WTM/SM/ IVD/ID3/9895/2020-21

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	Channel Nine Entertainment Ltd.	AABCC8801H
2.	Gaj Raj Singh	BEKPS1235N
3.	Kirti	BBAPK7304P
4.	Sumit Kumar & its Proprietorship firm viz. Vijay Bhagwandas & Co.	ARUPK1589P
5.	Madhukar Dubey & its Proprietorship firm viz. Magnum Industrial Corporation	AIJPD7329J
6.	Satendra Kumar & its Proprietorship firm viz. A R Enterprise	AWWPK8525E
7.	Goldline International Finvest Ltd.	AACCG6377M
8.	LMR Green Realty Pvt. Ltd.	AACCL1899B
9.	Nikky Printing Press Pvt. Ltd.	AADCN5292K
10.	Avisha Credit Capital Pvt. Ltd.	AAACA5715D
11.	Nem Singh	CKIPS6770D

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

In the matter of IPO of Channel Nine Entertainment Limited

Background:

1. The present proceedings are arising out of a common Show Cause Notice dated August 14, 2017 (hereinafter referred to as "SCN"), alleging that a scheme was deployed in the initial

public offer ("**IPO**") of equity shares of Channel Nine Entertainment Ltd. (hereinafter referred to as **"the Company or CNE"**), wherein the applicants of the IPO were funded by entities connected with *Company* itself and post- IPO, the funds so raised were not utilized towards the objects for which the funds were raised and instead were allegedly transferred to few of the entities who had funded the applicants of the IPO . Before conducting the investigation in the said IPO of the *Company,* a common *ex-parte ad interim* order dated June 29, 2015 was issued *inter alia* against the *Company* and against three other companies who were seen to have followed common *modus operandi* in deploying a fraudulent scheme with respect to their respective IPOs.

2. The brief facts pertaining to the IPO of the *Company* and the alleged scheme that was deployed by the *Noticees,* as recorded in the SCN are as under:

i. The *Company* came out with an IPO to raise 11.67 Crore by way of issue of 46,68,000 equity shares (30.10% of the post issue size), at the price of INR 25 per share. The equity shares of the *Company* were listed on SME segment of BSE Ltd. ("BSE") on March 12, 2013.

ii. The Prospectus of the *Company* had disclosed the following as the proposed utilization of IPO:

Table no. 1: Proposed Utilisation:

Sr. No.	Particulars	Amount (INR in Lakh)
1	To Finance the estimated expenditure of production of two (2) films	700.00
2	Strengthening Distribution operations	350.00
3	Brand building	60.00
4	Issue Expenses	57.00
	Total	1167.00

iii. The *Company*, vide its letter dated December 24, 2015, furnished during the investigation, provided the following break-up of the IPO proceeds utilization:

Table no. 2: Utilisation of IPO proceeds

Particulars	Utilized as on 31/03/2015 (INR in Lakh)
To Finance the estimated expenditure of production of two films	480.00

Particulars	Utilized as on 31/03/2015 (INR in Lakh)
Strengthening Distribution operations	311.11
Brand Building	54.19
Issue Expenses	29.30
Unutilized portion	296.90
Total	**1167.00**

iv. As the aforesaid claim of the *Company* pertaining to utilisation of IPO proceeds was not supported by any documents, the *Company* was advised to provide relevant documents so as to substantiate the above said claim of utilisation of IPO proceeds. However, the *Company* did not provide any documents sought from it.

v. In the IPO, a total number of 337 applications for 48,42,000 equity shares (including market maker application for 2,40,000 shares) were received by the *Company*, which was 1.04 times of the offer size of the IPO. Out of the said applications, 17 applications for 1,38,000 shares were rejected for various reasons. Out of the remaining 320 valid applications for 47,04,000 shares, the *Company* allotted 46,86,000 shares, to those 320 applicants, as per the following details:

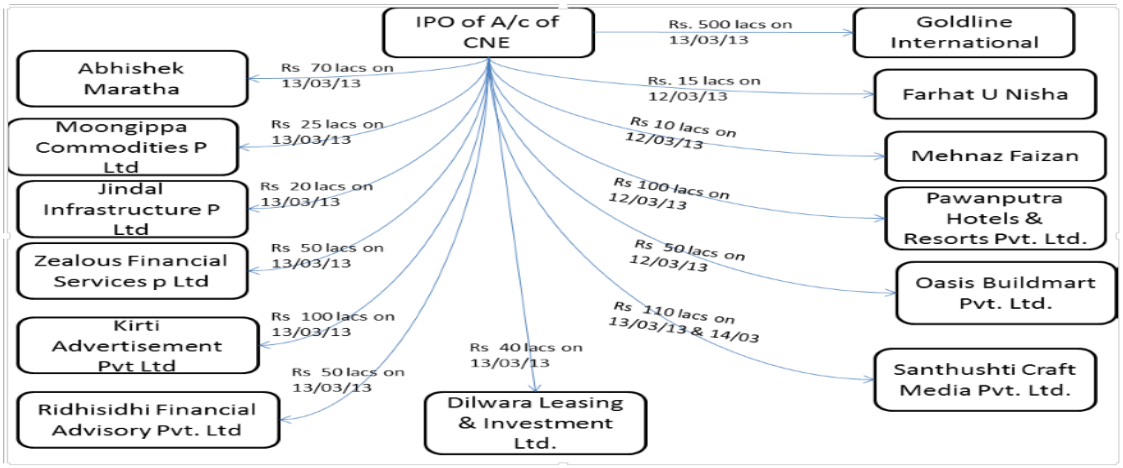
Table no. 3: Breakup of applications

Category	No. of shares applied	No. of shares allotted	No. of Allottees whom shares allotted	No. of shares Application rejected
QIB/MARKET MAKER	2,40,000	2,40,000	1	-
HNI	29,58,000	28,98,000	61	42,000
RII	16,44,000	15,48,000	258	96,000
Total	48,42,000	46,86,000	320	1,38,000

vi. The analysis of the bank account statements revealed that many of the applications for shares filed under the IPO were funded by different third party entities viz., Noticee nos. 4 to 11 (hereinafter referred to as '**funding group entities'**). Out of 274 retail applicants (RIIs), applications of 90 applicants were alleged to have been funded by certain funding group entities and out of those 90 applicants, 85 applicants

were allotted 5,10,000 shares. Similarly, in the market maker category the application for 2,40,000 shares was also alleged to have been funded by certain funding group entities. In HNI category, a total of 12,30,000 shares were allegedly allotted based on the funding by the funding group entities.

vii. Further, out of total IPO proceeds of INR 11.72 Crore, the *Company* allegedly transferred INR 11.40 Crore to numerous entities and out of the said amount, INR 5.00 Crore was transferred to one of the funding group entities. The graphic representation of such transfers, as captured in the SCN, is reproduced hereunder:



viii. The said third party funding group entities, were allegedly connected to the *Company*, directly/indirectly, based on various factors like fund transfers, common addresses etc. Further, certain funding group entities have received funds out of the IPO proceeds of the *Company*. The details of inter se fund transactions and the money provided by the funding group entities to the IPO applicants are as under:

Table no. 4: Summary of fund movements from Noticee no. 4 to 11 to various IPO allottees

Sr. No.	Name	Bank A/c no.	Details of funding	Details of fund received
1	Sumit Kumar (*Noticee no. 4*)	Yes Bank - 013683900002337	• Vijay Bhagwandas & Co. had issued 20 cheques of INR 1.50 Lakh each to the *Company,* on behalf of 20 Non ASBA retail investors. (20 allottees got allotment)	• It had received INR 25.00 Lakh from Aavia Buildtech Pvt. Ltd. and also transferred INR 40.00 Lakh to Mayfair Infosolution Pvt. Ltd.
2	MadhukarDubey	Yes - 013683900002209	• Magnum Industrial Corporation had issued 20 cheques of INR 1.50 Lakh each to the *Company,*	• It had received INR 30.00 Lakh from N V Sales Corporation.

	(*Noticee no. 5*)		on behalf of 20 Non ASBA retail investors. (20 allottees got allotment).	Further, N V Sales had received INR 50 Lakh from HPC Bioscience Ltd.
3	Satendra Kumar (*Noticee no. 6*)	Yes - 013683900002230	• A R Enterprise had issued 10 cheques of INR 1.50 Lakh each to the *Company,* on behalf of 20 Non ASBA retail investors. (9 allottees got allotment)	• It had received INR 15.00 Lakh from N V Sales Corporation. • Further, it had a fund movement with AMS Powertronic Pvt. Ltd. and Mayfair Infosolution Pvt. Ltd.
4	Goldline International FinvestLtd. (*Noticee no. 7*)	ICICI - 663005120449	• Goldline International Finvest Ltd. had given INR 1.50 Lakh to 8 Non ASBA retail investors each. (6 allottees got allotment) • Further, it had also given INR 3.60 Crore to four ASBA allottees viz. Panchsheel Securities Pvt. Ltd., Guardian Portfolio Consultants Pvt. Ltd., Search Finvest Pvt. Ltd. and Narayan Securities Ltd.	• Goldline received INR 5.00 Crore from *CNE* IPO proceeds.
5	LMR Green Realty Pvt. Ltd. (*Noticee no. 8*)	IDBI – **0109102000031994**	• **LMR Green Realty Pvt. Ltd** had issued 5 cheques of INR 1.50 Lakh each to the *Company,* on behalf of 5 Non ASBA retail investors. (5 allottees got allotment)	• It had received funds from Goldline.
6	Nikky Printing Press Pvt. Ltd. (*Noticee no. 9*)	Axis - **911020034143910**	• **Nikky Printing Press Pvt. Ltd.** had issued 23 cheques of INR 1.50 Lakh each to the *Company,* on behalf of 23 Non ASBA retail investors. (21 allottees got allotment).	• It had received funds of INR 28.00 Lakh from M/s. Nisha Traders and INR 7 Lakh from M/s. Amsons Apparels Pvt. Ltd.
7	Aavisha Credit Capital Pvt. Ltd. (*Noticee no. 10*)	HDFC - 05982740000567	• **Aavisha Credit Capital Pvt. Ltd**. had given INR 30.00 Lakh to Vijay Jindal, INR 6.00 Lakh each to Rajni Aneja & Pranay Aneja for making application in the IPO.	• Aavisha Credit Capital Pvt. Ltd. had received money from the Goldline International Finvest Ltd.
8	Nem Singh (*Noticee no. 11*)	Punjab National Bank – 1765000100292872	• He has issued 4 cheques of INR 1.5. Lakh each to the *Company*, on behalf of 4 Non ASBA retail investors. • Further, Ms. Mamta Bhardwaj and Mr. Ajay were also funded by the funding group entities to them for subscription of shares of Eco Friendly Food Processing Limited.	• It had received INR 1.50 Lakh each from 3 different entities viz. 1 Mamta Bhardwaj, 2) Umed Singh Bhutoria HUF and Mr. Ajay. • Further, LMR Green Realty Pvt. Ltd. had funded to him for subscription of shares of

				Friendly Food Processing Limited, subsequently the same was sold by him and the same amount utilized for making application in *CNE*'s IPO.

ix. The details of allotment of shares which were allegedly allotted based on the funds provided by the aforesaid funding group entities are as under:

Table no. 5: Details of allotment of shares funded by the funding group entities

Sr. No.	Funding Entity	Amount funded (Rs. in Lakh)	No. of allottees got allotment	No. of shares allotted
1	Goldline International Finvest Ltd.	342	10 (4 ASBA)	13,38,000
2	Sumit Kumar	30	20	1,20,000
3	Madhukar Dubey	30	20	1,20,000
4	Satendra Kumar	15	9	54,000
5	LMR Green Realty Pvt. Ltd.	7.50	5	30,000
6	Nikky Printing Press Pvt. Ltd.	34.50	21	1,26,000
7	Aavisha Credit Capital Pvt. Ltd.	42	3	1,68,000
8	Nem Singh	6	4	24000
	Total	507	92	19,80,000

x. Thus, out of 46,86,000 shares allotted under the IPO, allotment of as many as 19,80,000 shares, i.e., 42.25% of the total number of shares, were allotted to the entities who had received funds to make applications under the IPO from entities directly/ indirectly connected with the *Company* itself.

