

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992
in the matter of IPO of Onelife Capital Advisors Limited**

1. Onelife Capital Advisors Limited (hereinafter referred to as "OCAL") is a company incorporated under the Companies Act, 1956. The corporate and registered office of OCAL is situated at 96-98, Mint Road, Mumbai - 400 001. OCAL is an intermediary registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") having certificates of registration to act as Category I Merchant Banker, Portfolio Manager and also a stock broker (*trading member of the Bombay Stock Exchange Limited*).

2. OCAL came out with an Initial Public Offering (hereinafter referred to as "IPO") of shares to raise ₹36,85,00,000/- through the issue of 33,50,000 equity shares of ₹10/- at an issue price of ₹110/- through 100% book building route. Atherstone Capital Markets Limited (hereinafter referred to as "ACML") was the Book Running Lead Manager ("BRLM") in the said issue of securities. The IPO opened for subscription on September 28, 2011 and closed on October 04, 2011. The shares of OCAL were listed on October 17, 2011 in the Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Limited ("NSE").

3. SEBI noticed that the shares of OCAL were issued at a premium of ₹100/- (*on face value of ₹10/- each*) per share and the IPO was over-subscribed by 1.53 times, despite poor fundamentals (*CARE IPO rating of 1*). The IPO proceeds of OCAL were also found to be transferred to certain entities. SEBI, therefore, undertook a preliminary examination into the said IPO. During the preliminary investigation, it was *prima facie* observed that OCAL had made mis-statements in the offer documents and had utilised the IPO proceeds for purposes other than the objects of the IPO as stated in the Red Herring Prospectus ("RHP")/Prospectus. It was also observed that OCAL had transferred ₹15.54 crores (*42% of the IPO proceeds*) to an entity, Fincare Financial and Consultancy Services Private Limited ("Fincare") and a sum of ₹12 crore (*32% of the IPO proceeds*) to another entity, Precise Consulting & Engineering Private Limited ("Precise"). OCAL had stated that out of the said ₹27 crore, around ₹20 crore was paid for carrying out the activities stated in the Red

Herring Prospectus/Prospectus under objects of the issue viz., "*Development of Portfolio Management Services*" and "*General Corporate Purposes*" and the remaining ₹7 crore towards purchase of corporate office. Investigation revealed that most of the funds out of ₹20 crore were immediately transferred to five different entities based in Surat, Gujarat, whose business was not related to the securities market, instead was that of cloth trading, grocery etc. The said investigation also observed that the bank accounts of the five entities were opened during October 2011 and were closed immediately after the funds were transferred to various other entities. Further, the status of *Fincare* was observed to be "dormant" as per MCA website and *Previs* was mentioned as "defaulter" as per the same source.

4. ACML (*the BRLM in the IPO*) was alleged to have not reported material developments that took place between the date of registration of the RHP and the date when the shares of OCAL were allotted to general public, through advertisements as required under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations"). The RHP/Prospectus of OCAL mentioned that Mr. Pandoo Naig, the managing director of OCAL was issued a demand notice by the Income Tax Department. However, the details such as period and nature of transactions for which the said demand was raised, were not disclosed in the offer documents of OCAL. ACML was also not able to produce the details of income tax notice served on the managing director of OCAL. Further, ACML failed to produce written records of independent verification done with regard to the order book of OCAL, proposed corporate office and estimates of fund requirement under the object "*Development of Portfolio Management Services*". ACML was therefore alleged to have failed to perform adequate due diligence with respect to the statements mentioned in the RHP and its failure to independently verify material statements mentioned in the RHP/Prospectus of OCAL.

5. On the basis of the *prima facie* findings of the said investigation, SEBI had, pending investigation, passed an *ad-interim ex-parte* Order dated December 12, 2011 (hereinafter referred to as the "Interim Order"), whereby various directions were issued in the matter including the following :

- (i) OCAL was directed not to -
 - a. Issue any equity share or any other instrument convertible into equity share, in any manner, or alter its capital structure in any manner, till further directions in that regard ;
 - b. Undertake any fresh business in its capacity as merchant banker, portfolio manager and stock broker till further directions in that regard (*this direction is contained in paragraph 14.4 of the Interim Order*) ; and

- c. Buy, sell or deal in securities directly or indirectly, till further directions in that regard (*this direction is contained in paragraph 14.5 of the Interim Order*).
- (ii) The directors of OCAL, namely, Mr. Thiruvaidaimarudur Krishna Prabhakar Naig (*Chairman and Director*), Mr. Pandoo Prabhakar Naig (*Managing Director*), Mr. Dhananjay Chandrakant Parikh (*Non-Executive Director*), Mr. Ayodhyaprasad Chandra Shekhar Shukla (*Independent Director*), Mr. Tushar Shirdharani (*Independent Director*) and Mr. Thirumakottai Subramaniayar Raghavan (*Independent Director*) were directed not to buy, sell or deal in securities, directly or indirectly, till further directions in that regard.
- (iii) OCAL was also directed to call back funds (*IPO proceeds and short term loan taken from Prudential Group*) transferred to *Fincare* and *Precise*. These amounts together with all of the IPO proceeds that were still lying unutilized with OCAL across all its bank/deposit accounts or any investments including in mutual funds, were directed to be deposited in an interest bearing escrow account with a scheduled commercial bank, till further orders. The promoters of OCAL were directed to confirm compliance with the said direction to the stock exchanges where OCAL was listed, within 7 days from the date of the Interim Order (*this direction is contained in paragraph 14.7 of the Interim Order*).
- (iv) *Fincare* and *Precise* were directed not to buy, sell or deal in securities directly or indirectly, till further directions in that regard.
- (v) ACML, its managing director Mr. Gurunath Mudlapur and its compliance officer Mr. Ranjan Agarwal were prohibited from taking up any new assignments as Merchant Banker or be involved in any new issue of capital including in IPO, follow-on issue etc. from the securities market in any manner whatsoever, from the date of the Interim Order till further directions.
6. The Interim Order advised the entities/persons, against whom the directions were issued, to file their objections, if any, within 21 days and avail an opportunity of personal hearing, if they so desired. OCAL and its directors (*excluding Mr. Tushar Shridharani*) filed an appeal (Appeal no. 17 of 2012) before the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") challenging the Interim Order. Mr. Tushar Shridharani filed a separate appeal (Appeal no. 18 of 2012). Both the appeals were disposed of by the Hon'ble SAT vide an order dated January 20, 2012, wherein SEBI was directed to treat the said appeals as reply to the show cause notice (*Interim Order*). With respect to the contradictions pointed out in *paragraphs 14.4, 14.5 and 14.7* of the Interim Order, SEBI was directed to pass an order within a period of 15 days. In compliance with the direction of the Hon'ble SAT, SEBI vide an Order dated February 15, 2012 clarified the following :

