

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI**

**ORDER**

**UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 IN RESPECT OF FINCARE FINANCIAL AND CONSULTANCY SERVICES PRIVATE LIMITED**

**IN THE MATTER OF ONELIFE CAPITAL ADVISORS LTD.**

1. Onelife Capital Advisors Limited ("OCAL"), a company incorporated under the Companies Act, 1956, came out with an Initial Public Offering ("IPO") to raise ₹36,85,00,000 through the issue of 33,50,000 equity shares of ₹10 each with a premium of ₹100 through 100% book building route. The IPO opened for subscription on September 28, 2011 and closed on October 04, 2011. The issue was over-subscribed by 1.53 times though it was graded "1" (*CARE IPO rating of 1*) that suggests poor fundamentals. 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").
2. SEBI noticed that the IPO proceeds of OCAL were transferred to certain entities. SEBI, therefore, undertook a preliminary examination into the said IPO. During the preliminary examination, it was *prima facie* observed that OCAL had made mis-statements in its Red Herring Prospectus ('RHP') / Prospectus, failed to disclose material developments and had diverted the IPO proceeds for purposes other than the objects stated in the RHP/Prospectus. It was *prima facie* found that OCAL was aided and abetted by two entities namely, Fincare Financial and Consultancy Services Pvt. Ltd ("Fincare") and Precise Consulting & Engineering Pvt. Ltd ("Precise") in the said diversion of IPO proceeds. It was observed that OCAL had transferred ₹15.54 crore (42% of the IPO proceeds) to Fincare and ₹12 crore (32% of the IPO proceeds) to Precise.
3. On the basis of the preliminary examination, SEBI passed an *ad-interim ex-parte order* (hereinafter referred to as "*interim order*") against OCAL, its directors, Fincare, Precise and the Merchant Banker of OCAL - Atherstone Capital Markets Ltd ("ACML"), its Managing Director and Compliance Officer on December 28, 2011 and a clarificatory order on February 15, 2012. Vide

an Order dated January 16, 2013, SEBI confirmed the directions issued vide the *interim order* read with the clarificatory Order against all the entities.

4. Subsequent to the preliminary investigation, a detailed investigation was carried out by SEBI in the matter. The investigation, *inter alia*, revealed the following:
  - 1) OCAL appointed Fincare for carrying out the activities stated in the RHP under objects to issue viz. *“Development of Portfolio Management Services”* in respect whereof OCAL had entered into a memorandum of understanding ("MOU") with Fincare on October 5, 2011. The said MOU has projected Fincare’s excellent business track record. However bank account statements, MCA filings, statement of Fincare’s director Mayank Bhatt, visit to Fincare’s office by SEBI officials, etc. suggested otherwise.
  - 2) As per the MOU mentioned above, Fincare’s details are as under:

*“Fincare: The Company, having its office at Premises No 1, Rammanobar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084, has expertise and connections in networking with Merchant Banking Organization, Stock Broking Companies, Portfolio Management Companies, Corporates, High net worth Individuals, and Government bodies and strong liaison capabilities.”*
  - 3) In addition to above MOU, on November 01, 2011, another agreement was entered between OCAL and Fincare for the *“Purchase of Corporate Office”* through Fincare.
  - 4) During the investigation, Fincare had submitted that it has been operating from its current address since 2009. However, from its bank details it was observed that it had provided a different address to the bank. Fincare also claimed to have used the old address to open the bank account in Indian Bank in June 2011. Mr. Mayank R. Bhatt (director of Fincare) accepted that he had used the old address to open bank account as he had forgotten to provide new address to Indian Bank at the time of opening of bank account.
  - 5) Fincare’s office at its above mentioned address, was visited by SEBI officials in February 2012 and the following was noted:
    - i. Interiors of the office appeared to be recently done.
    - ii. There were no employees, other than office peon, available in the office.
    - iii. There was not even sitting arrangement for any employee over there.
    - iv. There were hardly any files and any other stationery visible at the office.
    - v. The board bearing Fincare’s name appeared to be new.
    - vi. The office was like a make-shift office and hardly resembled a regular office which had been operating since February 2009.

- 6) Fincare claimed that it had been operating from the present premises for more than two years. However, the same was updated with MCA only in December, 2011. Fincare also provided to SEBI a copy of “Leave and License Agreement” for the same premises which was executed on a non-judicial stamp paper of ₹ 100 but was not registered. The date of execution mentioned on the said agreement was February 19, 2009. On confirming with Additional Controller of Stamps, Mumbai, it was found that the stamp paper used for the aforesaid agreement was issued by General Stamp Office, Mumbai to treasury only in September 2011 (i.e. approx 2 years after the purported date of agreement). Clearly the stamp paper was over stamped and the agreement was prepared post-facto and was hence unregistered. Therefore, the observations made during the visit to Fincare’s office were further corroborated and it was observed that Fincare made a false claim that it had been operating from the said office premises since 2009.
- 7) Fincare filed income-tax returns ("ITR") for the financial years 2009-2010 and 2010-2011 in December 2011 after SEBI initiated investigation in the matter. As per the ITR for F. Y. 2009-2010 and 2010-2011, its Gross Total Income was shown as Nil. From MCA filings it was observed that Fincare filed its annual return for F. Y. 2008-09, 2009-10 and 2010-11 on December 15, 2011. When investigation was taken up in the matter, Fincare was shown as a dormant company on MCA website. However, after becoming aware of the investigation, Fincare updated records with MCA. Fincare submitted during the investigation that as on December 15, 2011 it was an active company on MCA website. Thus, it was observed that Fincare made its updated filing with MCA on December 15, 2011 only and its registered address with MCA was also changed in December 2011 only. From the above, it was inferred that Fincare’s status was “dormant” as per MCA website when OCAL had entered into agreement with it for development of PMS and most of the finder fee agreements submitted by Fincare and OCAL.
- 8) As per the minutes for the board meeting of OCAL dated September 30, 2011, Fincare urgently required money from OCAL to finalize the offices, Fincare had identified for OCAL. Subsequently, OCAL transferred funds to Fincare after taking short term loan. However Fincare submitted that the funds transferred to Fincare were used for the purpose of buying diamonds.
- 9) In his statement dated February 03, 2012, Mr. Mayank Bhatt clearly mentioned that before dealing with OCAL it had not done any business with any other company. Later, Fincare sent a clarification dated February 07, 2012 and its reply (to SEBI's *interim order*) dated February 15, 2012 which mentioned that Fincare had been acting as real estate broker and commission agent for the last two years. In the said clarification letter dated February 07,