3. Based on the aforesaid findings of facts as gathered in the course of investigation, it has been alleged through the SCN that *CNE* and its Directors had devised a scheme to get sufficient paid applications for the IPO of *CNE* so as to ensure listing of the *Company* on SME-exchange platform of the Exchange with the help of those funding group entities. It has further been alleged that the IPO of *CNE* would not have received the minimum prescribed subscription had the funding group not funded the applicants. The SCN thus alleges that *CNE*

and its Directors at the time of the aforesaid IPO, in connivance with the funding group entities have employed a fraudulent scheme to get the IPO subscribed in a fraudulent manner by directly/ indirectly funding the IPO applicants and the said acts are alleged to be in violation of Sections 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c) and (d) and 4(1) of SEBI (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations, 2003"**). Accordingly, vide the above-stated SCN *Noticees* have been called upon to show cause as to why suitable directions shall not be issued against them under the Sections 11(4), 11A and 11B of the SEBI Act, 1992.

4. I note from the available records that the aforesaid SCN was served on all the *Noticees* by SPAD except on the *Noticee nos. 4, 5, 6*, and *8*, on whom, the copy of SCN was served by way of affixation at their respective last known addresses. In response to the SCN, the *Noticee no.1 (Company)* vide letter dated October 04, 2017, *Noticees nos. 2* and *3* vide their separate letters dated June 17, 2019 and *Noticee no. 10* vide letters dated September 11, 2017 and June 12, 2019, have sought copies of documents like copy of investigation report etc. and have sought cross examination of the persons whose statements have been recorded during the investigation. Subsequently, in compliance with the principle of natural justice, an opportunity of personal hearing was accorded to all the *Noticees* and accordingly hearing notices were issued to all the *Noticees* informing them that their personal hearing is scheduled on June 19, 2019. However, the aforesaid *Noticees* sought adjournment of the personal hearing and reiterated their request for inspection of documents. After having provided them with the opportunity of inspection of documents on July 16, 2019 which was availed by *Noticee nos. 7* and *10*, the *Noticees* were again insisted for personal hearing on August 06, 2019. However, on the said date, only one entity viz., LMR Green Realty Pvt. Ltd. (*Noticee no. 8*) attended the personal hearing through video conferencing from Northern Regional Office, New Delhi. It is noted from the records that for the said personal hearing scheduled on August 06, 2019, the hearing notices had to be served on few of the *Noticees* by way of publication is newspapers as per the details below:

Table no. 6

Sr. No.	Names of the Noticee	Hearing on 06.08.2019
1.	Sumit Kumar & its Proprietorship firm viz. Vijay Bhagwandas & Co.	Hindustan Times and Nav Bharat Times, Delhi Editions

2.	Madhukar Dubey & its Proprietorship firm viz. Magnum Industrial Corporation	-do-
3.	Satendra Kumar & its Proprietorship firm viz. A R Enterprise	Times Day/Hindustan Times and Nav Bharat Times, Ghazaibad Edition
4.	Nikky Printing Press Pvt. Ltd.	-do-
5.	Nem Singh	Hindustan Express/Hindustan Times and Dainik Bhaskar Noida Editions

5. I find that although an adjournment request on behalf of *Noticee no.1, 2, 3, 7* and *10* was received, none of the other *Noticees* appeared before me on the said date for the personal hearing nor have they requested for adjournment of hearing. Therefore, request of *Noticee nos. 1, 2, 3, 7* and *10* was acceded to and for said *Noticees,* another date for personal hearing was fixed on November 14, 2019.

6. On November 14, 2019, *Noticee no. 2* appeared before me on behalf of himself as well as on behalf of *Noticee no. 1* (the *Company*) and *Noticee no. 3*. Subsequent to the hearing, a common written submission dated November 21, 2019 has been filed on behalf of the *Noticee nos. 1* to *3*, and thereafter another submission dated March 16, 2020 has also been filed on behalf of the *Noticee no. 1*. It is pertinent to note that *Noticee nos. 4, 5, 6, 7, 9* to *11* have neither appeared before me for personal hearing nor have submitted any written reply to the allegations made against them in the SCN, except for a very brief reply filed by the *Noticee no. 10*. The *Noticee nos. 7* and *10* had vide their separate letters dated July 29, 2019 requested for more time to file reply to the SCN, however, no reply has been filed by the said entities after the said communication.

7. In view of the above, I proceed to deal with the matter on the basis of materials available on records including the submissions made by them before me, both verbal and written in course of the proceedings.

Submissions of the Noticees

8. After perusing the written replies submitted by the *Noticees* (as mentioned in the preceding paragraphs) and having heard the arguments of the *Noticees*, the main arguments advanced by them are summarized hereunder:

Noticee no. 1, 2 and 3

9. The *Company* and *Noticee nos. 2* and *3*, have filed a common letter dated November 21, 2019, and further a written submission dated March 16, 2020 has also been filed on behalf of the *Noticee no. 1*. In their replies, the following contentions have been made by the said *Noticees*:

i. The IPO of *CNE* was 100% underwritten in compliance with Regulation 106 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**") and therefore the allegation that the *Company* was involved in getting its shares subscribed by acting in undesirable manner is not sustainable. Copy of the underwriting agreement has also been filed in support of the said submission.

ii. The financial dealings of the *Company* with the Goldline International Finvest Ltd (hereinafter referred to as "**Goldline**") and all other entities were purely commercial in nature. Goldline is an entity listed on BSE and is in the business of buying & selling shares as well as lending and borrowing. *CNE* had no control on the business activities of entities like Goldline and other entities referred to in the SCN as funding entities. Based on the financial transactions carried out between other entities, no adverse inference should be drawn against the *Noticee Company*, i.e., *CNE*.

iii. Cooperation has been extended by providing relevant documents during the investigation and perusal of the SCN does not reflect that the investigation was hampered due to lack of information or remained incomplete for any reasons attributable to the *Noticee Company*. Rather, the SCN reflects that SEBI was able to conclude its investigation and the instant SCN was issued after conclusion of the investigation.

iv. Vide order dated September 06, 2017, proceedings against 216 entities were disposed of who were initially *prima facie* charged in the *interim* order including entities having alleged association with the *Company*. The same shows that SEBI has not found any obnoxious irregularity pertaining to price rise and allocations in the IPO of the *Company*.

v. The provisions of Section 12 (a), (b) and (c) of SEBI Act, 1992, and Regulation 3 and 4 of PFUTP Regulations are not attracted, as they have not dealt in securities, i.e., activity in the secondary market segment of capital market.

vi. During investigation, only selected transactions, particularly financial, have been picked up and the transactions executed by third parties have been made basis to make allegations, without appreciating business model of such companies. The matter requires

re-investigation to appreciate the true facts based on the comprehensive investigation as has been done in various other matters.

vii. An amount of INR 1.00 Crore to Kirti Advertisement Pvt. Ltd. was advanced out of the IPO proceeds for pre-production of one Film, and the same was stated as one of the Objects in the Prospectus. A copy of ledger account of Kirti Advertisement Pvt. Ltd. in the Books of Accounts of the *CNE* along with copy of bank account statement showing transfer of funds from *CNE* to Kirti Advertisement Pvt. Ltd. have been filed.

viii. An entity namely Santushti Craft Media Private Limited and an individual namely Mr. Abhishek Maratha had approached the *Company* for production of Films and in pursuance thereof, the *Company* had advanced INR 1.60 Crore and INR 70.00 Lakh to them, respectively, for pre-production of film(s). The pre-production of films was stated as an Object of the Issue in the prospectus.

ix. Further, an amount of INR 15.00 Lakh (approx.) was spent by the *Noticee Company* for promoting the *Company* in film industries by hosting an event in The Metropolitan Hotel, New Delhi. Copy of ledger account of the said hotel along with copy of bank account statement showing the said transfer of funds to the hotel have also been filed.

x. Payment of INR 18.00 Lakh (approx.) was made to Guiness Corporate Advisors Limited, for acting as the Lead Manager to the Issue. Copies of invoice, bank statements have also been filed.

xi. An amount of INR 2.00 Lakh (approx.) was paid to SAP Print Solutions Pvt. Ltd., and an amount of INR 1.00 Lakh (approx.) was spent for newspaper advertisement and paid to Innovative Communication. The *Company* has also paid INR 1.00 Lakh (approx.) to Beetal Financial and Computer Services, who acted as the Registrar and Transfer Agent. The *Company* has paid to BSE Ltd., an amount of INR 2.00 Lakh (approx.) and INR 1.00 Lakh to NSDL and CDSL for depository's services. Copies of ledger account and bank account statement have been filed for all the above said payments.

xii. The *Company* has paid certain miscellaneous expenses to Gem Tours and Travels Private Limited and has filed copy of ledger account and bank account statement to support payment of INR 2.00 Lakh (approx.)

xiii. Apart from the above, the *Company* has made investments out of the IPO proceeds the details of which, as furnished by the *Company* are as follows: -

Table no. 7

Sr. No.	Name of the entity	Amount advanced	Document filed in support
1.	Dilwara Leasing & Investment Ltd.	INR 40.00 Lakh	Ledger account; Copy of bank account statement; Copy of Form 26AS
2.	Jindal Infrastructure Pvt. Ltd.	INR 20.00 Lakh	-do-
3.	Moongipa Commodities Pvt. Ltd.	INR 25.00 Lakh	-do-
4.	Zealous Financial Services Pvt. Ltd.	INR 50.00 Lakh	-do-
5.	Pawanputra Hotels & Resorts Pvt. Ltd.	INR 1.00 Crore	-do-
6.	Mr. Farhat U. Nisa	INR 15.00 Lakh	Ledger account and bank account statement
7.	Mr. Mehnaz Faizan	INR 10.00 Lakh	-do-

xiv. It has been submitted that the *Company* had, during the period of October 2012, borrowed INR 70.00 Lakh as short-term loan, from an entity viz., Oasis Buildmart India Pvt. Ltd. for strengthening distribution expenses which was one of the Objects of the Issue. The said amount of INR 70.00 Lakh has been repaid by the *Company* during March, 2013 from its surplus funds. Copy of ledger account has been filed in the support of said transaction.

10. The *Noticee no. 10* (Avisha Credit Capital Limited), vide its letter dated September 11, 2017, submitted that it is a Non- Banking Financial Company (NBFC**)** (hereinafter referred to as '**Avisha'**) and in its normal course of business, it had provided funds to needy people and such recipients of funds have discretion to utilize those funds, as per their requirement.