- (i) As regards the direction in *paragraph 14.5* in the Interim Order, OCAL was permitted to deal in shares for the limited purpose of fulfilling their existing obligations of underwriting for minimum subscription as required under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations") and do such other incidental acts in respect of those issues that were being dealt with by it as on December 28, 2011.
- (ii) The direction in *paragraph 14.7* of the Interim Order to continue without any modification.

7. Thereafter, OCAL and its directors (*excluding Mr. Tushar Shridharani*) preferred another appeal (Appeal no. 103 of 2012) against the SEBI Order dated February 15, 2012 read with the Interim Order. While disposing of the said appeal, the Hon'ble SAT vide its order dated June 25, 2012 observed that it was not appropriate for them to intervene in the matter as the matter is still under investigation involving a large number of parties. However, for the reasons stated therein, the Hon'ble SAT vacated the directions contained in *paragraph 14.7* of the Interim Order. SEBI was also directed to complete the investigation as expeditiously as possible and in any case before October 31, 2012. In compliance with the direction of the Hon'ble SAT, SEBI had completed the investigation in the matter within the stipulated time and further proceedings in accordance with law, have also been ordered, *inter alia*, with respect to the entities/persons who were proceeded upon in the matter vide the Interim Order.

8. This Order, would therefore, consider whether the directions issued vide the Interim Order, needs to be confirmed, revoked or modified in any manner. In this regard, I note the following submissions of the entities/persons made with respect to the Interim Order :

A. Reply of OCAL and its directors : The submissions of OCAL and its directors including Mr. Tushar Shridharani are from their appeals filed before the Hon'ble SAT. In addition, it was stated that Mr. Tushar Shridharani was an independent director of OCAL and was appointed on December 2, 2010. It is noted that Mr. Tushar Shridharani had resigned from the post of Independent Director with effect from December 29, 2011 (*the very next day of the Interim Order*). While denying the violations alleged in the Interim Order, OCAL and its directors, *inter alia*, made the following submissions :

- (i) OCAL executed separate agreements, in addition to the general agreements, with *Precise* and *Fincare* for payment of finder fees whenever mandates were obtained through them.
- (ii) As *Precise* and *Fincare* were strongly pressing for the payment, OCAL perceived that there was a possibility that *Precise* and/ or *Fincare* may stop procuring mandate letters in its favour and divert

such business to some other Merchant Banker. Considering the urgency, OCAL approached an NBFC namely Mercury Fund Management Company Limited and its associates Prudential Mercantiles Private Limited, Prudential Management Advisors Private Limited and Premier Corporate Securities and Finvest Private Limited for a very short term loan. The said NBFCs agreed to advance such short term loans to OCAL. Pursuant to the agreements with such NBFCs, OCAL borrowed ₹ 11.50 crores from them. Out of this, OCAL paid a total of ₹ 9 crores to *Precise* and ₹ 2.50 crores to *Fincare*. The aforesaid loans of the NBFCs were repaid by OCAL from out of the IPO proceeds. Additionally, on October 14, 2011, OCAL paid ₹ 1 crore to *Precise* and ₹ 5.33 crores to *Fincare* from the IPO proceeds. Payment of the finder fee does not fall within the scope of the said statement in the RHP.

- (iii) As disclosed in the Prospectus of OCAL, one of the objects of the said issue of shares was to raise funds for the purchase of a corporate office in Mumbai. OCAL had already identified a property and executed an MoU dated December 14, 2010 for the purchase thereof. The direct MoU between OCAL and Masala Gruh Properties Private Limited ("Masala Gruh") was terminated by Masala Gruh as evident from its letter dated October 27, 2011. As *Fincare* had also entered into an MoU dated April 12, 2011 with Masala Gruh to purchase a commercial office space of about 3,000 sq. ft., OCAL therefore negotiated with *Fincare* and entered into a preliminary MoU dated November 01, 2011 to acquire the said property on ownership basis and paid a sum of ₹ 7 crores from out of the IPO proceeds. The fresh agreement with *Fincare* is not for the purchase of the same office space as new premises was on the first floor of the same building. The transaction is denied to be suspicious and was not connected to the payments made by *Fincare* to Onelife Gas Energy and Infrastructure Limited and Shalini Patidar, as alleged in the interim Order.
- (iv) As part of its normal business, OCAL was to pay the finder fees to *Precise* and *Fincare* for the six IPO mandates which they had procured in favour of it. The said 'General Corporate Purpose' in RHP clearly mentioned that the same could be utilized for repayment of loans, enhancement of the company's productivity etc. The clause for interim use of funds if read as a whole makes it clear that the time of utilization of the IPO proceeds would be entirely at the discretion of OCAL and its board. There was no substantial alteration or change in the statements made in the RHP/prospectus with respect to the utilization of IPO proceeds.
- (v) However, the expenditure towards the said 'PMS services' objective will be incurred only as and when definitive agreements are entered into between OCAL and the landlords of the respective office premises which OCAL proposes to acquire for its PMS services branch.
- (vi) The resolution dated September 30, 2011 of the Board of Directors of OCAL or the actions taken pursuant thereto were not '*material developments*'.
- (vii) *Fincare* and *Precise* were third parties and not connected to OCAL.
- (viii) *Fincare* and *Precise* were not mere 'shell companies' and there was nothing suspicious about their appointment. The purported MCA details regarding *Fincare* and *Precise*, mentioned in the Interim

Order, are incorrect. The relationship of OCAL with *Fincare* was not connected with or concerned with any trading in the market. OCAL is not aware of and is not concerned with any of the allegations as regards transfer of funds by *Precise* and *Fincare* to third parties or any subsequent transfers to third parties. OCAL has no relationship or connection with any such third parties. OCAL is not aware of the fund flow from the Prudential Group, *Fincare* and *Precise*.

