650 for F.Y 2009-10 is not correct. I also find that during Financial Year 2009-10, Precise made a purchases of goods worth ₹ 1,56,29,815 and NIL sales. The purchased goods were valued at ₹ 2,90,04,765 as on March 31, 2010. Precise made no purchases or sales during Financial Year 2011-12 and the goods which were purchased in 2009-10 were valued at ₹ 3,07,34,789. It can be observed that due to the above valuation, the company reported a notional profit of ₹ 1,51,24,974 (₹ 17,50,024 in 2009-10 and ₹ 1,33,74,950 in 2010-11). These profits are not due to operations of Precise but are only notional profits which cannot be actually realized in cash and thus cannot be utilized by the company to meet any payments. In addition to the above, it is also to be noted that in the Income Tax Returns filed by the precise in 2009-10 and 2010-11, company itself reported that ₹ 17,50,024 and ₹ 1,33,74,950- respectively as notional profits. I also note that Precise has never executed a sale of the items shown as current assets. In absence of any sale transaction by Precise, mere revaluation of the items shown as current assets cannot be treated as income.

40. Regarding Fincare, I note that the company has claimed that Fincare had also referred several IPO mandates to it and it had expertise and connections in networking with Merchant Banking Organization, Stock Broking Companies, Portfolio Management Companies, Corporates, High net worth Individuals, and Government bodies and strong liaison capabilities. In this regard, I find that:

- From the ITR for F. Y 2009-2010 and 2010-2011 that the Gross Total Income of Fincare was shown Nil;

- Fincare was shown as a dormant company on MCA website.

- office premises at 'Premises No 1, Rammanohar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084' from where it claimed to be operating since 2009, was a make-shift office and hardly resembled a regular office which had been operating since February 2009. From the KYC documents obtained from the Bank it was observed that Fincare had a different address.

- As in the case of Precise, the 'Leave and License Agreement" for the office premises of Fincare was forged and created *post-facto* by mentioning false date on the said stamp paper.

- Most of the finder fee agreements between OCAL and Fincare, were dated before September 2011. The address of Fincare as mentioned in those agreements

was not the office where Finacre was operating in September 2011 when those agreements were stated to have been executed. Thus, those finder fee agreements were also created post-facto to justify payments to Fincare by OCAL.

43. Regarding KPT, I find that the company had transferred ₹ 7.7 crore to KPT for the purpose of 'brand building' without entering into an MoU in that regard. I also note that the Article of Association (AoA) of KPT was not having any provision of carrying out business for 'brand building'. From the bank statement of KPT, I note that the entire money was transferred by KPT to Shri Ashokkumar Fulabhai Patel, one of the Directors of KPT. From the bank statement of Shri Ashokkumar Fulabhai Patel, it was observed that out of ₹ 7.7 crores received from OCAL, an amount of ₹ 7.2 crores was transferred to M/s Chenaji Narsingji. I also find that the said amount was ultimately used for purchase of gold.

42. As stated in the foregoing paragraphs dealing with the reply of the Noticees, I note that the Noticees have contended that Precise and Fincare were having good financial fundamentals and had performed well in their respective spheres. The Noticees have also contended that Precise and Fincare were independent legal entities and business arrangements between the company and Precise were legitimate and legal. The said contention of the Noticees are too hard to be believed. In fact, as discussed in the preceding paragraphs, there are multiple circumstances and adverse observations such as:

- Precise and Fincare being in the defaulter list/dormant

- NIL income reported with respect Fincare and Precise as per income tax returns/annual returns;

- make shift office and lack of employees in the office of Fincare and Precise as observed by investigation during on-site visit;

- insignificant transactions in the bank statements of Fincare and Precise prior to their dealings with OCAL;

- back-dating of leave and license agreements of Fincare and Precise.

- funds received by Fincare and Precise from OCAL had further gone to common entities towards purchase of diamonds and gold that too from entities who were not found to be in the business of gold and diamond. Further, false invoices were furnished to justify dubious fund transfers to those entities.

The above adverse features abundantly establish that Fincare and Precise were not credible business partners as projected by the Noticees.

43. I note that the company had paid funds to the tune of ₹ 9.04 (₹3 crore to Precise and ₹6.04 crore to Fincare) as finder fee for the business brought to it by them. As mentioned above, Precise and Fincare were not having competence, expertise and even infrastructure to conduct such huge business. I, therefore, find that the finder fee paid by the company to Precise and Fincare was also highly unreasonable. Such unreasonably high finder fee and commission payments to such entities having dubious

financial credentials with inadequate infrastructure and expertise for rendering such services suggests intention of diversion of significant amount of IPO proceeds to these entities.

44. With respect to KPT, I find that payment was made in the guise of 'brand building' without any supporting documents to justify the existence of business relationship in that regard. I note that the Noticees have contended that one of the directors of KPT was having expertise in 'brand building'. However, the Noticees have not produced any documents in support of the said contention. I do not find any merit in the submission of the Noticees that the company could not execute an agreement with KPT due to the interim order passed by SEBI because there was no bar on the company from entering into business agreements. I find that the funds transferred to KPT was ultimately used for purchase of gold.

45. On the basis of the foregoing discussion, I find that those three entities viz. Precise, Fincare and KPT were dubious companies in terms of their experience, functioning of office, bank account statements, financial status, filings with MCA etc. Precise and Fincare had also forged documents in support of their various claims. No man of ordinary prudence would give away crores of rupees to entities with such dubious credentials. I note that in the instant case, the company itself is a category-I merchant banker who is not unaware of the ramifications of badly done IPO on investors. Thus, in the facts and circumstances of the case, I find that Noticees deliberately and willfully channeled the IPO proceeds in various directions in the garb of utilizing the same for the objects of issue, thereby indulged in diversion of IPO proceeds through the conduit of the aforesaid entities and thus

committed a fraud on the investors. Thus, it is established that the Noticees have violated the provisions of regulations 3 (a), (b), (c) & (d) and 4(1) and 4(2)(f) & (k) of PFUTP Regulations read with the provisions of section 12A(a),(b) & (c) of SEBI Act.

IV. Issue No. IV - Whether the Noticees have violated the provisions of clause 43A(1), (3) and 49 (IV) (D) of the Listing Agreement?

46. I note that it was also alleged in the SCN that the Noticee No.1 has violated clause 43A(1) &(3) of the listing agreement. In terms of the said clause, Noticee No.1 was required to furnish to the stock exchange material deviation if any, in the use of the issue proceeds. The same information was required to be furnished to the audit committee before furnishing the same to the exchange. Such disclosure to the audit committee is mandated by clause 49 (IV) (D) of listing agreement. It was alleged that Noticee No.1 has diverted the IPO proceeds and the information provided by the Noticee No.1 under the above clause that the IPO proceeds were utilized entirely as per the object was false.

47. In response to the said allegation, the Noticee No.1 has contended that it had not diverted the IPO proceeds and information submitted to the exchanges regarding the proceeds of the IPO was true and correct. This contention of the Noticee No.1 cannot be accepted. It has been clearly established in the foregoing paragraphs that the Noticee No.1 had indulged in fraudulent act whereby it had diverted the entire issue proceeds amounting to Rs. 35.5 crore to dubious entities having poor credentials/ financials. In the light of this, it can only be concluded that whatever disclosures regarding utilization of issue

proceeds that the Noticee No.1 has made to the Stock Exchange and the Audit Committee as per the Listing Agreement were false and incorrect. Therefore, I find that the Noticee No.1 has violated the provisions of clause 43A(1) &(3), 49 (IV) (D) of Listing agreement.

48. Thus, on the basis of the discussions in the foregoing paragraphs, I hold that the Noticee No. 1-3 have violated the provisions of section 11C (5) of SEBI Act, regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations read with section 12A(a), (b) and (c) of the SEBI Act and the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations. Noticee No.1 has, additionally violated the provisions of clause 43A(1), (3) and 49 (IV) (D) of the Listing Agreement.

49. In the instant case Noticee No. 1 is a listed company and Noticee Nos. 2 & 3 are its MD and executive chairman respectively. A company being a legal entity cannot act by itself, rather it acts through its directors and officers. I note that Hon'ble SAT, in the case of N. Narayanan vs Adjudicating Officer, SEBI (Appeal No. 29 of 2012 decided on October 05, 2012) has observed as under:

"....with the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running approach in the running of the company and take up responsibility not only for the achievements of the company, but, also failings thereto".

50. Further, Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)* held that *"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto .....SEBI has, therefore, a duty to protect investors individual and collective, against opportunistic behaviour of Directors and Insiders of the listed companies so as to safeguard market's integrity."*

V. Do the violations as mentioned above on the part of the Noticees attract penalty under sections 15A(a),15HA, 15HB of SEBI Act on Noticee Nos. 1-3 and section 23A(a) of SCRA on Noticee No. 3?.

51. In this context, it is relevant to quote the judgment of Supreme Court in the matter of *SEBI vs. Shri Ram Mutual Fund* wherein it was inter alia held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*

50. As the violation as mentioned above has been established, I am convinced that it is a fit case for imposing monetary penalty under sections 15A(a),15HA, 15HB and section of SEBI Act and section 23A(a) of SCRA which read as under:

SEBI Act

Penalty for failure to furnish information, return, etc.:

Section 15A If any person, who is required under this Act or any rules or regulations made there under,—

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less

15HA - Penalty for fraudulent and unfair trade practices

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15HB- "Penalty for contravention where no separate penalty has been provided: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

SCRA

Penalty for failure to furnish information, return, etc.

23A. If any person, who is required under this Act or any rules made there under,-

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognized stock exchange , shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure.

VI. If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act and 23J of SCRA?

53. As stated above, it is a fit case for imposing penalty. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J SEBI Act and 23J of SCRA, which read as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer. *While adjudging quantum of penalty under S.15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

SCRA

23J -Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.23-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

54. The Investigation Report has not quantified any gain to the Noticees or loss to investors as a result of the acts and omissions of the Noticees. I note that the company submitted that it had brought back into the company the advances given to Precise, Finecare and KPT aggregating to ₹ 35.25 crores in compliance with directions given to it by SEBI vide order dated August 30, 2013 in a separate proceeding under section 11B of the SEBI Act in the matter of investigation into IPO of the company. It also submitted a copy of the compliance report filed before SEBI in this regard and requested to take a lenient view in the present proceedings. However, the fact that the Noticees had acted in a manner highly detrimental to the interests of the securities market and the investors at large cannot be overlooked.

ORDER

55. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under section 15-I(2) of the SEBI Act and under section 23-I of SCRA, hereby impose the following penalty:

Sr. No	Name of the entity	Relevant provisions	Amount of Penalty (in rupees)
1.	Orbelife Capital Advisors Limited and TKP Naig	Under section 15A(a) of SEBI Act for violation of 11C(5) of SEBI Act	₹ 5,00,000/- (Five Lakh only) - shall be paid jointly and severally
2.	Orbelife Capital Advisors Limited	Under section 15HA of SEBI Act for violation of provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations	₹ 25,00,000 (Twenty Five Lakh only)
		Under section 15HB of SEBI Act for violation of the provisions of regulations 57(1), 60(4)(a) and 60(7)(a) clause 2(VII)(G)and	₹ 10,00,000 (Ten Lakh only)

		(XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations	
		Under section 23A(a) of SCRA for violation of the provisions of clause 43A(1), (3) and 49 (IV) (D) of the Listing Agreement.	₹ 5,00,000/- (Five Lakh only)
3	Pandoo Naig	Under section 15A(a) of SEBI Act for violation of 11C(5) of SEBI Act	₹ 5,00,000/- (Five Lakh only)
		Under section 15HA of SEBI Act for violation of provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations	₹ 1,00,00,000/- (One crore only)
		Under section 15HB of SEBI Act for violation of the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations	₹ 50,00,000 (Fifty Lakh only)
4.	T K P Naig	Under section 15HA of SEBI Act for violation of provisions of section 12A(a), (b) and (c) of the SEBI Act and regulations 3(a),(b),(c),(d), 4(1), 4(2) (f) and (k) of PFUTP Regulations	₹ 1,00,00,000/- (One crore only)
		Under section 15HB of SEBI Act for violation of the provisions of regulations 57(1), 60(4)(a) and 60(7)(a), clause 2(VII)(G)and (XVI) (B) (2) of Part A of Schedule VIII read with regulation 57 (2) (a) of ICDR Regulations	₹ 50,00,000 (Fifty Lakh only)

56. The Noticees shall pay the aforesaid amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Division Chief, Investigation

Department, ID-10, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

11. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

DATE: November 28, 2014	A SUNIL KUMAR
PLACE: Mumbai	ADJUDICATING OFFICER