Consideration of Issues and Findings:

11. Considering the findings from investigation conducted by SEBI, the allegations levelled against the *Noticees* in the SCN and the explanations offered by the *Noticees* through their verbal and written submissions, I find that the following issues require consideration in the present matter:

- *Issue I: Whether the Noticee nos. 4 to 11 are connected and the Company through connected entities/Noticees has funded the subscription of its IPO?*

- *Issue II: Whether the proceeds of IPO have been utilized by the Company in terms of the Objects stated in the Prospectus?*

12. Before moving on to examine the charges on merit, it is noted that a few of the *Noticees* have raised certain preliminary objections such as non-furnishing of sufficient documents enabling them to defend themselves properly. In this respect, I note that the *Noticees* while requesting for inspection and copies of documents have not pointed out at any specific document, which has been referred to and relied upon in the SCN and copy of which has not been made available to them for defending their case effectively. *Noticees* have also not brought to my notice any kind of prejudice that was caused by the purported non-furnishing of documents, if any.

13. From the SCN, it is noted that to support the allegations of funding of applicants to subscribe to shares under the IPO and non-utilization of IPO proceeds as per the objects of IPO documents, the SCN is duly enclosed with necessary annexures that contain various relevant details including information pertaining to IPO allottees. Further, it is also observed that the SCN does not mention about the recording of statement of any person and thus no reliance on any recorded statement has been made in the SCN to make allegations against the *Noticees*. Therefore, the grievance of non-furnishing of documents and not providing opportunity for cross examination of persons whose statement was recorded in the course of investigation as expressed by the *Noticees*, deserve outright rejection. Notwithstanding the above, the issue pertaining to the necessity of providing documents including copy of investigation report to a delinquent has come up for consideration before Hon'ble SAT in the matter of *Reliance Commodities Ltd. Vs. National Commodity & Derivatives Exchange Ltd. (Appeal No. 173 of 2019 -Date of Decision -23.07.2019)* in which the Hon'ble SAT *inter alia* held that: "*Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.*

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant....."

14. Having found no merit in the preliminary/ technical objections raised *Noticees*, I now move on to deal with issue on its merit.

15. As stated in the beginning, the acts of the *Noticees* during the IPO of CNE have been alleged to have violated provisions of SEBI Act, 1992 and PFUTP Regulations, 2003. It has also been alleged that there was actually no compliance of Regulation 14(1) of ICDR Regulations as the *Company* has resorted to a fraudulent manner and unfair method to ensure listing of its equity capital and the method so allegedly practiced by the *Company* was not in compliance with the rules and regulations in force at that point of time. At this stage, before moving forward to deal with the issues in hand, with facts unearthed in the course of investigation and evidences gathered in support of the allegations so made in the SCN, it would be proper to have a look at the relevant provisions as alleged to have been violated in terms of the SCN which are reproduced hereunder for ready reference:

SEBI Act, 1992

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

Section 12A.*No person shall directly or indirectly—*

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

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

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

SEBI (PFUTP) Regulations, 2003

Prohibition of certain dealings in securities

Regulation 3*. No person shall directly or indirectly—*

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

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

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

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

Prohibition of manipulative, fraudulent and unfair trade practices

Regulation 4 (1)

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

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Minimum Subscription

14. (1) the minimum subscription to be received in an issue shall not be less than ninety percent of the offer through offer document:

Provided that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

16. I shall now proceed to deal with the first issue, as framed above to determine as to whether the *Noticees* enjoyed connections amongst themselves and whether the *Company* has indeed funded the subscription to its own IPO, with the help of those connected entities who are also *Noticees* (*Noticee nos. 4* to *11*) in the present proceedings before me.

17. It has been alleged in the SCN that the *Company* has got its own IPO funded through connected entities and then transferred part of the IPO proceeds to one of the funding group entities (Goldline-*Noticee no.7*) which was put up as a front to provide finance to the IPO

allottees of CNE. The fund transfers made by the *Company* to Goldline have not been denied by the *Company* except for trying to explain that the said transfers were of commercial in nature. In this regard, I note from the records that investigation report has clearly found out several instances of fund transfers amongst the other *Noticees* as well (viz : *Noticee nos. 4,5,6,8,9,10* and *11*) and also between the other *Noticees* and Goldline, thereby sending an apparent message that there existed a close connection between the *Company* and the other *Noticees* and that all of them were part of the same group of entities who provided, directly and indirectly, financial help to the IPO allottees of the *Company*. Before I proceed to examine and record my observation on the specifics of funding aspect, it would be essential to first examine the allegation of interconnectedness amongst various entities the particulars of which are depicted in details with my observations in the table below:

Table no. 8: Connection / Fund Movement between funding group entities

Sr. No.	Particulars of Funding Entities/Noticees as per SCN	-Connection – Fund Movement amongst funding group entities
1	Goldline International Finvest Ltd. ('Goldline') (*Noticee no. 7*)	• Goldline received IPO proceeds of INR 5. 00 Crore from *CNE*. • Goldline had funded money to the Market Maker viz. Narayan Securities Ltd. and also to other HNI and RII category allottees. • Goldline is having fund movement with M/s. Mayfair Infosolution Pvt. Ltd., M/s. AMS Powertronic Pvt. Ltd., LMR green Realty Pvt. Ltd., M/s. Avisha Credit Capital Pvt. Ltd. and Aavia Buildtech Pvt. Ltd. **Observation:** From the examination of details as stated under para 5 and 10 of the SCN, it is noted that *CNE* (*Noticee no. 1*) had transferred INR 5.00 Crore to Goldline on 13.03.2013 i.e. the immediate next day of the IPO day. It is also noted that there is fund movement between Goldline and LMR green (*Noticee no. 8*). Further, the SCN also notes that Avisha (*Noticee no. 10*) had fund movement with *Noticee no. 7* (Goldline). In addition to the above, it is also noted that May Fair Infosolution Pvt. Ltd., AMS Powertronic Pvt. Ltd. and Aavia Buildtech Pvt. Ltd. had also fund transfers with *Noticee no. 7*. After examination of the above information as available on record, it can be safely concluded that *Noticee no. 7* (Goldline) along with other entities including *Noticee no. 8* and *10* had connection with *CNE*. The above observation finds strength from the fact that the *Company(CNE)* had transferred around 43% of the total IPO proceeds to the *Noticee no. 7* (Goldline)and neither the *Company* nor *Noticee no. 7* has furnished any justifiable explanation with respect to the said fund

		movement. Thus the aforesaid fund movements amongst the entities/*Noticees* are themselves sufficient enough to hold the connections that existed amongst these *Noticees* during the relevant period of time.
2.	Sumit Kumar (*Noticee no. 4*) **<u>Proprietorship Firm</u>** • Vijay Bhagwandas & Co. • Durga Prasad & Co.	• Vijay Bhagvandas & Co. had received funds from Aavia Buildtech Pvt. Ltd. • Vijay Bhagvandas & Co. received funds from A R Enterprise and N V Sales Corporation. • Durga Prasad & Co. received funds from Alliance Traders and A R Enterprise. • Durga Prasad & Co. also had fund movements with Mayfair Infosolution Pvt. Ltd. and AAMS Powertronic Pvt. Ltd. • Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar having the same/common address viz: Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. • Sumit Kumar is the director in AMS Powertronic Pvt. Ltd. **Observation:** From the materials on record, it is noted that *Noticee no. 4* shared a common address i.e. "Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi – 110092" with the following: ➢ Proprietorship firm of Madhukar Dubey viz. Magnum Industrial Corporation (*Noticee no. 5*) ➢ Proprietorship firm of Satendra Kumar viz. A R Enterprise (*Noticee no. 6*) Sharing a common address in KYC documents is in itself sufficient to hold that *Noticee nos. 4* to *6* are connected to each other. As far as the fund movements of *Noticee no. 4* with other entities are concerned, the SCN records that Vijay Bhagvandas & Co had received INR 25.00 Lakhs from Aavia Buildtech Pvt. Ltd. Similarly, fund transfers were noticed between *Notice no. 4* and Mayfair Infosolution Pvt. Ltd. From the records, I further note that *Noticee no. 4* (Sumit Kumar) is a director in AMS Powertronic Pvt. Ltd. In the preceding paragraphs, I have already established direct connection between Aavia Buildtech Pvt. Ltd., Mayfair Infosolution and AMS Powertronic Pvt. Ltd. with *Noticee no. 7*. In view of the above and the undisputed fact of direct connection of *Noticee no. 4* with these three entities, these facts are sufficiently strong enough to establish the connection of *Noticee no. 4, 5* and *6* with *Notice no. 7* and consequently with *CNE*.
3	Madhukar Dubey (*Noticee no. 5*) **<u>Proprietorship Firm</u>** • Alliance Traders • N V Sales	• Magnum Industrial received funds of INR 30.00 Lakhs from N V Sales Corporation. • N V Sales Corporation had fund movement with AMS Powertronic Pvt. Ltd. • Alliance Traders received funds from AMS Powertronic Pvt. Ltd., Mayfair Infosolution Pvt. Ltd.

	Corporation • A One Furniture • Magnum Industrial	• Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar having common address at Address): Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. **Observation:** It is observed from the SCN that it had received 30 Lakh from N V Sales Corporation and *Noticee no. 5* is also the proprietor of N V Sales Corporation. Considering the fact that Madhukar Dubey is a proprietor of N V Sales Corporation, connection is established between N V Sales Corporation and *Noticee no. 5*. Consideration of the material available on record clearly shows that N V Sales Corporation had a fund movement with AMS Powertronic Pvt. Ltd. (an entity connected to *Noticee no. 7*) leading to establishment of connection of *Noticee no. 5* to AMS Powertronic Pvt. Ltd. as well as Mayfair Infosolution Pvt. Ltd., both of which had fund movement with Goldline. Noticee no. 5 is connected to *Noticee no. 7* (Goldline) and the fact that it shared common address with *Noticee no. 4*, it can be reasonably concluded that *Noticee no. 5* is also connected to *Noticee no. 7* and consequently with the *Company*, i.e., *CNE*.
4	Satendra Kumar (*Noticee no. 6*) **<u>Proprietorship Firm</u>** • Bright Securities • A R Enterprise • Nisha Traders	• A R Enterprise received funds from N V Sales Corporation. • Further, A R Enterprise had a fund movement with AMS Powertronic Pvt. Ltd. and Mayfair Infosolution Pvt. Ltd. • Nisha Traders was having fund movement with Magnum Industrial, Bright Securities and A One Furniture and Mayfair Infosolution Pvt. Ltd. • Bright Securities was having fund movement with Goldline and AMS Powertronic Pvt. Ltd. • All of the above entities are having common address with *Noticee nos. 4* & *5*. **Observation:** From the SCN, it is noted that the *Noticee no. 4* had fund transfers with May Fair Infosolution Pvt. Ltd., AMS Powertronic Pvt. Ltd., and N V Sales Corporation. I have already observed above that *Noticee nos. 4, 5* and *6* shared common address and hence, enjoyed inter se connection. Also, connection between *Noticee no. 4*, *5*, May Fair Infosolution Pvt. Ltd. and AMS Powertronic Pvt. Ltd and *Noticee no. 7* has been established in the preceding paragraphs. Therefore, by combined reading of such connections read with the fund transfers of *Noticee no. 6* with the 3 entities mentioned above, it becomes further clear that *Noticee no. 6* is connected to *Noticee no. 7* as well as the *Company* i.e., CNE.
5	LMR Green Realty Pvt. Ltd. (*Noticee no. 8*)	• It had received funds from Goldline International Finvest Ltd. **Observation:** From the SCN, I note that *Noticee no. 8* has received from the