- (ix) The Income Tax Demand notice/ order in respect of Mr. Pandoo Naig, as disclosed in *Risk Factor no.7 at page XVI* of RHP was duly furnished to SEBI under cover of OCAL letter dated December 14, 2011. Vide letter dated December 26, 2011, Mr. Pandoo Naig had *inter alia* clearly informed SEBI that it would take some time to compile the same. Further, the said notice is not against OCAL but as against Mr. Naig and it is his personal liability. SEBI approved the disclosure as being adequate and sufficient to comply with the requirements *inter alia* of the ICDR Regulations.
- (x) The payment of ₹4 crore to Mint Street Estates Pvt. Ltd. was by way of a refundable deposit pursuant to a leave and license agreement by which OCAL had obtained large fully furnished office premises which in fact is the registered office of OCAL. Further the investment of ₹3 crore in shares of group companies is also legitimate, bonafide and verifiable. The payment made to other group companies were all legitimate and genuine and have been disclosed throughout without any questions of allegations been raised even though SEBI itself vetted or approved the offer documents.
- (xi) OCAL has 881 public investors holding 33,50,000 shares and therefore shutting down its entire business is bound to cause loss and injury to the investors. Further, the direction to call back the funds transferred to *Fincare* and *Precise*, would have adverse effects as the mandates received through them could be withdrawn and given to some others.
- (xii) OCAL has already identified two offices for setting up the PMS business in Ahmedabad and Baroda. If final definitive documents for acquiring the same are not expeditiously executed, OCAL may lose the premises. Further, there is a condition in the MoU dated October 11, 2011, between OCAL and *Precise* that if OCAL decides not to go ahead with the said PMS services set up activities, *Precise* would be entitled to liquidate damages by way of a drop dead fee of ₹60 lakh.

B. Submissions of *Fincare* -

Fincare made its submissions vide letter dated February 15, 2012 and *inter alia* submitted as follows :

- (i) It is a company registered under the Companies Act, 1956 and is acting as real estate brokers and commission agents since the last two years. One of its director Mr. Mayank Bhatt has been dealing in diamonds for the last several years.
- (ii) It had sent a letter dated December 14, 2011 to SEBI confirming receipt of ₹8.54 crore towards business generated as per the agreement dated October 05, 2011 and ₹7 crore towards acquiring the

right over the premises at 1st Floor, 42, Anandilal Podar Marg, Dhobi Talao, New Marine Lines, Mumbai - 400 002.

- (iii) Mr. Mayank Bhatt, director of *Fincare*, has experience in share trading and has developed contacts with persons and entities in the securities market. As Mr. Mayank Bhatt knew and was associated with one of the directors and promoters of OCAL and also because OCAL was a SEBI registered merchant banker, he introduced those companies which wanted to raise funds to OCAL.
- (iv) It entered into "*Finder Fee Agreements*" with OCAL with regard to such companies whereby it agreed to introduce companies intending to come out with IPOs and other issue of securities to OCAL and procure mandates from such companies for IPOs etc. In return, OCAL would pay it a 'finder fee' which would be a percentage of the fee receivable from the company which proposed to come out with issue of capital. The finder fee would usually be payable on completion of the IPO/issue but the same may be payable in advance also. Under the Finder Fee Agreement, if a company decided not to proceed with IPO/other issue of securities, it was entitled to 40% of "drop dead" fee agreed to between the company and OCAL in their mandate. Any failure by OCAL to pay the finder fee to it under various finder fee agreements entered into between OCAL and itself would constitute a default.
- (v) It also entered into an agreement dated October 05, 2011 with OCAL for identifying office premises for OCAL to provide portfolio management services. Any failure on its part to procure at least 10 mandates by March 31, 2012 and / or provide PMS facilities would constitute an event of default.
- (vi) The finder fee due to it with respect to the mandates signed in favour of OCAL is a sum of ₹13.24 crore and OCAL was required to pay an advance of ₹2.50 crore for setting up PMS. OCAL paid a total sum of ₹15.54 crore to it, out of which, ₹6.04 crore was the finder fee and the remaining was the deposit towards identifying office spaces and purchase of corporate office.
- (vii) As on February 15, 2012, it had identified two commercial/office space that met the criteria specified by OCAL and had entered into MOU/Term Sheets with the owners of such commercial spaces/offices to take them on leave and license/rental basis. *Fincare* denied being a company without sufficient financial capacity and with low business activity or a '*shell company*', as alleged.
- (viii) While filing the DRHP/RHP, no agreement had been entered into between OCAL and itself for setting up of PMS branches. Pursuant to the Interim Order, OCAL had requested it not to identify further premises. The property, in respect of which an MoU had been signed between Masala Gruh Properties Private Limited ("Masala Gruh") and itself, would be sold by Masala Gruh to OCAL and the payment of ₹7 crore to it would be a sufficient consideration to Masala Gruh.
- (ix) OCAL deposited ₹2.50 crore towards identifying PMS office premises and paid a total of ₹6.04 crore on various dates between October 13, 2011 and November 01, 2011 and that it was not aware or was not concerned with the source of funds. *Fincare* had made it clear to OCAL that it would not be able to procure mandates in addition to the 6 mandates already procured unless atleast part of the finder fee was paid to it. Accordingly, OCAL paid it around 50% of the finder fee due to it. It had

also made it clear that it would not be able to commence identifying office premises for their PMS branches without deposit of a substantial amount. Therefore, OCAL deposited a sum of ₹2.50 crore with it on October 13, 2011.

