WTM/MB/IVD/ID6/7231/2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In Re: **Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

In the matter of

IPO of Paramount Printpackaging Limited.

In respect of

S. No.	Entity's Name	PAN
1	Paramount Printpackaging Limited	AADCP8527D
2	Shri Divyesh Ashwin Sukhadia	ANUPS7272F
3	Shri Dharmesh Ashwin Sukhadia	ABFPS0273F
4	Shri Anuj Vipin Sukhadia	AYSPS2795Q

1. Paramount Printpackaging Limited (hereinafter referred to as "PPL / the company") came out with an Initial Public Offer ("IPO") of 1,30,94,175 equity shares to the public in the price band of ₹32/- to ₹35/- per equity share of face value of ₹10/- each. The issue opened for subscription from April 20, 2011 to April 25, 2011 and its shares got listed on May 09, 2011. The issue price was ₹35/- per equity share aggregating to ₹4,582.96 Lakhs. On the listing day, the price of the scrip opened at ₹35.00 at 09:15:00 am and was in the range of ₹35.00 to ₹37.50 till 13:56:26 and thereafter started falling sharply from 13:56:27 pm and reached its intraday low ₹24.60 at 15:29:46 and closed at ₹26.65. In view of above, Securities and Exchange Board of India ("SEBI") initiated investigation into the IPO of equity shares by PPL. The day of listing of the scrip of PPL i.e. May 09, 2011 was taken as the investigation period.

2. The Board of PPL during the Investigation period was as follows:

Name of Directors	**Designation**	**From**	**To**
Divyesh Ashwin Sukhadia	Chairman and Managing director	24 March 2006	Till date
Dharmesh Ashwin Sukhadia	Whole-time director	24 March 2006	Till date
Anuj Vipin Sukhadia	Whole-time director	24 March 2006	24 January 2013
Rohit Parmananddas Doshi	Independent director	01 April 2010	Till date
Vikram Devjibhai Patel	Independent director	01 April 2010	28 January 2013
Hemant Jagadish Engineer	Independent director	01 April 2010	Till date

3. <u>Shareholding pattern of PPL:</u>

3.1. The share holding pattern of the company as on the date of prospectus (May 02, 2011) and quarter ended June 30, 2011 was as under:

Category of shareholders	On May 02, 2011			Quarter ending June 30, 2011		
	No. of shareholders	Total number of shares	Total shareholding as a % of total number of shares	No. of shareholders	Total number of shares	Total shareholding as a % of total number of shares
Promoter and promoter group	9	1,08,00,700	79.38	9	1,08,00,700	40.45
Public shareholding	75	28,05,165	20.62	3,170	1,58,99,340	59.55
Total	**84**	**1,36,05,865**	**100.00**	**3,179**	**2,67,00,040**	**100.00**

3.2. The break-up of Promoter shareholdings in the table above was as under:

Name of the shareholder	May 02, 2011		June 30, 2011	
	No. of shares	% to total number of shares	No. of shares	% to total number of shares
Ketan V. Sukhadia	21,61,750	15.89	21,61,750	8.10
Anuj Sukhadia	21,61,750	15.89	21,61,750	8.10
Divyesh Sukhadia	20,25,100	14.88	20,25,100	7.58
Vipul Sukhadia	20,06,200	14.75	20,06,200	7.51
Dharmesh Sukhadia	20,06,100	14.74	20,06,100	7.51
Ashwin Sukhadia	3,66,000	2.69	3,66,000	1.37
Ketki Sukhadia	33,000	0.24	33,000	0.12
Neeta D. Sukhadia	27,000	0.20	27,000	0.10
Jagruti Sukhadia	13,800	0.10	13,800	0.05
Total	**1,08,00,700**	**79.38**	**1,08,00,700**	**40.45**

4. It was observed that the company registered a net profit of ₹4.17 Crores for the year ended March 2012 and Net Loss of ₹26.39 Crores for the year ended March 2013.

₹ in Crores

Description	Year		Quarter Ended		
	2011-12	2012-13	June, 2011	Sep, 2011	Dec, 2011
Total income	102.67	24.88	25.41	24.85	20.68
Total Expenditure	88.30	39.65	22.69	23.47	19.26
Net Profit / (Loss)	4.17	-26.39	1.18	1.35	0.90

5. The IPO of PPL was graded by ICRA and assigned IPO Grade 2 indicating *'Below Average Fundamentals'*. The equity shares were proposed to be listed on Bombay Stock Exchange Ltd. ("BSE") and National Stock Exchange of India Ltd. ("NSE"). The Book Running Lead Manager for the issue was Onelife Capital Advisors Limited (hereafter also referred as BRLM / Onelife /Merchant Banker).

6. The objects of the issue and cost of project as estimated by the management as disclosed in the Prospectus were as under:

Sl. No.	Objects of the issue	Funds required (₹ in lakhs)
A.	Setting up new facility for manufacturing high end duplex board cartons, Shippers and printed corrugated box at Gujarat	3,194.27
B.	Augmenting Long Term Working Capital Requirement	495.82
C.	General Corporate Purpose	338.87
D.	Issue expenses	554.00
	Total	**4,582.96**

7. The means of finance as estimated by the management is given below:

Means of finance	Amount (₹ in lakhs)
IPO proceeds	4,582.96
Internal accruals	Nil
Total	**4,582.96**

8. The details of escrow bank accounts and public issue bank accounts opened for the purpose of IPO are as under:

Name of the Account	Name of the Bank	Account Numbers
Escrow Collection Accounts		
Escrow Account - PPL IPO - QIB - R	HDFC Bank	00600350094905
Escrow Account - PPL IPO - QIB – NR	HDFC Bank	00600350094912
Escrow Account - PPL IPO - Public Issue - R	HDFC Bank	00600350094922
Escrow Account - PPL IPO - Public Issue - NR	HDFC Bank	00600350094939
ESCROW ACCOUNT-PPL PUBLIC ISSUE	IndusInd Bank	0006-560313-050
ESCROW ACCOUNT-PPL IPO-QIB-NR	IndusInd Bank	0006-560313-051
ESCROW ACCOUNT-PPL IPO-PUBLIC	IndusInd Bank	0006-560313-052
ESCROW ACCOUNT-PPL IPO-PUBLIC ISSUE	IndusInd Bank	0006-560313-053
ESCROW ACCOUNT-PUBLIC ISSUE-PPL IPO	IndusInd Bank	0006-560313-054
Public Issue Accounts		
PARAMOUNT PRINTPACKAGING LTD- PUBLIC ISSUE A/C	HDFC Bank	00600350094897

9. The company received the Issue proceeds of ₹45,82,96,125/- in its bank account from the public issue account on two different dates as under:

Date	Amount Received
7-May-11	45,80,45,000
18-Jul-11	2,51,125
Total	**45,82,96,125**

10. Upon being asked, PPL vide its letter dated June 05, 2012, provided the details of Utilization of IPO proceeds as under:

Details submitted vide Letter dated June 05, 2012			
Party Name	**Nature of Job**	**Total Amount Paid (in ₹)**	**Status as submitted by the company.**
Purchase of Land			
Highway Services Pvt. Ltd.	Purchase of Land	3,80,70,250	Purchase completed
Site Development, Civil Work and Building Construction			
Forever Sales Corp.	Excavation work	2,30,92,748	Work almost completed
Metro Industries	Construction of compound wall (EPC)	2,91,99,956	work in progress
Apex Ceramics	Construction of Plinth & related matters	5,56,82,527	work in progress
Niravani Enterprises	Interior Designing	98,36,670	work in progress
Mega Marketing	Construction	2,41,31,250	work in progress
Electrical Installation			
Forever Sales Corp (Paid to Madhuvan Enterprises on the request of the party)	Cables	1,31,34,189	Orders placed
Plant & Machinery and other ancillaries			
Swastik Trading Co.	Plant & Machinery and other ancillaries	7,14,46,560	Orders placed
Precise Engineering and Consultancy Pvt. Ltd.	Plant & Machinery and other ancillaries	8,72,18,880	Work in progress
Working Capital		3,89,79,495	
Issue Expenses			
Onelife Capital Advisors Ltd.	IPO Expenses	6,75,03,660	Completed
Total		**45,82,96,185**	

11. However, PPL vide its subsequent letter dated February 06, 2013 provided a different version of the utilization of IPO proceeds as under:

Details submitted vide Letter dated February 06, 2013			
Party Name	**Nature of Job**	**Total Amount Paid (₹ In lakhs)**	**Status**
A. Setting up new manufacturing facility			
A1.Purchase of Land			
M/s. Highway Services Pvt. Ltd.	Land	3,80.00	
A2.Site Development, Civil Work and Building Construction			
Precise Consulting & Engineering Pvt. Ltd.		3,47.50	
Forever Sales Corp.		2,30.92	
Metro Industries		2,92.00	
Apex Ceramics		5,56.83	
Niravani Enterprises		98.37	
Mega Marketing		2,41.31	
Madhuvan Enterprises		1,31.34	
A3.Electrical Installation			
Reality Sales India Pvt. Ltd.		61.00	
A4.Plant & Machinery and other ancillaries			
Heidelberg India Pvt. Ltd.		1,08.65	
Swastik Trading Co.		7,14.47	
Precise Engineering and Consultancy Pvt. Ltd.		5,24.69	
B. Working Capital		2,16.44	
C. Issue Expenses			
Onelife Capital Advisors Ltd.		6,75.03	
BSE		48.04	
NSE		2.20	
Total		**4,628.79***	

** The company had mentioned the total of above table as 4,582.96 lacs however as per the correct calculation, it comes out to be 4628.79 lacs (i.e. a difference of around 45.83 lacs).*

OBSERVATIONS W.R.T. UTILIZATION OF IPO PROCEEDS:

12. The details of utilization of IPO proceeds as submitted by the company vide its letter dated February 06, 2013 were analyzed. With respect to utilization of IPO proceeds towards objects of issue, each head is discussed in following paragraphs.

A. <u>Setting up a new facility at Gujarat to manufacture high end duplex board cartons, shippers and printed corrugated box:</u>

12.1. The company stated in its prospectus that it proposes to enter into the manufacture of higher end products in duplex board cartons, shippers and printed corrugated box by setting up a new manufacturing facility at Gujarat. The details of the proposed expansion as disclosed in prospectus are as follows:

Particulars	Amount (Rs. in lacs)
Land	400.00
Site development, Civil Work and Building Construction	315.00
Electrical Installation	277.20
Plant & Machinery and other Ancillaries	2,202.07
Total	3,194.27

A1. Purchase of Land:

12.2. The Company in its prospectus had stated as under:

"We have executed an MOU dated September 21, 2010 with M/s. Highway Services Private Limited for the land located at Gujarat and aggregating approximately 4 acres of land on ownership, subject to the execution of a definitive agreement and there after initiate action for obtaining necessary licenses/approvals from the competent authorities for setting up new plant. The MOU is valid till 225 days."