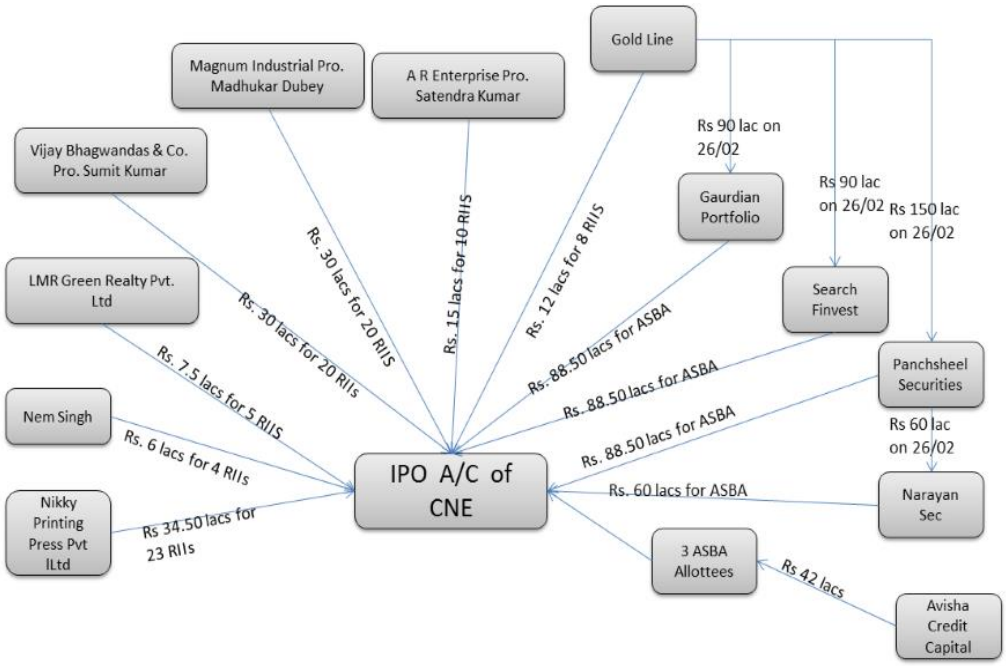
		Noticee no. 7, which ostensibly establish the connection of *Noticee no. 8* with *Noticee no. 7*. Further, since *Noticee no. 7* has already been found to have connection with the *Company*, based on materials available on record, it can safely be recorded that *Noticee no. 8* was also enjoying connection with the *Company*. At this point I may add that during the personal hearing before me the *Noticee no. 8* was advised to submit certain information like details of the 5 entities on behalf of whom *Noticee no. 8* had made payment to CNE for subscribing to its shares under IPO and the relationship of those 5 entities with the Noticee; alongwith a copy of agreement for sale based on which it had purportedly received INR 32.00 Lakh from CNE; and copy of its balance sheet/ITRs etc. However, *Noticee no. 8*, has not filed any of these information so as to justify its transactions that are the subject matter for the allegations made against it in the SCN. The non-compliance on the part of *Noticee no. 8* to furnish the requisite details further cements my observation that it had close connection with Goldline as well as with the *Company*.
6	Nikki Printing Press Pvt. Ltd. (*Noticee no. 9*)	• It had received funds of INR 28.00 Lakhs from M/s. Nisha Traders and INR 7.00 Lakhs from Amsons Apparels Pvt. Ltd. • It had also fund movement with Goldline, Mayfair Infosolution and with AMS Powertronic. • Directors Name of this Noticee *Company* during the relevant period were (as per MCA Database) were Sumit Kumar and Vinay Kumar. **Observation:** From the SCN, I note that it had fund transfers with Goldline (MayFair Infosolution Pvt. Ltd., and AMS Powertronic Pvt. Ltd.. As stated above, it had also received fund to the tune of INR 28.00 Lakh from Nisha Traders and INR 7.00 Lakhs from Amsons Apparels Pvt. Ltd. Investigation has further revealed that these two entities (Nisha Traders and Amsons Apparels Pvt. Ltd.) had fund movements with AMS Powertronic Pvt. Ltd. and Mayfair Infosolution Pvt. Ltd and were also connected with Mayfair Infosolution Pvt. Ltd and AMS Powertronic Pvt. Ltd. through common directors. On the basis of the above transactions and facts, I can conclude that *Noticee no. 9* was connected to *Noticee no. 7* and thereby also enjoyed connection with the *Company* i.e. CNE.
7.	Aavisha Credit Capital Pvt. Ltd. (*Noticee no. 10*)	• This Noticee had fund movement with Goldline and Mayfair Infosolution. **Observation:** In this respect, while dealing with connection of *Noticee no.7* with other Noticees, I have already dealt with fund transfers between *Noticee no. 7* and *Noticee no.10*, which has established beyond doubt the direct connection between Notice no. 7 and 10. It has also been noticed from the SCN that the

		Noticee no. 10 had fund transfers with May Fair Infosolution Pvt. Ltd. As May Fair Infosolution Pvt. Ltd. was directly connected with *Noticee no. 7*, such transfers of funds between *Noticee no. 10* and May Fair Infosolution Pvt. Ltd., reinforces the connection between *Noticee no. 7* and *10*. *Noticee no. 10* is also connected to the *Company* through Goldline and investigation has already found that a number of IPO applicants of CNE have been funded by *Noticee no. 10*. In its reply to the SCN, no details with any supportive documents have been furnished by this Noticee to justify the fund transfers as aforesaid and it has been merely claimed that it had extended advances to needy persons who had discretion to utilise such funds. Thus, in the absence of plausible justification and verifiable documents substantiating the movement of funds between Goldline and *Noticee no. 10*, the documents on record clearly point out the close connection of *Noticee no.10* with the *Company* i.e., CNE as well as the further utilization of said fund received by it towards funding of the allottees of IPO.
8.	Nem Singh (*Noticee no. 11*)	• He has received INR 1.50 each from 3 different entities viz. Mamta Bhardwaj, Umed Singh Bhutoria HUF and Mr. Ajay. • Further, LMR Green Realty Pvt. Ltd. has funded him for making subscription to the IPO of another company, viz: Eco Friendly Food Processing Park Limited ("ECO"). However, subsequently the shares of ECO purchased through IPO of ECO were sold by him and the amount so realized was utilized for making application under CNE IPO. **Observation:** From the above, it is noted that *Noticee no. 11* had received funds from LMR Green. It is also noted that he received INR 1.50 Lakh each from 3 different entities viz. Mamta Bhardwaj, Umed Singh Bhutoria HUF and Mr. Ajay. These 3 entities were also connected to Goldline through fund transfers. Based on the above, it can be held that *Noticee no. 11* was also connected to *Noticee no. 7* through the said chain of fund transfers. *Noticee no. 11* did not file any reply to the SCN nor has appeared before me for the personal hearing. Noticee no 11 is found to be connected to *Noticee no. 8* (LMR Green Realty Pvt. Ltd.) and accordingly also to the *Company*.

18. In view of my observations as recorded above in relation to the connections noticed amongst different *Noticees* who were allegedly involved in funding the IPO allottees of CNE, it stands fairly established from the materials on record that *Noticee no. 7* (Goldline) was closely connected to the *Company* i.e., *Noticee no. 1* on the basis of various fund transfers between them. I have also found from above factual details that the other *Noticees* viz., *Noticee nos. 4,5,6,8,9,10*

and *11* were enjoying connection with *Noticee no.7* based on various factors like fund movement, common directorship and common addresses etc. On the basis of the connection established between *Noticee nos. 1* and *7* and also amongst *Noticees nos. 4* to *11* as well as their connection with *Noticee no.7*, such compelling facts and circumstances surrounding the funds transfers and other factors as highlighted above, clearly lead me to conclude that *Noticees nos. 4* to *11* were very well connected to *Noticee no. 1*.

19. Having concluded that all the *Noticees* in the present proceedings enjoyed close connections with each other, I proceed to record my observations with respect to the specifics of the alleged funding of the applicants in the IPO of *CNE* which was allegedly done to ensure that the IPO of *CNE* achieves the minimum prescribed threshold level of subscription so as to guarantee a successful IPO as well as to facilitate successful listing of the scrip of *CNE*. The details of the said funding is summarised are the following pictoral representation:



20. As stated above, allegations have been made against the *Noticees* that the *Company* i.e. *Noticee no. 1* through its connected entities have funded the applicants in the IPO so as to achieve the minimum required subscription prescribed under the regulations and to ensure successful listing of its shares on the exchange platform. To meet this objective, the investigation has revealed that a number of fund transfers have taken place amongst the *Noticees*

and the funds so transferred were utilized by the funding entities to achieve the aforesaid objective to garner minimum mandatory level of subscription for the shares of the *Company* offered in the IPO by CNE. This was achieved by conceiving a common scheme under which, the connected entities have allegedly funded the IPO applications of a large number of subscribers to the IPO of the *Company*. As evident from my observations recorded in the Table no. 8 above that there were numerous fund transfers that have been found to have taken place between *CNE* and other group entities, who have allegedly funded the IPO allottees. It has also been noticed that immediately after the IPO was completed, an amount to the tune of INR 5.00 Crore was transferred from IPO proceeds of the *Company* (*Noticee no. 1*) to Goldline (*Noticee no. 7*). I have also mentioned about the specifics of various fund movements between *Noticee no. 7* (Goldline) and other *Noticees* such as *Noticee nos. 6, 8, 9* and *10*. Further, it has already been noticed that the above mentioned 08 funding *Noticees* i.e. *Noticee nos. 4* to *11* have funded from their bank accounts, the IPO applicants/allottees of the IPO of CNE to pay their subscription money against the allotment made to them.

21. Keeping in view the afore said details of fund transfers bearing direct nexus with the IPO allotment to various allottees of IPO of *CNE*, it has been alleged that the 92 allottees who were allotted 19,80,000 shares of *CNE* were infact funded by the *Company* itself through different funding entities. Curiously enough, the *Company* has not furnished any kind of explanation so as to justify as to why it had accepted cheques from numerous third parties on behalf of such a large number of IPO applicants, who were apparently not even related to such third party funding entities. The ground of the *Company* that it does not have control on transactions executed by third parties is evasive and casual, since based on such third party transactions only, the *Company* had allotted shares to the applicants of IPO, as demonstrated above. When the SCN has made categorical imputations, the *Company* ought to have offered explanation for such a misconduct so as to justify the *bonafide* of such transactions, but clearly, it has not been able to explain the rational of such nature of transactions.

22. Further, the shares of *CNE* were issued at @ INR 25 per shares and in the process, the total sum that was alleged to have been involved in the funding the afore-stated allottees comes to INR 4.95 Crore. As stated above, the investigation has noticed that immediately after the completion of IPO, *Noticee no. 1* had transferred huge sum of INR 5.00 Crore to account of the *Noticee no. 7* i.e. Goldline, and the said amount in fact almost matches with the above stated total

sum of funding made to the IPO allottees allegedly by the *Company* through different funding entities including Goldline (*Noticee no.7)*. The *Noticee no.1 Company* has simply tried to shrug off the allegation of its connection with those entities by claiming that the transactions including those executed with Goldline were commercial transactions. However, despite knowing that the said transaction of INR 5.00 crore with Goldline has been made out to be the major ground for making allegation of funding, the *Company* has not thrown any light on the exact nature of the said transaction, for which such a huge amount of INR 5.00 Crore was required to be transferred by the *Company* to the account of Goldline on the very next day of the IPO.

23. The above transfer constituted almost 43 % of the IPO proceeds and the justification advanced by the *Company* was merely a bald assertion that it was in the nature of commercial transaction without any documentary evidence to support its claim of commercial transaction. I note that one of the main objects of the IPO of *CNE* was production of films. However, the purpose of the said fund transfer was definitely not for the said object as neither the *Company* has claimed the same in its reply nor Goldline has even claimed that it is in the business of making films. In the absence of the same, it becomes clear that the said amount of INR 5.00 Crore was transferred to Goldline for purposes other than the declared objects of the IPO and as the materials available on record clearly suggest, the said transferred fund of INR 5.00 Crore was reimbursed to Goldline for the funding of the IPO applicants which Goldline had done on behalf of the *Company*. The above observation is further strengthened from the corroborating fact that a total sum of almost an equal amount was incurred by *Noticee nos. 4* to *11* (who have been found to be closely connected to *Noticee no. 7*) towards paying for and on behalf of 92 applicants to subscribe to 19,80,000 shares in the IPO of the *Company*. It is also observed that the aforesaid connected funding group entities have not provided any justification for funding those 92 applicants who successfully subscribed to 19,80,000 shares amounting to 42.25% of the share capital issued and subscribed under the IPO of *CNE*. It is pertinent to reiterate here that the said amount that was transferred to Goldline by *CNE* out of IPO proceeds, constituted more than 43% (approx.) of the total IPO proceeds mobilized by the *Company* indicating gross diversion of IPO proceeds from the books of accounts of the *Company*.

24. It is also noted that the funding Noticee entities have not filed any explanation with supporting evidence to justify the payment made by them for and on behalf of the above 92 applicant allottees of the IPO of CNE. No documents have been furnished to even to lay a

claim that the said amounts were lent to the IPO allottees nor any claim has been made to suggest that the said 92 IPO allottees have subsequently repaid the amounts to the funding entities. Therefore, in absence of any rebuttal with evidence to justify the transfer of fund by the *Noticee nos. 4* to *11* to the 92 IPO applicants or for making payment on behalf of them to the *Company*, the transfer of INR5.00 Crore by the *Noticee no. 1* in favor of *Noticee no. 7* immediately after the IPO does not leave any scope for being treated as a 'commercial transaction' as advanced by the *Company* i.e. *CNE*. On the contrary, looking holistically at the entire sequence of transactions involving fund transfers between the *Company* (*Noticee no.1)* and Goldline *(Noticee no.7*) and between Goldline and other connected *Noticees*, and the fact that the total amount allegedly reimbursed by the *Company* to Goldline post completion of IPO almost matches with the aggregate amount funded previously to the IPO applicants through various fund transfers effected by the funding entities, it leaves no doubt in my mind that the said transfer of INR 5.00 Crore by the *CNE* to *Noticee no. 7* was nothing but a reimbursement of the amount incurred by *Noticee no. 7* and its connected *Noticee* entities towards funding of the 92 allottees towards their subscription of 19,80, 000 shares in the IPO of *CNE*.

25. As noted earlier, IPO applicants from different categories were funded/sponsored by the *Company* with the help of the funding group entities. For example, out of 274 applications received under the RIIs category, applications filed on behalf of 90 applicants were found to have received funds from the funding group *Noticees* connected to the *Company* and out of such 90 applicants, allotment was made in favour of 85 applicants for a total of 5,10,000 shares. It is also noted that even for the Market Maker Category, an application for 2,40,000 shares was also found to be funded by one of the funding group entities. Similarly, in the HNI Category also, allotment of 12,30,000 shares were made based on the funds made available to the applicants by the *Company* connected funding group entities.

26. As a result of the aforesaid acts of providing funds to the IPO applicants/allottees of CNE, allotment of 19,80,000 shares (42.25% of the total shares allotted) was made to those applicants who were funded by the connected funding group entities with the financial backing of the *Company* itself. As mentioned earlier, out of the total IPO proceeds of INR 11.71 Crore, *the Company (CNE)* had transferred INR 5.00 Crore to Goldline immediately after the IPO making it apparent and too obvious that Goldline was adequately reimbursed by the *Company* for the funding that was done by it and its connected other funding entities to ensure the

payment of subscription amount aggregating to INR 4.95 Crore on behalf of the allottees of those 19,80,000 shares under the IPO of the *Company*.

27. As stated above, with respect to the aforesaid transactions, the *Noticee nos. 4* to *11* (except *Noticee no. 8* and *10*) have chosen to neither file a reply to the SCN nor to even avail the opportunity to personally appear before me to offer any justification behind their acts of funding the application money for and on behalf of the 92 applicants/allottees. Further, *Noticee no. 8* has also filed any documentary evidence to justify the transactions executed by it except for making an unsubstantiated claim that the fund transfers made by it were commercial in nature or towards sale/purchase of property. In the absence of any rebuttal with evidence to the contrary, the materials collected in the course of investigation leave me with no alternative but to hold that the aforesaid acts of providing funds were aimed at fulfilling a pre-designed scheme to ensure successful listing of the scrip on the exchange platform. I have already observed above that the said transfer of INR 5.00 Crore by the *Company* to Goldline immediately on the day after completion of IPO constituted around 43 % of the total IPO proceeds for which no discussion/disclosure is found in the Prospectus, which can be referred to find out as to what exactly warranted such an immediate transfer of fund to Goldline. The Noticee *Company* i.e. CNE, has also not made any effort to explain or offer any document to support that the transfer of INR 5 Crore to Goldline was indeed commercial in nature.

28. Insofar as *Noticee no. 10* is concerned, in its brief reply, it has merely stated that in pursuance of its business activity of NBFC, it had extended advances to needy persons. However, apart from making such a submission, no other information like rate of interest, tenure of loan, terms and conditions for advancing those funds, if any, details of collaterals nor any independently verifiable documents like application form, loan agreement, TDS certificate etc., have been filed to lend credibility to its explanation that the *Noticee no. 10* had extended advances in due course of its NBFC activity. I observe that such a conduct on the part of the *Noticee no. 10* renders the said submissions as hollow and bald claims, which deserves to be discarded for want of documentary evidence. There is no doubt that had the imputed transactions entered into in pursuance of genuine business of NBFC, the *Noticee no. 10* would have certainly been in a position to counter the allegations levelled in the SCN with controvertible evidence. Thus, I observe that the *Noticee no. 10* has failed to persuade me to make out a case in its favour.

29. Looking at the aforesaid dubious conduct of the *Noticees*, it is not surprising to note that even after 7 years of the said transfer of INR 5.00 Crore to Goldline, the Noticee *Company* and its Directors are not in a position to explain what was the 'commercial nature' of that transfer of funds made to *Noticee no. 7*. They have not submitted any details about the object for which that huge amount was transferred, nor have furnished any details about the work/service so delivered if any, by *Noticee no. 7* in lieu of the said INR 5 Crore received by it from the *Company* out of the IPO proceeds 7 years ago. I am therefore left with no option but to conclude that the said amount was nothing but reimbursement made by the *Company* towards the funding of 92 applicants/allottees under a pre-fabricated scheme to ensure a successful IPO as well as successful listing of the scrip.

30. In this respect, it is noted that the regulation 14(1) of ICDR Regulations stipulates that the minimum subscription that needs to be received in an issue (IPO) shall be at least 90% of the size of offer of shares being made in such issue. In the present case, the *Company* had in total, allotted 46,86,000 shares to 320 applicants. As discussed in the preceding paragraph, subscription of around 42% of the shares under the IPO, i.e., 19,80,000 shares was successfully done owing to the funding provided by the entities which were directly or indirectly connected to the *Company* itself.

31. From the diagram presented earlier it can be observed that Goldline had provided funds to 4 entities, who had in turn applied for shares in their names by filing application under ASBA category. Further, Goldline has also paid INR 12 Lakh directly to the *Company* on behalf of 8 RIIs. However, in respect of the remaining funding transactions by the funding group entities, it is seen that the funding entities have made direct payment to the IPO Accounts of CNE itself on behalf of the applicants. For illustration, as pointed out earlier, Nikki Printing Press Pvt. Ltd. (*Noticee no. 9*) has paid INR 34.50 Lakh directly to the *Company* on behalf of the 23 RIIs in support of their (23 RIIs) application of shares filed with the *Company*.

32. The *Company* in its written reply has asserted that SEBI should not draw adverse inference against it, as the business activities of other entities are independent of the *Company*. However, the fact that the *Company* was directly receiving IPO application money from the other third-party entities (funding entities) on behalf of the applicants of the IPO and immediately after completion of IPO it transferred a major portion of IPO proceeds amounting

to INR 5.00 Crore to Goldline, provides a strong preponderance of probabilities to establish that the *Company* was playing a central role in a scheme that was fabricated only to facilitate a successful IPO listing for the *Company*, without which the *Company* would not have achieved the minimum level of subscription required to ensure listing on the exchange platform. It is not the case of the Noticee *Company* that its public issue was so oversubscribed that even in the absence of those 92 applicants/allottees, the *Company* would have succeeded in achieving the desired level of subscription for successful listing of its securities. Further the analysis of fund transaction that took place between the *Company* and the funding group *Noticees*, also corroborates that the total funding made for subscription to 19,80,000 shares was INR 4.95 Crore which was reimbursed by the *Company* (CNE), by transferring INR 5.00 Crore to Goldline on the next day of IPO, i.e., March 13, 2013. The aforesaid observations clearly indicate that the entire transaction was done under a well-orchestrated device, under which a limited specific role was assigned to each of the *Noticees* and such role has been well discharged by each of the *Noticees* to make the IPO of CNE a success, by ensuring that the mandatory requirement of 90% minimum subscription, as laid down under Regulation 14 (1) of the ICDR Regulations is achieved by the collective as well as individual efforts of each of the *Noticees*.

33. The *Company* has also argued that its IPO was 100% underwritten and therefore the charges of deploying a scheme for getting the minimum subscription for its IPO cannot be sustained. It has been argued that without the help of such allegedly funded applicants, the underwriting agreement would have been triggered and saved the IPO from failing to get listing. In order to test the strength of such a submission, it is required to dwell into the underwriting agreement that the *Company* has filed in its support for which the relevant clauses governing underwriting are reproduced hereunder:

> ***2. Underwriting***
> *On the basis of representations and warranties contained in this Agreement and subject to its terms and conditions, the Underwriter hereby agrees to underwrite and/or procure subscription for the Equity Shares in the manner and on the terms and conditions contained in Section 5 of this Agreement.*
> ……
> ***5. Issue***
> *5.1 Notwithstanding anything contained elsewhere or otherwise in this Agreement, the Company agrees that the maximum number of Equity Shares in the Issue that the Underwriter have to underwrite is 46,68,000 Equity Shares, which is allocated as under:*

Name of the Underwriter	*No. of Shares Underwritten*

GCAPL	*46,68,000*

5.2 In the issue, Underwriter shall only be responsible for ensuring completion of the subscription in respect of such applicants, including ensuring full payment of the issue Price in respect of the Equity Shares for which such applications are made, in the manner set forth in this Section.

5.2.1 The default in full and timely payment of the Issue Price in respect of the Equity Shares for which the applicant has placed a application and received allocation in respect of such application; or

5.2.2 The withdrawal of a applicant, in respect of which an allocation of Equity Shares has been made, by the applicant prior to allotment of the Equity Shares subscribed by such applicant;

5.3 The Underwriter shall be liable to discharge its underwriting obligations as follow:

The Underwriter will be required for themselves, to the extent of applications procured by them, to make good any default by such applicants.

(underlines supplied)

34. From a careful perusal of the afore-stated clauses of the underwriting agreement I observe that the essential conditions that were laid down in the said agreement have restricted the underwriter to be responsible towards only those applications that were to be procured by it (Clause 5.3) only in case of default of payment (Clause 5.2.1.) or in case of withdrawal of the application (Clause 5.2.2). The agreement, nowhere casts any obligation on the underwriter that it has to subscribe to the portion of the issue that remains unsubscribed. In other words, contrary to the claim of the *Company* there is no condition prescribed in the aforesaid agreement based on which one can say that the issue was to assured to be 100% underwritten. In view of the same, the *Company* has not able to project an absolute *prima facie* presumption that there was no necessity on the part of the *Company* to devise any scheme in order to arrange funding for the IPO applicants, as has been alleged in the SCN. Further, even after presuming that the aforesaid clauses of the Underwriting Agreement had given some cushion to the *Company,* the established facts remain that the *Company* through connected funding group entities had indeed funded the 92 applicants/allottees, and in absence of such funding, the issue of equity shares of the *Company* would not have sailed through and achieved the minimum 90% of the offer size, as mandated by Regulation 14(1) of ICDR Regulations. Moreover, the factual narration of events starting from funding through entities like Goldline and finally transferring funds back to Goldline, have exposed unequivocally the conduct of the *Company* to get the issue subscribed by

achieving minimum subscription level. The aforesaid discussion has further reinforced the allegation that the mandatory requirement of getting minimum 90% application of the issue size was not achieved by the *Company* on its own strength and rather the *Company* through its connected entities devised an arrangement for funding the applicants/allottees to be successful in achieving the desired level of subscriptions to ensure the listing through such a fraudulent scheme.

35. In the light of the foregoing discussion, which brings to the fore the roles played by various entities in providing funds for subscription to the IPO of CNE to the tune of 42.25% of the total issue size, I observe that the of financial transactions executed between various *Noticees* that have neither been disputed nor could be countered with any tangible justification, coupled with the non-response to the SCN by various *Noticees,* have tilted the preponderance of probabilities in support of the allegations of SCN that the *Company* has acted in tandem with other *Noticees* to fructify a pre-mediated scheme to garner the minimum number of applications as mandated under the ICDR Regulations in order to make the IPO successful. In view of the same, the first issue for consideration in the present order has to be answered affirmatively in support of the SCN and against the *Noticees*.

Issue II: Whether the proceeds of IPO have been utilized by the Company in terms of the Objects stated in the Prospectus?

36. It been alleged that the IPO proceeds of the *Company* have not been utilized in terms of the objects as disclosed in the offer documents. SCN has also alleged that the *Company* has not provided complete and correct picture of utilization of IPO proceeds during investigation conducted by SEBI.

37. I find that the *Company* vide its written submission dated March 16, 2020, has offered their explanation justifying that the IPO proceeds have been utilized by the *Company* only for the purposes as stated in the Prospectus. On perusal of the said reply, it is observed that the said reply is evasive in nature, and also contains contradictory facts. Further, whatever explanation has been offered towards utilization IPO proceeds they are not supported by any piece of evidence to lend credence to those explanations offered by the *Company* and its Directors. Under the circumstances, I proceed to record my observations on the allegations of misutilisation of IPO proceeds on the basis of available records and after considering the reply

of the *Company* and its Directors, under different heads of objects of IPO in the following paragraphs:

a) **Details of utilization of proceeds towards production of films:**

i. In terms of the prospectus and disclosure made therein, the *Company* was to utilize the IPO proceeds for financing of two films and for the said object, an amount of INR 7.00 Crore was allocated. The *Company* and its Directors have in their written reply submitted that the transfers of funds made to the 3 different entities viz., Kirti Advertisement Pvt. Ltd. (hereinafter referred to as "**Kirti"**); Santushti Craft Media Private Limited (hereinafter referred to as "**Santushti**") and Mr. Abhishek Maratha were meant for the said object. As per the claim of the *Company*, it has transferred INR 1.00 Crore, INR 1.60 Crore and INR 70.00 Lakh to the aforesaid three entities, respectively. It has been submitted that the amount of INR 1 Crore paid to Kirti and INR 70 Lakh paid to Mr. Maratha were towards pre-production of one film each. However, with respect to Santushti, I can find that the reply of the *Company* is patently confusing. The *Company* has stated that: "…*The Company had advanced INR 1,60,00,000/- (Rupees One Crore Sixty Lakh Only) out of the IPO proceeds towards pre-production of* ***One (2) Films…"*** (emphasis supplied). It indicates that the Noticee *Company* itself was not clear as to whether the number of films for which payment was advanced to Santushti was 'One' or 'Two'. Irrespective of the above, as appears from the *Company*'s submissions, the *Company* had advanced INR 3.30 Crore to three entities towards production of 03-04 films whereas the offer documents disclosed production of 02 films.

ii. The *Company* on the one hand vide its letter dated December 24, 2015 had informed SEBI that it had spent INR 4.80 Crore towards financing the production of 'two films', whereas on the other hand vide its written explanations has furnished that only INR 3.30 Crore have been spent under this object and neither the *Company* nor its Directors have furnished any details pertaining to the balance amount of INR 1.50 Crore claimed to have been utilized under this head. In view of the above, I find that the submissions of the *Company* are fraught with contradiction and do not inspire any confidence to rely on the submissions so advanced by it and its Directors.

iii. Moreover, the aforesaid submissions of the *Noticees* still remain mere bald assertions and not supported by any evidence. The *Company* has not furnished any documents to substantiate the claim of expenditure/funds transfers having been done for production of films and no details with respect to the proposed film productions including the profile of the three above named entities, viz; their past experience in the field of film

making, documentation executed with them prior to transferring money to them to safeguards the interest of the *Company* and its shareholders or even the broad contours of the proposed films to be produced have been shared by the *Company* or its Directors with SEBI. No details with respect to the total budget of the production of films, the deliverables expected from the three entities with timelines or any other related technical details etc., have been furnished. It is surprising to note that despite making payment of such huge amounts, no independently verifiable document like copy of contracts detailing the terms and conditions for the transaction, Board Resolutions, balance sheets and Profit and Loss Accounts showing entries for such payments made, expenses incurred or steps taken so far by either of three entities towards production of films, present status of such production, tax deducted or paid emanating from such transaction etc., have been furnished to lend any credibility to their claim that the amounts so transferred to the three entities referred to above, were indeed intended for accomplishing the object of film production as per the offer documents.

iv. I observe that the *Company* has attempted to build its defense only on the basis of its internal ledger accounts maintained by it with respect to the aforesaid three entities. From the documents filed by the *Company* it is seen that all the payments made to the aforesaid three entities have been done in a very short span of time soon after the completion of IPO. It is noted that the amount of INR 1.00 Crore was transferred to Kirti on March 13, 2013; amount of INR 1.60 Crore was transferred to Santushti in three tranches starting from March 05, 2013 to March 14, 2013; while the amount of INR 70.00 Lakh was transferred to Mr. Maratha on March 13, 2013 itself.

v. As may be observed from above, the scrip of the *Company* got listed on March 12, 2013 and all the fund transactions have been executed with the aforesaid three entities around the said time only. I note that the transfer of funds immediately after the IPO to all these entities and the inability of the *Company* and its Directors to provide any details with respect to the purported film projects even after a passage of more than 7 years, renders the *Company*'s claim of having utilized the IPO money towards any kind of film production as false, baseless and *sans* merit. The undue haste shown by the *Company* for transferring the funds to those three entities and the gross inability of the *Company* to provide any supporting document or details except for its self-generated internal ledger accounts, exposes that the *Company*'s claim of utilization of proceeds of IPO towards film production is completely specious and concocted one. Thus the above narrated factual analysis and my observations clearly demonstrate the fraudulent motive of the *Company* and its Directors.

vi. In another glaring instance of contradictory stand taken by the *Company* before me, I note that with respect to the transaction executed with Mr. Maratha, the internal ledger account of Mr. Maratha maintained in the Books of Accounts of the *Company* shows a journal entry of INR 21,863 under the head 'interest received' whereas, the Noticee *Company* has submitted that INR 70.00 Lakh was given to him as advance towards pre-production of film. Since the *Company* has failed to show any linkage of this journal entry with the purported assignment of film production, it can be said that the claim of the Noticee of transferring substantial amount of fund to Mr. Maratha towards pre-production of film is *ex-facie* false and merits outright rejection.

vii. Admittedly, the *Company* on the very next day of IPO, i.e., on March 13, 2013, has transferred an amount of INR 5.00 Crore to Goldline (*Noticee no. 7*), and as per the *Company*'s own submission vide its letter dated December 24, 2013, more than INR 80.00 Lakh was incurred towards issue expenses and brand building and INR 3.11. Crore was spent towards strengthening distribution operation, which cumulatively comes to INR 9.00 Crore (approx.). The public issue raised INR 11.67 Crore for the *Company* and as per the *Company*'s own admission vide its letter dated December 24, 2013, an amount of INR 2.96 Crore still remained un-utilized at that point in time. Under the circumstances, after factoring in those items of expenditure, the question arises as to where was the scope for the *Company* to utilize the IPO proceeds to the extent of INR 4.80 Crore INR towards production of films, as claimed in its letter dated December 24, 2015 and to transfer those funds to the three entities referred to above. The *Company*'s explanation and submissions defy simple arithmetic calculation and given the undeniable fact that the *Company* had transferred INR 5.00 Crore to Goldline out of the IPO proceeds to reimburse the funding of IPO subscription amount, there is no way that the *Company* could have advanced the amounts to the three entities for production of films as claimed by it, after meeting the other expenditure heads (distribution operation, issue expenses & brand promotion) as per its own submission. The head wise break up of expenses submitted by the *Company* as highlighted above to claim that IPO proceeds have been utilized towards meeting the proclaimed objects in the offer documents have called the bluffs of the *Company* and have exposed its claims to be completely false and misleading which further goes on to establish that the proceeds of IPO were not indeed utilized by the *Company* in compliance with the disclosure made in the offer documents. However, the *Company* and its Directors have glaringly indulged in falsehood by making false, untrue and misleading disclosure in the offer documents as part of their pre-decided fraudulent scheme to induce the investors to invest in the securities of the *Company*.

b) **Strengthening Distribution Expenses**

38. It is noted from the Table no. 1 above, that the *Company* had, in its Prospectus *inter alia* stated that it would utilize INR 3.50 Crore out of the proceeds of the IPO to strengthen distribution operation. Further, in the letter dated December 24, 2015, the *Company* had informed SEBI that it has utilized INR 3.11 Crore towards the said purpose. However, the said claim of the *Company* was not supported by any documentary evidence to substantiate that those expenses were actually incurred towards such purpose. In its written reply dated March 16, 2020, the *Company* has provided some details regarding the expenditure under the above head, which are analysed herein under, on merits.

i. The *Company* has stated that during October, 2012, it had borrowed an amount of INR 70.00 Lakh from an entity called Oasis Buildmart India Pvt. Ltd. (hereinafter referred to as "**Oasis**") for strengthening distribution operation [which was a declared object in the offer document]. It is submitted that the said amount of INR 70.00 Lakh has been repaid from its surplus funds. The *Company* has not furnished any verifiable evidence of having received the said amount from Oasis nor has it produced any details as to how and for what purposes the said amount was invested/spent to strengthen its distribution operations. The details of entities to whom such amount was paid towards this end have also not been furnished.

ii. I observe at the outset that the *Company* in its letter dated December 24, 2015, had *inter alia* informed SEBI that it had utilized INR 3.11 Crore towards the stated Object of strengthening its distribution. However, at that time the *Company* had not provided any documentary evidence to SEBI to support its claim of having utilized the said amount for the stated object of strengthening its distribution. Even at this stage also, the *Company* has merely stated about 'repaying INR 70.00 Lakh to Oasis', which it had purportedly borrowed for the stated object, albeit few months before the public issue of its equity. Further, the *Company* has claimed that it had repaid the said amount from its surplus funds, however, no details or justification to distinguish such surplus funds from the IPO proceeds have been furnished or explained. If the *Company* has repaid the said amount of INR 70 Lakh out of its surplus funds (and not from the IPO proceeds) then there was no necessity for it to present, this amount as an expenditure incurred towards meeting the objects of IPO such as strengthening its distribution. It shows that the *Company* has used IPO proceeds to repay its debt from Oasis but has sought to camouflage it by stating that the amount has been repaid out of its surplus funds.

iii. Thus, the *Company* on the one hand claimed in December 2015 that it had utilized INR 3.11 Crore towards the aforesaid object, whereas after more than 4 more years, it has provided another explanation only with respect to usage of INR 70.00 Lakh which again is fraught with contradiction, as the *Company* has claimed that the said amount of INR 70 Lakh was paid out of the surplus lying with the *Company* (not from the IPO proceeds). Thus, the explanation and clarification offered by the *Company* appears to be grossly incomplete, vague and also contradictory and as a result, no clarity emerges as to how and what exact amount was spent by the *Company* towards meeting the object of strengthening distribution operation as per disclosure made in the IPO offer documents.

iv. The *Company* has neither furnished any details with respect to the utilization of the above amount from the proceeds of IPO as per its claim nor has it furnished any documentations to suggest that the amounts have been paid after execution of necessary documents to safeguard the interest of the *Company*. Further it is not clear as to whether the *Company* has made full & final payment or only a part of the total consideration towards this object of IPO.

v. The *Company* has not brought any details before me to explain the exact objects/purpose for which the money borrowed from Oasis was spent and what object was achieved or executed with the money borrowed from Oasis.

39. In my firm view the *Company* was under an obligation to make a true and fair disclosure in its Prospectus and was mandatorily required to disclose that it would utilize certain proceeds of IPO towards repayment of its debt if it intended to repay the amount borrowed from Oasis. It is beyond acceptance that the *Company* without making disclosure in the Prospectus subsequently claims to the Regulator about having 'utilized' certain amount towards one of the stated Objects of IPO which upon further scrutiny, is found to be a repayment of old debt for which no justification has been advanced. Such a shrewd conduct on the part of the *Company* and its Directors can be termed as a deceptive device used to solicit money from the investors under the garb of meeting various business objects as per the false declarations made in the IPO offer documents. The *Company* has not been able to produce any verifiable document like balance sheet etc., or even copy of bank account statement showing receipt and transfer of funds from/to Oasis, with respect to the money borrowed from and repaid to Oasis. The *Company* has only filed a copy of an internal ledger account which can not substantiate the said fund transfers in the absence of other verifiable evidences. Therefore, the statement made by

the *Company* about repayment of INR 70 Lakh earlier borrowed from Oasis appears to be an eyewash or a cover up exercise, with a motive to conceal its act of siphoning off the IPO proceeds to the detriment of the shareholders.

40. In view of the aforesaid detailed factual findings, I am constrained to conclude that the *Company* has furnished false and misleading information and the claim made before me with respect to transfer/repayment of INR 70.00 Lakh to Oasis is also a false claim not supported by any material evidence. Under the circumstances, I find that the *Company* has failed to justify the utilization of INR 3.11 Crore towards strengthening its distribution as was claimed by it during investigation and the said claim is blatantly false, fabricated and misleading.

c) <u>Brand Building</u>

41. Insofar as the Object of Brand Building is concerned, it was stated in the Prospectus that the *Company* will utilize INR 60.00 Lakh from the IPO proceeds towards the said Object. The *Company* had also informed about the utilization of INR 54.19 Lakh as on March 31, 2015 towards the Object of Brand Building Vide letter dated December 24, 2015, but without any supporting documents/evidence to substantiate the said expenditure.

42. In its reply dated March 16, 2020, the *Company* has furnished the details of expenditure to the tune of INR 15.89 Lakh only towards this purpose and has stated that the said amount was incurred to make payment to a hotel in New Delhi for arranging a meeting/party. The said meeting/party was purportedly conducted by the *Company* to promote its brand. However, the *Company* has not been able to produce any photograph of any such meeting/party to substantiate its claim of the organizing the said meeting/party for brand promotion. Even if I accept the said submission on its face value based on the bank account transfer of the said amount to the hotel, there remains still a gap of INR 38.29 Lakh (out of INR 54.19 Lakh, as claimed to have been spent by it) in support of which no whisper has made in the reply dated March 16, 2020 of the *Company*. The *Company* has not been able to show through its bank statement that the expenditure of INR 38.29 Lakh has really been incurred towards brand building.

43. Having considered the aforesaid factual position, I am constrained to observe that the *Company* has resorted to fraudulent means for raising money and has not only misled investors but also has furnished false and fabricated information about utilization of IPO proceeds to

SEBI and the claim of expenses in respect of brand building also remains unsubstantiated. In view thereof, I find that the said amount earmarked for investment in brand building as an object of IPO offer documents has not been spent for the said object.

d) Unutilized Portion

44. As noted from the Table no. 2 above that, the *Company* had in its letter dated December 24, 2015 informed that an amount of INR 2.96 Crore (approx.) out of the IPO proceeds remained unutilized as on March 31, 2015. I note that no document like bank account statement etc., was submitted to show that such an amount was actually 'lying unutilized' with the *Company*. However, in the written submission dated March 16, 2020 filed by the *Company*, its contentions are observed to be in total contrast and variance with the aforesaid claim. Before me, the *Company* has submitted that it has advanced a short term loan of INR 2.60 Crore to as many as 7 different entities, viz., to Dilwara Leasing & Investment Ltd. (INR 40.00 Lakh); Jindal Infrastructure Pvt. Ltd. (INR 20.00 Lakh); Moongipa Commodities Pvt. Ltd. (INR 25.00 Lakh); Zealous Financial Services Pvt. Ltd. (INR 50.00 Lakh); Pawanputra Hotels & Resorts Pvt. Ltd. (INR 1.00 Crore); Mr. Farhat U. Nisa (INR 15.00 Lakh); and to Mr. Mehnaz Faizan (INR 10.00 Lakh)

45. The *Company* had not provided any such information with respect to any short terms loans advanced by it before the investigative officers of SEBI although all such transactions were supposedly executed in the year 2013 purportedly as 'short term loans'. Nevertheless, even after a passage of 7 years, the *Company* is still not in a position to demonstrate if it has already closed out all such so called short term loans or has ploughed back the said amounts for meeting the ultimate Objects as were declared in the Prospectus. Although the *Company* has supported the advancement of such short term loans in the year 2013 with relevant internal ledger accounts, bank statements and copy of Form 26 AS in few cases, I find that the reply of the *Company* is completely evasive on the issue as to whether those loans from those entities have been recovered or whether are still continuing as outstanding loans in its books of accounts. It shows that the *Company* has not only furnished wrong information about the said short term loans during the investigation as there was no mention of any such short term loans in the letter filed during investigation, but also has not been able to substantiate the recovery of those loans, if at all recovered, even after 7 years of advancing those short term loans. Thus, the

said act of the *Company* by advancing the IPO proceeds as short term loans is certainly an act done by it outside the stated Objects of the IPO and behind the back of the shareholders. Moreover, the *Company* has not been able to substantiate the end utilization of its IPO proceeds which were meant for specific purposes/objects stated in the Prospectus.

46. Further, the SCN has also alleged that the *Company* had transferred INR 50 Lakh to Ridhisidhi Financial Advisory Pvt. Ltd. on March 13, 2013, out of the IPO proceeds. However, no explanation whatsoever, has been offered by the *Company* with respect to the said fund transfer, which constrains me to observe that the said fund transfer was also an instance of siphoning off of IPO proceeds for which *Company* has not been able to provide any justification.

47. Thus, to sum it up all, the *Company* has not been able to provide any cogent explanation or satisfactory justification to support its claim that it has utilized the IPO proceeds for the purposes/objects stated/declared by it in the Prospectus. The *Company* has made some unfounded explanations to justify the fund transfers made by it immediately after the completion of IPO but in the process, the *Company* has furnished only false and concocted information only to mislead the investigation and to evade its accountability towards the shareholders and investors.

48. In view of the foregoing findings and observations there is only one conclusion that can be logically deduced, that the funds/capital which were raised by the *Company* through the IPO by disclosing that the said capital would be utilized for the Object of Film production, and strengthening distribution operation etc., have in reality, not been utilized to achieve those objects so disclosed to the public at large. On the contrary, the available records, factual details coupled with the dubious conduct of the *Company* in the aftermath of IPO clearly suggest that proceeds of the IPO have been diverted by it to the detriment of the shareholders.

49. Investment in an IPO of a company is made by the investors generally by evaluating various disclosures made in the Prospectus about the company which may range from its financials, profits earned in last few years, expansion plans and purpose for which the money being raised would be utilized etc. Therefore, when the money raised from public in an IPO is not put to use for the purpose for which it was raised, the *bonafide* of the said IPO itself becomes dubious and it is perceived as a malicious ploy by the promoters and Directors of the

Company to misuse and abuse the mechanism of capital market for defrauding the innocent investors by inducing them to invest/subscribe to the shares of a company.

50. Under the circumstances, I observe that the *Company* has not only furnished false, fabricated and completely misleading information to SEBI during its investigation about its IPO process and transactions with various entities, but has also not bothered to utilize the proceeds of the IPO for the purposes of achieving the Objects enumerated by it in the Prospectus. As discussed above, none of the explanations filed by the *Company* with respect to the utilization of IPO proceeds has been found to be true or substantiated by any kind of verifiable evidence. Thus, the explanations offered by the *Company* have been found to be rather specious, manipulative and misleading. In my view, the gross inability of the *Company* to furnish any supporting details to substantiate the transfer of funds to various entities coupled with the evasive & misleading explanations offered by it from time to time as pointed out in previous paragraphs, speak volumes of the unscrupulous misconduct of the *Company* and does not inspire confidence in any of the submissions made by it during the present proceedings.

51. Under the circumstances, it becomes clear that the *Company* has apparently diverted of the IPO proceeds from its accounts, by transferring them to various entities towards some other inexplicable purposes which were never disclosed to the public shareholders in the IPO documents. In view of the above discussion I am constrained to hold that the issue no. II has to be answered negatively, against the *Noticees*.

52. Having concluded that the *Company* has failed to justify the utilization of IPO proceeds to achieve the objects stated in the offer document, I proceed to examine the role played by the *Noticee* Directors of CNE in committing the violations as alleged in the SCN.

53. The materials available on record show that *Noticee no. 2* (Gaj Raj Singh) and *Noticee no. 3* (Kirti) were part of the management of the *Company* during the IPO process and were accordingly in-charge of the day to day affairs and responsible for its business affairs.

54. The *Company* (*Noticees* no. 1) as well as both of its Directors (*Noticee no. 2* and *3*) have contended that the *Company* has complied with all applicable norms with respect to the IPO. However, as I have already recorded my findings in this order, the *Company* has deliberately with the help of other connected entities, funded the subscribers of its IPO so as to achieve the minimum statutory required subscriptions to its IPO to get its shares listed successfully on the

stock exchange and has also not been able to substantiate its claim that it has utilized the IPO proceeds for the purposes/objects declared in the Prospectus.

55. There cannot be two opinions that being the Directors of the *Company*, it was the responsibility of the Noticee nos. 2 and 3 to ensure that the IPO proceeds of the *Company* should have been utilized as per the purpose/objectives disclosed in the IPO prospectus. The *Company* and the *Noticee no. 2* and *3* have neither produced any rationale/justification regarding immediate transfer of IPO proceeds to Goldline nor have they been able to substantiate their claim of having utilized the IPO proceeds to achieve the objects stated in the Prospectus.

56. It is settled position that a company being an artificial juristic person, acts through its Directors, who are the natural persons in charge of the affairs of such company. All the deeds and misdeeds executed in the name of a company are actually attributable to these natural persons, i.e., the Directors of such company who have superintendence and control over all the activities of a company. In the present matter also, *Noticee nos. 2* & *3* being Directors of *Noticee no. 1* were responsible for managing the affairs of the *Company*. However, till date none of them has been able to discharge his primary onus of controverting the allegations of funding of IPO subscribers/allottees and non-utilization of IPO proceeds with any convincing explanation backed by any tangible, unassailable supporting documents. While reiterating the liability of directors *qua* the management of affairs of a company, observation of the Hon'ble Supreme Court of India in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152*has *inter alia* squarely applies to the present proceedings which is reproduced hereunder:

> "33. *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

57. Moreover, a natural person who is actively involved in running the day to day affairs of the *Company* in the capacity of Director, reaps the benefit out of the *Company* and therefore, has

also to be held responsible for the misdeeds committed in the name of the *Company*. In the present case therefore, the funds that were transferred out of the accounts of the *Company* towards reimbursement of funding of IPO application/subscription money to Goldline or to various other entities allegedly by way of misutilisation/ siphoning off of the IPO proceeds, could not have been so transferred without the notice/knowledge and deliberate involvement of the Directors of the *Company*. Under the circumstances, I have to hold that the *Noticee nos. 2* and *3*, who were at the helm of affairs of the *Company* during the relevant time, were equally responsible for devising a scheme for getting the IPO of the *Company* listed through fraudulent and manipulative arrangement as well as to divert and siphon off the IPO proceeds towards purposes other than for the purposes/objects of the IPO. Thus, to conclude, I hold that the *Company* and its Directors (*Noticee nos. 1, 2* and *3*), by resorting to unfair means behind the back of innocent investors have deliberately mis-utilized the IPO proceeds, which have been found to be not in compliance with the objects stated in the Prospectus of the *Company*.

58. With regard to role played by *Noticees no. 4* to *11,* it is pertinent to note that the aforesaid scheme as devised and fabricated by the *Company* and its Directors would not have been possible to be implemented if the funding of IPO subscriptions were not initially arranged through *Noticee nos. 4 to 11* for various applicants/allottees who participated in the IPO and were allotted with substantial shares of the *Company*.

59. In the entire scheme pre-conceived by the *Company* and its Directors, *Noticees* no. 4 to 11 have acted as the intermediaries/conduits, either to make payments to the *Company* on behalf of the IPO applicants or to directly transfer funds to the applicants so as to enable them to participate in the IPO bidding process of CNE. First, as soon as the IPO proceeds were received, the *Company* alongwith its Directors (*Noticee no. 2* and *3*) have transferred the entire amount of funds that were received (INR 5.00 Crore) from such applicants to Goldline (*Noticee no. 7*) which was closely connected to all the other funding entities. Apart from transferring INR 5.00 Crore to Goldline, the *Company* also transferred funds to three entities viz., Kirti Advertisement (INR 1.00 Crore); Santhushti Craft and Media Pvt. Ltd. (INR 1.60 Crore) and Mr. Maratha (INR 70.00 Lakh), aggregating to INR 3.30 Crore, out of the IPO proceeds in the name of cost of films production in support of which, the explanations furnished by the *Company* have not been found to be satisfactory and are found to be fraught with several contradictions that could not be explained by the *Noticees*. Another set of 7 entities, details of

which have been mentioned in Table no. 7 above, were also paid INR 2.60 Crore in total by the *Company* for which no explanation or justification has been offered. Further, no explanation has been put forth by the *Company* with respect to transfer of INR 50.00 Lakh to Ridhisidhi Financial Advisory Pvt. Ltd. which was also beyond the objects stated in the Prospectus.

60. In the manner as illustrated above, the *Company* has ultimately diverted about INR 11.40 Crore from the total IPO proceeds of INR 11.70 Crore and has transferred the said amount in favour of various entities for purposes other than the stated purposes/objects of the IPO and even after passage of 7 long years, the *Company* has not been able to either show the return of such funds to its bank account or deployment of the said funds for the purposes of the Objects stated in the Prospectus, based on which the investors were induced to make application for allotment of the shares under IPO. Hence, it has become unambiguously clear that the *Company* has misused or rather has abused the disclosure based regulatory norms prescribed for raising capital through IPO under the ICDR Regulations by first making false disclosure to the market at large, about the objects of IPO and then by circumventing the regulations governing IPO mechanism by funding its own IPO applicants/subscribers through its connected entities in absence of which, the IPO of the *Company* would have certainly failed to meet the mandatory statutory pre-condition of at least 90% of offer size to be subscribed by the applicants. Finally, as has been conclusively established in the foregoing paragraphs, the *Company* and its directors have fraudulently diverted the IPO proceeds without utilizing the same for the stated objects of IPO as declared in the offer documents.

61. The scheme that has been implemented by the *Company* in coordination the funding group *Noticees,* to fraudulently ensure success of its IPO programme, is itself self-evident of the reasons for transferring major chunk of the IPO proceeds to one of the funding group entities, immediately after completion of the IPO. Further, the scheme also throws light on the reason as to why the *Company* has not deployed the IPO proceeds towards the objects of IPO, thereby committing a serious breach of trust of the genuine IPO applicants who had made investments based on the misleading disclosures made by the *Company*. The scheme explains the reasons as to why the Noticees including the *Company* have not been able to produce any cogent reasons and verifiable evidence to justify any of the transfers of funds made by it out of the IPO proceeds which were diverted out if its books of accounts in gross deviations from the stated Objects of the IPO. Thus, the specious claims of utilization of IPO proceeds remain far away

from the actual utilization of such IPO proceeds till date, leaving the promises made to the investors in the IPO documents as nothing but a subterfuge. Under the circumstances, the *Noticees* are found to have grossly violated the provisions of SEBI Act and PFUTP Regulations. I therefore hold that the actions of the *Noticees* have been glaringly ill motivated, fraudulent and are in violation of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a), (e) of SEBI (PFUTP) Regulations, 2003.

62. Insofar as the degree of proof required to prove the charge against the *Noticees* is concerned, I note that Hon'ble Delhi High Court, in their findings recorded in the matter of *SEBI Vs. CRB Capital Markets Ltd. (date of decision: December 05, 2019)*, have observed *inter alia* that: "*Clearly, given the manner in which fraudulent acts are undertaken under deceit and camouflage, if done with the affairs of a company/trust etc., the standards of proof required to prove such fraudulent conduct would necessarily be less stringent.*"

63. Incidentally, I note that in one of the submissions, the *Company* has attempted to attribute the ongoing proceedings as arising out of incomplete information submitted by it during the investigation and has further contended that had it submitted complete information during the investigation, the proceedings would not have been initiated. I have considered the said submission and observe that while making such a submission, the *Company* did not explain as to what were the factors that constrained it or prevented it from submitting all the requisite information during the investigation nor has it explained as to what details or documents it wanted to furnish to complete its submissions. I observe that the present proceedings are in the nature of a quasi-judicial proceeding and the *Noticees* herein including the *Company*, are free to furnish any document or explanation in its defence and the same does not require any fresh investigation, as has been requested for. Going by the said request of the *Company*, it was thought fit to grant another opportunity to it to file such information or explanation, which as per its claim could have turned around the fate of the proceedings. The said opportunity was availed by the *Company* and accordingly it has also filed explanations and documents vide letter dated March 16, 2020, the details and merits of which have already been considered, therefore, not being reiterated again. In view thereof, I am convinced that adequate opportunities to defend the allegations have been provided to the *Company* and availed by the *Company*, as well, however, it has failed to make a case in its favour, for the reasons discussed at length in the foregoing part of the order.

64. I find it relevant to discuss here that the regulatory objective behind prescribing a minimum subscription of at least 90% of shares being offered under IPO, appears to be to restrain the companies out of the arena of stock exchange, which do not carry adequate ability to evince interest of sufficient investors to apply for its shares. The regulatory regime has kept the threshold as such in order to protect the interest of investors. However, devious entities like the *Noticees* in the present case, by designing an intricate scheme, bypassed such stringent regulatory requirements by projecting a compliance with the said regulatory threshold, which was achieved by the *Noticees* based on their coordinated efforts to circumvent such regulatory preconditions. By achieving the mandatory threshold, a collective inducement was caused to the general investing public, who had no avenue to identify that the so called successful listing of the scrip of the *Company* was actually emanating from a fraudulent scheme deployed by the *Noticees*.

65. It is clear in view of my findings recorded in the Order that the *Noticee Company* was able to achieve the threshold of minimum subscriptions in its IPO only through the fraudulent scheme deployed in connivance with the other *Noticee*s. Therefore, it becomes imperative to direct the Promoters of the *Company* to provide an exit opportunity to the shareholders.

Directions:

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

i. *Noticee no. 2* and *3* (the promoters of the *Company*) are directed to make a public offer through a merchant banker to acquire shares of the *Company* from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order.

ii. BSE to facilitate valuation of shares to be purchased as directed at (i) above, and compulsorily delist the *Company*, if the public shareholding reduces below the minimum level in view of aforesaid purchase.

iii. The *Noticee no. 1* is hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner for a period of 8 years.

iv. *Noticee nos. 2* and *3* are hereby restrained from holding post of director, any managerial position or associating themselves in any capacity with any listed public company and with any public company which intends to raise money from the public, or with any intermediary registered with SEBI for a period of 3 years.

v. The *Noticees*, as mentioned below are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period specified in their respective columns:

Sr. No.	Name of Entity	Debarred vide interim order	Period of debarment
1.	Channel Nine Entertainment Ltd.	Yes	Till date of this order
2.	Gaj Raj Singh	Yes	Till date of this order
3.	Kirti	Yes	Till date of this order
4.	Sumit Kumar & its Proprietorship firm viz. Vijay Bhagwandas & Co.	Yes	Till date of this order
5.	Madhukar Dubey & its Proprietorship firm viz. Magnum Industrial Corporation	Yes	Till date of this order
6.	Satendra Kumar & its Proprietorship firm viz. A R Enterprise	Yes	Till date of this order
7.	Goldline International Finvest Ltd.	Yes	Till date of this order
8.	LMR Green Realty Pvt. Ltd.	No	1 Year
9.	Nikky Printing Press Pvt. Ltd.	No	1 Year
10	Aavisha Credit Capital Pvt. Ltd.	Yes	Till date of this order
11	Nem Singh	No	1 Year

vi. Obligation of the debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid debarred *Noticees* in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

67. The Order shall come into force with the immediate effect.

68. It is also clarified that the during the period of restraint/prohibition/debarment the unit of mutual funds shall also remain under freeze.

69. A copy of this order shall be forwarded to the *Noticees*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

Date: December 22, 2020 **S. K. MOHANTY**
Place: Mumbai **WHOLE TIME MEMBER**