- (x) The details regarding MCA filings set out in the table in paragraph 6.4 are not the present details. The latest details that have been updated in the MCA website have already been provided to SEBI. Therefore, *Fincare* is not a shell company or a defaulter, as alleged.
- (xi) SEBI officials have visited its office in Ghatkopar (*Mumbai*) and therefore, the alleged notation on the hand delivery "No such Address exists" is obviously erroneous. It had already identified two premises for PMS offices of OCAL and were in the process of executing leave and license agreements, installing computers and software and recruiting staff. However, the same were put on hold as requested by OCAL in view of the Interim Order.
- (xii) *Fincare* had invested the amounts including the amounts received from OCAL in diamonds (*purchased from traders including Sainath Corporation and Venus Publicity*) at its own risk. It was not concerned with the use of monies paid by it to Sainath Corporation and Venus Publicity. It has diamonds of greater or equivalent value which could be liquidated as and when required.
- (xiii) The receipt of ₹8.54 crore from OCAL was part of the monies due to it as Finder Fee and the deposit to be paid under the PMS agreement dated October 01, 2011. It paid a total sum of ₹3.80 crore to Sainath Corporation and ₹4.03 crore to Venus Publicity towards purchase of diamonds and was not aware of or not concerned with further use of funds by them. It did not pay any monies to Mahak Enterprises as alleged in the Interim Order. *Fincare* paid ₹4.33 crore to Onelife Gas Energy & Infrastructure Limited as repayment of a loan taken from it on June 02, 2011; paid ₹2.17 crore to Shalini Patidar towards purchase of shares of Decolight Ceramics Limited in an off-market transfer on November 01, 2011 and a sum of ₹69 lakhs was given to Sparc Pesticides Private Limited, whose director Mr. Pravin Bandarkar is the brother of one its directors, Mr. Prakash B Bandarkar.
- (xiv) *Fincare* was approached by OCAL with a proposal to purchase the property in respect of which it had already entered into an MoU with Masala Gruh and as the same appeared to be commercially attractive to it (as it was earning a profit of ₹50 lakhs), it had no reason to forego the same. It denied transferring ₹7 crore received from OCAL to Onelife Gas Energy & Infrastructure Limited and Shalini Patidar.
- (xv) As *Fincare* had utilised the payments made by OCAL towards the PMS Agreement, it cannot be said that the funds transferred to it was not utilized for the objects of the issue. The sum of ₹2.50 crore from OCAL is retained in the form of diamonds.
- (xvi) *Fincare* had referred 6 mandates to OCAL. It denied that there were any suspicious flow of funds from it to OCAL and that all funds received by it from OCAL were under agreements entered into with them.

- (xvii) The Interim Order did not indicate the emergent need for passing the same and that SEBI does not allege that *Fincare* violated any provision of law.

In view of its submissions, *Fincare* requested that the directions contained against it in the Interim Order be revoked.

C. Submissions of *Precise* :

Precise made its submissions to the Interim Order vide letter dated February 13, 2012, which were almost on the lines of the reply/submissions made by *Fincare*. Certain submissions specific to *Precise*, *inter alia*, are as follows :

- (i) It is engaged in Project Management Consultancy services since 2009. It was also introducing companies desirous of raising funds from the market by way of IPOs, further issue of shares, preferential allotment etc., which they have done for OCAL also.
- (ii) OCAL was required to pay an advance of ₹12 crore for setting up of PMS ; the finder fee due to it in respect of mandates signed in favour of OCAL is ₹6.28 crore. As one (1) IPO was already completed, finder fee of ₹3.40 crore was payable to it. ₹3 crore is the finder fee as per the finder fee agreement dated January 20, 2010 and the mandate letter dated January 20, 2010 issued by Paramount Print Packaging Private Limited, due from OCAL. OCAL had paid only ₹9 crore (out of ₹12 crore) as deposit towards setting up of PMS services. As on January 31, 2012, there was a shortfall of ₹6.28 crore, which was due and payable to it by OCAL.
- (iii) It is investing its surplus funds from the said businesses in diamonds from Surat. The same included the funds received from OCAL. The diamonds were purchased from traders including Mahak Enterprises, Jay Enterprise and Surya Solutions. It is not concerned with the use of funds by the said traders.
- (iv) OCAL had paid it only ₹3 crore towards finder fee i.e., under General Corporate Purposes as stated in the objects of the issue and the remaining sum of ₹9 crore paid to it was a deposit under the PMS agreement dated October 01, 2011 and the same is retained in the form of diamonds.
- (v) *Precise* did not utilise the amounts provided to it under the PMS agreement for any other purpose.

D. Submissions of ACML, its managing director Mr. Gurunath Mudlapur and its compliance officer Mr. Ranjan Agarwal : ACML, its managing director and compliance officer made submissions vide letter dated March 19, 2012 to the Interim Order. The submissions of ACML, *inter alia*, are as follows :

- (i) No procedure or enquiry was conducted as per the Intermediaries Regulations before passing directions against it vide the Interim Order. SEBI has not explained any role played by it or that of its Managing Director and compliance officer, who are part of its merchant banking team.
- (ii) SEBI has not provided all documents and records relied upon to arrive at the allegations and findings against it, although it requested for the same.
- (iii) ACML, incorporated in 2006 is a public limited company and managed by qualified and experienced professionals.
- (iv) With respect to the IPO of OCAL, it was approached by Mr. Pandoo Naig, Managing Director of OCAL, for raising funds during August 2010. After initial discussions and subsequent preliminary checks and diligence by it, a mandate letter dated October 14, 2010 was signed whereby it was appointed as Book Running Lead Manager (BRLM) for the IPO.
- (v) ACML initiated formal due diligence at a macro level with OCAL and the same continued till the filing of DRHP with SEBI. Thereafter, it continued with regular monitoring and updates on the business of the company till the filing of RHP with the Registrar of Companies (RoC).
- (vi) The grading given by CARE to the IPO of OCAL was disclosed in RHP and other offer documents. The basis of allotment of shares pursuant to the IPO was approved and finalised by the BSE and the shares were allotted on that basis by OCAL and its Registrar and Share Transfer Agent (RTA). It is not aware and not concerned with the allottees or relationship between them.
- (vii) OCAL had informed it during the due diligence exercise that they propose to establish branches in cities across India to provide PMS services to equity investors and estimated the cost in setting up of such branches including infrastructure, rentals etc., would be ₹115.78 million. On its request, the company provided a table (*reproduced in the said paragraph of the Interim Order*) as to the basis/rationale for those estimates. ACML independently verified the rental rates and other expenses prevalent in the cities mentioned in the table. Such disclosure of estimates is a standard procedure for disclosures as per its understanding and hence needs to be viewed as such.
- (viii) The general corporate purposes for which the proceeds of the IPO were to be used by OCAL were clearly mentioned in the DRHP and other offer documents. These documents were scrutinised by SEBI, BSE and NSE and no fault was found with respect to the disclosures. ACML had verified the proposal to purchase the corporate office from the proposed seller (Masala Gruh) before the same was incorporated in the DRHP and other offer documents. It was not informed by OCAL about the subsequent changes in the said proposal and would not have come to know of the same unless informed by OCAL or by