12.3. The break-up of the expenses incurred by the company towards the purchase of land and documents submitted by company were examined. It is noted that the company had actually incurred expenditure of ₹3,55,68,525 as against ₹380 lacs submitted by it vide letter dated February 6, 2013.

A2. Site development, Civil Work and Building Construction

12.4. The Company in its prospectus had stated as under:

"We intend to build a factory shed at the estimated cost of ₹315.0 lacs. We have obtained quotations dated September 20, 2010 from Precise Consulting & Engineering Private Limited, A 602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the factory shed."

12.5. Though the company had named only Precise Consulting and Engineering Private Limited as vendor for construction of building, the company submitted that it had made payments to following vendors out of IPO proceeds for construction of the building:

S. No.	Vendor Name	Total Amount Paid (₹ In lakhs)
1	Forever Sales Corp.	230.92
2	Metro Industries	292.00
3	Apex Ceramics	556.83
4	Mega Marketing	241.31
5	Madhuvan Enterprises	131.34
6	Niravani Enterprises	98.37
7	Precise Consulting & Engineering Pvt. Ltd.	347.50

12.6.Payments made to entities at S. No. 1 to 5 in the Table above: The company had transferred ₹14,52,40,647 to five entities (S. No. 1 to 5 above) on May 7, 2011 i.e. on the very day of receipt of funds in the bank account of the company from the public issue account.. Bank statements and the KYC forms of the said five entities were obtained from Axis Bank, where they held the accounts. It was observed that all these entities were sole proprietorship firms of one Mr. Mahendra S Patel and were located at same address. The names of these vendors were also not mentioned in the prospectus.

12.7.Payments made to Nirvani Enterprises (entity No. 6 in the above table): The company had transferred ₹98,36,670 to Nirvani Enterprises on May 7, 2011 i.e. the very same day of receipt of funds in the bank account of the company from the public issue account. Bank statement and the KYC form of the entity were obtained from Bank of Baroda, where the entity held the account. It was observed that entity was sole proprietorship firms of one Mr. Nitesh R Doshi. The name of this vendor was also not mentioned in the prospectus.

12.8.Payments made to Precise Consulting & Engineering Pvt. Ltd (entity no. 7 in the table above): The company had made the payments aggregating to ₹9,47,18,880 on three different dates as under:

Date	**Amount**
07.05.2011	8,03,18,880
09.05.2011	1,41,49,000
29.07.2011	2,51,000
Total	**9,47,18,880**

12.9. It was also observed that the company had received back ₹75,00,000 from the entity in its SBI account No.031503488224 on June 04, 2011. The company vide its letter dated January 10, 2014 confirmed the receipt and stated that the same

is refund given by the entity on account of excess payment received by the vendor. In view of the above the net payment made to Precise is ₹8,72,18,880 which includes the payment of ₹524.69 lacs made under a separate head *"Plant & Machinery"* and other ancillaries discussed in subsequent paragraphs.

12.10. Further, the company vide its letter dated June 16, 2014 signed by Divyesh Sukhadia, Director of the company submitted that the company has made payments to certain vendors on the instructions of Mr. Pandoo Prabhakar Naig, Managing Director of One Life, the merchant banker of the company. The company has stated that though the payments were made in the second half of 2011, till date no work has been started. The list of vendors included Forever Sales Corp., Metro Industries, Apex Ceramics, Mega Marketing, Nirvani Enterprises and Precise Consulting & Engineering Pvt. Ltd.

12.11. In view of above it was observed that the company had not received any services from the aforesaid vendors for whom the payments were made towards Site development, Civil Work and Building Construction.

A3. Electrical Installation:

12.12. The company in its prospectus had stated as under:

*"We have obtained quotations dated 20th September, 2010 from Precise Engineering and Consultancy Private Limited**, A 602, Shakamba Tower, Sunset Room House, Silver Beach Eparta, Shrdha Eparta Memnagar, Ahmedabad 380052, for the electrical installations."*

12.13. As stated in the prospectus the quotation was for ₹264 lakhs. Company vide its letter dated February 06, 2013 stated that it had paid ₹61 lakhs for Electric Installation to an entity named Reality Sales India Private Limited. However, the

company did not provide any proof of work carried out or proof of payment. Bank statements of the company were analyzed and no such payment was found.

12.14.In view of above it is observed that the company has not spent any amount out of IPO proceeds for electrical installation.

A4. Plant & Machinery and other ancillaries:

12.15. The company in its prospectus has stated as under:

We are contemplating to purchase the following machineries for the proposed expansion project. We have relied upon the following quotations for the machineries and the details of the same are summarized as follows:-

Sr. No.	Particulars	Name of the Supplier	Quotation / Proforma Invoice No.	Quotation Date	Quotation Validity (Number of days)	Currency	Amount	Amount (Rs. In lacs)
1.	CD 102-6+L Heidelberg Speedmaster	Heidelberg India Private Limited	MUM/3434.R	September 4, 2010	90	EURO	1,46,40,000	882.10
2.	High Speed Cutter POLAR 115X	Heidelberg India Private Limited	MUM/3433.R	September 4, 2010	90	EURO	47,000	28.30
3.	Suprasetter A 105, G&J Raptor 85, Debris Removal and supported Software Products	Heidelberg India Private Limited	MUM/3440.A-MUM3440 BR	September 4, 2010	90	EURO	94,000	56.60
4.	EXPERTFOLD 110 A-2 Universal Folder –Gluer	Bobst SA, Switzerland	BIN-10/MAC/BSA/Q/AAU.2	September 1, 2010	45	CHL	3,65,000	167.13
5.	NOVACUT 106 Autopalten press	Bobst SA, Switzerland	BIN-10/BSA/MAC/PI/ADA.1	September 1, 2010	30	CHL	310,000	140.00
6.	Double Wall Corrugated Cardboard Making Machine	Tien Chin Yu Machinery Manufacturing Company Limited	KID-00010	September 1, 2010	30	USD	16,86,900	761.80
	Total							**2,035.93**
	Add: Contingencies @5 %							101.80
	Total							**2,137.73**

(As on 19th September, 2010, Euro 1= Rs.60.25, USD 1=Rs.45.16 and CHL 1=Rs.45.79)

12.16. Company vide its letter dated February 06, 2013 stated that it had made payments to following vendors

Sl. No.	Vendor Name	Amount (Rs. In Lacs)
1	Heidelberg India Pvt. Ltd.	108.65
2	Swastik Trading Co.	714.47
3	Precise Engineering and Consultancy Pvt. Ltd.	524.69
	Total	**1347.81**

12.17.<u>Payment made to Heidelberg India Pvt. Ltd:</u>

a) The company has made two payments aggregating to ₹1,08,65,325 on February 15, 2011 (₹84,00,925) and June 21, 2011 (₹24,64,400). Vide letter dated December 19, 2013, the company was asked to confirm whether it had received the delivery of the machines and to provide copy of delivery challans. The company vide its letter dated January 10, 2014 submitted that it had received back the advances paid to Heidelberg India Pvt. Ltd, amounting to ₹101.23 lakhs on September 20, 2012, which were credited to current account number 0762020000686 maintained with Bank of Baroda. However, the company did not provide any reason for the same. In order to verify its claim, bank statement was obtained from Bank of Baroda and the credit of ₹1,01,23,389 was observed on September 20, 2012.

b) In view of above, it was observed that the company has not utilized any amount out of IPO proceeds for purchase of Machinery from Heidelberg India Pvt. Ltd.

12.18.<u>Payment made to Swastik Trading Co:</u>

a) The company had transferred ₹7,14,46,560 to Swastik Trading Company on May 7, 2011 i.e. the very day of receipt of funds in the bank account of the

company from the public issue account. Bank statements and the KYC form of Swastik Trading were obtained from Axis Bank, where the account was maintained by the entity. It was observed the entity was sole proprietorship firm of one Mr. Mahendra S Patel. The name of the vendor was not mentioned in the prospectus.

b) Vide letter dated December 19, 2013, the company was asked to confirm whether it had received the delivery of the machines *inter alia* from Swastik Trading Co and to provide copy of challan for delivery of machines received. The company vide its letter dated January 07, 2014 submitted as under:

> *"However, the above advance payment made to Precise Consulting and Engineering Private Limited and Swastik Trading Co. have not yet been realized. Neither the said entities have delivered the machines for which advance payments were made, nor have they returned back the advance paid by our Company. As a result of non-delivery of machines the company had not been able to successfully and on time execute the contracts as envisaged in the IPO."*

c) In view of above it was observed that the company had not received the machinery from the vendor Swastik Trading Co to whom the payments were made out of IPO proceeds.

12.19.<u>Precise Engineering and Consultancy Pvt. Ltd:</u>

a) PPL made the payments aggregating to ₹9,47,18,880 on three different dates as under:

Date	Amount
07.05.2011	8,03,18,880
09.05.2011	1,41,49,000
29.07.2011	2,51,000
Total	**9,47,18,880**

b) It was also observed that the company had received back ₹75,00,000 from Precise in its SBI account No.031503488224 on June 04, 2011. The company in its letter dated January 13, 2014 confirmed the receipt and stated that the same is refund given by the entity on account of excess payment received by the vendor. In view of above, the net payments made to Precise is ₹8,72,18,880 which includes the payment made under the separate head Site development, Civil Work and Building Construction discussed earlier.

c) Vide letter dated December 19, 2013, the company was asked to confirm whether it had received the delivery of the machines inter alia from Precise Engineering and Consultancy Pvt. Ltd and to provide copy of challan for delivery of machines received. The company vide its letter dated January 07, 2014 has submitted as under:

"However, the above advance payment made to Precise Consulting and Engineering Private Limited and Swastik Trading Co. have not yet been realized. Neither the said entities have delivered the machines for which advance payments were made, nor have they returned back the advance paid by our Company. As a result of non-delivery of machines the company had not been able to successfully and on time execute the contracts as envisaged in the IPO."

d) Further, the company vide its letter dated June 16, 2014 signed by Divyesh Sukhadia, Director of the company had submitted that the company had made payments to certain vendors including Precise Consulting and Engineering

Private Limited and Swastik Trading Co. on the instructions of Mr. Pandoo Prabhakar Naig, Managing Director of One Life Capital Advisors Limited, the merchant banker of the company. The company stated that though the payments were made in the second half of 2011, till date no work has been started.