2012, Fincare had mentioned that it had dealt with a lot of companies before OCAL. However, from Fincare's bank account statement for the year 2008-09 and 2010-11 (HDFC Bank) it was observed that there has been no inflow / outflow of funds throughout the year. In 2009-10 there was a cash deposit of ₹ 1 Lakh which was immediately transferred. It was observed that Fincare's bank statement upto June, 2011 did not resemble bank statement of an active company.

- 10) From the above, it was inferred that annual filing of data with MCA as well as filing of ITR was an afterthought and was done with an intention of giving false appearance of an active company. Thus, it was observed that Fincare had provided false information/ forged document to SEBI to prove that it is a normal active company.
- 11) Fincare submitted to SEBI on March 15, 2012 that it had identified two commercial / office spaces that met the criteria specified by OCAL for opening of PMS offices and have entered into MOU/ Term Sheets with the owners of the said premises. As per the agreement between OCAL and Fincare regarding development of PMS, it was nowhere mentioned that Fincare will enter into an MOU with owners of the offices identified for PMS for OCAL. Further, as per the list of locations provided by ACML i.e. BRLM to the IPO of OCAL, OCAL planned to open offices at 4 locations viz. Bandra, Borivli, Kemps Corner and Ghatkopar in Mumbai. As per Fincare's submissions, Fincare had identified two offices in Andheri which was not mentioned as a prospective location for PMS office of OCAL. Furthermore, both the offices, identified by Fincare, are located in the same Co-operative Society in Andheri, which does not even seem to have business sense. Further, Fincare have received money in advance from OCAL for development of PMS but still have not provided any money to the owners of said two premises, even after entering into MOU with the owners. Hence, it was inferred that the above claims were false and made by Fincare to prove that it was working towards the IPO's objectives.
- 12) During the statement recording of Mayank Bhatt, director and only employee of Fincare, following was observed:
  - i. He stated that he did not know anything about PMS. However, in the agreement signed between OCAL and Fincare for "Development of PMS", it was clearly mentioned that Fincare had expertise and connections in networking with Portfolio Management Companies, HNIs etc. The same agreement was signed by Mr. Pandoo Naig and Mr. Mayank Bhatt.
  - ii. He stated that Fincare would do complete office set-up for PMS which does not include bringing mandates for PMS. However in the board meeting minutes of OCAL dated September 30, 2011, it was mentioned that Fincare and Precise would bring PMS

mandates to OCAL. It was also noted that Fincare had accepted having long association with OCAL.

- iii. He stated that he had his sources in 3-4 cities in India which can search and recommend properties/ offices to Fincare. When asked about the name of these cities, he stated that one of them was Mumbai and he did not remember the name of other cities. He even did not remember the name of his source in Mumbai. It was noted that that he was Fincare's only employee.
  - iv. He also stated that he searched property also through direct dealing but later did not define what he actually meant by direct dealing and mentioned that he would provide a reply to this point later.
  - v. He said that Fincare would provide unskilled manpower to OCAL for its PMS offices however this activity was just started by Fincare and it had not given such service to any other client.
  - vi. He also stated that after OCAL received license for merchant banking from SEBI, Fincare started giving IPO mandates to OCAL.
  - vii. When asked about how he came to know about fund requirement or IPO plans of various companies, he stated that he had acquaintances in share broker community. However, he did not remember name of any such broker. In the agreement between Fincare and OCAL dated October 05, 2011 also, it is mentioned that Fincare had connection with broking community. However before providing IPO mandates to OCAL, Fincare had not done any such activity as per his statement.
  - viii. When asked about his personal bank accounts, he stated that he had two bank accounts, one in HDFC bank and he did not remember the name of the other bank. He even did not remember the name of the branch of HDFC bank, he had account with.
- 13) From the above, it was observed that there are apparent contradictions in the submissions made by Fincare. Based on the observations of visit to Fincare's office, bank statements, MCA records, income-tax returns, etc and statement of its director, it was inferred that Fincare is not a credible company to carry out IPO objectives, as projected by Fincare and OCAL and that OCAL appointed Fincare for carrying out IPO objective with *mala fide* intention and resorted to making false claims about it, Fincare too affirmed the same by making false claims and forged/false submissions.
- 14) Further, it was submitted by OCAL that it had made payment of ₹ 7 cr. to Fincare on November 1, 2011 for making arrangement for purchase of premises for corporate office of OCAL from Masala Gruh Properties Pvt. Ltd (Masala Gruh). The same was repeatedly confirmed by Fincare too. However, it was observed from the RHP/ Prospectus that OCAL

had initially entered into an agreement with Masala Gruh directly, for purchase of premises for corporate office, which OCAL later stated to SEBI during the investigation that the said agreement with Masala Gruh had been terminated on October 27, 2011 and that they had entered into a fresh agreement with Fincare on November 1, 2011 who would now arrange to buy the Corporate office premises from the same entity i.e. Masala Gruh for OCAL. OCAL submitted that they were buying through Fincare 1<sup>st</sup> floor of the same property while their earlier agreement with Masala Gruh was for the purchase of 2<sup>nd</sup> floor while both floors have identical area. The same was confirmed by Fincare also. Based on subsequent investigation, following observations are noted in this regard:

- i. Mayank Bhatt stated in his statement to SEBI that when he heard that OCAL was going to purchase the 2<sup>nd</sup> floor of property of Masala Gruh he had gone to see the same property. He heard owner of Masala Gruh discussing with somebody for sale of 1<sup>st</sup> floor of the same premises. After hearing this discussion he proposed to buy the 1<sup>st</sup> floor for Fincare. He liked the property and bargained from Masala Gruh to buy the same for ₹ 6.5 cr. in 1<sup>st</sup> week of April, 2011.
  - ii. He also stated that Fincare entered into MOU with Masala Gruh for the same without any payment as token amount to Masala Gruh, which is very unusual.
  - iii. He stated that Fincare did this MOU as a strategic investment opportunity for the company since the property was at a prime location. Fincare was even not required to pay any token money for the said property.
  - iv. On being asked about any such prior strategic investments made by Fincare, Mr. Mayank Bhatt stated that Fincare had not done any such investment prior to this.
- 15) From the above, it was observed that Fincare was acting as a middle man and benefiting to the tune of ₹ 50 lakh whereas OCAL was losing the same ₹ 50 lakh. Masala Gruh entered into MOU also with Fincare without receiving any token money. Further, OCAL paid to Fincare ₹ 7 cr. for the purchase of property which is not even in Fincare's name. When asked why Fincare had not purchased the property from Masala Gruh even after receiving the full payment for the same from OCAL, Mr. Mayank Bhatt mentioned that he did not do so because of *ad-interim* SEBI order dated December 28, 2011. While it is noted that the said ₹ 7 cr. were received by Fincare from OCAL on November 01, 2011 and the said SEBI order came on December 28, 2011 i.e. about two months after receipt of full payment. He further stated that Fincare had bought diamonds out of the said fund. Investigation has further revealed that even the said diamond deals were suspicious. It was observed that there was no insistence by OCAL on Fincare for either purchase of property from Masala Gruh or for return of funds. On receipt of ₹ 7 cr. from OCAL by Fincare on November 01, 2011

for purchase of corporate office for OCAL (as per Fincare's submissions and that of OCAL), it was observed from Fincare's bank statement that it transferred immediately ₹ 4.33 crore to Onelife Gas Energy and Infrastructure Ltd (OGEIL). In the *interim order* passed by SEBI on December 28, 2011, it was alleged that OCAL had diverted IPO proceeds to promoter entity i.e. OGEIL through Fincare. To this, OCAL and Fincare submitted that the same was towards repayment of loan Fincare had availed from OGEIL on June 02, 2011.

- 16) During the statement recording of Mr. Mayank Bhatt at SEBI, he was asked about purpose of availing the claimed loan from OGEIL and was asked to provide copies of loan agreement to SEBI. He was also asked to give details of multiple transactions observed in bank statement of Fincare on June 02, 2011 i.e. day of opening of Fincare's bank account in Indian Bank, involving crore of rupees among Fincare, OGEIL and Sparc Pesticides Pvt Ltd. (SPPL). He stated that he would clarify the same later.
- 17) In reply dated March 15, 2012, Fincare submitted that on June 02, 2011 there was a receipt of ₹ 51.61 cr from OGEIL and transfer of ₹ 50.6 cr. to Sparc Pesticides Pvt. Ltd. (SPPL). Fincare's letter mentioned that the said amount was received as a loan from OGEIL and then further given as a loan to SPPL. From the copies of loan agreements submitted by Fincare, it is observed that Fincare had availed a loan of ₹ 51.61 crore from OGEIL and extended a loan of ₹ 52.5 crore to SPPL.
- 18) With regard to above, it is noted that both the loan agreements did not contain the purpose of the loan. Neither Fincare nor OGEIL are in the business of financing however, as per Fincare's claim, both of them were approached for and have provided huge amount of loans. One of the agreement, claimed to be entered between Fincare and SPPL is not even on a stamp paper. These agreements bear Fincare's present address i.e. Premises No. 1, Rammanohar Gupta Building, Asalfa, Ghatkopar, Mumbai. However, as has been already discussed the "leave and license agreement" provided by Fincare for the above address is forged and could not be entered before September 2011 as the non-judicial stamp paper (on which said leave and license agreement is prepared) itself was issued to the treasury in September 2011. Based on above, it is alleged that the above loan agreements submitted by Fincare are created post facto.
- 19) The above observation of false claims of loan advancement was further corroborated by subsequent findings based on analysis of bank statements of the entities involved in the transactions i.e. OGEIL, Fincare and SPPL for transactions on June 02, 2011. The findings of the investigation regarding the same are presented below:

Date of Transaction	Number of Rotaions	Remitter/ receiver	OGEIL	Fincare	SPPL
02-06-2011		Opening balance (in ₹)	44897.9	0	353247.25
			₹ crores)	₹ crores)	₹ crores)
02-06-2011	1	SPPL	9.4		
02-06-2011		FincareF			9.4
02-06-2011		OGEIL		9.4	
02-06-2011	2	SPPL	9.4		
02-06-2011		Fincare			9.4
02-06-2011		OGEIL		9.4	
02-06-2011	3	SPPL	9.4		
02-06-2011		Fincare			9.4
02-06-2011		OGEIL		9.4	
02-06-2011	4	SPPL	9.4		
02-06-2011		Fincare			9.4
02-06-2011		OGEIL		9.4	
02-06-2011	5	SPPL	9.4		
02-06-2011		Fincare			9.4
02-06-2011		OGEIL		9.4	
02-06-2011	6	SPPL	9.4		
02-06-2011		Fincare			3.6
02-06-2011		OGEIL		3.61	
02-06-2011	7	SPPL	3.6		
02-06-2011		Fincare			
02-06-2011		OGEIL		1	
		Closing Balance (in ₹)	83944897	10100000	353247.25



- 20) From the above, it is observed that on June 02, 2011 SPPL transferred ₹ 9.4 crores first to OGEIL which OGEIL transferred to Fincare and Fincare returned it back to SPPL. The same funds were rotated 5 times on that day. It was observed that the opening balance of none of the three was affected. After that SPPL again transferred ₹ 9.4 cr. to OGEIL however OGEIL transferred only ₹ 3.61 cr. to Fincare which transferred ₹ 3.6 cr. to SPPL. Hence after this sixth rotation OGEIL received ₹ 5.79 cr., Fincare received ₹ 1 lac and SPPL lost (account balance reduced by) ₹ 5.8 cr. After that, SPPL transferred ₹ 3.6 cr. to OGEIL and then OGEIL transferred ₹ 1 cr. to Fincare. After this no transactions were observed in the three accounts on June 02, 2011. Hence, at the end SPPL transferred effectively ₹ 8.39 cr. to OGEIL and ₹ 1.01 cr. to Fincare. The same change can be observed from the difference in the opening and closing account balances of the three entities.
- 21) If bank accounts are not carefully perused the pattern of rotation may be overlooked and bank statements may give an appearance that on June 02, 2011 OGEIL transferred ₹ 51.61 cr. to Fincare and Fincare transferred ₹ 50.6 cr. to SPPL in total. However, the same was not the case as the opening balances of these accounts were very low and these entities have not received any fund from any other entity on that day. Hence, it is alleged that there was no actual loan liability of Fincare towards OGEIL as submitted by Fincare and OCAL.
- 22) Therefore, Fincare have not only aided and abetted OCAL by affirming its false submissions such as repayment of a loan received from OGEIL but it also played an active role by forging the agreements to justify those false submissions. It was also alleged that Fincare have served as a routing entity to facilitate siphoning off of public money by OCAL to its promoter entity i.e. OGEIL.
- 23) Fincare received a total of ₹ 15.54 cr. from OCAL out of its IPO proceeds for “development of PMS” (₹ 2.5cr.), “purchase of corporate office” (₹ 7 cr.) and towards finder fee (₹ 6.04 cr.), as claimed by Fincare and OCAL. Further on enquiring about the utilization of the money received from OCAL, Fincare submitted that the amount of ₹ 7.83 cr. had been invested in diamonds. Fincare submitted invoices in support of its claim of purchase of diamonds from two entities viz. Sainath Corporation and Venus Publicity.
- 24) As per bank account KYC, Sainath Corporation is registered as wholesale trading of raw silk (cloth trading) and Venus Publicity is registered as a consultancy firm (Provident and Insurance services) hence they do not appear to be diamond sellers. From Fincare’s reply/ KYC from the bank, it was observed that Sainath Corporation is owned by Ganeshlal Madanlal Shah, who also owns Mahak Enterprises. It is to note that Precise, another partner of OCAL, has claimed to purchase diamonds from Mahak Enterprises. Hence, the funds

received by Fincare and Precise from OCAL have further gone to common entities. During the visit of SEBI officials, it was observed that the addresses of Venus Publicity and Sainath Corporation were residences and not shops as claimed by Fincare. There was no mention of the name “Sainath Corporation” and “Venus Publicity” at their respective addresses provided by Fincare.

- 25) In view of above facts, it was observed that Fincare made false claim of buying diamonds and provided false invoices to justify dubious fund transfers to “Sainath Corporation” and “Venus Publicity”. Thus it was alleged that Fincare facilitated the diversion of IPO proceeds of OCAL.
- 26) OCAL and Fincare have submitted that Fincare provided 6 IPO mandates totaling to issue size of ₹ 676 crore to OCAL. On a sample basis, offices of two companies' viz. Renaissance Corporation Limited (Renaissance) and Strategic Marketing Services Private Ltd (SMSPL) were visited by SEBI officials. During the visit to Renaissance, it was observed that a single office, with an area of around 1050 square feet was housing three companies including Renaissance. Surprisingly no employee of Renaissance was found at this address. In case of SMSPL, it was observed that its office was situated in a building which is a housing co-op society. The office was a 2 BHK flat with an approximate area of 900 square feet. There was sitting arrangement of around 8-10 persons. It was further known that there were 15 employees with SMSPL. On enquiring about nature of business of the company, it was known that the company supplied small gift items such as caps, bags, coffee mugs etc for corporate gifting and this was their major business. Looking at the premises and considering the nature of business, the company appeared to be a very small enterprise and that too not capital intensive. However as per the mandate provided by OCAL, SMSPL plans to raise ₹ 40 cr. through IPO. Investigation further revealed that the address provided on the mandate for another company Baba Shyam Vyapar Private Ltd. (BSVPL), claimed to be provided to OCAL by Fincare, was the same as SMSPL and even the directors for both the companies are same. As mentioned above, the name of BSVPL was not even seen at the given address, however as per mandate provided, BSVPL planned to raise ₹ 300 cr. through IPO. These mandates as well as proposed amount to be raised, hardly appear to be genuine. Despite imposition of *interim order* directions, OCAL was not prohibited from carrying out existing business/ mandates including the above. However, it was noted that no DRHP was filed by OCAL with respect to any of the above mandates to SEBI.
- 27) OCAL and Fincare have submitted that a portion of IPO proceeds (₹ 6.04 crore), transferred to Fincare was towards the obligation of finder fee for the IPO and other mandates brought to OCAL by Fincare. Fincare as well as OCAL have provided copies of

finder fee agreements which state that OCAL would pay 40% of its earning to Fincare as finder fee. Fincare have further submitted that ₹ 6.04 crores received by it as finder fee is approximately 50% of finder fee payable to it; hence further finder fee liability of OCAL towards Fincare was there.

- 28) As it is already discussed in earlier paras that the leave and license agreement provided by Fincare is not genuine. The stamp paper on which the said agreement is executed, was issued by General Stamps Office, Mumbai in September 2011, however the agreement is said to be executed in 2009. It is also to note that most of the finder fee agreements mentioned above, claimed to be executed between OCAL and Fincare are dated before September 2011 however, all of them mention Fincare's present address where the company was not existing. Thus, it was alleged that these finder fee agreements are also backdated and have been created post facto to justify payments made to Fincare by OCAL, out of IPO proceeds. It was also alleged that Fincare have actively aided OCAL in diversion of IPO proceeds by furnishing false agreements and by making false submissions in collusion with OCAL.
- 29) From the above, it was alleged that Fincare have also facilitated siphoning off of IPO proceeds to promoter entity through Fincare and tried to justify the same by submitting forged loan agreements and making false claims along with the company i.e. OCAL. Hence Fincare have colluded with OCAL and actively facilitated the diversion of their IPO proceeds. Fincare's replies have many alleged apparent contradictions. Thus it is alleged that Fincare in collusion with OCAL diverted IPO proceeds of OCAL also and made forged/ false submissions to SEBI to project Fincare's relationship with OCAL as a normal business partner rather than an accomplice in its misdeeds.

5. In view of the above, SEBI issued a show cause notice dated June 12, 2013 to Fincare calling upon it to show cause as to why appropriate directions under section 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") , should not be issued against it. The SCN alleged that Fincare violated section 12 A (a),(b),(c) of SEBI Act and regulations 3(a), (b),(c),(d), 4 (1) of PFUTP Regulations which read as under-

#### **SEBI Act**

##### **"12A. No person shall directly or indirectly—**

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

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

### **PFUTP Regulations**

#### *3. Prohibition of certain dealings in securities*

*No person shall directly or indirectly-*

- (d) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (e) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (f) 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;*
- (g) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

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

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

6. Fincare, vide its reply to the SCN dated September 30, 2013, *inter alia* made the following submissions:

- a) That the address of Fincare at Asalfa village, Ghatkopar is a matter of record. Merely, because the address in MCA records was not changed, it cannot be concluded that Fincare never had its address at Asalfa village, Ghatkopar. Further, it is SEBI's own case that its investigation team had visited the office of Fincare at Asalfa village, Ghatkopar and had also recorded the statement of its director. It is strange that SEBI had not verified the said fact from office owner or the neighbors and jumped to inferences.
- b) On becoming aware of the discrepancy, steps were taken by Fincare to rectify the address in the records of Indian Bank and as on date the address in the records of Indian Bank is that of Asalfa Village, Ghatkopar.

- c) In so far as expertise in merchant banking business is concerned, it is submitted that, the director of Fincare Mr. Mayank Bhatt has developed contacts among persons and entities in the securities market and financial services industry. He used these contacts to come across information regarding companies that are desirous of raising funds from the market by way of IPOs, further issue of shares, preferential allotment, debt issues etc. The same was reiterated by Mr. Mayank Bhatt while giving his statement to SEBI on 3<sup>rd</sup> February, 2012.
- d) The stamp paper was validly purchased from stamp vendor and there was no reason to suspect the vendor.
- e) The income tax returns were filed by Fincare in due course and no adverse findings can be made because of delayed filing and that there was no connection of Income Tax filing with SEBI investigation.
- f) Fincare was not aware of the source of funds of OCAL and the amounts transferred to it by OCAL were from loans raised by it and not out of the IPO proceeds as alleged by SEBI in the notice. Further, OCAL in its board meeting disclosed that payment has to be made to Fincare to finalize offices. In this regard Fincare submitted that money was sought against outstanding dues and the utilization of money earned by it cannot be questioned.
- g) It was alleged that Fincare was not an “active” company as per MCA website when OCAL had entered into agreement with it for development of PMS and fee finder agreements. In this regard Fincare submitted that it was not figuring in the “dormant” company as on the date of ex-parte *interim order* and that updation of MCA records has no connection with the investigation initiated by SEBI.
- h) In respect of the location of the offices fixed by Fincare, it was submitted that the location of the offices were suggested to OCAL by Fincare and only after OCAL agreed, the locations were finalized. Further, no money was paid to the owners of the office premises finalized by OCAL due to the *interim order* passed by SEBI.
- i) It was also submitted by Fincare that the agreement entered with OCAL was only to provide office set up for PMS to OCAL and not for carrying out PMS activities. Therefore, no adverse inference can be drawn based on not knowing about PMS. Further, the agreement nowhere states that Fincare is carrying out PMS activities. On the contrary, the agreement stated that Fincare had networking with various companies/ individuals etc including PMS companies.
- j) In relation to the agreement with Masala Gruh Properties Pvt. Ltd. ("Masala Gruh ") for purchase of property, Fincare submitted that OCAL had entered into an MoU with it for assignments of rights in respect of office premises at 1<sup>st</sup> Floor, 42, Anandilal Podar Marg, Dhobi Talao, New Marine Lines, Mumbai -400 002 i.e. Near Metro Cinema. By virtue of the

said assignment, the said property, in respect of which an MoU had been signed between Masala Gruh and Fincare, would be sold by Masala Gruh to OCAL and the payment of ₹ 7 Crore to Fincare would be sufficient consideration to Masala Gruh. Fincare also submitted that it is not concerned with the commercial transactions between Masala Gruh and OCAL. Merely because Masala Gruh has not taken any advance from Fincare, no adverse inference can be drawn against Fincare. The payment was not made to Masala Gruh because of SEBI order and OCAL's instructions not to make the payment. The amount was transferred to OGEIL as repayment of loan.

- k) With regard to transactions with OGEIL and SPPL it may be noted that the same had nothing to do with Fincare's dealings with OCAL. Further, the said transactions took place much prior to the IPO of OCAL which is subject matter of investigation. Based on the contents of loan agreements, which have not been disputed by any of the parties, no adverse inferences can be drawn. Further, non-execution of loan agreements on stamp paper cannot also lead to adverse inference.
- l) It is denied that Sainath Corporation and Venus Publicity are not diamond sellers as alleged. SEBI should have recorded statements and checked all bank accounts before reaching to any conclusion.
- m) Fincare had provided 6 IPO mandates totaling to issue size of ₹ 676 Crores to OCAL. All the companies were huge companies and had a sound business model. They possessed enough assets and business to raise money through capital market. It is therefore denied that the mandates introduced by us to OCAL or the amounts to be raised are not genuine as alleged.
- n) It is also denied that the finder fees agreements are backdated and have been created post facto to justify payments by OCAL to us as alleged. In relation to the finder fee agreements which SEBI alleges are executed on stamp paper issued in 2011, Fincare had strongly denied that these agreements were forged and submitted that OCAL has filed a criminal complaint in the Azad Maidan Police Station reporting suspected receipt of non-genuine stamp papers. Further, the letter dated March 22, 2012 sent by Addl Controller of Stamps, Mumbai and relied upon by SEBI is riddled with inconsistencies. Therefore, the credibility of the details in the said letter is doubtful and such letter cannot be relied upon for drawing the inference of forgery against Fincare.
- o) Fincare is not concerned with the alleged misstatements made by OCAL and had no role to play in them.

7. An opportunity of personal hearing was granted to Fincare on November 13, 2013 which was adjourned to December 26, 2013 at Fincare's request. However, on the said date no one appeared on behalf of Fincare. In the interest of justice another opportunity of hearing was granted to Fincare on January 13, 2015. In response thereto, vide letter dated January 19, 2015, Fincare waived its right of personal hearing.
8. I have examined the SCN, reply and the material available on record.
9. Fincare has contended that SEBI was wrong in drawing inferences from the status of its office (revealed during the site visit by SEBI officials). Also SEBI did not seek to verify anything from the landlord of the said office premises or the neighbors. In this regard, I note that Fincare as per its own submissions had excellent financials and had provided business to the tune of ₹ 670 crore in value. If Fincare as a company was doing so well, then it was expected that its office would be in a working condition with adequate infrastructure, which was not found as such pursuant to the visit by SEBI officials. I note that Fincare has not submitted any evidence to dispute the findings of the site visit mentioned in the SCN but has merely disputed the inference drawn by SEBI. I, therefore, cannot accept the above submission of Fincare in absence of any evidence to support the same.
10. As regards the allegation of over-stamping of the "leave and license agreement", Fincare has contended that it had bought the stamp paper from a registered stamp vendor and requisite entries were made in the register of the stamp vendor. Further, it also sought the cross examination of the stamp vendor and the Addl Collector of Stamps in order to prove its innocence. In this regard, I note that the allegation regarding the over-stamping of the stamp paper is based on the official records and the same were also provided to Fincare along with the SCN. Fincare has not submitted any evidence to dispute the said official records but has claimed that its *bona fide* in purchase of the stamp paper. In view thereof, I do not find any merit in the submission of Fincare in that regard. With regard to opportunity to cross-examine the stamp vendor and the Addl Collector of Stamps as demanded by Fincare, I note that the SCN does not rely upon the statements of stamp vendor or the Addl Collector of Stamps in these proceedings. Therefore, the question of providing opportunity to cross-examine the stamp vendor does not arise.
11. I note that the office premises at 'Premises No 1, Rammanohar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084' from where Fincare claimed to be operating since 2009, was a make-shift office and hardly resembled a regular office which had been

operating since February 2009. From the KYC documents obtained from the Bank it was observed that Fincare had a different address. Fincare claimed to have used the old address to open the bank account in Indian Bank in June 2011. In my view, mentioning of old address in important places such as bank and MCA show that the contention of Fincare operating from a different address is an afterthought.

12. Further, most of the finder fee agreements between OCAL and Fincare are dated before September, 2011. However all of them mention the present address of Fincare where it was not located at that point of time. Thus, those finder fee agreements were also created *post-facto* to justify payments to Fincare by OCAL. Hence, Fincare had made false claim that it had been operating from the said office since 2009. It is inconceivable how in past multiple non-judicial stamp papers can be provided to Fincare bearing serial numbers which would be issued more than one year in future. It is evident that such agreements were created *post-facto*. Further, no inconsistency is found in the letter written by Addl. Commissioner of Stamps which clearly mentions that the non-judicial stamp paper used for finder fee agreement was issued only in 2011.
13. With regard to the financials of Fincare, I find that no actual income was earned by it which is also clear from the fact that no tax has been paid by it. Further, Fincare filed its annual return for three financial years i.e. F. Y. 2008-09, F. Y. 2009-10 and 2010-11 on December 15, 2011. Filing returns of three years at one go cannot be classified as normal course. Further, the dormant status of company in the records of MCA which was subsequently changed indicates that the actions were afterthought. I also note that the fact that Fincare had introduced several prospective clients to OCAL and others, even if it is assumed to be true, does not reflect the financial standing of Fincare. These facts indicate that Fincare was not an active company and was merely acting as a front entity for OCAL.
14. I note that as per Fincare's submission, it had provided 6 IPO mandates totaling to issue size of ₹ 676 crore. As per OCAL, the mandates would fetch a fee of ₹ 33.1 crore to OCAL. OCAL claimed to have made payment of ₹ 7 crore to Fincare on November 1, 2011 for making arrangement for "purchase of premises for corporate office" from Masala Gruh. It is observed that OCAL had paid to Fincare ₹ 7 crore i.e. entire amount in advance. Immediately after receipt of above mentioned ₹ 7 crore from OCAL, Fincare transferred ₹ 4.33 crore to OGEIL which was a promoter entity of OCAL and OGEIL and OCAL had common promoter-directors. OCAL had submitted to Hon'ble SAT and SEBI that the said transfer was done by Fincare to repay the loan taken by Fincare from OGEIL on June 02, 2011.



15. I note that Bank account of Fincare was opened in Indian Bank, King Circle branch on June 02, 2011 only. On the same day, there was a receipt of ₹ 51.61 crore and further transfer of ₹ 50.60 crore in/ from the account of Fincare which was claimed as receipt of loan amount of ₹51.61 crore from OGEIL by Fincare and further advancement of loan of ₹ 50.60 crore to Spark Pesticides Pvt. Ltd by Fincare. A loan agreement with regard to the claimed loan from OGEIL to Fincare, bearing signature of MD of OCAL, Mr. Pandoo P. Naig and Mr. Mayank Bhatt, Director of Fincare was provided to SEBI. However, it was found that there was no actual loan involved.
16. It is noted that OCAL paid the complete amount in advance on November 01, 2011 whereas *interim order* was passed close to 2 months after that. Hence the reply submitted by Fincare that payment could not be made to Masala Gruh because of SEBI's interim order cannot be accepted. It is pertinent to note that there was no insistence by OCAL on Fincare for either purchase of property from Masala Gruh or for return of funds received for corporate office premises. On the contrary, OCAL approved the work being carried out by Fincare and appreciated Fincare in its letter dated December 15, 2011 to SEBI. Further, Fincare had immediately made payment to OGEIL and thus, even if SEBI has not passed the interim order, Fincare could not have made the payment as it did not have the money to make the necessary payment.
17. According to Fincare, all the companies (whose IPO mandates were provided by Fincare) were huge companies and had a sound business model. In this regard, it is noted that based on observations gathered through field visit of the companies, only two companies were found at the same address whereas employees of only one company was found there. Even a signboard showing the name of the company Baba Shyam Vyapar Private Ltd. (a company claimed to be proposing IPO worth ₹ 300 crore) did not exist at the given address. Further, Fincare did not provide any documentary evidence to substantiate its above claim.
18. As regards the allegation that Fincare did not have any idea about PMS business, it submitted that the agreement entered with OCAL was only to provide office set up for PMS to OCAL and not for carrying out PMS activities. Therefore, no adverse inference can be drawn based on not knowing about PMS. It further submitted that the agreement nowhere states that Fincare is carrying out PMS activities. On the contrary, the agreement stated that Fincare had networking with various companies/ individuals, etc including PMS companies. In this regard, I note that Fincare was appointed by OCAL for the purpose of carrying out the activities stated in the RHP

under objects to issue viz. “*Development of Portfolio Management Services*” and a substantial percentage of the IPO proceeds was paid by OCAL to Fincare for the said purpose. It is inconceivable that a company would pay ₹15.54 crore towards fulfillment of an object of the issue to a company which has absolutely no idea about that line of business, which in the present case was *portfolio management services*. Further, Fincare has also not provided any cogent explanation to justify how it would have carry out the task assigned to it by OCAL without having any idea about what *portfolio management services* entail. In view of the above, I do not find any merit in the above contention of Fincare and reject the same.

19. It is noted that Fincare had identified two offices in Andheri which was not mentioned as a prospective location for PMS office of OCAL as per the list provided by ACML to SEBI which was provided to ACML by OCAL. In this regard, Fincare submitted that identification of office premises was dictated by the requirements of OCAL and it was not aware of the list of locations provided by ACML. In this regard, I note that the agreement between Fincare and OCAL was regarding development of PMS and as per the agreement Fincare was not required to enter into MoU with the owners of the officers identified for the said purpose but despite the same, Fincare went ahead and entered into MoUs. It does not appeal to reason that Fincare was searching for office spaces without even asking for the prospective locations from OCAL. Further, the fact that Fincare entered into MoUs with the owners of the office spaces without payment of any consideration itself raises serious doubt regarding Fincare's version of the entire transaction. In view of the above, I find that Fincare has failed to provide a satisfactory explanation to the allegation that it made false claims to prove that it was working towards IPO's objectives.
20. With regard to the allegation of utilization of funds by Fincare for purchasing diamonds rather than for finalizing offices, Fincare submitted that utilization of money earned by it cannot be questioned as the funds were utilized in the ordinary course. In this regard, I note that as per the board minutes of OCAL for the board meeting dated September 30, 2011, Fincare urgently required money from OCAL to finalize the offices and the same has not been denied by Fincare.. Thus, instead of using the money received from OCAL for the said purpose of finalization of offices, the utilization of money for purchase of diamonds itself raises serious doubt on the transaction. I further note that these diamonds were claimed to have been bought by Fincare from entities whose KYC documents revealed that they were not in the business of selling diamonds. These facts in totality show that the diamonds were not purchased by Fincare in the ordinary course of business and were purchased at the behest of OCAL for facilitating the diversion of issue proceeds.

21. To summarize, Fincare was claimed to have been employed by OCAL for carrying out the activities stated in the RHP under objects to issue viz. “*Development of Portfolio Management Services*”. However, the facts discussed hereinabove including the following point out that Fincare was not an active company and merely acted as a vehicle to facilitate OCAL to divert/siphon off the IPO proceeds: -

- The income-tax returns of Fincare for the last 2 years were filed on December 22, 2011. As per ITR for F. Y 2009-2010 and 2010-2011 of Fincare, submitted by it to SEBI, the Gross Total Income of Fincare is shown Nil. From MCA filings it was also observed that Fincare filed its annual return for F. Y. 2008-09, F. Y. 2009-10 and 2010-11 on December 15, 2011. When investigation was taken up in the matter, Fincare was shown as a dormant company on MCA website.
- The office premises at 'Premises No 1, Rammanohar Gupta Building, Asalfa Village, AG Link Road, Ghatkopar (W), Mumbai-400084' from where it claimed to be operating since 2009, was a make-shift office and hardly resembled a regular office which had been operating since February 2009. From the KYC documents obtained from the Bank it was observed that Fincare had a different address.
- The “Leave and License Agreement” for the above premises of Fincare was executed on a non-judicial stamp paper of ₹100. The date of execution mentioned of the said agreement is February 19, 2009. On confirming with Additional Controller of Stamps, Mumbai, it was found that the said stamp paper was issued by General Stamp Office, Mumbai to treasury only in September 2011 (i.e. approx 2 year after the purported date of agreement). Further, most of the finder fee agreements between OCAL and Fincare, are dated before September 2011. However all of them mention the present address of Fincare where it was not existing. These finder fee agreements were also created *post-facto* to justify payments to Fincare by OCAL. Fincare made false claim that it had been operating from the said office since 2009.
- Fincare was not consistent in its reply / statement as regards its line of business. The director of Fincare, Mr. Mayank Bhatt in his statement dated February 03, 2012 clearly mentioned that before dealing with OCAL, Fincare had not done any business with any other company. Also he could not provide any details regarding the area of operation of Fincare, its clients, functioning of Fincare's business, etc. Later, Fincare sent a clarification dated February 07, 2012 and its reply (to SEBI's *interim order*) dated February 15, 2012 which mentioned that Fincare had been acting as real estate broker and commission agent for the last two years. In the said clarification letter, Fincare mentioned that it had dealt with a lot of companies before OCAL. However, from Fincare's bank account statement for the year

2008-09 and 2010-11 (HDFC Bank) it was observed that there has been no inflow / outflow of funds throughout the year. In 2009-10 there was a cash deposit of ₹ 1 Lakh which was immediately transferred. It was observed that Fincare's bank statement upto June, 2011 did not resemble bank statement of an active company.

22. In view of the aforesaid findings, I find that Fincare facilitated OCAL in siphoning off / diversion of IPO proceeds and therefore violated section 12 A (a),(b),(c) of SEBI Act and regulations 3(a), (b),(c),(d) and 4 (1) of PFUTP Regulations.
23. It is pertinent to note that pursuant to the investigation, a show cause notice dated February 26, 2013 was issued to OCAL and its directors also. Vide order dated August 30, 2013, SEBI disposed the SCN dated February 26, 2013 and *inter alia*, directed that OCAL and its Managing Director Mr. Pandoo P. Naig shall, jointly and severally, bring ₹ 35.25 crore i.e. the diverted IPO proceeds into the company from Fincare, Precise and KPT Infotech Pvt. Ltd. within six months and prohibited them from accessing the securities market directly or indirectly, in whatsoever manner, for a period of 3 years In compliance of the abovementioned order Stellant Capital Advisors Ltd. (Merchant Banker on behalf of OCAL) submitted a compliance report dated July 22, 2014 showing receipt of ₹ 35.25 crore into the company from Fincare, Precise and KPT Infotech Pvt. Ltd.. I also note that the directions issued against Fincare vide SEBI's *interim order* are still in operation.
24. Considering the above, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the SEBI Act and regulation 11 of the PFUTP Regulations hereby restrain Fincare Financial and Consultancy Services Pvt. Ltd from accessing the securities market and also prohibit it from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of five years from the date of the *interim order* i.e. December 28, 2011.
25. This Order shall come into force with immediate effect.

Sd/-

**Date: May 13<sup>th</sup>, 2015**

**Place: Mumbai**

**RAJEEV KUMAR AGARWAL  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**