the seller as the MoU and the sale deeds executed by the company are private contractual documents. It had obtained an undertaking from the company that there were no significant developments between filing of RHP and allotment of shares. It was not aware of this development at the time of filing the final prospectus.

- (ix) It was not informed by OCAL regarding its Board Meeting held on September 30, 2011 or the decisions taken therein. It became aware of the short term loans availed by OCAL from NBFCs for the first time from the Interim Order. As regards the letter dated December 14, 2011 of OCAL (*with respect to the mandates received through Fincare and Precise*), it was not privy to the agreements entered into by the company with *Fincare* and *Precise* and came to know of the same for the first time from the Interim Order. To the best of its knowledge and as per the information provided to it by the company, no definitive arrangements were made by OCAL towards any of the objects of the issue except for purchase of corporate office.
- (x) As OCAL did not inform it of the Board Meeting held on September 30, 2006, or provided the minutes thereof or the agreements with *Fincare* and *Precise* or the termination of the MoU with Masala Gruh and the borrowing from NBFCs, it could not have been aware of the same, despite its standard and regular interval requests for material updates during the IPO process. Therefore, it could not have ensured disclosures of such developments to the public by way of an advertisement or otherwise. Therefore, the Certificate of Due Diligence issued by it was true and correct to the best of its knowledge and information. In view of the same, ACML denied that it failed to comply with Regulation 8(2)(f) of the ICDR Regulations.
- (xi) It was not aware of the transfer of funds from the NBFCs to OCAL, then from OCAL to *Fincare* and *Precise* and from them to other entities. No law in force gives the authority or responsibility of monitoring the end use of IPO proceeds to a merchant banker. The issuer company's Board is responsible for monitoring the end use of these funds. Therefore, it cannot be held responsible for the use of proceeds of the IPO of OCAL. To the best of its knowledge, OCAL had not made any definitive arrangement for the development of its PMS business or its merchant banking business (by way of finder fee agreement and same is a post facto revelation to it).
- (xii) There is no material brought on record by SEBI to show that it was aware of the aforesaid Board Meeting held on September 30, 2011, the arrangement between OCAL and *Fincare* and *Precise*, and the termination of the MoU with Masala Gruh. This fact is evident from the details submitted by SEBI during inspection of documents in the matter.
- (xiii) With respect to the Income Tax Demand Notice, issued to Mr. Pandoo Naig, the details were mentioned in the copy kept with it as part of its due diligence. Though this notice could not be produced during the initial stage of investigation, it had subsequently submitted the same to the investigating officer through an email dated December 12, 2011.

The disclosure regarding the aforesaid Income Tax Demand Notice on Mr. Pandoo Naig is detailed as, not only the details of demand on Mr. Pandoo Naig is disclosed but also the details regarding its implications on the issuer company (OCAL) and its investors are disclosed. These disclosures were subject to scrutiny by SEBI at the time of filing of RHP and at no stage of the IPO did SEBI require any further disclosures to be made.

- (xiv) With respect to the MoU entered into by OCAL with Masala Gruh for the purchase of office space, ACML submitted that its officer had physically visited the said premises and also verified the prevailing market rates with local real estate brokers.
- (xv) With respect to the proposal to utilise ₹11.58 crores from the IPO proceeds for development of PMS, it was submitted that the said estimate was arrived by the management of OCAL based on their internal business plan. The same was accepted by it as OCAL is the final deliverer on this business agenda. ACML did a check on the rentals prevailing in the cities where the branch offices were to be developed and used property websites as a key option to re-verify the estimates on this subject.
- (xvi) With respect to the fund raising mandates of ₹473 crores as on July 15, 2011 of OCAL, ACML submitted that it had cross verified many of these mandates with the promoters /authorised representatives of those companies over telephone and even met some promoters personally when they were at the client company's office.
- (xvii) ACML denied to have failed to make all material disclosure in the DRHP and other offer documents and denied violating regulations 57(1) and 64 of the ICDR Regulations.
- (xviii) OCAL had three separate registrations granted by SEBI and the same provided a great degree of comfort to it regarding the company, its management and promoters. Further, the observation letter of SEBI regarding the DRHP and the implicit approval of the IPO documents provided reassurance. It did everything reasonably possible to ensure that investors are provided with all relevant information relating to the company, its promoters, its management and the IPO. It fully understood its fiduciary responsibility as a merchant banker and is committed to good and ethical business practices.

In view of the submissions, ACML, its managing director and compliance officer requested SEBI that the directions passed against them in *paragraph 14.9* of the Interim Order may be revoked.

9. I have considered the observations/*prima facie* findings mentioned in the Interim Order as against OCAL, its directors, *Fincare*, *Preise* and ACML, its managing director and compliance officer, the submissions of the said entities/persons and other material available on record. As stated above, the limited issue to be considered at this stage is whether the *ad-interim ex-parte* directions issued against the aforesaid entities/persons vide the Interim Order needs to be confirmed, vacated or modified in any manner.