12.20. As the company has admitted in its communications that it had neither received any machinery for which payments were made nor received back the advance made to the vendors, it was observed that the company did not utilize the IPO proceeds for purchase of machinery.

B. <u>WORKING CAPITAL:</u>

12.21. The company vide letter dated February 06, 2013 had stated that it had spent ₹216.44 lakhs towards Working Capital. However, when the company was asked to provide details of vendors and nature of work carried out, it submitted vide letter dated January 10, 2014 as under:

"Annexure 6 gives details of ₹53.75 Lakhs which was paid towards advance against machinery. Please note that inadvertently, instead of ₹53.75 Lakhs, ₹216.44 Lakhs was mentioned in our earlier letter dated February 06, 2013. Annexure-6A gives the list of details of utilization of the remaining ₹185.17 lacs which was used as a general corporate purpose for discharging statutory liabilities of our company and for payment of creditors."

12.22. Though the company had stated that it had paid ₹53.75 lakhs to Bobst India Private Limited, it was observed from the details submitted by the company that 13 payments aggregating to ₹45.75 Lakhs was paid to Bobst India Private Limited on different dates between May 11, 2011 and July 26, 2011 towards advance for

the purchase of machinery. Purchase of machinery is a capital expenditure and cannot be considered as working capital expense. The company has also stated in its communications that it has put the project on hold. Further, it has also written to various vendors to whom the advances were given and requested them to refund the money and the advances given to them after deducting the expenses incurred till then.

12.23. In view of the same, it was observed that the company has not incurred any expenditure towards working capital expenditure out of IPO, though it was stated in the prospectus that ₹495.82 lakhs would be spent to meet the working capital requirement.

C. <u>General Corporate Purposes:</u>

12.24. The Company in its prospectus under the head General Corporate Purposes had stated as under:

We are continuously looking for opportunities to grow. While, we have not identified any specific projects at present, the management is continuously identifying and evaluating opportunities. 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 ₹338.87 lacs for general corporate purposes including but not limited to strategic initiatives, brand building exercise, marketing setup, strengthening of the market capabilities, partnerships, joint venture, future projects 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. Our Company's management in accordance with policies set out by

the Board will have flexibility in applying the balance proceeds of this issue, for general corporate purposes. 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.

12.25. The company in its communication dated February 06, 2013 had not stated any utilization of IPO proceeds towards General Corporate Purposes. However, when the company was asked to provide details of vendors and nature of work carried out, it submitted vide letter dated January 10, 2014 as under:

"Annexure 6 gives details of ₹53.75 Lakhs which was paid towards advance against machinery. Please note that inadvertently, instead of ₹53.75 Lakhs, ₹216.44 Lakhs was mentioned in our earlier letter dated February 06, 2013. Annexure-6A gives the list of details of utilization of the remaining ₹185.17 lacs which was used as a general corporate purpose for discharging statutory liabilities of our company and for payment of creditors."

12.26. On perusal of the details provided by the company, it was observed that the company had utilized ₹1,85,36,066 towards discharging of statutory liabilities *viz.,* TDS, Fringe Benefits Tax , Income Tax, Provident fund, ESIC and for payment to its creditors. No evidence was provided by the company to support that these payments were towards strategic initiatives, brand building exercise, marketing setup, strengthening of the market capabilities, partnerships, joint venture, future projects and meeting exigencies which the Company in the ordinary course may not foresee etc. and hence were not falling within the disclosure made by the company in its prospectus.

12.27. In view of above, it was observed that the company has not incurred any expenditure out of IPO proceeds towards General Corporate purposes.

D. <u>Issue expenses:</u>

12.28. The estimated issue related expenses stated by the company in its prospectus are as follows:

(Rs. in lacs)

Activity	Amount	Percentage of Issue Expenses	Percentage of Issue Size
Lead Management Fees, Underwriting and Selling Commission	438.50	79.15	9.57
Advertising and marketing expenses	40.00	7.22	0.87
IPO Grading Expenses	1.50	0.27	0.03
Printing and stationery expenses	40.00	7.22	0.87
Others (Registrar fees, Legal fees, Listing fees, Book Building software, Stamp Duty, etc.)	34.00	6.14	0.74
Total Estimated Issue Expenses	**554.00**	**100.00**	**12.09**

12.29. The utilization of IPO proceeds towards issue expenses as provided by the company vide its communication dated February 06, 2013 is as under:

Particulars	**Amount (₹ in lakhs)**	**Remarks**
Onelife Capital Advisors Ltd.	675.03	Merchant Banker's fees
BSE	48.04	1% security deposit
NSE	2.20	Custody fees.
Total	**725.27**	

12.30. From the details provided by the company and the bank statement of the company, it was observed that the company had transferred ₹6,75,03,600 to Onelife - merchant banker on May 7, 2011. The payment was made against various invoices raised by the merchant banker related to IPO of the company. However, it was noted that the company had earmarked ₹438.50 lakhs as *"Lead*

Management, Underwriting and selling commission" fee but actually paid ₹675.03 lakhs to the merchant banker.

12.31. The company had stated that it had paid ₹48.04 Lakhs to BSE. However, it was observed from the details provided by the company that only ₹45,82,961 was paid to BSE. The amount was paid by the company to Bombay Stock Exchange on April 19, 2011 i.e. even before the date of opening of the bids for subscription as security deposit in accordance with clause 42 of the listing agreement and the same cannot be considered as issue expenses as the same is refundable and such deposit is a condition precedent for issuance of new securities.

12.32. The company has stated that it had paid ₹2,20,877 to National Stock Exchange as custody fees on September 09, 2010. However, the company did not provide any details of the same.

12.33. Further, the company vide its letter dated June 16, 2014 signed by Divyesh Sukhadia, Director of the company submitted that the company had made payments to certain vendors including Onelife on the instructions of Mr. Pandoo Prabhakar Naig, Managing Director of Onelife. He has stated that though the payments were made to these vendors in the second half of 2011, till date no work has been started. In the same letter, PPL/ its director made an allegation that Onelife and Mr. Naig duped PPL to the tune of almost ₹37 crores (including the payment made to One Life). In view of the above, it was observed that the payment of Rs. 675.03 lakhs made to Onelife was not towards issue expenses.

Snapshot of the fund utilization by PPL:

12.34. From the analysis made in the preceding paragraphs, it was observed that the company has utilized only ₹357.90 lakhs towards objects stated in the prospectus

and the balance ₹4225.07 lakhs was not utilized for the objects stated in the prospectus.

Sl. No.	Objects of the Issue	Amount (Rs. In Lakhs)			
		As disclosed in the prospectus	Utilisation as submitted by the company	Actual Utilisation ascertained pursuant to investigation	IPO Proceeds not utilised
1	Setting up new facility for manufacturing high end duplex board cartons, Shippers and printed corrugated box at Gujarat	3,194.27	3,687.08	355.69	2,838.58
2	Augmenting Long Term Working Capital Requirement	495.82	216.44	-	495.82
3	General Corporate Purposes	338.87	-	-	338.87
4	Issue Expenses	554.00	725.27	2.21	551.79
	Total	**4,582.96**	**4,628.79**	**357.90**	**4,225.07**

**Payment of Rs. 675.03 lakhs to Onelife was not considered as Issue expenses in view of the allegation of PPL against Onelife of duping it of Rs. 37 crores.*

13. OBSERVATION W.R.T DIVERSION OF IPO PROCEEDS:

13.1. Initially, the company in its communication dated June 05, 2012 had provided the status of various Jobs executed as "*Work almost completed*", "*Work in Progress*". Further, in its communication dated February 06, 2013, PPL mentioned that it had revised the project size from ₹45.83 crores to ₹104 crores in order to scale up the project for the betterment of the investors and the profitability and it also mentioned that PPL had requested all the vendors of the project to go slow on the project till fresh total enterprise value study is conducted.

13.2. However, the company, in its reply dated January 07, 2014 inter-alia, stated that the company has put the project on hold. It has written to various vendors to refund the advances given to them after deducting the expenses incurred. However, they have not received back the money. Further, it was informed that the company is in process of initiating legal proceeding against these vendors. Further, company

inter alia alleged that Mr. Pandoo Prabhakar Naig, Managing Director of Onelife has close association with some of these vendors. After the closure of the public issue as desired by Mr. Pandoo and upon his instructions, payments were made to some of these vendors. Mr. Pandoo agreed to help the company for completion of the project. However, it was not getting any cooperation from him/Onelife.

13.3. Further, the company, vide letter dated June 16, 2014, accused Mr. Pandoo of duping the company to the tune of almost ₹37 crores in respect of IPO proceeds. The company has sent the copy of the letter to Chief Minister of Maharashtra, Commissioner of Police - Mumbai, Economic Offences Wing and Chairman-CBDT etc. The company inter-alia stated that it has made payments to certain vendors on the instructions of Mr. Pandoo. Though the payments were made to these vendors in the second half of 2011, till date no work has been started.

13.4. The company, vide emails dated May 22, 2017 and May 30, 2017, was asked to provide the evidence in support of its claim that payments to various vendors were made as per the instructions of Mr. Pandoo. However, the company did not provide any evidence.

13.5. In view of above, it was observed that though the company has claimed to have utilized ₹4,628.79 lakhs (as per letter dated February 6, 2013), the company has actually utilized only ₹357.90 lakhs in conformity with the objects of the prospectus (i.e. purchase of land and issue expenses). The company did not receive anything in return for the amounts paid to various vendors for works related to setting up the factory. Further, the company has provided different versions of its reply in respect of the utilization of IPO proceeds. Thus, it was observed that the above facts indicated the company's deliberate attempt to hide the diversion of IPO proceeds and passing the buck on Merchant Banker.

13.6. It is observed from the submissions made by the company that it has put the project on hold. It is noted that the IPO came in April 2011, allotment of shares took place on May 5, 2011 and the company was listed on NSE and BSE on May 9, 2011. However, even after passage of so many years, the company could not complete the project as stated in the Objects of Issue but it has been put on hold. It has not taken any action till date against the vendors who failed to supply machinery. This shows lackadaisical approach of the company and its directors. From the information available on the website of BSE/NSE, it is observed that the company has not made any public disclosure that the project is kept on hold. On perusal of the minutes of the sixth Annual General Meeting of the company held on September 21, 2012, it is observed that the company had not disclosed the progress of its project to the shareholders. Further the progress of project is also not discussed in the Annual Reports of the company for 2011-12 to 2015-16.

13.7. As observed in the preceding paragraphs, the vendors viz., Mega Marketing, Swastik Trading Co., Madhuvan Enterprise, Forever Sales Corporation, Apex Ceramics and Metro Industries to whom payments aggregating to ₹21,66,87,230 were made, were proprietary concerns of one Mr. Mahendrabhai S. Patel. Further, none of these vendors were mentioned in the prospectus. The nature of business and the date of registration of these entities as observed from the KYCs obtained from the banks is as under:

Name of the Entity	**Nature of Business**	**Date of Registration as commercial establishment**	**Amount transferred by company**
Mega Marketing	Trading of Building Material	30/04/2010	2,41,31,250
Madhuvan Enterprise	Trading of Building Material	12/03/2010	1,31,34,189

Forever Sales Corporation	Trading of Hardware Items	31/12/2010	2,30,92,748
Apex Ceramics	Trading of Ceramic Tiles and Sanitary Item	12/03/2010	5,56,82,527
Metro Industries	Trading of Industrial Goods Suppliers	12/03/2010	2,91,99,956
Swastik Trading Co.	Trading of Building Material	21/06/2010	7,14,46,560

13.8. From the table above, it was observed that these vendors were registered for less than one year or about a year as on date of transfer of funds to these entities' bank accounts (i.e. May 07, 2011). Further, none of these entities were into business of construction or supply of machinery for which the money was paid by the company. Thus, the company has failed to carry out required due diligence to check whether vendors have adequate experience, expertise and reputation in the relevant field of work.

13.9. Further, one of the recipients of IPO proceeds Mr. .Nitesh Doshi (proprietor – Nirvani Enterprises), to whom ₹98,36,670 was paid by the company on May 07, 2011, informed vide his letter dated July 15, 2013 that the promoters of PPL had approached him through Mr. Pandoo Naig (MD of Onelife) to accommodate them and accordingly he had raised bills on them against an arrangement and cash was returned to promoters of the company after taking a facilitation fee.

13.10. As explained in the preceding paragraphs the company did not receive any services or machinery for the amounts transferred to above entities.

13.11. The total amount diverted to aforesaid nine entities was ₹38,87,46,380 i.e. 84.82% of the issue size.

Name of the vendor	Date of transfer	Rs. in Lakhs
Apex Ceramics	7-May-11	5,56,82,527
Forever Sales Corporation	7-May-11	2,30,92,748
Madhuvan Enterprises	7-May-11	1,31,34,189
Mega Marketing	7-May-11	2,41,31,250
Metro Industries	7-May-11	2,91,99,956
Nirvani Enterprise	7-May-11	98,36,670
Onelife Capital Advisors Lir	7-May-11	6,75,03,600
Precise Consulting Enginerring Pvt Ltd	7-May-11	8,03,18,880
	9-May-11	1,41,49,000
	29-Jul-11	2,51,000
Swastik Trading Co.	7-May-11	7,14,46,560
Total		**38,87,46,380**

ISSUANCE OF SHOW CAUSE NOTICE

14. In view of above, a show cause notice dated March 26, 2018 was issued to PPL, Shri Divyesh Ashwin Sukhadia, Shri Dharmesh Ashwin Sukhadia and Shri Anuj Vipin Sukhadia (hereinafter collectively referred to as "the Noticees" and individually by their respective names).

14.1. Based on the observations noted above, it was alleged in the SCN that PPL did not utilize ₹4,225.07 lakhs towards the objects stated in the prospectus. Further, out of ₹4,225.07 lakhs, ₹ 3,887.46 lakhs were diverted to different entities in the guise of making payments towards the objects stated in the prospectus either on the day of receipt of funds or within a few days thereof. It was also alleged that PPL had a pre-determined plan to transfer the IPO proceeds to different vendors including the vendors whose names were not disclosed in the prospectus, on receipt of funds from public issue accounts. Thus, PPL allegedly devised fraudulent scheme or device to mis-utilize/ divert the IPO proceeds.

15. It was further alleged that PPL provided wrong disclosures in Prospectus/RHP as it never intended to utilize the IPO proceeds for the Objects stated in the prospectus and diverted the IPO proceeds to vendors including those whose names were not mentioned in the prospectus. PPL allegedly also failed to disclose material information which is true and adequate so as to enable the applicants of IPO to take an informed investment decision. These false, misleading and inadequate disclosures in the RHP / Prospectus allegedly misled and defrauded the investors in securities market in connection with the issue of shares of PPL. By the said conduct on the part of PPL, it allegedly caused publication of misleading information in the RHP/Prospectus thus influencing investors to purchase the shares of the company.

16. It was further mentioned in the SCN that a company cannot act by itself, but only through its directors who are expected to exercise their powers on behalf of the company with utmost care, skill and diligence. Divyesh Ashwin Sukhadia - Managing Director of the company, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia (both being whole time directors of PPL), signed the declaration in the prospectus certifying that all the statements in the prospectus are true and correct. Further, they were in charge of the day to day affairs of PPL at the relevant time. Therefore, Divyesh Ashwin Sukhadia, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia were allegedly responsible for the aforesaid acts and omissions of PPL and for giving wrong certificate in the RHP / Prospectus.

17. Based on the above observations / allegations, it was alleged in the SCN that the Noticees had violated the provisions of regulations 57 (1) and 57 (2) (a) r/w Clause 2 (XVI) (B) (2) of part A of schedule VIII and 60 (7) (a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 ("ICDR Regulations"), section 12 A (a),(b),(c) of the Securities and Exchange board of India Act,1992 ("SEBI

Act") and regulations 3 (b),(c),(d), 4 (1), 4(2) (e), (f), (k), (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").

18. Vide the SCN, the Noticees were called upon to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of SEBI Act should not be issued against them for the violations alleged above.

SERVICE OF SCN, INSPECTION OF DOCUMENTS AND INITIAL COMMUNICATIONS FROM THE NOTICEES

19. The SCN was served on all the Noticees except PPL. With regard to PPL, it was informed by other Noticees that PPL had gone into liquidation and a winding up order has been passed in that regard. It was also informed that an official liquidator has been appointed in the matter. The Noticees other than PPL sought inspection of documents including all communications exchanged between SEBI with banks / financial institutions, complete investigation report and all the communication exchanged by SEBI with persons referred in the SCN. Acceding to the request of the said Noticees, an opportunity of inspection of all the documents relied upon for the purpose of issuance of SCN was provided to them, which was availed by their authorized representatives. Thereafter, the Noticees, not being satisfied with the documents provided to them during inspection, vide letter dated August 10, 2018, again requested for inspection of documents.

PERSONAL HEARING

20. An opportunity of personal hearing was provided to the Noticees on March 07, 2019. The hearing notice in that regard was served on all the Noticees except PPL. On the said date of hearing, the authorized representatives on behalf of the

three directors (i.e. Noticees except PPL) appeared. With regard to PPL, It was submitted by its director, Mr. Divyesh Sukhadia that the company has gone into liquidation and an Official Liquidator has been appointed for that purpose. Thus, the directors of the company cannot represent the company. On behalf of the other Noticees, the following was, *inter alia*, submitted during the hearing:

i) The business by Sukhadia family was started in 1941 in the form of a partnership firm. In 2006, a private limited company was formed
ii) In 2010, the promoters of PPL met Mr. Pandoo Naig who advised them to go public and assured that the company could raise Rs. 100 crore from public.
iii) As a part of the deal, Mr. Naig was supposed to help the company in setting up its business with the help of other companies / vendors.
iv) Admittedly, around 84% of the IPO proceeds were given to the vendors introduced to the company by Mr. Naig.
v) Mr. Naig has perpetrated a fraud on the company and its promoters / directors.
vi) The submission of the promoters that everything was done as per the instructions of Mr. Naig are corroborated by the letter from Nitesh Doshi which also mentions Mr. Naig's name.
vii) In 2013, the company's accounts were treated as NPA. Company did not have sufficient funds. It did not have funds for filing a civil suit. The company did not have any funds to enforce the specific performance of contracts against the vendors.
viii) Thereafter, a complaint was filed by the promoters of the company to EOW but the same was not entertained by EOW and their complaint was redirected to SEBI.

ix) As on date, it is an admitted fact that the moneys have gone to the vendors. When the contracts were signed, 100% of the money had gone to them in advance.

x) The SCN does not state what direction will be issued by SEBI in these proceedings.

xi) The promoters/directors pray that SEBI should exercise its powers under section 11B of the SEBI Act to disgorge the funds given by PPL to the vendors who have not delivered the services as were promised by them. In the interest of investors, SEBI should direct the money to be brought back to the company.

21. During the hearing, the above named Noticees were asked to submit their response as regards the due diligence carried out by them before transferring funds to the vendors as mentioned in the SCN. They were given 10 days' time to file their written submissions in the matter.

POST HEARING SUBMISSIONS

22. Pursuant to the hearing, the 3 Noticees submitted combined written submissions, *inter alia*, submitting as under:-

22.1. PPL is a company promoted and owned by the Noticees' family. The Noticees have been operating the business of PPL since the last few decades. The Noticees and PPL are not 'fly-by-night' operators who could be alleged to have participated in any wrong- doing.

22.2. The Noticees were approached by and appointed Onelife as the Book Running Lead Manager for handling the IPO of PPL. Mr. Pandoo Prabhak Naig, Managing Director, Onelife ("Mr. Naig"), had assured the Noticees that an overall funding of Rs. 100 cores would be procured by him for the purpose of furthering the business of PPL. There was an amount of about Rs. 45 crores

raised through the IPO and there was a bank overdraft of about Rs. 55 crores that Mr. Naig helped procure from the State Bank of India which was eventually to be used for the expansion plans of PPL. As this was a substantial amount that Mr. Naig procured for PPL, there was, at the relevant time no suspicion on part of the Noticees about his intentions. Further, Onelife was a newly registered merchant banker which led to there being no suspicion about the wrong-doings of Mr. Naig and Onelife.

22.3. Further, as part of the overall expansion plan, the Noticees were convinced by Mr. Naig that various vendors would be sourced by Mr. Naig who would enable the production of PPL. Apart from these entities, there were other parties to whom monies were remitted as part of the expansion.

22.4. The various entities introduced by Mr. Naig to PPL did not honor their part of the contract and did not undertake their obligations. The Noticees, upon becoming aware of the fraud, filed various proceedings including complaints with the Economic Offences Wing of Mumbai Police ("EOW") who referred the matter to SEBI. Complaints were also filed by the Noticees with the SEBI. However, despite these steps, instead of initiating proceedings against these entities, SEBI has chosen to initiate the present proceedings and adjudication proceedings against the Noticees.

22.5. Noticees are themselves the victims of the fraud played upon them by Mr. Naig and Onelife. The monies paid to various parties that were introduced by Mr. Naig have been misappropriated by them. On account of such fraud, PPL is under liquidation and the Noticees have lost their business and their homes.

22.6. Noticees have themselves taken appropriate steps to ensure that criminal proceedings are initiated against the wrong-doers. Despite efforts of the Noticees, the EOW and SEBI have not initiated any investigation to determine the misappropriation of the funds.

22.7. The conduct of the Noticees is not such of a party itself involved in wrong-doing. The Noticees themselves having brought the wrong-doing to the notice

of various regulatory authorities, cannot be alleged to have committed any wrong-doing.

22.8. The interest of the investors will be better served if directions are issued to investigate the matter and for disgorgement of the funds from the wrong-doers to PPL. This may also enable revival of the company with a view to benefitting the investors. This is in line with the mandate of SEBI under Sections 11 and 11B of the SEBI Act.

22.9. It is apparent from the Show Cause Notice that the monies have gone to third parties as payments for services to be provided by them. There is nothing to demonstrate that the monies have been received by the Noticees.

22.10. There is one party (Mr. Doshi) who is alleged to have paid cash to the 'promoters' of PPL. This statement does not indicate that there was any payment made to the Noticees. Given the nature of fraud played by Mr. Naig and others it is likely that the cash may have been misappropriated by them. The Noticees have submitted that they have never met this party directly. It is likely therefore that someone may have fraudulently misrepresented themselves as the Noticees and would have pocketed the monies.

22.11. The Noticees' request for cross-examination of this witness has not been granted. This deters the fact--finding process in violation of requirements of natural justice. It is submitted that the statement cannot therefore been relied upon against the Noticees.

22.12. On the other hand, no purpose will be served in acting against the Noticees in the present proceedings. Assuming while denying that there is any wrong-doing attributed to the Noticees, the same can be adjudicated by the adjudicating officer.

22.13. The present proceedings are violative of requirements of natural justice and fair play. The Noticees have, despite having requested, been denied: i) material and information relevant for the present proceedings; and ii) cross-examination of a key witness whose statement has been relied upon by SEBI for bringing

grave allegations against the Noticees.

22.14. The Show Cause Notice does not set out any specific direction that is proposed to be issued pursuant thereto. The Show Cause Notice only calls upon the Noticees to show cause as to why 'suitable directions under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued against them'. It is submitted that there are various powers available with the SEBI under Sections 11 and 11B of the SEBI Act.

22.15. It is trite law as laid down by various fora that it would be incumbent for a show cause notice to contain the exact nature of the measure that it proposes to take, failing which, the order passed would be violative of the principles of natural justice and would be liable to be set aside. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in *Gorkha Security Services v. Govt. of Net of Delhi & Ors.* (Decaled on August 4, 2014) and the order passed by Hon'ble SAT in Royal Twinkle Star Club Pvt. Ltd. vs. SEBI (SAT Appeal No. 436 of2015decided on February 3, 2016).

22.16. In the absence of any directions specified in the Show Cause Notice, the Noticees are not able to determine and deal with the exact measure proposed to be taken against them. It is apparent in the present case that there is no discernible measure, available under Sections 11 and 11B of the SEBI Act that can be taken against the Noticees. The Noticees have therefore been denied an opportunity of being able to meet the exact action proposed against them- in violation of principles of natural justice.

22.17. The Noticees submit that they acted on the representations and assurances given by Onelife and Mr. Naig. It was advised by Mr. Naig that the vendors suggested by them are competent for providing services required from them. The Noticees relying upon the advice, advanced amounts to Apex Cerar:1ics, Forever Sale Corporation, Mega Marketing, Metro Industries, Nirvana Enterprises, Precise Consulting & Engineering Private Ltd, Swastik Trading Company and Onelife. It is in fact the Noticees who have pro-actively been

seeking investigation against the wrong- doers. It is apparent that had the Noticees been hand in glove with the above parties, the Noticees would not have taken steps to have criminal proceedings initiated against these parties.

22.18. Despite several verbal demands to the vendors, the vendors did not deliver the goods and services as assured to be provided nor have they returned the consideration paid to them by the PPL. The Noticees submit that they also sent a Notice dated July 30,2013 to One Life calling upon the Onelife to return to Noticees a sum of Rs.7,13,03,600 (Rupees Seven Crores Thirteen Lakhs Three Thousand and Six Hundred only).

22.19. During a meeting they were assured by Onelife and Mr. Naig, that majority of the vendors have agreed to return the money and this status was informed to SEBI by a letter dated January 10, 2014 in response to SEBI's letter dated December 19,2013.

22.20. Upon assurances given by Onelife and Mr. Naig, the Noticees waited for the refunds to be transferred, however, no goods and services were delivered till 2014. Upon defaults made by the vendors and the callous attitude of Onelife and Mr. Naig towards the progress of the project, the Noticees realized that they have been misled and defrauded and they are heavily suffering losses due to this bad commercial decision taken by them.

22.21. On June 12, 2014, Shri Divyesh Ashwin Sukhadia filed complaints before SEBI and EOW against Onelife and Mr. Naig regarding the grave fraud committed by Onelife.

22.22. To the shock and surprise of the Noticees, the complaint filed before the EOW was transferred to the SEBI by a letter dated December 2, 2014, wherein it was mentioned by the officials of the EOW that "this office has not carried out any enquiry to this matter and no original papers are kept in this office".

22.23. The conduct of EOW towards the complaint filed by the Noticees has caused grave injustice and grave prejudice to the rights of the Noticees. Shri Divyesh Ashwin Sukhadia was therefore constrained to file a Criminal Writ Petition

bearing no. 2003 of 2015 before the Bombay High Court against the EOW for illegal transfer of investigation of complaint dated June 16, 2014 filed by Shri Divyesh Ashwin Sukhadia against One Life from EOW to SEBI vide Order dated June 25, 2014.

22.24. The Noticees have lost their entire business and reputation and have been forced to shelve the new project which was aimed to be initiated through the proceeds of the IPO.

22.25. From about 80-100 crores of profitable performance, PPL was reduced to a status of non-functional unit. The statutory dues to the government and the labor remain unpaid and the banks have classified PPL as a Non-Performing Asset. The Noticees submit that they have also sold off their residential properties and are therefore, now left with no assets owned by them.

22.26.PPL has been ordered to be wound up by an Order dated January 25, 2018 passed by the Hon'ble Bombay High Court in the Company Petition bearing no. 710 of 2014. It has been recorded in the said order that PPL is unable to discharge its debts, is commercially insolvent and requires to be wound up.

22.27. Due to winding up of PPL, the Noticees do not have any access to any proceeds from the !PO of PPL and sufficient funds to initiate any legal action to recover the money from the vendors which have taken advance monies from the PPL and have neither delivered the goods and services nor have they returned the consideration paid to them. Therefore, no real purpose will be served by wrongly accusing the Noticees of siphoning off the money from the proceeds of the IPO of PPL.

22.28. It is submitted that no purpose will be served if directions of restraint etc. are imposed upon the Noticees. The Noticees are not in a financial position to continue in the securities market and do not propose to in any case participate in the market. Further, as monies have not come to the Noticees personally, there is no question of any disgorgement against them.

22.29. Interest of shareholders of PPL will be better served if there is an investigation

directed in the usage of the funds by the third parties who have defrauded the Noticees and PPL. The funds remitted to these entities can be brought back into PPL and revive the company.

22.30. The powers of the SEBI in this case are wide enough to issue such directions necessary to bring the funds back.

22.31. There are contradictory details provided in the Show Cause Notice. The Noticee submits that it was mentioned in the Show Cause Notice at Clause 6.36 that the PPL has utilized only Rs. 357.90 lakhs towards the objects stated in and the balance Rs. 4225.07 lakhs has not been utilized for the objects stated in the prospectus. However, Clause 8 of the Show Cause Notice, it has been mentioned that out of Rs.4,225.07 lakhs, Rs. 3,887.46 lakhs were diverted to different entities. This shows that there is an investigation required by SEBI to get to the root of the matter.

22.32. Further the Show Cause Notice alleges that funds have not been utilized for the purposes mentioned in the: prospectus. However, the following are instances which. demonstrate that the allegations are unfounded:

a. The Show Cause Notice records the fact that monies were indeed paid to Highway Services Private Limited for purchase of land in Gujarat. The fact that the monies were paid is recorded and the fact is that there was a slightly lower amount paid compared to what was projected in the prospectus. This cannot be any means be termed as any violation as incorrectly done by the Show Cause Notice.

b. Further monies were paid and almost refunded by Heidelberg India Pvt. Ltd. ("HKPL"). The receipt of the funds from HIPL is also not disputed. In that view of the matter it is not correct to allege that the monies were not utilized for the purpose stated in the prospectus.

22.33. In view of the above noted submissions, the Noticees prayed the following:

a. The present Show Cause Notice be withdrawn/set aside;

b. Further detailed investigation be directed in the matter to find the routing

of funds to various parties and such funds may be directed to be disgorged into PPL;

c. SEBI may refer the matter also to the EOW or SFIO for investigation and appropriate action.

23. Afterwards, one last opportunity of submitting additional submissions, if any, was provided to the Noticees and letters in that regard were sent to the Noticees on January 23, 2020. In response thereto, the Noticees vide their letters dated February 3 and 4, 2020 filed additional written submissions in line with their replies / written submissions which have been summarized above. One additional submission made by the Noticees vide the above letters was that inordinate delay in issuance of a show cause notice or completion of proceedings requires the proceedings to be dropped. Reliance in that regard was placed on the order of Hon'ble SAT in the matter of *Ashlesh Gunvantbhai Shah v. SEBI* (Order dated January 31, 2020)

24. The official liquidator appointed in the matter by the Hon'ble Bombay High Court was also sent a copy of the SCN along with annexures and the letter in that regard was delivered. However, no response was received from the official liquidator in response to the same.

CONSIDERATION OF ISSUES

25. I have perused the SCN, replies, oral and written submissions made by the Noticees and other material available on record. On perusal of the same, the following issues arise for consideration:

A. Whether PPL had mis-utilized and diverted the proceeds of the IPO as has been alleged in the SCN?

B. Whether PPL had made wrong disclosures in the prospectus and had failed to

make material disclosures in the prospectus?

C. If the answers to issues A and B are in affirmative, whether the Noticees have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations as alleged in the SCN?

D. If the answer to issue C is in the affirmative, what directions need to be issued against the Noticees?

26. As noted above, PPL has gone into liquidation and official liquidator for the said purpose has been appointed pursuant to the directions of Hon'ble Bombay High Court. A copy of the SCN was served on the official liquidator but no response was received from him / her. The other Noticees in the matter (i.e. PPL's ex-managing director and 2 ex-whole time directors) have not made any representation on behalf of PPL. Thus, I am dealing with the submissions put forth by Noticees other than PPL and any reference to the collective term "Noticees" while dealing with their submissions shall not automatically mean that replies / submissions have been made by PPL. It is however made clear that the findings / observations recorded in respect of the submissions made by the 3 directors and shall hold good in respect of PPL insofar as the same are applicable to it.

27. The above noted issues are dealt with in the ensuing paragraphs in light of the facts of the case and the submissions made by the Noticees.

A. Whether PPL had mis-utilized and diverted the proceeds of the IPO as has been alleged in the SCN?

B. Whether PPL had made wrong disclosures in the prospectus and had failed to make material disclosures in the prospectus?

28. Before dealing with the factual and legal aspects of the present proceedings, I find it important to deal with the communication sent to SEBI by one person named

Mr. Nitesh R. Doshi who was the proprietor of an entity named *Nirvani Enterprises* to whom PPL had transferred the funds on May 7, 2011. It has been stated in the SCN that Mr. Doshi informed SEBI vide his letter dated July 15, 2013 that the promoters of PPL had approached him through Mr. Pandoo Naig (MD of Onelife) to accommodate them and accordingly he had raised bills on them under an arrangement and cash was returned to promoters of the company after taking a facilitation fee.in this regard. In this regard, the Noticees had asked for cross-examination of Mr. Doshi. However, due to non-cooperation of the said entity, opportunity of cross-examination could not be provided to the Noticees. Therefore, I am of the view that the statement regarding refund of money to the promoters of PPL contained in the letter dated July 15, 2013 sent by Mr. Doshi cannot be relied upon for the purpose of present proceedings. For the same reason, any reliance placed by the Noticees on the said letter from Mr. Doshi cannot be considered. It is however clarified that the same does not have any bearing on the fact of transfer of ₹98,36,670 to Nirvani Enterprises by PPL which is reflected in the bank statement of PPL and has not been disputed by the Noticees.

29. Prior to the examination of the issues in the present proceedings, I find it relevant to mention the fact that PPL as a company was owned by the Sukhadia family as they collectively held 79.38% shares of PPL prior to the IPO and post the IPO collectively held 40.45% shares of PPL. Further, Divyesh Ashwin Sukhadia (Chairman and Managing Director), Dharmesh Ashwin Sukhadia (Whole-time Director) and Anuj Vipin Sukhadia (Whole- time Director) were in charge of the affairs of PPL before and after the shares of PPL got listed. Thus, it would be correct to say that the company – PPL was always under the control of the aforesaid 3 Noticees and the decisions taken by PPL were essentially taken by these Noticees.

30. Apart from other submissions, the Noticees have made a preliminary submission that they were not provided an inspection of all documents including communications exchanged between SEBI with banks / financial institution, complete investigation report and all the communication exchanged by SEBI with persons referred in the SCN. In this regard, I note that an opportunity of inspection was provided to the Noticees and their authorized representatives took inspection on their behalf. During the said inspection, the Noticees were provided with an inspection of all the documents which have been relied upon by SEBI for the purpose of issuance of SCN. No other document / material, even if collected by SEBI during investigation, has been relied upon by SEBI for the purpose of levelling the allegations in the SCN. In light thereof, I am of the view that grant of inspection of documents which were collected during investigation but were not relied upon by SEBI for the purpose of the SCN would not be necessary as the Noticees were provided with all the relevant documents which would have enabled them to submit their appropriate defense in the present proceedings.

31. Another preliminary contention raised by Noticees is that it would be incumbent for a show cause notice to contain the exact nature of the measures that it proposes to take, failing which, the order passed would be violative of the principles of natural justice and would be liable to be set aside. In this regard reliance has been placed upon the judgment of Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors*.(2014) 9 SCC 105 and the order passed by Hon'ble SAT in *Royal Twinkle Star Club Pvt. Ltd. vs. SEBI* (SAT Appeal No. 436 of 2015 decided on February 3, 2016). With regard to the above argument, it is noted that under the SEBI Act and more particularly, in light of the provisions of section 11(1) of the SEBI Act, SEBI has such powers and in appropriate cases is duty bound to take measures in any manner as it may deem fit to *inter alia* prohibit and deal with fraudulent and manipulative acts

in securities markets to protect the interests of investors. In the present case, the SCN issued to the Noticees has spelt the provisions (such as section 11(4) and 11B under which preventive and remedial directions, if found necessary, would be issued. Further, the SCN clearly indicates the specific nature of violations that have been alleged against the Noticees in terms of different provisions of SEBI Act, PFUTP Regulations, ICDR Regulations, etc. which if eventually found to be breached, would require issuance of suitable directions under specific provisions as mentioned under the SCN. Further, the issuance of the exact directions against the Noticees would also depend on the justification / explanation provided by the Noticees in response to the allegations levelled in the SCN. Thus, the aptness of directions against the Noticees would depend on the factual and legal matrix that would emerge after consideration of the submissions of the Noticees. I am therefore of the view that nature of directions that can be issued against the Noticees was contained in the SCN. Additionally, I also find that in the nature of proceedings like the present one, identification of an exact direction can also be indicative of a pre-determined mindset against the Noticees indifferent to their explanations / justifications. Thus, I find that, in letter and spirit, the present SCN was in line with the principles laid down by the Hon'ble Supreme Court in the *Gorkha Security* case, and was not violative of the principles of natural justice as has been sought to be contended by the Noticees.

32. I have also perused the order passed by the Hon'ble SAT in *Royal Twinkle* case and I find that Hon'ble Tribunal in the said case has examined the Gorkha Security case extensively. However, the decision arrived at is not based on the understanding of Hon'ble Tribunal of the *Gorkha Security* case, as it emerged from the said examination. On the contrary, it has been specifically recorded in the order that "*However, applicability of the judgment of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into*....". Thus,

in my view, the observation regarding *Gorkha Security* matter in the order passed by Hon'ble Tribunal in Royal Twinkle matter, in my view, is merely an *obiter dictum* and cannot be relied upon by the Noticees.

33. With regard to the argument of the Noticees regarding inordinate delay in issuance of SCN and completion of proceedings, I find that the fact of delay in completion of investigation and / or initiation or completion of enforcement proceedings, in itself, cannot be a ground for dropping the proceedings. Only in cases where a Noticee is adversely affected, can such a submission be considered. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of *Metex Marketing Pvt. Ltd. vs.SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

34. In this context, it is noteworthy that as a generally accepted principle regarding enforcement action by any enforcement authority, investigation/inquiry against any subject entity and the consequent action in pursuance of the same should be completed in a reasonable timeframe which would serve the objective of balancing the rights of the persons subjected to enforcement action and the investors whose rights are being protected though enforcement proceedings. However, it is equally true that the time consumption in investigation or consequent enforcement actions can be caused due to multiplicity of factors such as the violation coming to the notice of the enforcement authority on a later date, the requisite data / material not being readily available, non-cooperation by the subject entities, pendency of connected matters before other courts / authorities, etc. in the present case, it is not out of relevance to mention that that delay was caused on account of reasons including the violation coming to SEBI's notice on a later date, non-cooperation by certain

entities, etc. Thus, in order to address the contention raised by the Noticees, it would be appropriate to consider the facts and circumstances of the case in light of the legal principles in this regard.

35. In my view, proceedings cannot be quashed on the ground that the same had been initiated at a late stage or could not be concluded in a reasonable period unless the delay creates prejudice to the Noticee. Since the entire material on which the allegations levelled in the SCN were based, has been provided to the Noticees, they were not in any manner constrained to submit their defense to the allegations levelled in the SCN. I, therefore, find that the above noted prayer of the Noticees with regard to dropping the proceedings on account of inordinate delay cannot be accepted.

36. On a careful perusal of the replies / written submissions filed by the Noticees, it appears that no submissions have been made by the Noticees in response to the point-wise allegations made in the SCN. The findings of the investigation contained in the SCN have not been disputed by the Noticees except for highlighting an inconsistency regarding mis- utilization and diversion of issue proceeds. I find it pertinent to clarify here that as apparent from the SCN, mis-utilization is considered from the viewpoint of the deployment of funds which is not in line with the objects disclosed in the prospectus regardless of the refund received by PPL, whereas diversion has been considered from the viewpoint of amount transferred to entities in respect of which no goods / services were received by PPL even after passage of several years. That is why there is a difference in the amount of mis- utilization and diversion of issue proceeds. These legs can co-exist in a scenario where the mis-utilization of funds is also because of the diversion of funds.

37. It has been revealed by the investigation that PPL utilized only ₹357.90 lakhs towards objects stated in the prospectus and the balance ₹4,225.07 lakhs was not utilized for the objects stated therein. Further, investigation revealed that the IPO proceeds were transferred to 9 entities who did not provide any service / goods as contracted. Thus, it has been observed that the funds to the tune of ₹38,87,46,380 were diverted by PPL to the nine entities. However, without prejudice to the findings / observations regarding mis-utilization and diversion by the Noticees recorded in this order, I am of the view that the calculation of the amounts mis-utilized and diverted as recorded in the investigation needs to be reviewed in light of the following facts:

37.1. ₹ 1,01,23,389 out of ₹1,08,65,325 paid to Heidelberg India Pvt. Ltd. as advance was received by PPL in its account, which cannot be treated as mi-utilized as alleged in the SCN.

37.2. ₹ 4,38,50,000 was disclosed in the prospectus w.r.t *Lead Management, Fees, Underwriting and Selling Commission .* Since, the IPO process was completed and the Merchant Banker was involved in the said process, the amount disclosed in the prospectus towards the aforesaid purpose cannot be considered as mis-utilized / diverted. Thus, out of ₹ 6,75,03,000 paid to Onelife, ₹ 4,38,50,000 cannot be considered as mis-utilized or diverted as alleged in the SCN and the remainder would be treated as mis-utilized and diverted. .

37.3. ₹ 1,85,36,066, which was paid by the company towards discharging of statutory liabilities viz., TDS, Fringe Benefits Tax , Income Tax, Provident fund, ESIC and for payment to its creditors, can be considered as genuine expenditure towards general corporate purposes.

38. Thus, considering the above, for the purpose of this order, the amount of IPO proceeds mis-utilized by PPL would be ₹ 34,99,97,545 and the amount diverted by PPL to the 9 entities would be ₹ 34,48,96,380.

39. Coming to the submission of the Noticees in relation to allegations levelled in the SCN, it has been contended that they acted entirely at the instructions of Onelife/Mr. Naig and eventually became a victim of the fraud. In this regard, I note that the Noticees have made contradictory contentions in their replies / written submissions. On one hand, they have submitted that they have been in the business for around 8 decades, while on the other hand they have argued that they were convinced by Mr. Naig to utilize the IPO proceeds in the manner directed by him and accordingly, transferred almost the entire IPO proceeds to entities suggested by Mr. Naig without an iota of scrutiny / due diligence on their part. It does not appeal to reason that an experienced business family like the Sukhadia family who have (as claimed) around 8 decades of experience in the business, would become a puppet at the hands of a person who was a newly registered merchant banker and was only supposed to act as the BRLM for the IPO of PPL. Further, despite being categorically asked during the personal hearing, the Noticees have not submitted any detail of the due diligence carried out by them while transferring the IPO proceeds to various entities as noted earlier. I note that in securities market, a Merchant Banker is an intermediary who *inter alia* advises the issuer regarding the preparation of the draft prospectus and the IPO process. The contents of the offer document are primarily based on the information provided by the issuer to the Merchant Banker. The directors of the issuer company sign the declaration in the draft offer document / draft prospectus certifying that the disclosures made therein are true and correct. Investors subscribe to the shares of the issuer on the basis of the information contained in the prospectus. The issuer company and its management is required to deploy the IPO proceeds in line with the objects disclosed in the prospectus. Thus, any issuer such as PPL cannot escape its liability by shifting the burden on the Merchant Banker as regards the utilization of IPO proceeds. The argument of the Noticees that they were approached by Onelife for raising 100 crore Rupees and that they were given the assurance by Onelife / Mr. Naig

that Onelife / Mr. Naig would source all the vendors with regard to a business in which the Sukhadia family had expertise, appears to be only an afterthought to obfuscate the matter. In view of the above, I am unable to accept the submission of the Noticees that they were defrauded by and are victims of the so called fraud perpetrated on them by Mr. Naig / Onelife.

40. Further, the Noticees have vehemently argued that their conduct in the matter is not that of wrong doers as they had themselves taken appropriate steps by filing complaints with EOW (dated July 1, 2014) and SEBI (dated June 16, 2014). In this regard, I find that the relevant conduct of the Noticees which needs to be viewed in relation to the violations alleged against them would be their conduct while utilizing the proceeds of the IPO. As found during the investigation, majority of the IPO proceeds were undisputedly transferred by PPL on the same day or within few days of the receipt thereof to the entities who, as claimed, were sourced by the Merchant Banker. In my view any person of ordinary prudence would not enter into any transaction of such substantial value with such companies / entities without any due diligence merely on the suggestion of a person with no experience or expertize in their decade old business. It is pertinent to reiterate here that six of these entities were only registered for less than one year or about a year as on date of transfer of funds to these entities' bank accounts, and none of these entities were into business of construction or supply of machinery, etc. for which the money was paid. Thereafter, when none of the recipients of the IPO proceeds honored the contracts entered into with the company, the Noticees did not take any action towards enforcing the contracts between PPL and the recipient entities. According to the Noticees, they only sent verbal reminders to the said recipients of funds, and asked the Merchant Banker about the status. In my understanding, once the IPO process was over, the Merchant Banker – Onelife had no role in directing the utilization of issue proceeds. The Noticees have failed to show any bit of due diligence on their part before transferring the funds to the

recipient entities. Subsequently, for a period of around 3 years, the Noticees were only waiting for the recipient entities to honor their commitments. Admittedly, the account of PPL became NPA by the end of year 2013. Further, in the year 2014, the liquidation proceedings (pursuant to which the winding up order has been passed) were filed against PPL. Thus, the complaint filed by the Noticee(s) before EOW and SEBI in the year 2014 appears to be a mere face saving exercise. The Noticees have not mentioned even a single step towards ensuring performance of their contracts with entities to whom the IPO proceeds were transferred particularly when nothing was done by the recipient entities towards the purpose for which IPO proceeds were transferred to them. The Noticees could have gone to the Court for specific performance of the contracts with the vendors much before 2014. In light of the above conduct of the Noticees, the preponderance of probability shows that the Noticees had pre-decided the vendors (evidenced by no due-diligence and the immediate transfer of funds to them) and had no intention of deploying the IPO proceeds towards the objects of the issue disclosed in the prospectus, which was evident from the fact that the Noticees took no action against the vendors for 3 years towards ensuring performance of the contracts. I, therefore find no merit in the submission of the Noticees in this regard.

41. It is also relevant to highlight that upon inquiry regarding the Utilization of IPO proceeds, the Noticees vide letter dated June 05, 2012 provided the details which contained false information. For instance, regarding the excavation work contracted with *Forever Sales Corp.* it mentioned the status as "*work almost completed",* whereas in the subsequent complaint dated June 16, 2014 (filed on behalf of the company before SEBI), it was mentioned that no work was done by *Forever Sales Corp.* till that date. Likewise, status of "*work in Progress*" was submitted by the Noticees vide letter dated June 05, 2012 in respect of money given to various vendors against whom the Noticees complained in their subsequent complaint dated June 16, 2014 and alleged that no work was done

by them. The table below contains the false submission made by the Noticees vide their letter dated June 05, 2012:

Details submitted by PPL vide Letter dated June 05, 2012 regarding utilization of IPO proceeds			
Party Name	**Nature of Job**	**Total Amount Paid (in ₹)**	**Status as submitted by the company.**
Purchase of Land			
Highway Services Pvt. Ltd.	Purchase of Land	3,80,70,250	Purchase completed
Site Development, Civil Work and Building Construction			
Forever Sales Corp.	Excavation work	2,30,92,748	**Work almost completed**
Metro Industries	Construction of compound wall (EPC)	2,91,99,956	**work in progress**
Apex Ceramics	Construction of Plinth & related matters	5,56,82,527	**work in progress**
Niravani Enterprises	Interior Designing	98,36,670	**work in progress**
Mega Marketing	Construction	2,41,31,250	**work in progress**
Electrical Installation			
Forever Sales Corp (Paid to Madhuvan Enterprises on the request of the party)	Cables	1,31,34,189	Orders placed
Plant & Machinery and other ancillaries			
Swastik Trading Co.	Plant & Machinery and other ancillaries	7,14,46,560	Orders placed
Precise Engineering and Consultancy Pvt. Ltd.	Plant & Machinery and other ancillaries	8,72,18,880	**Work in progress**
Working Capital		3,89,79,495	
Issue Expenses			
Onelife Capital Advisors Ltd.	IPO Expenses	6,75,03,660	Completed
Total		**45,82,96,185**	

42. As noted above, in their complaint dated June 16, 2014, the Noticees / company complained to SEBI that the companies whose names have been emboldened in

the table above had not started any work. Thus, the Noticees initially submitted false information to SEBI in order to cover up mis-utilization / diversion of the issue proceeds.

43. In addition to the above, I find that the Noticees provided wrong disclosures in Prospectus/RHP, as they never intended to utilize the IPO proceeds for the Objects stated in the prospectus and diverted the IPO proceeds to vendors regarding whom the Noticees have not shown to have done any due diligence. These wrong disclosures resulted in misstatements in the Prospectus which misled and defrauded the investors in securities market in connection with the issue of shares of the company.

44. Further, the Noticees failed to disclose material information (regarding the vendors being pre-determined to whom IPO proceeds were transferred) which is true and adequate so as to enable the applicants of IPO to take an informed investment decision. These inadequate disclosures in the RHP / Prospectus also misled and defrauded the investors in securities market in connection with the issue of shares of the company. By the said conduct, PPL caused publication of misleading information in the RHP/Prospectus thus influencing investors to purchase the shares of the company.

45. In view of the above findings and observations, it is concluded that the Noticees had a pre-determined plan where under it first raised money from the public through the IPO route by concealing material information, making false / wrong and inadequate disclosures regarding the vendors, then transferred the IPO proceeds to pre-decided vendors within a few days and thereby mis-utilized and diverted the proceeds of the IPO. I therefore find that the Noticees in the present case had mis-utilized ₹ 34,99,97,545 and had diverted ₹ 34,48,96,380.

46. Having observed as above, I also find it important to deal with the contention of the Noticees that failure is on part of SEBI in not ordering an investigation into the actual use of the funds by the entities to whom funds were transferred by PPL. As regards this submission, without prejudice to other findings in this order, I find that it was incumbent on the Noticees to take appropriate action under law for recovery of funds from the entities who as claimed by the Noticees have perpetrated a fraud on them. As revealed during the investigation, the entities to whom the funds were transferred by the Noticees, had no prior experience in the relevant work and were incorporated / formed few months prior to the transfer of funds to them. For several years from the transfer of funds to these entities, no goods / services (as contracted) were provided to PPL, and PPL/ its directors took no action under law for enforcing the terms of their contracts or for refund of the amounts transferred. The same clearly indicates role of the Noticees in diverting the IPO proceeds as alleged in the SCN. Considering the above, I find no merit in the argument of the Noticees that the use of funds by the entities (to whom funds were blindly transferred by PPL) ought to have been investigated by SEBI.

C. If the answers to issues A and B are in affirmative, whether the Noticees have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations as alleged in the SCN?

47. With regard to the examination of this issue, I find it pertinent to refer to the applicable provisions: text whereof is reproduced as under:

ICDR Regulations

Manner of disclosures in the offer document.

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

decision.

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

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

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

SCHEDULE VIII , PART A, Clause 2 (XVI) (B) (2)

(XVI) Other Information:

(B) Declaration: (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(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

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

SEBI Act:

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any

manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

…

(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

…

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:-

…

(e) an act or omission amounting to manipulation of the price of a security;

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

…

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

…

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

…

48. As concluded and recorded earlier in the order, PPL (as a company) had mis-utilized ₹ 34,99,97,545 and had diverted ₹ 34,48,96,380 to the 9 vendors (whose names have been mentioned earlier) in the manner discussed hereinabove.

49. Regulation 57 of the ICDR Regulations requires that the offer document issued by the Issuer Company shall contain all *material disclosures* which are *true and adequate* so as to enable the applicants to take an informed investment decision. It also deals with the manner of disclosure of material information in the offer document. With regard to significance of disclosures in offer documents, it is pertinent to note that Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd.* vs. *SEBI* decided on February 20, 2008 observed that *" an incorrect or wrong information in a letter of offer or other similar documents*

issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator".

50. I find that the information regarding the vendors, to whom majority of the IPO proceeds were transferred immediately on receipt thereof in the issue proceeds' account, being pre-determined, was material information and should have been incorporated in the offer document to enable the prospective investors to appreciate PPL's approach in a better manner before investing in the IPO of PPL. The fact that the IPO proceeds were transferred to the vendors on the day of receipt or within a few days and that no due diligence relating to them was carried out by the Noticees prior to such transfers indicates that all the vendors were pre-decided and therefore, the Noticees were in a position to disclose the material information about the vendors. Thus, PPL failed to disclose true and adequate information in the prospectus so as to enable the investors to take an informed decision before investing in the IPO of PPL.

51. I also find that the information disclosed in the prospectus regarding the objects of the issue was false because the manner in which the IPO proceeds were utilized was for purposes other than those stated in the prospectus and nothing was achieved by the company towards the objects for which the money was raised from the public. In other words, the Noticees provided wrong disclosures in Prospectus/RHP, as they never intended to utilize the IPO proceeds for the Objects stated in the prospectus and diverted the IPO proceeds to pre-determined vendors. Thus, I find that the information disclosed in the prospectus was misleading, untrue, unfair and manipulative / deceptive because the true intended objects of the issue were not stated in the prospectus.

52. By making false, misleading, inadequate and manipulative / deceptive disclosures in the RHP / Prospectus, PPL misled the investors in securities market in

connection with the issue of its shares and induced the investors to purchase its shares. In this context, in order to highlight the liability of a person for inducing other person to purchase / sell / subscribe to shares, I find it important to refer to the following observations of Hon'ble Supreme Court of India (Justice Ranjan Gogoi) in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* (Order dated September 20, 2017):

> *"6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*
>
> *…*
>
> *8. A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act.* ***The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did.*** *This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need*

not be present or proved and established to be present. ***In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.*** *No element of dishonesty or bad faith in the making of the inducement would be required."*

53. In the present case, it would not be wrong to conclude that but for the concealment of truth regarding the vendors being pre-determined and the wrong and misleading disclosures regarding the intended utilization of IPO proceeds not being towards the objects of the issue, the investors who subscribed to the shares of PPL, might not have done so. Therefore, by making false and misleading disclosures and concealing relevant information, PPL as a company induced the investors to subscribe to its IPO and thereby defrauded them.

54. in light of the findings / observations recorded above, I find that the acts / omissions described hereinabove, in totality, show that the company - PPL actively concealed material information, suggested untrue facts, made false and inadequate disclosures in the RHP/Prospectus and mis-utilized / diverted the IPO proceeds. The said acts and omissions of PPL, apart from being in violation of the requirements of the ICDR Regulations, also show a fraudulent scheme or device on part of PPL to mis-utilize/divert the IPO proceeds. Such scheme or device falls within the ambit of regulation 2(1)(c) of the PFUTP Regulations. and is therefore in violation of the provisions of section 12A of the SEBI Act and regulations 3 and 4 of the PFUTP Regulations alleged in the SCN.

55. Coming to the liability of the Noticees other than PPL, I note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care,

skill and diligence. In terms of Sections 291 and 292 of the Companies Act, 1956, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. The Hon'ble Supreme Court of India, while describing what is the duty of a Director of a company, held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* that:

> *"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially"*.

56. I note that in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company.in this context, I place reliance on the decision of Hon'ble Supreme Court in the matter of *LIC Vs. Escorts Limited* (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Hon'ble Court had observed as under :

> *"90. … the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved,*

the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."

57. In the present case, it has already been mentioned that PPL as a company was owned by the Sukhadia family as they collectively held 79.38% shares of PPL prior to the IPO and post the IPO collectively held 40.45% shares of PPL with the balance being with the public. Further, Divyesh Ashwin Sukhadia (Chairman and Managing Director), Dharmesh Ashwin Sukhadia (Whole-time Director) and Anuj Vipin Sukhadia (Whole- time Director) were in charge of the affairs of PPL before and after the shares of PPL got listed. Thus, it would be correct to say that the company – PPL was always under the control of the aforesaid 3 Noticees and the decisions taken by PPL were essentially taken by these Noticees regardless of their claim that they had relied upon Onelife / Mr. Naig.

58. Considering the above, I find that this is a fit case for lifting of corporate veil and fixing the liability on the persons responsible for managing the affairs of the artificial persons (i.e. PPL) in a fraudulent and deceptive manner. At this point it is also pertinent to refer to the observations of Hon'ble SAT in the matter of *Brooks Laboratories Ltd.* vs. *SEBI (*decided on March 21, 2018) wherein Hon'ble SAT, emphasizing on the liability of Managing Director and others held as under:

"*Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus."*

59. In view of the foregoing, I find that PPL, its Managing Director - Divyesh Ashwin Sukhadia and Whole Time Directors namely, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia violated the provisions of regulations 57 (1) and 57 (2) (a) r/w Clause 2 (XVI) (B) (2) of part A of schedule VIII and 60 (7) (a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009, section 12 A (a),(b),(c) of the SEBI Act,1992 and regulations 3 (b),(c),(d), 4 (1), 4(2) (e), (f), (k), (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

60. Without prejudice to the above findings and observations, considering the submission of the Noticees that they acted upon the representations, assurances and advice given by Onelife / Mr. Naig and advanced payments to the vendors suggested by it, I find it relevant to discuss the acts/ omissions / conduct of the Noticees as have been revealed by the investigation, in order to ascertain whether the same lead to the violation of the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations. It is noteworthy that the same submission of total reliance on Onelife / Mr. Naig forms the basis of the complaints filed by the ex-Managing Director of PPL made to EOW and SEBI. In this regard, I note that under the Indian Legal Framework, IPO of shares is recognized as one of the modes through which a public limited company can raise funds from the public investors. Thus, it is the issuer company which is required to disclose to the public the objects for which it intends to raise money and the manner in which it proposes to utilize the same. The contents of the prospectus are primarily based on the information provided by the issuer to the Merchant Banker and the directors of the issuer company sign the declaration in the offer document / prospectus certifying that the disclosures made therein are true and correct, though merchant banker has its own obligation of “due diligence”. The investors treat the information contained in the prospectus as the representation made by the issuer company and

subscribe to the shares of the issuer on the basis of the same. Thus, under the ICDR Regulations, an issuer company is always responsible for the information / statements / declarations provided in the prospectus and cannot shift this responsibility onto any one. Even assuming Noticees' submission that PPL was approached by Onelife and agreed to the representations and assurances made by it regarding raising of capital from the public and also regarding sourcing of vendors by Onelife / Mr. Naig, to be right, the same indicates that prior to the IPO, there was an arrangement / understanding between PPL and Onelife. Thus, when the list of vendors to whom the funds would go (which eventually went immediately upon their receipt) and the subsequent utilization of the IPO proceeds was to be decided by Onelife, then disclosures in the prospectus, including the disclosure of names of any vendors was nothing but a representation made in a reckless and careless manner. This is because PPL knew that the disclosures as to the name of the vendors or the amount of money earmarked for different parts of IPO objects, may or may not be correct as it had neither any control over selection of vendors nor over the amount of money to be spent on the proposed IPO objectives. Despite the above, making such a representation can be nothing but a reckless representation. Such representation made in a reckless and careless manner is in itself fraudulent in terms of regulation 2(1)(c)(5) of the PFUTP Regulations. Further, if the entire contents of the prospectus are determined by the Merchant Banker, then the declaration given by the directors of PPL – the three Noticees in the present case- certifying the statements / disclosures contained in the prospectus to be true and correct, would actually be false, misleading, deceptive and manipulative because if the directors are not deciding upon the contents of the offer document / prospectus, how can they certify it to be true and correct. In view of the above, I find that by making reckless and careless representation and by making false, misleading, deceptive and manipulative disclosures in the prospectus, the Noticees misled the investors and induced them to subscribe to the shares in the IPO of PPL. Viewing this in light of the

observations of Hon'ble Supreme Court of India in the matter of SEBI v. Kanaiyalal Baldevbhai Patel (Order dated September 20, 2017) noted earlier in the order, I find that PPL, its Managing Director - Divyesh Ashwin Sukhadia and Whole Time Directors namely, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia violated the provisions of regulations 57 (1) and 57 (2) (a) r/w Clause 2 (XVI) (B) (2) of part A of schedule VIII and 60 (7) (a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009, section 12 A (a),(b),(c) of the SEBI Act,1992 and regulations 3 (b),(c),(d), 4 (1), 4(2) (e), (f), (k), (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

D. If the answer to issue C is in the affirmative, what directions need to be issued against the Noticees?

61. As observed above, the violation of provisions of ICDR regulations, SEBI Act and the PFUTP Regulations alleged against the Noticees in the SCN have been established. Now, the final question that emerges for consideration is what directions are required to be issued against the Noticees in light of the violations committed by them. In this regard, I note that Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorized to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations and ICDR Regulations have been framed. The said Regulations apart from bringing transparency and fairness among other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By diverting the IPO proceeds and by failing to make true and adequate disclosures in the Prospectus, not only

the investors were defrauded and misled but it has also impaired the integrity of the securities market. In view of the same and considering the violations committed by the Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them.

62. In this context, it is noteworthy to refer to the following observations of Hon'ble Supreme Court of India in the matter of *N Narayanan* Vs*. Adjudicating Officer, SEBI* decided on April 26, 2013 with regard to the concept of market abuse in securities market:

> *"Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abuser.*
>
> *…*
>
> *A word of caution:*
>
> *43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should*

know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity.

…

SEBI has the duty and obligation to protect ordinary genuine investors and the SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities."

63. It has been mentioned earlier in the order that PPL as a company is undergoing liquidation pursuant to the directions of Hon'ble Bombay High Court dated January 25, 2018. As noted from the website of Ministry of Corporate Affairs, even as on date, PPL is in the process of liquidation. In these circumstances, I find it appropriate to mention that the directions issued by way of this order shall subject to the orders passed in the ongoing liquidation process.

Order:

64. In view of the facts and circumstances of the case and the observations / findings recorded hereinabove, I, in exercise of the powers conferred upon me in terms of

Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act issue the following directions:

i) PPL is hereby restrained from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 (five) years, from the date of this order subject to the directions of the Bombay High Court / Official Liquidator appointed by the Bombay High Court in pursuance of the liquidation / winding up proceedings pending in respect of PPL.

ii) Divyesh Ashwin Sukhadia, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia are hereby restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 5 (five) years, from the date of this order.

iii) Divyesh Ashwin Sukhadia, Dharmesh Ashwin Sukhadia and Anuj Vipin Sukhadia are also restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for a period of 5 (five) years from the date of this order.

iv) Subject to direction at point (i) of this paragraph, it is clarified that in view of the prohibition on sale of securities, during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

65. It is made clear that if the Noticees have any open positions in any exchange traded derivative contracts, they can close out/ square off such open positions

within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that the Noticees can settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of March 16, 2020.

66. The order shall come into force with immediate effect.

67. A copy of this order shall be served upon all recognized Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

Sd/-

DATE: March 16, 2020
PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA