

## 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:

Sr. No.	Name of the Noticee	PAN
1	HPC Biosciences Ltd	AABCH6762Q
2	Shri. Tarun Chauhan	AGXPC3049G
3	Ms. Madhu Anand	AXTPA8813F
4	Goldline International Finvest Ltd.	AACCG6377M
5	Shri. Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, Magnum Industrial Alliance Traders	AIJPD7329J
6	Shri. Satendra Kumar & its Proprietorship firm viz. Nisha Traders	AWWPK8525E
7	Avisha Credit Capital Pvt. Ltd.	AAACA5715D
8	Shri. Sumit Kumar & its Proprietorship firm viz. Durga Prasad & Co.	ARUPK1589P
9	Shri. Raj Kumar & its Proprietorship firm viz. Bright Securities	BNBPK2681L
10	Shri. Prakash Gupta & its Proprietorship firm viz. Shiv Traders	ARVPG7849R
11	AMS Powertronic Pvt. Ltd.	AAECA8718H

*(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 HPC Biosciences Limited

#### Background:

1. The present proceedings are arising out of a common show cause notice dated December 11, 2017 (hereinafter referred to as "SCN") alleging that a scheme was deployed in the Initial Public Offer (IPO) of equity shares of HPC Biosciences Limited (hereinafter referred

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Order in the matter of IPO of HPC Biosciences Limited

to as “**HPC/the Company**”), wherein certain applicants of the IPO were funded by the entities connected with the *Company* itself and subsequently, the IPO proceeds were not utilized towards the objects of raising funds and instead were allegedly transferred to a few of the entities who had funded the applicants of the IPO. Before conducting the investigation into the IPO of the *Company*, a common *ex-parte ad interim* order dated June 29, 2015 was issued *inter alia* against the *Company* and three other companies who were seen to have followed a common *modus operandi* in deploying a fraudulent scheme with respect to their respective IPOs.

2. The facts in brief with respect to the IPO and the scheme that was allegedly deployed by the *Company* and other *Notices*, as noted from the SCN, are narrated as under:

- i. The *Company* came out with an IPO by offering 45,00,000 equity shares (28.30% of its post issue size) of INR 10 at an issue price of INR 35 per share to raise INR 15.75 Crore. The equity shares of the *Company* were listed on SME segment of BSE Ltd. (“BSE”) on March 19, 2013.
- ii. The *Company* had disclosed in the Prospectus that the funds so raised in the IPO shall be utilized in the following manner:

**Table no. 1 - Proposed Utilisation**

<b>Sr. no.</b>	<b>Particulars</b>	<b>Amount (INR in Lakh)</b>
1	Development of Green House Cultivation	327.00
2	Development of Farm land for transition to Organic Farming	790.00
3	Strengthen Supply Chain Management	250.00
4	Procurement of farm tools and equipments	38.00
5	General Corporate purposes	100.00
6	Issue Expenses	70.00
	Total	1575.00

- iii. During the investigation, the *Company* was asked to provide the details of the utilisation of the IPO proceeds. The *Company* vide its letter dated January 14, 2016 provided the breakup of different heads under which the IPO proceeds were utilised as on March 31, 2015. As per the information submitted by the *Company* during the investigation, the IPO proceeds were utilised as under:

**Table no. 2: Details of IPO Utilisation as submitted by *Company***

Particulars	Utilized as on 31/03/2015 (INR in lakh)
Development of Green House Cultivation	300.00
Development of Farm land for transition to Organic Farming	928.50
Strengthen Supply Chain Management	50.00
Procurement of farm tools and equipments	32.50
General Corporate purposes	35.75
Issue Expenses	30.62
Unutilized portion	218.63
<b>Total</b>	<b>1596.00</b>

- iv. The *Company* was asked to furnish details of the utilization of funds raised through the issuance of securities with supporting documents to substantiate the utilization of funds as per its claim, however, it did not furnish any supporting documents.
- v. In the IPO, the *Company* had received 563 applications for 48,60,000 shares (1.08 times of the offer size). After rejecting numerous application for various reasons, a total of 45,60,000 shares were allotted to 540 applicants, thereby raising INR 15.97 Crore in the IPO. The details of applications received, shares allotted etc., are tabulated herein below:

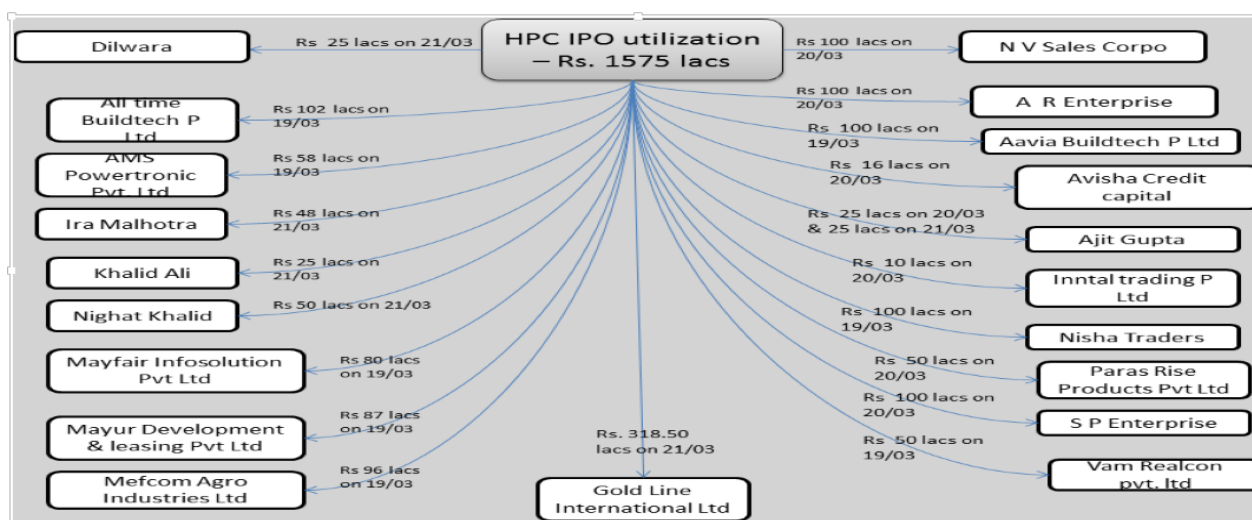
**Table no. 3: Break up of Applications**

Date of Bid	No. of shares applied	No. of shares allotted	No. of Allottees whom shares allotted	No. of shares Application rejected
QIB/MARKET MAKER	232,000	232,000	1	-
HNI	2,852,000	2,624,000	113	184,000
RII	1,776,000	1,704,000	426	72,000
Total	4,860,000	4,560,000	540	256,000

- vi. It was also revealed during the investigation that certain entities which were directly/indirectly connected with *HPC* had funded few of the IPO applicants so as to enable them to make applications under the IPO of the *Company*. The connection between those entities is based on factors like fund movements, common directorships

in companies etc. For the sake of reference, the said entities are hereinafter referred to as “funding group entities”.

- vii. The investigation further revealed that in Retail Individual Investors (RIIs) category, 163 applicants were allegedly funded by the funding group entities, out of which 156 applicants were allotted 6,24,000 shares. Similarly, in HNI category also, 4,68,000 shares were alleged to be allotted to HNIs based on the funding by the funding group entities. Further, in the market maker category, the application for 2,32,000 shares were allegedly funded by the funding group entities. In total, out of 45,60,000 shares allotted under the IPO, 13,24,000 shares (624000 (RII) + 232000 (Market Maker) + 468000 (HNI), were funded by the funding group entities, which comes to 29.03% of the total shares allotted under the IPO.
- viii. It was further revealed in the investigation that out of the total sum of INR 15.96 Crore raised by *HPC* in the IPO, an amount of INR 15.65 Crore (approx.) was transferred to the accounts of various entities and out of such INR 15.65 Crore, an amount of INR 10.59 Crore (approx.) was transferred to certain funding entities or entities related to them. The details of such fund transfers have been captured in the following graphical representation:



- ix. It was further revealed from the investigation that 8 such entities had funded the IPO applicants of the *Company*. The details of funding made by these entities as well as other

transactions (executed before as well as after IPO) relevant to the proceedings are captured in the following table:

**Table no. 4**

Sr. no.	Name	Bank A/c no.	Funding by funding group entity	Receipt of Funds by Funding group entity
1	Goldline International Finvest Ltd. (Goldline) (Notice no.4)	ICICI Bank – 6630051204 49	<ul style="list-style-type: none"> <li>Goldline had issued 59 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 59 Non ASBA retail Investors. (55 applicants got allotment)</li> </ul>	<ul style="list-style-type: none"> <li>Goldline had received INR 3.18 Crore (approx.) from the <i>Company</i> on March 21, 2013.</li> </ul>
2	Madhukar Dubey <b>Proprietors hip Firm:</b> <ul style="list-style-type: none"> <li>N V Sales Corporation</li> <li>Magnum Industrial</li> <li>Alliance Traders</li> </ul> (Notice no.5)	Yes Bank – 1368390000 2171	<ul style="list-style-type: none"> <li><b>N V Sales</b> had issued 8 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 8 Non ASBA retail investors. (7 applicants got allotment)</li> </ul>	<ul style="list-style-type: none"> <li>N V Sales had received funds of INR 6.00 Lakh from Nisha Traders.</li> <li>N V Sales Corporation had received INR 1.00 Crore from IPO proceeds of HPC. Subsequently the same were transferred to Shiv Om Sales Corporation.</li> </ul>
		<b>Yes Bank</b> – 0136839000 02209	<ul style="list-style-type: none"> <li><b>Magnum Industrial</b> had issued 15 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 15 Non ASBA retail investors. (15 applicants got allotment)</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Magnum Industrial had received INR 21 Lakh from Bright Securities of Satendra Kumar.</li> </ul>
		Yes Bank – 1368390000 2242	<ul style="list-style-type: none"> <li><b>Alliance Traders</b> had issued 25 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 25 Non ASBA retail investors. (25 applicants got allotment)</li> </ul>	<ul style="list-style-type: none"> <li>Alliance traders had received INR 42.50 Lakh from Shiv Om Sales Corporation.</li> </ul>
3	Satendra Kumar <b>Proprietors hip Firm:</b>  Nisha Traders (Notice no.6)	Yes Bank- 0136839000 02254	<ul style="list-style-type: none"> <li><b>Nisha Traders</b> had issued 25 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 25 Non ASBA retail investors. (23 applicants got allotment)</li> </ul>	<ul style="list-style-type: none"> <li>Nisha traders had received INR 18.00 Lakh from Alliance Traders which is proprietorship firm of Madhukar Dubey, INR 10.00 Lakh from Bright Securities which is proprietorship firm of</li> </ul>

				Satendra Kumar and INR 10.50 Lakh from N V Sales Corporation which is proprietorship firm of Madhukar Dubey.
4	Avisha Credit capital Pvt. Ltd. (Noticee no.7)	HDFC Bank – 0598274000 0567	<ul style="list-style-type: none"> <li>• <b>Avisha Credit Capital</b> had issued 7 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 7 Non ASBA retail investors. (7 applicants got allotment)</li> <li>• Further, it had funded INR 1.40 Lakh each to 16 Non ASBA applicants. (16 applicants got allotment)</li> <li>• It had also transferred INR 4.20 Lakh to its director viz. Mr. Vijay Jindal for making application in the IPO.</li> </ul>	<ul style="list-style-type: none"> <li>• Avisha Credit Capital had received INR 16.00 Lakh from IPO proceeds of <i>HPC</i>.</li> </ul>
5	Sumit Kumar <b><u>Proprietors</u></b> <b><u>hip Firm:</u></b>  • Durga Prasad & Co.  (Noticee no.8)	<b>Yes Bank</b> – 0136839000 02325	<ul style="list-style-type: none"> <li>• <b>Durga Prasad &amp; Co.</b> had issued 8 cheques of INR 1.40 Lakh each to the <i>Company</i> on behalf of 8 Non ASBA retail investors. (8 applicants got allotment)</li> </ul>	<ul style="list-style-type: none"> <li>• He had received funds of INR 11.50 Lakh from Bright Securities of Satendra Kumar (Yes Bank – 013683900002195).</li> </ul>
6	Raj Kumar <b><u>Proprietors</u></b> <b><u>hip Firm:</u></b>  • Bright Securities • A R Enterprise • Nisha Traders  (Noticee no.9)	<b>Axis Bank</b> : 9130200073 97919          <b>Axis Bank:</b> 9130200072 39198	<ul style="list-style-type: none"> <li>• <b>Bright Securities</b> had transferred INR 80 Lakh to Gaurdian Portfolio Consultants Pvt. Ltd. who had applied in HNI category.</li> <li>• <b>Bright Securities</b> had also transferred INR 32.50 Lakh to AMS Powertronic Pvt. Ltd. and INR 30 Lakh to Madhukar Dubey.</li> </ul>	<ul style="list-style-type: none"> <li>• A R Enterprise had received INR 1.00 Crore from IPO proceeds of <i>HPC</i>.</li> </ul>

		<b>Axis Bank:</b> 9130200073 49295		<ul style="list-style-type: none"> <li>Nisha Traders had received INR 1.00 Crore from IPO proceeds of <i>HPC</i>.</li> </ul>
7	Prakash Gupta <b><u>Proprietors</u></b> <b><u>hip Firm:</u></b> Shiv Traders (Noticee no. 10)	<b>Tamilnad Mercantile Bank –</b> 2111500508 00237	<ul style="list-style-type: none"> <li>It had funded INR 1.43 Crore to Narayan Securities Ltd. who had applied in the IPO of <i>HPC</i>. Out of INR 1.43 Crore, Narayan Securities Ltd. had transferred INR 56 Lakh to Panchsheel Securities Pvt. Ltd. and INR 21 Lakh to Search Finvest Pvt. Ltd.</li> <li>Panchsheel Securities Pvt. Ltd. and Search Finvest Pvt. Ltd. had also applied in the IPO of <i>HPC</i>.</li> </ul>	<ul style="list-style-type: none"> <li>It had received INR 1.00 Crore from S P Enterprise which were the IPO proceeds of <i>HPC</i>.</li> </ul>
8	AMS Powertronic Pvt. Ltd. (Noticee no.11)	<b>Axis Bank –</b> <b>9120200041</b> <b>51524</b>	<ul style="list-style-type: none"> <li><b>AMS Powertronic</b> had given INR 35 Lakh to Search Finvest Pvt. Ltd. and INR 35 Lakh to Guardian Portfolio Consultants Pvt. Ltd. who had applied in HNI category.</li> </ul>	<ul style="list-style-type: none"> <li>It had received INR 58.00 Lakh from IPO proceeds of <i>HPC</i>.</li> <li>AMS Powertronic had received funds from Bright Securities.</li> </ul>

- x. The summary of amounts financed by the above noted 8 entities as well as the allotments of shares made by the *Company* based on such financing are presented below:

**Table no. 5**

Sr. No	Funding Entity	Amount funded (INR in lacs)	No. of allottees got allotment	No of shares allotted
1	Goldline International Finvest Ltd	82.60	55	220000
2	Madhukar Dubey	67.20	47	188000
3	Satendra Kumar	35	23	92000
4	Avisha Credit Capital Ltd	36.40	23+1(ASBA)	92000+12000 = 104000

5	Sumit Kumar	11.20	8	32000
6	Raj Kumar (Bright Securities)	56	1	152000
7	Prakash Gupta (Shiv Traders)	137.20	2	384000
8	AMS Powertronic Pvt. Ltd & Shiv Traders	56	1	152000
	Total	481.60	161	13,24,000

3. Thus, based on the aforesaid details, the SCN alleges that the *Company* and its Directors had devised and planted a scheme with the help of the funding group entities to achieve the threshold of minimum applications (90% of the offer size) required for listing of its scrip on the SME segment of BSE, as has been envisaged under Regulation 14(1) of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009, (hereinafter referred to as “**ICDR Regulations**”). As the *Company* and its connected entities (other *Notices*) had allegedly acted in concert to fund to the tune of 29.03% of the total allotted shares, the achievement of compliance with Regulation 14(1) of the ICDR Regulations was allegedly done under a fraudulent scheme, under which certain funds from the IPO proceeds were transferred to a few of the funding group entities post-IPO against the funding made by the to the IPO applicants and the said act of devising a scheme to ensure listing of securities with the help of the funding group entities has been alleged to be in violation of Sections 12A(a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) read with Regulation 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**”).

4. It is noted that the SCN was served on the *Notices nos. 1 to 4, 7 and 9* through SPAD and upon the rest of the *Notices*, the SCN was served through affixture at their respective last known addresses. I note from the records that the *Notice nos. 2, 3, and 7* had sought inspection of the documents which was provided to them on September 23, 2019.

5. The *Notices* were provided with opportunity to make submission in their defense through personal hearing before me that was fixed on June 18, 2019 which was subsequently rescheduled to July 16, 2019. It is noted that on July 16, 2019 no one appeared on behalf of the



*Notices* hence, another opportunity of personal hearing was granted to the *Notices* on November 14, 2019. On the said date, only *Notice no. 2* appeared before me and he also represented on behalf of *Notice no. 1* and *3* however, no one appeared on behalf of the other *Notices*. The details of the service of hearing notices which were served to the *Notices* for hearing held on November 14, 2019 are as under:

**Table no. 6**

Noticee no.	Name of the Noticee	Hearing on 14.11.2019
1	HPC Biosciences Ltd	Navbharat Times and Hindustan Times- Delhi Edition – 05.11.2019
2	Shri. Tarun Chauhan	-do-
3	Ms. Madhu Anand	-do-
4	Goldline International Finvest Ltd.	-do-
5	Shri. Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, Magnum Industrial Alliance Traders	Times Day and Hindustan Times- Ghaziabad Edition- 12.11.2019
6	Shri. Satendra Kumar & its Proprietorship firm viz. Nisha Traders	Navbharat Times and Hindustan Times- Delhi Edition – 05.11.2019
7	Avisha Credit Capital Pvt. Ltd.	-do-
8	Shri. Sumit Kumar & its Proprietorship firm viz. Durga Prasad & Co.	Times Day and Hindustan Times- Ghaziabad Edition- 12.11.2019
9	Shri. Raj Kumar & its Proprietorship firm viz. Bright Securities	Navbharat Times and Hindustan Times- Delhi Edition – 05.11.2019
10	Shri. Prakash Gupta & its Proprietorship firm viz. Shiv Traders	-do-
11	AMS Powertronic Pvt. Ltd.	-do-

6. It is noted from the materials available on record that none of the *Notices* except for *Notice nos. 1, 2* and *3*, has filed any reply to the SCN and also except for these three *Notices*, none of the other *Notices* has availed the opportunity of personal hearing before me.

7. It is noted from the records that the *Notice nos. 2, 3* and *7* have through their various letters, have sought copy of investigation report and all other material collected by SEBI during the investigation and to support their request for such documents, reliance has been placed on

the judgment of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Price Waterhouse (Civil Appeal no. 6003-6004/2012)*. Further, vide common letter dated November 20, 2019, *Noticee nos. 1, 2 and 3* have filed a written submission. Also, vide letter dated March 03, 2020, an additional submission has been filed by the *Noticee no.1*. The highlights of aforesaid submissions made by the above noted three *Noticees* (i.e. *Noticee nos. 1, 2 and 3*) are as under:

- i. The IPO of CNE was 100% underwritten in compliance with the Regulation 106P 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 other entities were purely commercial in nature. Goldline is in the business of buying & selling of shares and lending and borrowing. Further based on the financial transactions carried out between other entities, no adverse inference should be drawn against the *Noticee Company*, i.e., *HPC*.
- iii. The *Company* came out with its IPO to raise INR 15.96 Crore by way of public issue and its securities got listed on BSE-SME segment w.e.f. March 19, 2013. For the purposes of IPO, the *Company* appointed Lead Manager (Guinness Corporate Advisors Pvt. Ltd.) and Registrar to the Issue (Cameo Corporate Services Ltd.) to carry out all legal procedure and compliances for the purpose of IPO. The said entities as well as BSE have advised and ensured due compliances of extant regulations for the purpose of IPO.
- iv. 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 the reasons attributable to the *Company*. Rather, the SCN reflects that SEBI was able to conclude its investigation and the instant SCN was issued after conclusion of the investigation.
- v. Vide order dated September 06, 2017, proceedings against 110 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*.

- vi. The provisions of Section 12 A (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.
- vii. During investigation, only selected financial transactions 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.
- viii. In terms of the stated Objects of the IPO, the *Company* has entered into agreements with various entities for development of farm land for transition into organic farming. The *Company* has provided copy of agreements, invoices, ledger etc., pertaining to the agreements entered with 7 different proprietorship firms for a total amount of INR 8.99 Crore.
- ix. The *Company* had also made certain expenses towards IPO itself which includes INR 2.35 Lakh to BSE; INR 2.60 Lakh to SAP Printer Solutions Pvt. Ltd.; INR 18.09 Lakh to Guinness Corporate Advisor (Manager to the Issue); INR 1.88 Lakh to NSDL and CDSL; and INR 1.30 Lakh to Innovative Communication (for newspaper advertisement). The *Company* has also incurred expenses of around INR 2.20 Lakh towards miscellaneous heads like travelling expenses (INR 1.75 Lakh); brokerage to IPO banks (INR 25,956) and market making expenses (INR 20,000). For the said expenses, the *Company* has given copy of its internal ledger.

### **Consideration of Issues and findings**

8. Before advertng to the merits of the case, I deem it fit to first deal with the technical ground raised by certain *Notices*. It is noted that few of the *Notices* have made a request to provide all the documents collected during investigation, copy of investigation report etc. At the outset, I observe that the *Notices* have made a very generic request seeking all the documents pertaining to the present proceedings. Insofar as the copy of investigation report and alleged non-compliance of principles of natural justice is concerned, I refer to the observations made

by the Hon'ble SAT in the case of *Reliance Commodities Ltd Vs. National Commodity & Derivatives Exchange Ltd.* (Date of decision: July 23, 2019). The relevant portion of the said observations are reproduced hereunder:

*"2. 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....."*

9. Further, similar observations have also been made by Hon'ble SAT in the matter of *Shruti Vora Vs. SEBI* (Date of decision: February 12, 2020). In the said matter, the appellant therein had challenged the rejection of her request to inspect all the documents collected during the investigation. While rejecting the said challenge, Hon'ble SAT *inter alia* held: *"...A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO."* (emphasis supplied). Therefore, applying the ratio of the aforesaid orders in the present case, I observe that the demand of the *Noticees* to provide them with the copy of investigation report and other material collected during the investigation is devoid of merit and is thus rejected.

10. Moving on further, it is noted from the records that despite providing sufficient opportunity, the *Noticee nos. 4 to 11* have failed to present their case before me, as they have neither filed any reply to the SCN nor appeared before me for the personal hearing. I also note that adequate opportunities have been provided to them to present their case rebutting the allegations made in the SCN, however, for the reasons best known to them, they have preferred to remain absent and silent. I am of the view that sufficient opportunities have been granted to them and therefore, it would be appropriate to proceed with matter on its merit, based on material available on record.

11. I have carefully perused the SCN, its annexure, submissions made by the *Noticee nos. 1, 2 and 3* and other materials available on the records. From a perusal of the charges made in the SCN, it is viewed that the following issues emerge for consideration in the present matter:

Issue I: Whether the Noticee nos. 4 to 11 are connected and whether the Company through its 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 I proceed to examine whether the material available on record is sufficient to find out the answers to the aforesaid issues, it would be appropriate to refer and reproduce the relevant provisions of the law that have been alleged to have been violated by the Noticees in the SCN or are relevant for to the present matter:

**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.*

13. Insofar as the connection amongst the *Notices* is concerned, I note that such an allegation is largely premised on the *inter-se* fund transactions between various parties and in a few cases, the connections are based on other parameters like common directorship, common address etc. The said details of connections that were found amongst various entities, as noted from the SCN are reproduced hereunder:

**Table no. 7**

Sr. No.	Particulars	Connection - Fund Movement
1.	Goldline International Finvest Ltd. ('Goldline') <i>(Notice no. 4)</i>	<ul style="list-style-type: none"> <li>Goldline had received INR 318.50 Lakh from IPO proceeds of <i>HPC (Company)</i>.</li> <li>Goldline was having fund movement with Mayfair Infosolution Pvt. Ltd., AMS Powertronic Pvt. Ltd. <i>(Notice no. 11)</i>, Avisha Credit Capital Pvt. Ltd. <i>(Notice no. 7)</i></li> <li>Goldline also had fund movement with the entities who had funded to IPO allottees viz. Aggrawal traders, AMS Powertronic Pvt. Ltd. <i>(Notice no.11)</i>, Bright Securities <i>(Notice no. 9)</i>, Columbia Sales and had also received INR 500 Lakh from another company's (Channel Nine Entertainment Ltd.) IPO proceeds.</li> </ul>
2.	Madhukar Dubey <b><u>Proprietorship Firm:</u></b> <ul style="list-style-type: none"> <li>Alliance Traders</li> <li>N V Sales Corporation</li> <li>A One Furniture</li> <li>Magnum Industrial</li> </ul> <i>(Notice no.5)</i>	<ul style="list-style-type: none"> <li>N V Sales Corporation had received INR 100.00 Lakh from IPO proceeds of <i>HPC (Company)</i>.</li> <li>N V Sales Corporation had fund movement with AMS Powertronic Pvt. Ltd.</li> <li>A One Furniture had received funds from Magnum Industrial.</li> <li>Alliance Traders had received funds from Columbia Sales, AMS Powertronic Pvt. Ltd., Mayfair Infosolution Pvt. Ltd., A One Furniture.</li> <li>Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. (Bank KYC)</li> <li>Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar were having common address. (Bank KYC)</li> </ul>
3.	Satendra Kumar <b><u>Proprietorship Firm</u></b> <ul style="list-style-type: none"> <li>Bright Securities</li> <li>A R Enterprise</li> <li>Nisha Traders</li> </ul> <i>(Notice no. 6)</i>	<ul style="list-style-type: none"> <li>It had fund movement with Goldline <i>(Notice no.4)</i>, AMS Powertronic Pvt. Ltd. <i>(Notice no. 11)</i>, Mayfair Infosolution Pvt. Ltd., Alliance Traders, N V Sales Corporation and Bright Securities.</li> <li>It had received funds from N V Sales Corporation.</li> <li>Nisha Traders had received funds from Magnum Industrial and Bright Securities.</li> <li>A R Enterprise had received funds from ECO and Shiv Traders.</li> <li>Nisha Traders <i>(Notice no. 6)</i> had received funds from ECO, Alliance Traders, N V Sales Corporation and A One Furniture.</li> <li><b>Address:</b> Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. (Bank KYC)</li> <li>Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar</li> </ul>

		were having common address. (Bank KYC )
4.	<p>Avisha Credit Capital Pvt. Ltd.</p> <p>(Notice no. 7)</p>	<ul style="list-style-type: none"> <li>• Avisha Credit Capital had received INR 16.00 Lakh from IPO proceeds of <i>HPC (Company)</i>.</li> <li>• Director Name: 1) Shubha Jhindal, 2) Vijay Kumar Jhindal, 3) Rakesh Agrawal</li> <li>• <b>Common Director:</b> During the investigation period, Avisha Credit Capital Pvt. Ltd. (Notice no. 7) and Mayur Developments and Leasings Ltd. were having common director.</li> <li>• Address of Vijay Kumar Jindal and Shubha Jhindal: S-520, Greater Kailash Part I, New Delhi - 110 048.</li> <li>• <b>Common Address:</b> Vijay Kumar Jindal, Shubha Jhindal and Mayur Development Leasings Pvt. Ltd. having common Address.</li> <li>• It had fund movement with Eco Friendly Food Processing Par Ltd. (“ECO”), Goldline (Notice no. 4) and Mayfair Infosolution.</li> </ul>
5.	<p>Sumit Kumar</p> <p><b><u>Proprietorship Firm</u></b></p> <ul style="list-style-type: none"> <li>• Vijay Bhagwandas &amp; Co.</li> <li>• Durga Prasad &amp; Co.</li> </ul> <p>(Notice no.8)</p>	<ul style="list-style-type: none"> <li>• Durga Prasad &amp; Co. had received funds from Bright Securities (Prop. Satendra Kumar)</li> <li>• Durga Prasad &amp; Co. had received funds from Alliance Traders, A R Enterprise of Satendra Kumar and N V Sales Corporation.</li> <li>• Durga Prasad &amp; Co. also had fund movement with Mayfair Infosolution Pvt. Ltd. and AMS Powertronic Pvt. Ltd.</li> <li>• Address: Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. (Bank KYC)</li> <li>• Proprietorship firm of Sumit Kumar, Madhukar Dubey and Satendra Kumar were having common address. (Bank KYC)</li> <li>• Sumit Kumar is the director of AMS Powertronic Pvt. Ltd. (Notice no. 11)</li> </ul>
6.	<p>Raj Kumar</p> <p><b><u>Proprietorship Firm:</u></b></p> <ul style="list-style-type: none"> <li>• Bright Sec.</li> <li>• A R Enterprise</li> <li>• Nisha Traders</li> </ul> <p>(Notice no. 9)</p>	<ul style="list-style-type: none"> <li>• <b>Address of Bright Securities, A R Enterprise, Nisha Traders:</b> Plot No. 3, Gali No. 3, East Guru Angad Nagar, Laxmi Nagar, Delhi - 110092. (Bank KYC)</li> <li>• Proprietorship firm of Raj Kumar, Sumit Kumar, Madhukar Dubey and Satendra Kumar were having common address. (Bank KYC)</li> <li>• Nisha Traders of Raj Kumar was having fund movement with AMS Powertronic Pvt. Ltd., Shiv Om Sales, Mayfair Infosolution Pvt. Ltd.</li> <li>• A R Enterprise and Nisha Traders of Raj Kumar (Notice no. 9) had received INR 100 Lakh each from IPO proceeds of <i>HPC</i>.</li> </ul>



7.	Prakash Gupta <b><u>Proprietorship Firm:</u></b> • Shri Trading Co. Shiv Traders  (Notice no. 10)	<ul style="list-style-type: none"> <li>Shiv traders had received INR 100.00 Lakh from S P Enterprise which were the IPO proceeds of HPC (Company).</li> <li>Shiv Traders had fund movement with S P Enterprise, Mayfare Infosolution Pvt. Ltd. AMS Powertronic Pvt. Ltd., Shiv Om Sales.</li> </ul>
8.	AMS Powertronic Pvt. Ltd.  (Notice no.11)	<ul style="list-style-type: none"> <li>It had received INR 58.00 Lakh from IPO proceeds of HPC (Company).</li> <li>It had fund movement with Goldline, Shiv Traders, Shiv Om Sales, Mayfair Infosolution Pvt. Ltd.,</li> <li><b>Director Name</b> (MCA Database): 1) Sumit Kumar 2) Vinay Kumar</li> <li>Sumit Kumar is the common Director in AMS Powertronic Pvt. Ltd. &amp; Mayfair Infosolution Pvt. Ltd.</li> </ul>
9.	Mayur Developments and Leasings Ltd.	<ul style="list-style-type: none"> <li>It had received INR 87.00 Lakh from IPO proceeds of HPC (Company).</li> <li>Current Director: 1) Rakesh Chunilal Agarwal, 2) Akshit Jindal, 3) Amit Kumar Mittal</li> <li>Director till 18/10/2014: 1) Shubha Jindal, 2) Vijay Kumar Jindal</li> <li>Address of Mayur Development is: S-520, Greater Kailash Part I, New Delhi - 110 048.</li> <li><b>Common Director:</b> During the investigation period, Avisha Credit Capital Pvt. Ltd. (Notice no.7) and Mayur Developments and Leasings Ltd. were having common Director.</li> <li><b>Common Address:</b> Vijay Kumar Jindal, Shubha Jindal and Mayur Development Leasings Pvt. Ltd. were having common Address.</li> </ul>
10.	Mayfair Infosolution Pvt. Ltd.	<ul style="list-style-type: none"> <li>It had received INR 80.00 Lakh from the IPO proceeds of HPC (Company).</li> <li>It had fund movement with AMS Powertronic Pvt. Ltd., Shiv Traders, Madhukar Dubey, Aavia Buildtech Pvt. Ltd.</li> <li><b>Director Name</b> (MCA Database): 1) Sumit Kumar 2) Vinay Kumar</li> <li>Mayfair is connected with AMS Powertronic Pvt. Ltd., through common directors.</li> </ul>
11.	Aavia Buildtech Pvt. Ltd.	<ul style="list-style-type: none"> <li>It had received INR 100.00 Lakh from IPO proceeds of HPC(Company).</li> <li>It had fund movement with Mayfair Infosolution, AMS Powertronic Pvt. Ltd. and Shiv Om Sales.</li> </ul>
12.	S P Enterprises	<ul style="list-style-type: none"> <li>It had received INR 100.00 Lakh from the IPO proceeds of HPC. The same were transferred to Shiv Traders.</li> </ul>
13.	Shiv Om Sales	<ul style="list-style-type: none"> <li>Shiv Om Sales had fund movement with Alliance Traders and N V Sales Corporation.</li> </ul>

14. I note that the *Noticee no. 1* has not denied the transfer of funds to various entities which included transfer of INR 3.18 Crore to *Noticee no. 4*. The *Notices nos. 1 to 3* have rather given an evasive reply stating that the said transfers were in the nature of commercial transactions without supporting their reply with any verifiable documents/evidence. I find the *Notices nos. 1 to 3* were given an opportunity after their personal hearing to produce supporting evidences to counter the allegations made in the SCN, however, no such evidence or supporting material has been made available to me to explain the *bonafide*/rational of the said transfers of funds made by the *Company* involving substantial amounts evidently transferred to *Noticee no. 4* out of the IPO proceeds.

15. I note from the Table no.7 presented above that the *Noticee no. 4* was having fund transactions with various other entities viz., *Notices nos. 7, 9, 11* and few other entities. Further, the address of the proprietorship firms of *Notices nos. 5, 6 and 8* was common. It is also noted that the majority of the remaining *Notices* were also found connected based on inter-se fund transactions. Further, *Noticee no. 8* (Mr. Sumit Kumar) is one of the Directors of *Noticee no. 11* and is also a Director in another company viz., Mayfair Infosolution Pvt. Ltd. The said company (Mayfair Infosolution Pvt. Ltd.) had not only received INR 80.00 Lakh from the IPO proceeds of *HPC* but also had fund transactions with *Noticee no. 5*, Shiv Traders (Proprietorship firm of *Noticee no. 10*), and Aviva Buildtech Pvt. Ltd. (which had received INR 1.00 Crore from the IPO proceeds of *HPC*). It was thus observed that the aforesaid *Notices* were enjoying interconnectedness amongst themselves due to various factors, details of which have been narrated above.

16. In the light of various factors encapsulated under Table no. 7 above and in the absence of anything produced before me to prove to the contrary, I note that from the materials available on record, it can be reasonably concluded that the allegation of connections made in the SCN stands established. I observe that the *Notices* were tied with each other by way of some or other common factors as highlighted above, with *HPC* being in the centre place.

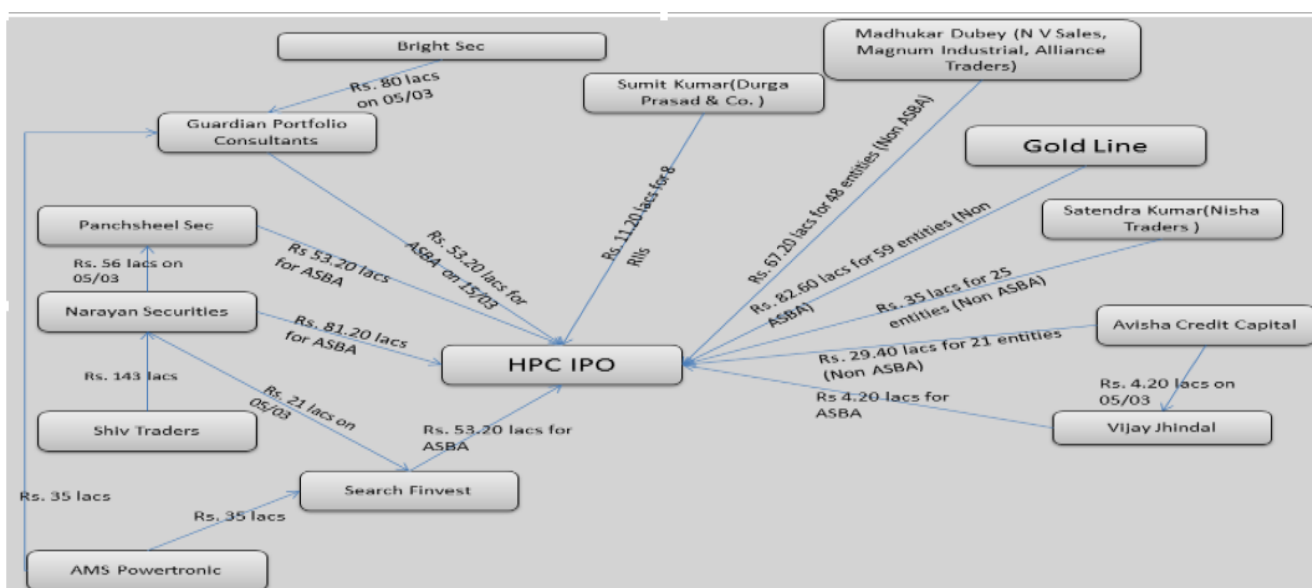
17. After having found that the *Notices* were enjoying inter-se connections, as alleged in the SCN, I note that the next leg of the allegations pertain to the funding of IPO applicants by the funding group entities and also their direct/indirect fund movements with the *Company*

indicating that the *Company*, out of the IPO proceeds, has transferred huge amount of money to many of the funding group entities.

18. At the relevant point in time, the prospective investors who intended to subscribe to the shares under the IPO of a company, could make an application either under the Application Supported by the Blocked Amount (ASBA) in which appropriate amount is blocked in their accounts to support their application or in the alternative by supporting their application by way of a cheque.

19. From the SCN, it is noted that the 'funding group entities' have in most of the cases directly issued cheques to the *Company* on behalf of the applications filed by numerous applicants, who had applied under non-ASBA category. Further, in remaining cases, the funding group of entities have, through a web of transactions, directly or indirectly funded the applicants and such applicants have, based on the strength of such funds received from the funding group of entities, applied under ASBA category.

20. All the transactions that have been alleged to be in the nature of funding the IPO applications of different applicants are captured in the following graphical representation:



21. Curiously, I find that the *Company* has not given any reasoning as to why the applications of various applicants of IPO, which were supported by the cheques issued by the funding group *Notices* on their behalf and not by any cheques drawn by the respective applicants themselves, were accepted by it. I also note that none of the funding group entities (who are also *Notices* in

this proceedings), has furnished any explanation justifying its action of paying by drawing cheques directly in favour of the *Company*, on behalf of the IPO applicants. I observe that the *Company* has not only accepted such applications for subscription to the IPO with cheques drawn from accounts of funding entities (not from applicants' accounts) but has also allotted 13,24,000 shares to those applicants/subscribers under its IPO, in gross violation of the extant norms governing issue of shares under IPO, which mandates that the IPO applicants must pay his application money from his own account.

22. Apart from the above, certain funding group entities are found to have provided funds directly to the IPO applicants which were in turn, used by the applicants to support their applications filed under ASBA category. The above representation and the Table no. 4 have sufficiently indicated the fund movements pertaining to funding of the applicants for the IPO of *HPC*. For illustration, it is noted from the aforesaid details that *Noticee no. 7*, Avisha Credit Capital Pvt., has not only provided 7 cheques on behalf of 7 non-ASBA applicants (all of which got allotment of shares), but had also has provided INR 4.20 Lakh to one of its Director Mr. Vijay Jhindal, who had applied for shares under ASBA category based on the funds so received from *Noticee no. 7*. The details of finances provided by all the 8 funding group entities (*Noticee nos. 4 to 11*) and shares allotted against these funded applicants are explained further in the following table:

**Table no. 8**

Sr. no.	Noticee	Non-ASBA (Cheque issued to the <i>Company</i> on behalf of applicant)	Non-ASBA (Funding to applicant)	ASBA	No. of applicants who got allotment of shares	Amount funded (INR in Lakh)	Amount received (INR)	Shares allotted
1	Noticee no. 4	59	0	0	55	82.60	318.50 Lakh from IPO proceeds	220000
2	Noticee	48	0	0	47	67.20	100.00 Lakh (from IPO)	188000

	no. 5						proceeds) 6.00 Lakh from Nisha Traders (proprietorship firm of Noticee no.6)	
3	Noticee no. 6	25	0	0	23	35	18.00 Lakh from Alliance Traders and  10.50 Lakh from N V Sales Corporation (both are proprietorship firms of Noticee no.5)  10.00 Lakh from Bright Securities (proprietorship firm of Noticee no. 9)	92000
4	Noticee no. 7	7	16	1	24	36.40	16.00 Lakh from IPO proceeds	104000
5	Noticee no. 8	8	0	0	8	11.20	11.50 Lakh from Bright Securities (proprietorship firm of Noticee no. 9)	32000
6	Noticee no. 9	1	0	0	1	56	A R Enterprises and Nisha Traders (both proprietorship firm of Noticee no. 9) received INR 100.00 Lakh each from IPO proceeds of	152000

							the <i>Company</i> .	
7	Noticee no. 10	0	0	3	2	137.20	Shiv Traders (proprietorship firm of Noticee no. 10 had received INR 100.00 Lakh from a firm, S P Enterprises, who in turn had received the said amount from the IPO proceeds of the <i>Company</i> .	384000
8	Noticee no. 11	0	0	2	1	56	58.00 Lakh from IPO proceeds of the <i>Company</i> .	152000
<b>Total</b>						<b>481.60</b>		<b>13,24,000</b>

23. I note that the *Company* and its two Directors who have responded to the SCN and have participated in the personal hearing, have been given multiple opportunities to make their submissions with respect to the alleged funding of IPO applicants by certain funding entities. However, despite having filed written replies to explain the merit of their case, the said *Noticees* have evaded the main issue pertaining to the above noted funding group entities issuing cheques on behalf of or to the IPO applicants for financing their applications for the IPO of *HPC*. It is observed that the *Company* and its Directors have merely stated that the said transactions (involving funding of the applicants) were of commercial in nature and those transactions executed by third parties cannot lead to any adverse inference against them. I find such an explanation to be casual, evasive, and completely irresponsible, since except for a few instances, the *Company* (*HPC*) has directly received cheques from the funding group *Noticees* which accompanied the IPO applications made by various applicants. I find that in such type of financial transactions, the onus to prove that such financial transactions were genuine, *bonafide* and within four corners of law, lie equally on the funding group entities who have provided those cheques either on behalf of or to the IPO applicants as well as on the *Company* itself, since

the *Company* has received and accepted such third party cheques from funding entities (instead of from the applicants) to allot shares to those applicants. The accountability of the *Company* becomes more onerous when the SCN ultimately makes a categorical allegation holding the *Company* responsible for providing funding to the IPO subscribers. The *Company* can't escape from its responsibility to justify these transactions by merely stating that, for these third party transactions, no adverse inference can be drawn against it. The *Company* cannot also escape from the liabilities that may arise out of its explicit action of receiving cheques from the third party funding group *Notices* on behalf of various IPO applicants (who were apparently unrelated to the funding entities) by taking the plea that transactions between third parties cannot be invoked against it, without bringing on table, its explanation as to why it willingly accepted the applicants to use third party cheques to pay their IPO application money. Moreover, the fund giving *Notices* who have by their very actions, played a major role in the aforesaid scheme of IPO financing allegedly orchestrated by the *Company*, by issuing cheques on behalf of those purportedly unrelated applicants and also by providing funds directly to some of the applicants so as to enable them to get shares allotted successfully under the IPO, ought to have clarified their stand by filing written replies to the SCN explaining with supporting materials, the exact nature and purpose of those transactions that have been alleged to be the transactions made for funding the IPO applicants. I also note that it is no one's case that the said transactions were in the nature of loan transactions vis-à-vis the IPO applicants since none of the *Notices* has claimed them to be loan transactions nor has produced any verifiable or reliable document before me to explain the nature of those transactions.

24. As far as the impact of such funding of IPO applicants is concerned, I recall that the *Company* had issued 45,60,000 shares under its IPO. Out of the said shares, as per the foregoing analysis allotment of 13,24,000 shares has been made to those applicants who were financially funded by the funding group *Notices*, either by paying directly to the *Company* on their behalf or to the applicants to enable them to pay their application money under the IPO. As the *Company* and its connected entities were found to be the major financial source behind the IPO applications of a huge chunk representing 29.03% of the total shares allotted, it is apparent that due to the aforesaid financial support/funding made by the *Company* and its connected entities, and only due to the concentered efforts made by them in funding such large number of applicants,

the IPO of the *Company* was able to smoothly sail through the statutory threshold of 90% of the shares offered, as envisaged under Regulation 14(1) of ICDR Regulations.

25. Had the *Notices* not acted on the lines of a pre-fabricated scheme as glaringly evident from their actions highlighted above, the IPO of the *Company* would not have been able to achieve the mandatory subscription threshold of 90%. I note that in case the *Company* would not have been able to garner subscription applications at least for 90% of the shares offered under IPO, it was under a statutory obligation to refund the amount so collected, as has been prescribed under Regulation 14(2) of ICDR Regulations, which was intended to be avoided by the *Company* at any cost.

26. I further note that the *Company* has in its reply contended that its IPO was 100% underwritten which completely nullifies the allegation against the *Company* for being part of a scheme to provide funds for the subscription made by the IPO applicants in order to achieve the mandatory subscription applications. However, such an argument made by the *Company* does not find support from its overall conduct in conjunction with the conduct of other *Notices* which have clearly demonstrated as to how in a pre-meditated manner, the *Company's* connected entities first funded the applications for IPO and helped the *Company* to achieve the prescribed statutory threshold limit of 90% of shares offered under the IPO so as to successfully list its equity shares on SME segment of BSE.

27. Notwithstanding the *ex-facie* contradictory arguments advanced by the *Notices* vis-à-vis the conduct displayed by the *Notices* in the entire IPO issue, the *Company's* emphasis on the underwriting agreement needs to be discussed in detail. In this connection, I deem it fit to reproduce relevant clauses of the underwriting agreement that was entered into by the *Company* with Guinness Merchant Banker Private Limited, for the purpose of its IPO:

***“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 45,00,000 Equity Shares, which is allocated as under:*



<i>Name of the Underwriter</i>	<i>No. of Shares Underwritten</i>
GCAPL	45,00,000

*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)***

28. A careful consideration of the aforesaid clauses of the Underwriting Agreement reveals that the obligation of the underwriter was limited/restricted to only those IPO applications that was to be procured by it (Clause 5.3), only in case of default of payment by an applicant after allotment of shares (Clause 5.2.1.) or in case of withdrawal of such applications by applicants (to whom allocation of equity shares has been made) just prior to allotment of shares to those applicants (Clause 5.2.2). There is no other clause in the aforesaid agreement that can be shown to have imposed a contractual obligation on the underwriter to subscribe to the entire unsubscribed portion of the IPO so as to cross the minimum threshold of 90% subscriptions of total quantity of shares offered in the IPO. Thus, the said Underwriting Agreement which is being peddled by the *Company* as a strong defense shield to ward off the charges of funding of IPO subscription by the *Company*, is actually of no help to the *Company* given the facts and circumstances of the present case. The *Company* has not been able to project an absolute *prima facie* presumption that there was no necessity on the part of the *Company* to deploy any scheme so as to arrange funding for its IPO, as has been alleged in the SCN. Moreover, even despite the said Underwriting Agreement being in place, the established facts have indicated that the *Company* and its connected entities had indulged in providing funding to applicants to whom as much as 29.03% of the total shares were allotted. I observe that in absence of such a financial

backing, the only consequence would have been the failure of the IPO thereby compelling the *Company* to refund all the application amounts so collected from the applicants. Therefore, the argument of the *Company* projecting its Underwriting Agreement as an answer to the allegations of funding subscription to its own IPO does not hold ground at all hence, is liable to be rejected as not maintainable on the face of the aforesaid factual evidence and observations made in preceding paragraphs.

29. In view of the foregoing discussion, particularly the details of the financial transactions highlighted above, the evasive replies of the *Company* and its Directors and complete absence of any explanation from the other *Notices*, I am persuaded to hold that the *Company*, its Directors and the rest of the *Notices* have successfully implemented a fraudulent scheme to achieve sufficient number of applications by way of funding the applicants, with the sole motive to get the listing of its equity shares on SME segment of BSE. Thus, as far as the first issue is concerned, the same has to be answered affirmatively against the *Notices* and in favour of the allegations levelled in the SCN. I shall now deal with the next set of allegations pertaining to diversion of IPO proceeds in deviation from the Objects of the IPO.

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

30. At the outset, it may be recalled that the *Company* raised equity capital of INR 15.96 Crore through the IPO by way of which, the equity shares of the *Company* got listed on BSE-SME segment on March 19, 2013. When the information with respect to utilisation of the funds was sought by SEBI, the *Company* vide its letter dated January 14, 2016 furnished a break up of utilisation of the said amount of INR 15.96 Crore which have been duly indicated in Table 2 of the present order.

31. It is noted from the SCN that despite being categorically asked during investigation, the *Company* did not provide documents to support the utilisation of the IPO proceeds as per its claim which *inter alia*, included INR 3.00 Crore paid towards development of Green Housing Cultivation; INR 9.28 Crore (approx.) spent towards development of farm land for transition to organic farming and INR 2.18 Crore (approx.) remaining as unutilised portion.

32. In its submissions made during the present proceedings, the *Company* has only furnished the details of utilizing INR 8.99 Crore towards development of farm land; INR 27.03 Lakh

towards Issue expenses; and INR 2.20 Lakh towards miscellaneous expenses like brokerage, market making etc., aggregating to INR 9.28 Crore (approx.). Thus, out of the total amount of INR 15.96 Crore raised in the IPO, the *Company* has been able to put forth some explanation for approx. INR 9.28 Crore only and for the rest of the amount, i.e., INR 6.68 Crore, the reply of the *Company* has been conspicuously silent. To elaborate further, the *Company* has not provided the exact details for which an amount of INR 3.18 Crore (approx.) was provided by it to Goldline. The said amount was close to 20% of the total IPO proceeds of INR 15.96 Crore and the silence of the *Company* with respect to specifics of the said amount of transfers to Goldline exposes its complicity in the scheme of funding the IPO applicants as alleged in the SCN. Similarly, the funds transferred to other entities within a short span of receiving the IPO proceeds, have also not been touched upon by the *Company*. It is thus observed that the *Company* has failed to furnish any document or reasoning so as to clarify the discrepancies in its submissions made during the investigation which were not found to be supported by actual fund transfers, that have taken place in its accounts post IPO exercise.

33. I find that such an omission on the part of the *Company* speaks volumes about its conduct, as despite specific questions put to the *Company* to explain with corroborative evidence the nature of certain fund transfers out of the IPO proceeds, the *Company* has not been able to explain the nature of any of the proclaimed utilization/fund transfers or about the current status of the investments which it had disclosed earlier to have been made for INR 3.00 Crore towards development of Green Housing Cultivation or even about the present status of the amount of INR 2.18 Crore which was stated to be lying unutilized at that time of investigation. As a result, it is not known as to how the said unspent amount of INR 2.18 Crore was ultimately put to use by the *Company*. Therefore, even after passage of 7 years from raising of the fund through IPO, the *Company* is not in a position to explain the actual deployment of IPO proceeds, so as to defend itself from the charges made in the SCN.

34. The explanation of the *Company* with regard to payment towards Issue expenses and miscellaneous expenses do not deserve much of discussion as the same have been largely executed with registered intermediaries. I should now however deal with the explanation furnished by the *Company* with respect to utilization of IPO proceeds towards accomplishment of one of the prime Objects of the Issue, i.e., expenses of INR 8.99 Crore towards development of farm lands.

35. Admittedly, the *Company* had raised INR 15.97 Crore in the IPO, out of which, within a span of three days (March 19, 2013 to March 21, 2013), it executed transactions with 20 different entities. A careful analysis of the reply filed on behalf of the *Company* (as confronted with the pictorial representation under para 8 of the SCN) reveals that out of the 20 entities named in the above said pictorial representation of the SCN, the *Company* has only explained transactions executed by it with 04 (four) entities viz., N V Sales Corporation, A R Enterprises, Nisha Traders and S P Enterprises. It is pertinent to mention here that the said 04 (four) entities have been clubbed by the *Company* in a separate category of total 7 entities with whom the *Company* had purportedly entered into agreements for land development just prior to the IPO. The *Company* has not commented anything on the transactions allegedly executed with the remaining 16 entities (out of those 20 entities as alleged in the SCN).

36. It is observed that the *Company* through its post hearing written submissions has provided *inter alia*, the copies of agreements executed by it those 7 entities for the purpose of the development of farm land (hereinafter collectively referred to as “**the agreements**”) alongwith the copies of bank account statements showing the transfers of money to the said entities and has also furnished copies of invoices. The salient features of the said agreements purportedly executed for development of farm land are summarized here:

- i. All the agreements entail development of small portions of land, out of a large common land admeasuring 400.66 Acres situated at Pant Nagar, Uttrakhand.
- ii. The other party to each of the agreements is a proprietorship firm and the name of proprietor is not mentioned in the narration of the party.
- iii. Out of 7 firms, 3 firms viz., N V Sales, Nisha Traders and A R Enterprises share same address, i.e., Plot no. 3, Gali no. 3, East Guru Angad Nagar, Laxmi Nagar, New Delhi. The rest of the firms are situated in New Delhi or Ghaziabad.
- iv. In some cases, one firm has signed the agreement and the other firm(s) owned by the same proprietor was found to have funded the IPO applicants of the *Company*. For example, A R Enterprises is owned by Mr. Raj Kumar (*Noticee no. 9*) but his other proprietorship firm viz., Bright Securities had provided funds to the IPO applicants.

- v. All the agreements are exactly identical with respect to the terms and conditions and only the size of the land being entrusted by the *Company* to the counter party for development, and the corresponding consideration amounts are the only variable factors.
- vi. The agreements have been executed on letter heads of the *Company* (not on stamp paper) and have not been registered/notarized.
- vii. The details of the consideration, size of land and payments claimed to have been made to various entities under all such agreements are summarized hereunder:

**Table no. 9**

Sr. no.	Name of the entity	Amount transferred	Date of agreement/Amount/ Size of Land	Amount transferred
1.	Raj Marketing India	INR 60 Lakh	26.11.2012/ INR 60 Lakh/26.71 Acre	INR 60 Lakh on 27.12.2012
2.	A.R. Enterprises	INR 1.50 Crore	01.01.2013/ INR 1.50 Crore/66.76 Acre	INR 50 Lakh on 27.02.2013 INR 1 Crore on 20.03.2013
3.	Garg Traders and Supplies	INR 1.10 Crore	16.11.2012/ INR 1.10 Crore/48.97 acre	INR 60 Lakh on 27.12.12 INR 50 Lakh on 27.02.2013
4.	Nisha Traders	INR 1.49 Crore	20.12.2012/ INR 1.50 Crore/66.78 acre	INR 49 Lakh on 27.02.2013 INR 1 Crore on 19.03.2013
5.	N.V. Sales Corporation	INR 1.50 Crore	01.01.2013/ INR 1.50 Crore/66.78 acre	INR 50 Lakh on 27.02.2013 INR 1 Crore on 19.03.2013
6.	Shiv Traders	INR 60 Lakh	19.12.2012/ INR 60 Lakh/26.71 Acre	INR 60 Lakh on 27.12.2012
7.	S.P. Enterprises	INR 2.20 Crore	01.12.2012/ INR 2.20 Crore/97.94 acres	INR 70 Lakh on 28.12.2012

				INR 50 Lakh on 27.02.2013
				INR 1 Crore on 20.03.2013
	<b>Total</b>	<b>INR 8.99 Crore</b>		

37. At the outset, I observe that these documents were never filed by the *Company* during the investigation conducted by SEBI nor were filed along with the initial reply to the SCN and have come on record for the first time only by way of the post hearing submissions filed by the *Company*. Nevertheless, I have minutely perused the contents of the said agreements and when those contents are contrasted and compared with other materials available in the records of investigation particularly with the contents of draft offer document (January 17, 2013) and Prospectus (dated February 22, 2013) (hereinafter collectively referred to as “**IPO documents**”) pertaining to the IPO, I observe the following discrepancies:

- i. In the above mentioned agreements, the *Company* has claimed itself to be the sole and absolute ‘owner’ of the 400.66 acres of land, however, in the IPO documents, the said land is missing from the list of properties owned by the *Company* and rather the *Company* has disclosed on page 70 of the Prospectus under the heading ‘Business Overview’ that it has entered into a contract for ‘contract farming’ with the landowner of the said property. Furthermore, under the Risk Factors enlisted in the prospectus, the *Company* has listed out the following as one of the risk factors:

***We do not own the land on which we are carrying our agriculture operations.***

*The land at which we presently carry out or agriculture operations is contracted land and any discontinuance of same may disrupt our agriculture operations and may adversely affect the operations, finances and profitability of our Company.*

- ii. Further, all the afore-mentioned agreements have purportedly been executed during the period of November 16, 2012 to January 01, 2013, i.e., just immediately prior to the IPO of the *Company*. If the *bonafide* of the said agreements are to be accepted on their face value, then one of the disclosures made in the IPO documents has to be viewed as a false declaration by the *Company*, viz: “*We are yet to place orders for proposed soil, green house cultivation etc. for the Project, as specified in the "Objects of the Issue" on page 45 of this Prospectus. Any delay in*

*procurement of soil bed, installation of green house may delay the implementation schedule. We may also be subject to risks on account of inflation in the price. Hence our Project could face time and cost over-run which could have an adverse effect on the operations of our Company. Negotiations in respect of specification with suppliers have been commenced and the agreements will be entered in due course once the negotiations are completed and Issue proceeds are procured.”*

- iii. As stated above, all the aforesaid agreements have been executed prior to the IPO and from the table above, it is also noticed that huge amounts of funds have been transferred by the *Company* in favour of those 7 entities prior to the IPO as well. The quantum of such amounts which have been paid (pre- IPO) to those entities going by the aforesaid table comes to INR 4.49 Crore, which therefore cannot be stated to have been utilized from the IPO proceeds. However, the *Company* has claimed that the entire sum of INR 8.99 Crore was paid to those 7 entities for farm land development including the aforesaid pre-IPO transactions of INR 4.49 Crore, has been utilized out of the IPO proceeds. Under the circumstances, the claim of the *Noticee Company* stands on a false ground to begin with as far as its claim of utilization of IPO proceeds towards the Object of development of farm land is concerned.

38. In view of the aforesaid discrepancies, the *Company* cannot claim itself to be the absolute owner of the subject land at the time of executing those agreements with the proprietors of various entities, as the same would render the corresponding relevant disclosure made in the Prospectus as false proclamations and reduce those declarations to nullity. I observe that such an observation projecting glaring contradictions assumes crucial significance in calling the *Company's* bluff as the purpose behind presenting such invalid and unenforceable agreements was to demonstrate utilization of IPO proceeds for one of the major objects disclosed in the Prospectus. Moreover, the *Company* has not produced any document before me to show its ownership over the subject land like purchase deed, payment details etc. to lend any credence to their assertions made in those agreements executed on *Company's* letter head claiming ownership of the said land. It is also relevant to add here that the details of exact location of such a large tract of land or the respective small portions of the said land, which are the subject matter of those 7 agreements are also not provided in the agreements. Under the circumstances, the genuineness of these agreements is seriously questionable and it seems that the agreements were prepared only for the purpose of providing a superficial explanation for deployment of IPO

proceeds towards farm land development, as has been claimed by the *Company* without furnishing even the bare minimum information about the specific location and size of the land with its corroborative documents such as purchase/lease agreement, payment details etc.

39. I observe that when large amounts of funds of a newly listed company are being paid out of IPO proceeds for the first time to third parties under an agreement, it deserves to be first discussed at the Board level before the execution of such important contracts or at least immediately after execution of those contracts and the Board ought to have been apprised of the execution of the said contracts by the *Company*. The records before me do not suggest that the afore said agreements which were entered into just prior to the IPO was ever brought to the notice of the Board of the *Company*, nor do the IPO documents bear even any passing reference to those agreements which the *Company* intended to execute with various parties. Similarly, it's a common knowledge that no Director or official can sign such important agreements for and on behalf of *HPC*, unless the concerned Director or official of the *Company* has been duly authorized or empowered by the *Company*, in support of which, there has to be some internal document like Board Resolution or authorization letter in possession of the *Company*. However, no such document in the nature of either a Board Resolution or an authorization letter in favour of any Director or official permitting him to negotiate and enter into any contractual obligations with any third parties regarding the proposed land development for contract farming has been produced before me.

40. Strangely enough, the *Company* had transferred huge amounts of money through agreements which are un-registered, un-notarized, rendering such agreements to be *ab initio* unenforceable in law. Further, there is no witness to such agreements, which further corroborates that these agreements do not possess any qualities to be called as valid or enforceable documents. I find that the *Company* has not been able to produce any third party verifiable document/details like the details of profit/revenue earned or return from the funds so deployed by the *Company* for the land development, or any approval of land development plan/layout from local authorities, or any latest entry in the balance sheet certified by the statutory auditors indicating tangible outcome of the funds so transferred for land development or even any photographs of the development work that was supposed to be carried out with the money so invested towards the said object, as claimed by the *Company*, to corroborate the purpose for which those un-registered unenforceable agreements are claimed to have been



executed with several parties. It is also pertinent to mention here that the firms with whom these un-registered agreements have been claimed to have been executed are found to be involved in a web of transactions facilitating the funding of the IPO applicants as discussed in the earlier part of this order. I would also add here that apart from producing the afore stated unenforceable agreements executed for the land development as part of its post hearing submissions, the *Company* has not even made a whisper about other Objects like development of greenhouse cultivation, strengthening of supply chain management and procurement of farm tools equipment in its submissions. The absence of any kind of explanation further corroborates the case made in the SCN, as the *Company* had in its reply dated January 14, 2016 filed during investigation, claimed to have spent large amount of IPO proceeds on all the aforesaid Objects as disclosed in its IPO documents.

41. Considering the aforesaid deficiencies, discrepancies, contradictions and apparent falsehood observed in the explanations offered by the *Company* and other Directors (*Noticee no.1, 2, & 3*) as pointed out in previous paragraphs, I have no hesitation to hold that the *Company* has not come up with clean hands before me and by showing the agreements which do not appear to be genuine, the *Company* has made an unjustified attempt to seek discharge from the present proceedings that deserves to be rejected.

42. The holistic examination of the materials available on record goes on to point that the agreements produced before me by the *Company* as a defense to neutralize the charges levelled against it in the SCN are all self-generated, concocted and have been made up only as an afterthought exercise after the personal hearing was over. All the factual details and analysis thereof and the circumstances under which the *Company* has tried to set up its defense via the agreements referred to above, clearly tilt the preponderance of probability against the *Company* and vindicate the allegations made against it in the SCN. Under the circumstances, I observe that the *Company* has miserably failed to impress on me that the funds that have been paid to different entities mentioned in the table no. 9 above were indeed paid in pursuance of the Objects of the IPO for which such funds were raised by the *Company* through public issue.

43. To sum up the discussion, I find that the *Company* has furnished partial details of utilization of IPO proceeds to the extent of only INR 9.28 Crore while for the remaining amount (INR 6.68 Crore), no details or explanation have been furnished at all and nothing is

known with respect to the fate of the said amount which was also raised from the investors by offering its securities under IPO. Even for the details so furnished in support of the utilization of IPO proceeds of INR 9.28 Crore, as per the detailed examination and analysis made thereof in the earlier paragraphs, it is clearly revealed that the claim of having spent the said amount towards meeting the objects of the IPO turned out to be false, baseless and unsubstantiated. As recorded above, the *Company* has failed to substantiate those unenforceable agreements by any kind of third party verifiable documents like purchase /lease agreement of the land, details of payments of purchase consideration, if any, audited balance sheets, approvals from the local authorities for land development, TDS certificates, etc., so as to lend any credence to its claim of having transferred more than 50% of the IPO proceeds to the aforesaid 7 entities under such unenforceable agreements. Thus, the claim of the *Company* grossly lacks *bonafide* in the absence of any basic documentary evidence which could have been relied upon to verify such a claim of having transferred large amounts of IPO proceeds to those 7 entities, rendering such claim as completely manufactured and replete with contradictions.

44. The second leg of allegation against the *Company* in the SCN flowing out of the aforesaid allegation of non-utilisation of IPO funds for meeting the objects of IPO is that the *Company* has diverted the money raised under its IPO by transferring it to some of the funding group *Notices*. As observed earlier, the easiest way for the *Company* to dispel both the allegations was to demonstrate the utilization of the funds as per the Objects of the Issue. However, by taking the help of those concocted un-registered agreements so as to create a façade of genuine deployment of IPO funds towards the object of IPO, the *Company* has grossly failed to achieve its nefarious goal as those agreements and the explanations offered thereon were found to be specious, misleading and contradicting the declarations made in the IPO documents. So, having concluded that the funds transferred by the *Company* to various entities were not for appropriate utilization of IPO proceeds in terms of the declared objects of IPO, I have to move on to deal with the details of various fund transfers effected by the *Company* from the IPO proceeds so as to determine the true nature of those funds transfers.

45. I note that the SCN through a graphical representation made under its para 8 (also reproduced in the beginning of the present order) has demonstrated that out of INR 15.96 Crore raised in IPO, the *Company* has immediately transferred out a sum of INR 15.65 Crore (approx.) out of which, INR 10.59 Crore (approx.) was transferred to various funding group

*Notices*. I observe that the *Company* has attempted to justify funds transfers to a few of those funding group *Notices* like Nisha Traders etc., stating that the same was paid under contractual obligation for development of land for the *Company*, a claim which has already been found to be baseless and has been rejected by me. For the rest of the transactions that formed part of the transfers detailed in the said graphical representation, including a transfer of INR 3.18 Crore to Goldline (*Notice no. 4*), the *Company* has merely stated that the said transactions were in the nature of commercial transactions without supporting its claim by any underlying details, agreements, invoices, income-expenditure statement for those pay-outs, or any other verifiable document to explain the rational of those commercial transactions which involved such significant amounts of fund transfers.

46. It is interesting to note that the amounts of these transactions entered with various individuals, proprietorship firms, companies etc., ranged from INR 10 Lakh to INR 3.18 Crore which were promptly executed by disbursing the funds in a short span of only 3 days (March 19, 2013 to March 21, 2013) from the date of listing of shares of the *Company* (March 19, 2013). It shows that the *Company* had a pressing need of funds to meet huge amounts of pending obligations to carry out its business as per the objects of IPO, hence one can assume that the supporting documentations/agreements, correspondences with the parties concerned, internal sanction orders, entries in the books etc., underlying those transactions would have been kept ready beforehand so as to process the payments/disbursals expeditiously without any delay soon after the IPO proceeds were available at its disposal. However, strangely enough, till date, the *Company* has not been able to justify those transactions as legitimate commercial transaction by producing any documentary evidence whatsoever, like agreement/invoices, ledger accounts, bank account statement, TDS certificate or any other verifiable document, even after passage of 7 years of those fund transfer. It is also relevant to reiterate here that the largest single party fund transfer has been made to the *Notice no. 4* (Goldline) to the tune of INR 3.18 Crore apart from other fund transfers like INR 1.00 Crore transferred to Aviva Buildtech.

47. Considering the overall conduct of the *Notice no. 1*, I find it beyond acceptance that the *Company* and its Directors (*Notice nos. 1 to 3*) are not in a position to explain the details of transfer of INR 15.65 Crore, when it was disclosed to the investors in the IPO documents that the IPO proceeds would be utilized for the stated Objects of the Issue. Although the *Company* has submitted during the investigation conducted by SEBI that it has utilized the amounts in

terms of the stated objects, neither the details of the expenditure/funds transfers were furnished nor the explanations offered by the *Company* could even remotely pass the muster to satisfy that the IPO funds have actually been utilized for the purposes for which the IPO was issued by the *Company*.

48. In view of the aforesaid facts and the circumstances and the manner and timing of transfer of funds made immediately after the IPO, I am constrained to observe that the amount of INR 10.59 Crore which was immediately diverted from the IPO proceeds to various entities belonging to the funding group entities represent nothing but reimbursement of the funds that were provided by the funding group entities (*Noticee nos. 4 to 11*) so as to make the IPO of the *Company* successful by helping it cross the statutory ceiling of 90% of total subscription amounts.

49. After analyzing all the facts and the materials on records, I am of the view that the *Company*, in connivance with the funding group Noticees at the first stage, financially supported the applications of the 161 IPO applicants who were allotted 13,24,000 shares. Subsequently, out of INR 15.97 Crore received under the IPO, the *Company* siphoned off INR 15.60 Crore (approx.) by transferring the same to various entities out of which, INR 10.59 Crore (approx.) was transferred to the funding group *Noticees*. By acting in tandem and in concert to fructify their scheme, all the *Noticees* in this proceedings have been able to make the IPO of *HPC* successful by way of funding the IPO applications to the extent of 29.03% of the total shares subscribed under the IPO in the absence of which, the IPO would have been hit by non-achievement of the mandatory 90% of shares offered in the IPO and resultantly the scrip of *Company* would have failed to reach the listing platform of the stock exchange.

50. I may hasten to add here that in its reply to the SCN, it was submitted by the *Company* that the matter requires re-investigation taking a plea that selected transactions have been picked up by SEBI and had the *Company* furnished complete information, the proceedings would not have been initiated. It is observed that the *Company* while making request for re-investigation has neither explained as to what were the constraining factors due to which the information was not submitted during the investigation nor has it elaborated the details of information that it wants to furnish now (which it could not furnish earlier), so as to show the circumstances mitigating enough to grant it exoneration from the charges. It is an admitted position that the present

proceedings are in the nature of quasi-judicial proceedings and all the *Notices* including the *Company* are free to furnish any details/information that they want to give to defend the charges made against them in the SCN, which does not require fresh investigation in the matter. However, in light of such a submission made on behalf of the main *Noticee*, it was advised to furnish whatever documents or explanations it wanted to furnish. The *Company*, vide its letter of dated March 03, 2020 availed the opportunity and has made certain additional submissions as well as filed certain documents in support thereof which have already been carefully evaluated in the present order. It is observed that the adequate number of opportunities have been provided to the *Company* during the present proceedings before me, to enable it to counter the allegations made in the SCN. The *Company* also availed opportunities and has filed various documents as it wished to file. However, as discussed above, despite all the opportunities it had with it, the *Company* has not been able to answer the charges of SCN to make out a case of exoneration. It has completely failed to justify the utilization of IPO proceeds and the transfer of funds executed by it, leading to a clear cut case that the funds raised in IPO were not utilised for the objects as mentioned in the Prospectus. The feeble attempt to produce certain self made documents to project utilization of IPO proceeds is nothing but an eyewash that the *Company* has attempted to make. Thus, the claimed grievance of not having provided adequate opportunities does not exist anymore in the present case as the *Company* and its Directors have provided whatever explanation and documentary proofs they intended to file out of their own volition, which have been duly considered by me and the findings on such explanations have already been recorded in this order. Under the circumstances, the unassailable fact remains that despite providing adequate opportunities, and in spite of furnishing various explanations and documents, the *Notices* including the *Company* have not been able to produce any tangible material or evidence so as to justify the transfer of huge sums of IPO proceeds to different entities, in gross violation of the stated Objects of the IPO.

51. The scheme that was crafted intricately and implemented in coordination with other *Notices* is self-evident and self explains as to how the funding group entities first fraudulently supported the IPO applications of various applicants by funding their application money so as to enable the IPO cross the threshold of minimum applications of 90% of the shares offered. The facts also explain the reasons as to why immediately after completion of the IPO, the IPO proceeds were transferred to various entities including the funding group entities. The said

transfer of funds immediately after the IPO coupled with the evasive and unsubstantiated explanations offered by the *Company* with respect to claimed utilization of IPO proceeds, further explain the reasons as to why the *Company* had not actually utilized the IPO proceeds towards the Objects of its IPO. In reality, the specious claims of utilization of the IPO proceeds remained far away from the actual utilization in terms of the stated Objects, resulting in the un-fulfillment of the promises made to the shareholders by way of the Prospectus.

52. In view of my observations in the foregoing paragraphs highlighting the facts which clearly indicate that the *Company* in collusion with the other *Notices* has implemented a scheme to get the IPO successfully subscribed by deceptively funding the IPO applicants thereby getting its securities listed on the SME segment of BSE and subsequently, has diverted the IPO proceeds by transferring large portions thereof to the entities which helped it to fund the IPO applications, I hold that the *Company* has violated Section 12 A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

53. The SCN has implicated the *Notices nos. 2 and 3* being Directors of the *Notice no. 1*, as both of them were part of the management of the *Company* during the IPO process of the *Company* and were accordingly in-charge of the day to day affairs and were responsible for its business affairs during the relevant period.

54. I note that the Directorship of the *Notices nos. 2 and 3* is an admitted position and there is no dispute to the said fact. Further, the *Notices nos. 2 and 3* have also not pleaded ignorance or taken any other defense with respect to their role and involvement in the activities of the *Company* pertaining to the IPO. It is seen that the *Company*, after making adequate disclosures in terms of the extant framework, was able to list its securities, which was possible as an outcome of a fraudulent scheme perpetrated by the *Notices*. As the persons in charge of its day to day affairs, it was an onerous responsibility cast on the Directors to ensure that true and fair disclosures are made; the compliance with the applicable regulations like Regulation 14 (1) are made in letter and spirit and the IPO proceeds are put to use as per the Objects so disclosed under the offer documents so as to increase the value of the investments made by the shareholders.

55. I have already recorded that the *Company* had achieved the minimum threshold of 90% subscription of the total offer made under the IPO, by fraudulently arranging funding of the

applications representing 29.03% of the shares subscribed, through its connected entities and has eventually paid back to those funding group entities out of the IPO proceeds under the garb of utilization of IPO proceeds as per the objects of IPO.

56. There is no material placed on record or no ground has been taken before me by any of the *Notices* so as to distinguish the case of the two Directors viz., *Noticee nos. 2 and 3*, from the case of *Company* in so far as the violations committed by the *Noticee no. 1 Company* in the process of raising money from the public and diverting such money with the help of *Noticee no. 2 and 3* for various purposes other than the objects for which the money was raised from public under the IPO.

57. At this stage, I am seeking guidance from the decision of Hon'ble Supreme Court passed in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152*, wherein it was observed that:

*“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.”*

58. It is also relevant to mention here that whatever offences and violations have been committed by the *Company* through its actions as part of a pre-designed scheme so as to accomplish a successful IPO were in fact the acts perpetrated by the natural persons who were running the *Company* at the given point of time since, ultimately the benefits from such acts of the *Company* are enjoyed by those natural persons who committed those transactions in the name of the *Company*. Moreover, the steps taken under the said scheme were cogent enough to reflect the mindset behind such an indigenous scheme of funding the IPO applications to make the IPO successful in the eyes of law. Thus, I find that the *Noticee nos. 2 and 3* being the Directors of the *Company* were responsible for and involved in the scheme which led to successful listing of the securities of the *Company* on the SME segment of BSE based on

fraudulently financed applications and consequent diversion of IPO proceeds. Therefore, the actions of *Noticee nos. 2 and 3* are also equally violative as per the charges levelled in the SCN.

59. Insofar as *Noticee nos. 4 to 11* are concerned, I note that their role of providing funds to the applicants at the time of IPO and then receiving back the funds out of the IPO proceeds has already been dealt with adequately and needs no further reiteration. I may however, note that in the entire scheme, the *Noticee nos. 4 to 11* have played an important part by providing funds on time in support of the applications of IPO to the extent of 29.03% of the shares subscribed and have also received back large amounts of funds, directly or indirectly, out of the IPO proceeds against the funding made by them to facilitate the success of the IPO. Surely enough, the scheme could not have been successfully implemented but for the crucial roles played by the *Noticee nos. 4 to 11*. I have already recorded earlier the amount provided by the *Noticee nos. 4 to 11* to the IPO applicants as well as the amounts so received back by the *Noticee nos. 4 to 11* out of the IPO proceeds. It is relevant to state here that the *Noticee nos. 4 to 11* have not stated anything in their defense and therefore can be deemed to have accepted the charges made against them in the SCN.

60. To sum up, the *Notices* in this case have crafted the scheme with intricacies and in such a manner that the degree of proof to expose their fraudulent acts would be of preponderance of probabilities which, as held by me earlier are clearly tilted against the *Notices*. In this regard, in a case involving fraudulent activity by a company, the Hon'ble Delhi High Court has observed *inter alia* as: “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.” [*SEBI Vs. CRB Capital Markets Ltd. (date of decision: December 05, 2019)*]

61. I note that the present case is built upon the statutory requirement of achieving subscription of at least 90% of shares being offered under IPO, for a company to be allowed to be listed on an Exchange. The rationale behind such a requirement appears to ensure that the stock market opens up for only such issuers who have the capability and capacity to broadly align the *Company's* vision with the vision and investment horizon of adequate number of shareholders. It is pertinent to note that that keeping a threshold of a minimum mandatory subscription on a higher side of 90% itself shows that such a regulatory framework is aimed at



protecting the interest of the gullible prospective minority shareholders. In the present case, the aforesaid statutory requirement is found to be circumvented by the mischievous and errant *Notices* who, by working as a team through a pre-decided plan, have not only misled the public about the successful subscription to the IPO of *HPC* but also have deceived the regulatory mandate by falsely projecting compliance with the said mandatory requirement of 90% subscription while in reality, bulk of the subscriptions was pre-arranged through funded applications. The said action on the part of the *Notices* have led to inducement to the prospective shareholders, who invested in the IPO only because it was to be listed and under a mistaken belief that the *Company* has achieved the statutory compliances on its own due to overwhelming public response to its IPO.

62. I note that in the present case, when the basic requirement of achieving subscription of 90% of shares offered under the IPO is found to be standing on falsehood, the only way to protect the investors of the securities market is to provide them with an opportunity to exit from the *Company*.

**Directions:**

63. In view of the foregoing, 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(4) and 11B thereof, pass the following directions:

- i. *Notice nos. 2 and 3* (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 *Notice 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. *Notices no. 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 *Notices*, 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.	HPC Biosciences Ltd	Yes	Till date of this order
2.	Shri. Tarun Chauhan	Yes	Till date of this order
3.	Ms. Madhu Anand	Yes	Till date of this order
4.	Goldline International Finvest Ltd.	Yes	Till date of this order
5.	Shri. Madhukar Dubey & its Proprietorship firm viz. N V Sales Corporation, Magnum Industrial Alliance Traders	Yes	Till date of this order
6.	Shri. Satendra Kumar & its Proprietorship firm viz. Nisha Traders	Yes	Till date of this order
7.	Avisha Credit Capital Pvt. Ltd.	Yes	Till date of this order
8.	Shri. Sumit Kumar & its Proprietorship firm viz. Durga Prasad & Co.	Yes	Till date of this order
9.	Shri. Raj Kumar & its Proprietorship firm viz. Bright Securities	No	1 Year
10.	Shri. Prakash Gupta & its Proprietorship firm viz. Shiv Traders	Yes	Till date of this order
11.	AMS Powertronic Pvt. Ltd.	Yes	Till date of this order

- vi. Obligation of the debarred *Notices*, 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 *Notices* in the F & O

segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

vii. It is further clarified that during the period of the aforesaid restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze.

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

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

-Sd-

**Date: December 22, 2020**

**Place: Mumbai**

**S. K. MOHANTY**

**WHOLE TIME MEMBER**