10. I note that with respect to the two objects of the IPO of OCAL, i.e., *Development of Portfolio Management Services* and *General Corporate Purposes*, it was stated that OCAL did not have definitive arrangements for the said objects even till the time of submission of the Prospectus (i.e., on October 10, 2011). However, in the board meeting of OCAL held on September 30, 2011, it was decided that *Fincare* and *Precise* be appointed for procuring PMS mandates and to identify suitable office premises for OCAL. OCAL also decided to avail short term loans from Mercury Fund Management Company Limited (*Mercury*) and their associates (*entities of the Prudential group*) to the extent of ₹11.50 crores. Mr. Pandoo Naig, the managing director of OCAL was authorised to make payments for setting up PMS branches, finder fees to *Fincare* and *Precise* and to avail short term loan for making payments to *Fincare* and *Precise*. After receipt of funds from *Mercury* and the *Prudential group entities*, OCAL had transferred ₹9 crore to *Precise* and ₹2.50 crore to *Fincare*. On receipt of such funds, *Precise* transferred funds to three Surat based entities and *Fincare* transferred funds to two different entities.

11. Further, as per the RHP/Prospectus, it was expressly mentioned by OCAL that no bridge loan was taken against the IPO proceeds. However, the decision to take short term loans from *Mercury* and from the entities of the *Prudential group* for meeting the payments due to *Fincare* and *Precise* was a 'material development' post the filing of the RHP, which was not in consonance with the statements made in the RHP/Prospectus. The engagement of *Precise* and *Fincare* also assumes importance in the light of the fact that OCAL, had in its RHP, mentioned that no definitive arrangements were made with respect to the two objects of the IPO, as mentioned above. Thus, the engagement of *Fincare* and *Precise* and the decision of OCAL to take short term loans are material developments, which warrant adequate and proper disclosure to the investors. However, OCAL has submitted that such decisions to take short term loans to make payments to *Fincare* and *Precise* were taken in the 'normal and ordinary course of business'. I note that IPO funds were to be utilised to pay back such short term loans (*as per the decisions taken in the board meeting held on September 30, 2011*) and the said acts were materially different from the statements in the RHP, as stated above, OCAL was under an obligation to inform such developments to the investors. These could be factors influencing the minds of the investors on whether to subscribe in the IPO of OCAL. Therefore, the aforesaid submission of OCAL, in my view, is not convincing.

12. Although, OCAL has made a specific statement in its RHP/Prospectus that it has not taken any bridge loan against the IPO proceeds, I note that OCAL has submitted that there is always a residuary clause which enables a company to utilize part of the IPO proceeds for the

general business and that the object "*General Corporate Purpose*" clearly mentioned that the same could be utilised for repayment of loans, enhancement of the company's productivity. Thus, the said submission of OCAL appears to be a subsequent attempt on its part to ratify the irregularities already committed by it. When OCAL has stated that it did not take any bridge loan and when subsequently it was forced to take loans (*as claimed*) to pay *Fincare* and *Precise*, the least that was expected of OCAL was to make a proper and complete disclosure of the same. Therefore, in the absence of prompt disclosure from OCAL about such material developments which took place during the period between the filing of the RHP and the date of allotment of securities, OCAL has *prima facie* contravened the relevant provision of the ICDR Regulations, as alleged in the Interim Order.

13. I also note that as per the finder fee agreements, payments were to be made to *Fincare* and *Precise*, post-successful completion of IPO and receipt of fee by OCAL from the issuer (*companies which had given mandates*). But OCAL has made advance payments of finder fee for many IPOs to *Fincare* and *Precise*, which seems unusual. *Precise* has submitted that the IPO of Paramount Print Packaging Limited, was already completed. However, it is strange to note that the finder fee for such mandate was also paid to *Precise* at a time, when the IPO proceeds of OCAL was received. The said manner of making advance payment of money to the *Fincare* and *Precise*, in the garb of paying finder fees seems very unusual. OCAL has claimed that *Fincare* and *Precise* are third parties. Strangely enough, it has paid everything in advance to the so called third parties. The said advance not only included advance payment of finder fees or other commissions but also payments which were not due to these entities (*e.g. payment of ₹7 crore to Fincare (for property it did not own) towards purchase of premises for corporate office*). OCAL has contended that it did not make any expenditure. However, it needs to be noted that when money is transferred under whatever head be, to third parties, it definitely amounts to 'expenditure'. The agreements with *Fincare* and *Precise* contained clause for payment of a 'drop dead' fee. The payment of such fee is an "expenditure" in itself, as the same cannot be recovered from *Precise* and *Fincare*. Hence, the above submission by OCAL regarding the expenditure is contrary to the statement made in the Prospectus that no expenditure has been incurred by OCAL and therefore untenable.

14. As mentioned above, OCAL had claimed that it appointed *Fincare* and *Precise* for carrying out certain objects of its IPO. The findings of the preliminary investigation regarding *Fincare* and *Precise* have already been mentioned in the Interim Order. *Precise* has claimed that it provides services to a large number of companies. However, it has not submitted sufficient proof to

substantiate such claim. The same was the case with *Fincare* also. It is also noted that the status of *Fincare* was "*dormant*" as per the MCA website during the period when OCAL had entered into agreement with *Fincare* for the development of PMS business and also the Finder Fee Agreements. *Precise* was in the '*defaulter*' list as per the MCA website when OCAL had entered into agreements with *Precise*. Both the entities, *Fincare* and *Precise* were found to have updated their annual returns very belatedly in the website of MCA. In this regard, it is to be noted that the Income Tax Returns of both the entities as well as the updation/filing of annual returns with the MCA for the last three years were done only in the month of December 2011 or even later, by which time the entities were well aware of the investigation by SEBI. However, the fact remains that when OCAL entered into agreements with *Precise* and *Fincare*, *Precise* was in the "***defaulter***" list and status of *Fincare* was "***dormant***", as per the website of MCA. I also note that *Fincare* and *Precise* have stated that they have utilised funds received from OCAL (*towards finder fee, development of PMS and purchase of corporate office*) to purchase diamonds. In this regard, it is noted from the bank accounts of *Fincare* and *Precise* that the entire funds received from OCAL were immediately transferred to third parties, as mentioned in the Interim Order. It is reiterated that the five different entities based in Surat, Gujarat, to whom money was transferred by *Fincare* and *Precise* (*after receipt of funds from OCAL*), were doing the business of cloth trading, grocery etc and not diamond trading. These details are available in the "KYC" documentation given to the banks. It is also important to note that the bank accounts of the five entities were opened during October 2011 and were closed immediately after the funds were transferred to various other entities.

15. The Interim Order has observed that *Fincare* and *Precise* were '*old acquaintances*' of Mr. Pandoo Naig, the managing director of OCAL. As per the minutes of the board meeting of OCAL held on September 30, 2011, Mr. Pandoo Naig was authorised to take short term loans and to make payments to *Fincare* and *Precise*. The payments to *Fincare* and *Precise* have already been *prima facie* held to be diversion of IPO proceeds. Mr. Pandoo Naig has also not produced the complete income tax demand notice received by him. It has been alleged that Mr. Pandoo Naig, being the managing director of OCAL played an active role in the matter. The other directors of the company, OCAL, namely, Mr. Thiruvaidaimarudur Krishna Prabhakar Naig (*Chairman and Director*), Mr. Dhananjay Chandrakant Parikh (*Non-Executive Director*), Mr. Ayodhyaprasad Chandra Shekhar Shukla (*Independent Director*), Mr. Tushar Shirdharani (*former Independent Director*) and Mr. Thirumakottai Subramaniayar Raghavan (*Independent Director*) were found to be the signatories to the RHP/Prospectus in the IPO of OCAL. I note that OCAL is alleged to have failed to disclose material developments. Such liability is fastened on the directors of the said company also as they

being the signatories to the RHP/Prospectus, have endorsed the contents/disclosures/statements mentioned therein. All the directors of OCAL would also be liable for all/any activity which the company engages/involves itself in furtherance of the objects of its IPO. In view of the same, I find that *prima facie* all the directors including Mr. Tushar Shridharani (*who has since resigned from OCAL*) has to be made responsible for such lapses regarding disclosures. It is noted that the two independent directors (*T.S. Raghavan and A.P.Shukla*) have recently been re-appointed in September 2012.

16. I also note that OCAL had entered into an agreement with Masala Gruh for the purchase of a property, which according to OCAL was terminated by Masala Gruh. OCAL has stated that as *Fincare* entered into an MoU with Masala Gruh, it paid a sum of ₹7 crore to acquire the property on ownership basis. OCAL has also submitted that the fresh agreement with *Fincare* is not for the purchase of the same office space as the premises are situated on the first floor of the same building. I also note that *Fincare* was not the title owner for the said property. However, OCAL had transferred the full consideration of ₹7 crore for the purchase of the property in advance to *Fincare*, even when there seems to have been no demand for such payment from *Fincare*. It is crucial to note that out of said ₹7 crore, ₹4.33 crore was transferred to a group entity of OCAL, i.e., Onelife Gas Energy and Infrastructure Limited. Therefore, considering the facts and circumstances of the case, the said 'arrangement' of purchasing property through *Fincare* can be viewed *prima facie* as a "channel" for diversion of IPO proceeds and does not seem to be in the normal course of things. The Interim Order also observes that the payment of ₹7 crore to *Fincare* towards purchase of corporate office, was transferred immediately to Onelife Gas and Energy Infra Limited (*group entity of OCAL*) and to Shalini Patidar (*a friend of Mr. Pandoo Naig*). It is alleged that funds from the IPO proceeds were transferred through layers to a group company and a friend of a promoter of OCAL. OCAL has denied that the transactions are suspicious and were not connected to the payments made by *Fincare* to Onelife Gas Energy and Infrastructure Limited and Shalini Patidar. However, no convincing reason has been submitted before me for taking a different view with respect to the said payments.

17. OCAL had produced a list of locations where it would be setting up its PMS branches. Subsequently, *Fincare* has stated that it had found two commercial places in Andheri (Mumbai), but the said location does not figure in the original list provided to SEBI. It is also noted that the two commercial premises were found to be in the same co-operative society building. Having two branches in the same location and that too in the same building does not seem to make any

business/commercial sense. I also note that though *Fincare* has submitted that they have entered into MoU/terms sheets, it has not provided proof for the same. As regards the delivery of letters/summons on *Fincare*, I note that as per the Interim Order, all the correspondences from SEBI to the said entity on its address in Ghatkopar (Mumbai) returned undelivered. As per the acknowledgement on the correspondence sent through hand delivery, the remark was "*No such Address exists*". *Fincare* and *Precise* have been appointed by OCAL for meeting the objects of the issue. However from the dealings of the said two entities, certain commonalities were observed, the details of which are mentioned below :

- (a) It was observed that the bank accounts of all the three entities (including OCAL) are in the same bank and the same branch i.e. Indian bank – King Circle branch,, opened at the same time.
- (b) Both the entities have used their old address (non-operational) to open their bank account with Indian Bank- King Circle branch.
- (c) The offices of both *Precise* and *Fincare* are located in the same vicinity.
- (d) Both *Precise* and *Fincare* were not financially sound entities, which is evident from the acknowledgement of ITR submitted by these entities wherein their gross income for the last two years was shown as 'nil'.
- (e) The annual returns for the last three years were filed with MCA by both the entities around the same time in December 2011.
- (f) It was observed from the bank account statements that these two entities immediately on receipt of funds from OCAL, further transferred the funds to related parties and none of them were offering any services that would help these two entities in their assignments.
- (g) OCAL, has time and again stated in its reply that both *Precise* and *Fincare* insisted on advance payments for undertaking the work assigned to them.
- (h) *Precise* and *Fincare* have nil or negligible manpower and both claimed to be capable of providing a wide array of services.

Precise and *Fincare* were found to be 'old acquaintances' of Mr. Pandoo Naig (*the managing director*), who appointed them on behalf of OCAL. Thus, it appears that Mr. Pandoo Naig has significant role with respect to the dealing of these entities.

18. OCAL has submitted that the direction in the Interim Order which required OCAL to recall the funds transferred to *Fincare* and *Precise* (*as contained in paragraph 14.7 of the Interim Order*), would result in the withdrawal of mandates received through *Fincare* and *Precise*. In this regard, I find that as the Hon'ble SAT had already modified the said direction and therefore, the submission requires no further consideration.

19. As regards ACML, the Interim Order had *inter alia* observed that -

- (i) ACML failed to disclose the payments made to *Fincare* and *Precise* towards the development of OCAL's PMS business ;
- (ii) It was not able to produce complete documents with respect to the income tax demand notice issued to Mr. Pandoo Naig ;
- (iii) It did not produce any written documents to show that it had done independent verification of the claim of ACML that the "going rate" of the property is valued at ₹23,334 per sq.ft. ;
- (iv) It did not produce any records to show that it did an independent verification to ascertain whether the property was in fact in the name of Masala Gruh. Further, ACML could not produce records to show that it did an independent verification with respect to the claim of OCAL that ₹11.57 crore would be required towards rental and deposit for taking premises across various cities in India.
- (v) It also did not have records to show that it verified the claim of OCAL that it had fund raising mandates of ₹473 crores as on July 15, 2011.

20. ACML has submitted that it was not aware of the board meeting of OCAL held on September 30, 2011 in which major decisions with respect to the utilisation of IPO proceeds, availing loan against IPO proceeds and engaging Fincare and Precise were discussed and decisions were taken. ACML has also contended that it obtained letters from OCAL, wherein it was mentioned by OCAL that there were no material developments from the date of RHP to the date of Prospectus. Such letters of OCAL were signed by its managing director, Mr. Pandoo Naig. I have noted such submissions. The requirement of a merchant banker in an IPO need not be over emphasised. It is the merchant banker who scrutinises all the statements/disclosures made by an issuer company in its RHP/offer documents. If a merchant banker performs its functions mechanically, the purpose of having a SEBI registered intermediary in the issue process becomes futile. I am of the view that ACML should have specifically enquired from OCAL of any board meeting/AGM/EGM and important decisions taken therein which have a bearing on the IPO. Thus, ACML has failed to act in a proactive manner as expected of it in the issue process, falling short of complying with its statutory mandate in letter and spirit.

21. As regards the disclosure of Income Tax Demand Notice issued to Mr. Pandoo Naig, ACML has submitted that it had provided the relevant document to SEBI. However, I note that ACML had not submitted proper documents as claimed by it, and it had provided only the first

page of the said demand notice vide its e-mail to SEBI on December 12, 2011. ACML did not have a copy of the complete notice and this can be construed as its failure in exercising due diligence of the records. In view of the same, the said submission of ACML that it had provided copy of the said notice to SEBI is misleading and contrary to the facts.

22. I also note that ACML did not produce any written document to show that it had done independent verification of the claim of OCAL that the going rate of the property is valued at ₹ 23,334 per sq. ft. Further, there were no written records with ACML to show that they had done an independent verification to ascertain whether the property is indeed registered in the name of Masala Gruh. ACML could have obtained a copy of the title deeds pertaining to the said property from OCAL and kept the same in their records. ACML, in its reply, has submitted that the said property was visited by its officer and they had checked the prevailing rates of property from local real estate brokers. However, in the absence of any proof, I am not inclined to accept such submissions. I also note that the MOU between OCAL and Masala Gruh was valid up to June 13, 2011 and that the same was claimed to be extended by OCAL vide letter dated June 02, 2011. However, ACML has not mentioned the same in the offer documents. This again could *prima facie* be construed as a failure on the part of ACML in its exercise of diligence. It is very important to note that the rates of the properties in the shortlisted locations for setting up PMS branches, were found to be highly inflated as per the rates available on the websites mentioned in the reply of ACML.

23. I also note that with respect to the fund raising mandates of ₹473 crores as on July 15, 2011 of OCAL, ACML submitted that it had cross verified many of these mandates with the promoters /authorised representatives of those companies over telephone and even met some promoters personally when they were at the office of OCAL. However, it does not have any documentary proof to show that it independently verified that OCAL had mandates for such a huge value. As regards the submission that SEBI has not provided all documents and records relied upon to arrive at the allegations and findings against it, I note that it was provided with an opportunity for inspection of documents and that relevant documents were furnished to it.

24. In view of the foregoing, I am of the view that OCAL, its directors, *Precise, Fincare* and ACML, its managing director and its compliance officer, have not made plausible reasoning/explanation for their conduct and the allegations levelled against them. I note that SEBI has completed the investigation in the matter and would initiate appropriate action as deemed appropriate, in accordance with law, against the aforesaid entities/persons. In the light of above

facts and circumstances, I am of the considered view, therefore, that no intervention is called for, at this stage, in either vacating the interim directions or modifying it, with respect to the said entities/persons.

25. I, therefore, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued in *paragraphs 14.3, 14.4, 14.5, 14.6, 14.8 and 14.9* of the ex-parte Order dated December 28, 2011 read with Order dated February 15, 2012, issued in the matter of IPO of Onelife Capital Advisors Limited, against Onelife Capital Advisors Limited, its directors Mr. Thiruvaidaimarudur Krishna Prabhakar Naig (*Chairman and Director*), Mr. Pandoo Prabhakar Naig (*Managing Director*), Mr. Dhananjay Chandrakant Parikh (*Non-Executive Director*), Mr. Ayodhyaprasad Chandra Shekhar Shukla (*Independent Director*) and Mr. Thirumakottai Subramaniayar Raghavan (*Independent Director*), Fincare Financial and Consultancy Services Private Limited, Precise Consulting & Engineering Private Limited, Mr. Tushar Shridharani, Atherstone Capital Markets Limited, its managing director Mr. Gurunath Mudlapur and its compliance officer Mr. Ranjan Agarwal.

26. The directions issued in paragraphs *14.7 (the direction to OCAL to call back funds (IPO proceeds and short term loan taken from Prudential Group) transferred to Fincare and Precise)* already stand modified vide the Order dated June 25, 2012 of the Hon'ble Securities Appellate Tribunal, issued in the matter.

27. This Order shall continue to be in force till further directions.

Date : January 16, 2013
Place : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA