

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER: Order/MC/VS/2021-22/15158-15161]**

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**UNDER SECTION 15-I OF SEBI ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995**

In respect of -

- 1. 4G IT Solutions (India) Pvt. Ltd. (previously Rikhav Brokers Pvt. Ltd.)** (PAN AADCR3830K) (CIN U74992MH2006PTC164190) having address at B-35/36, Matruchhaya, S.N. Road, Mulund (West), Mumbai – 400080.
- 2. AHL Investment Consultants Pvt. Ltd.** (PAN AAFC A3910K) having address at 35/36, Matru Chhaya, S. N. Road, Mulund West, Mumbai – 400080
- 3. Manba Investments & Securities Pvt. Ltd.** (PAN ACCM4718N) having address at 306, Runwal Heights, LBS Marg, Opp. Nirmal Lifestyle, Mulund (West), Mumbai – 400080
- 4. Manba Broking Services Pvt. Ltd.** (PAN AECM5981D) having address at 324, Runwal Heights, LBS Marg, Opp. Nirmal Lifestyle, Mulund (West), Mumbai - 400080

*In the matter of Initial Public Offer of Vaswani Industries Ltd.*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) initiated adjudication proceedings against 4G IT Solutions (India) Pvt. Ltd. (previously Rikhav Brokers Pvt. Ltd.) (“**Noticee 1**”/ “**Rikhav**”), AHL Investment Consultants Pvt. Ltd. (“**Noticee 2**”), Manba Investment & Securities Pvt. Ltd. (“**Noticee 3**”) and Manba Broking Services Pvt. Ltd. (“**Noticee 4**”), under Section 15HA of the Securities and Exchange Board of India Act, 1992 (“**the SEBI Act**”), for alleged violations of the SEBI Act and the SEBI (Prohibition of

*Adjudication Order in respect of Rikhav Brokers Pvt. Ltd. (presently known as 4G IT Solutions (India) Pvt. Ltd.) and 3 others in the matter of Initial Public Offer of Vaswani Industries Ltd.*

Fraudulent and Unfair Trading Practices relating to the Securities Market) Regulations 2003 ("**PFUTP Regulations**") and appointed Adjudicating Officer vide order dated January 10, 2013.

2. Adjudication Order No. EAD-3/AO/DRK/JP/507-51 to 510-54 of 2014 was passed on 25.04.2014 in respect of the Noticees, by which a penalty of Rs. 75,00,000 was imposed on Noticee 1, Rs. 25,00,000/- on Noticee 2, and Rs. 50,00,000/- each on Noticees 3 and 4 for the contravention of section 12 A (a), (b) & (c) of the SEBI Act, Regulation 3 (b) & (d), 4 (1) and 4 (2) (a) & (b) of the PFUTP Regulations.
3. The Noticees 1 and 2 appealed the abovementioned adjudication order before the Securities Appellate Tribunal ("SAT"), and vide order dated August 10, 2016 in SAT Appeal No. 240 of 2014, the SAT set aside the impugned adjudication order and restored the matter to the file of the Adjudicating Officer to pass fresh order on merits and in accordance with law. Similarly, in respect of appeal filed by Noticees 3 and 4 against SEBI's order dated 24.04.2014, SAT vide its order dated October 4, 2016 set aside the impugned order qua the Noticees 3 and 4 and restored the matter to the file of Adjudicating Officer for passing fresh order on merits and in accordance with law.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as Adjudicating Officer ("AO") under Section 15-I of the SEBI Act read with Rule 3 of the of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the '**Adjudication Rules**'), vide order dated February 1, 2021, to inquire into, and adjudge under Sections 15HA of the SEBI Act, the aforesaid alleged violations of the Noticees. The appointment of the undersigned as AO was communicated vide order dated February 18, 2021.

## SHOW CAUSE NOTICE, REPLY AND HEARING

5. The allegations levelled against the Noticees in the Show Cause Notice No. EAD-2/JP/7010/2013 dated March 21, 2013 (“**SCN**”) are summarized as follows:-
6. SEBI conducted investigations into the alleged irregularities in the Initial Public Offering (IPO / Issue) of Vaswani Industries Ltd. (VIL) covering the period from April 01, 2011 to March 31, 2012 (hereinafter referred to as 'Investigation Period'). The investigation revealed that VIL came out with an IPO for 100 lakh equity shares of face value of Rs. 10 each at a premium of Rs. 39 per share. The issue was a 100% book-built issue and the price band fixed by the VIL was in the range of 45/- to 49/- per share. The bidding for the Issue started on April 29, 2011 and closed on May 3, 2011. At the time of closure of the Issue, it was observed that bids for shares were received from the category of Qualified Institutional Buyers (QIBs) which was 2% of the total bids, the bids for 1,69,35,240 shares were received from the-category of Non Institutional Investors (NIIs) which was 41% of the total bids and the bids for 2,38,87,440 shares were received from Retail Individual Investors (RIIs) which was 57% of the total bids. The oversubscription levels on closure of bids were 0.16 times for QIBs, 11.29 times for NIIs and 6.82 times for RIIs. Based on these figures, the oversubscription in the Issue was calculated at 4.16 times. However, after taking into consideration cheques returned, withdrawn and technical rejections, the oversubscription level fell to 1.28 times and the Issue price was fixed at 49/- per share. It was observed during the investigation that there were large scale of bids withdrawals and cheques were not banked along with bids applications or returned or payment were stopped in the RII and NII categories. The observations made under the investigation and which is relevant in the present proceeding, are mentioned below.
7. The bids in the IPO of VIL were made at the highest price level of the price band, by the several clients through the terminal of their sub-syndicate member(s), and subsequently withdrawn, the major portion of said bids or the

cheques were not banked /not enclosed along with bids applications or the cheques payment were stopped etc., while subscribing to the said issue, with an object to give a misleading appearance of subscription in the IPO, and also to increase the bid price at the highest level.

8. The details of the bids received in the IPO of the VIL were given in the table as shown at Annexure II of the SCN. It is revealed from the said table that there was large scale withdrawals and rejections of the bids. There were 147 applications in High Networth Individual (HNI) Category for a total of 169,35,240 shares and 7343 applications in RII category for a total of 23887440 shares before rejections and withdrawals, but, large numbers of bids were withdrawn / rejected in said IPO as referred in above table. The subscription levels in the IPO at the time of closure and at allotment details were indicated in the table at Annexure II of the SCN.
9. As per the statement of Shri Hitesh Lakhani - Director of Rikhav Securities Ltd. (the subsyndicate member), the Rikhav Brokers Pvt. Ltd. & AHL Investment Consultants Pvt. Ltd. were the group companies of Rikhav Securities Ltd. Rikhav Brokers Pvt. Ltd. and Rikhav Securities Ltd, had common directors namely:- Mr. Hitesh Lakhani, Mr. Rajendra N Shah, Mr. Sunil K. Chheda and Ms. Bharati H Lakhani).
10. The Noticees were the clients/applicants of Rikhav Securities Ltd., (sub – syndicate member) and made the bid applications in said IPO through the terminal of said sub-syndicate member. The details of day-wise bids of the Noticee in the IPO and subsequent withdrawal/rejection are tabulated below:

Bid Date	Bid Time	Terminal Name	Name 1	CAT	RTNREASON	RATE	TOTAL
29.4.11	10:27:34	Rikhav Securities Ltd	Rikhav brokers private limited	HNI	Chq Returned	49	612240
29.4.11	10:34:09	Rikhav Securities	Reeta Jain	HNI	Chq Returned	49	40800

		ltd					
29.4.11	10:35:03	Rikhav Securities Ltd	Indira Jain	HNI	Chq Returned	49	40800
29.4.11	15:24:22	Rikhav Securities Ltd	Shahrukhkhan sharfarazkha	HNI	Chq Returned	49	612240
29.4.11	13:37:03	Rikhav Securities Ltd	Manba Investments & Securities Pvt. Ltd.	HNI	Not banked	49	408120
29.4.11	13:37:04	Rikhav Securities Ltd	Manba Broking Services Pvt. Ltd.	HNI	Not banked	49	408120
29.4.11	15:35:32	Rikhav Securities Ltd	AHL Investment Consultants Pvt. Ltd.	HNI	Chq Returned	49	204000
29.4.11 TOTAL				2326320			
02.05.11	10:05:41	Rikhav Securities Ltd	Vivek Agarwal	HNI	Chq Returned	49	1020240
02.05.11 TOTAL				1020240			
GRAND TOTAL							3346560

11. Noticee 1 had placed bids at 10:27:34 at a price of Rs. 49 per share for 6,12,240 shares. This was the first bid placed on that day viz. opening day of the Issue. The first three bids for the day were placed at the terminal of Rikhav Securities Ltd. on behalf of the Noticee, Reeta Jain and Indira Jain till 10:35:03. Subsequently, the cheques were returned in respect of all these entities. The total contribution of these 3 trades to the Issue size was 693840 shares (6.9% of the Issue size). Noticee 2 placed a bid for 204000 shares at 13:35:32 hrs on 29.04.2011, and the cheque in respect of the same was returned. Noticees 3 and 4 placed bids for 408120 shares each at 13:37:03 and 13:37:04 hrs respectively, for which the cheques were not banked.

12. A large number of bids were placed by the Noticees in a well determined way with the intention of withdrawing at a later stage. The Noticees in concert with said sub- syndicate member placed the bids with prior design to withdraw or not to bank the applications/bids, but with intention to show a good response in the IPO and to contribute towards discovering the highest price of the price band of 49/- on the first day of bidding. Allegedly, such practice of bidding by Noticees in the IPO which were subsequently withdrawn etc., were not *bonafide* in nature, but was done with a motive to artificially inflate the bid book and to create misleading appearance of bidding.
13. In view of the above, it was alleged that the Noticees had indulged into unfair trade practice by way of making huge bids in the IPO and subsequently withdrawing the same, which was meant only to create an interest for other investors/public to subscribe in the Issue. Allegedly, such bids were made by the Noticees at the highest price with an intent to raise the price of the Issue at the highest level of price band, were not *bonafide* in nature but were done with a motive to artificially inflate the bid book and create misleading appearance of bidding. Therefore, it was alleged that by adopting and indulging into such kinds of act/practices/device/artifice, the Noticees violated section 12 A (a), (b) & (c) of the SEBI Act, regulation 3 (b) & (d), 4 (1) and 4 (2) (a) & (b) of the PFUTP Regulations.
14. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15 HA of the SEBI Act, which reads as follows:-

*“15HA. Penalty for fraudulent and unfair trade practices.*

*If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”*

15. A Hearing Notice No. EAD-5/MC/VS/OW/P/2021/12217 dated June 14, 2021 was issued to Noticee 1, granting an opportunity of hearing by videoconferencing on 02.07.2021, and to make consolidated and complete submissions before the AO by 30.06.2021. Further, vide Hearing Notice Nos. EAD-5/MC/VS/OW/P/2021/33210-33265, and EAD-5/MC/VS/OW/P/2021/33217/1&2 dated November 18, 2021, Noticee 2 and Noticees 3 and 4 respectively were granted opportunity of hearing by videoconferencing on 03.12.2021.
16. Vide letter dated 27.08.2021 Noticee 1 made the following submissions: -
- (a) The present matter is more than 10 (Ten) years post the IPO of VIL. Therefore, it is extremely difficult, if not impossible to locate each and every paper pertaining to the matter and great prejudice is caused to the Noticee to defend its case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself.
  - (b) Even after the matter was remanded back by the Hon 'ble Tribunal and pursuant thereto Noticee filed its Documents, the opportunity for hearing was given to the Noticee nearly after 5 years.
  - (c) Noticee is a private limited company incorporated under the Companies Act, 1956 and registered with the Registrar of Companies, Maharashtra, Mumbai.
  - (d) Noticee is a part of the Rikhav Group which is engaged in the business of stock broking finance, investment and trading in the stock market for last more than a decade.
  - (e) Noticee has changed its business from finance and stock market related activities to Information Technology (IT) and IT enabled services hence the name of the Company was changed to 4G IT Solutions (India) Pvt. Ltd. w.e.f. 14.01.2013.
  - (f) At present Mr. Ratilal Pitroda and Mr. Mahesh Shah are the directors of the Company. Pertinently, Appellant has been a law abiding entity with a clean and unblemished track record.

- (g) In April 2011, VIL floated an IPO by way of a 100% Book Building Process for 1 crore equity shares of Rs. 10 / - each. The IPO of VIL opened on 29.04.2011 and closed on 03.05.2011. The shares were offered in the price band of Rs. 45/- to Rs. 49/-. The shares were to be listed on BSE and NSE stock exchanges. M/s Ashika Capital Limited ("ACL") was appointed as the Lead Manager and Syndicate Member to market the IPO and was as such, in charge of the process and procedure to be followed in the IPO of VIL. ACL had appointed Rikhav Securities Limited ("RSL") as one of the Sub Syndicate Members. The role of the RSL as a Sub Syndicate Member was to assist Syndicate Member to distribute application forms to prospective investors, collect duly filled in forms along with the required cheque payments and upload the bids on the stock exchange system during the period of Book Building process of the IPO. For rendering aforesaid services, sub syndicate members receive a remuneration based on the final allotment of the shares to the investors whose application were filed through that sub syndicate member.
- (h) On 29.04.2011, Noticee submitted an application dated 03.05.2011 in the IPO of VIL in the Non-Institutional Investor category ('NII') for 6, 12,240 shares and had tendered cheque for Rs.2,99,99,760/- to RSL.
- (i) At the time of submitting applications, Noticee genuinely desired to get allotment of VIL shares and gain profit on listing of VIL shares.
- (j) However, subsequently on closure of VIL issue following factors came to Noticee's knowledge:-
- I. Grapevine that company is not that much good/ sound.
  - II. QIB was not received for 1st two days and the same remained undersubscribed even after the closure of Issue.
  - III. Market sentiment became weak after the closure of IPO of VIL.
  - IV. Negative News in market / various website about the IPO of VIL.
  - V. There was a possibility of heavy loss on the listing day of VIL.
  - VI. Many investors were withdrawing the application



VII. There was immediately a good opportunity in the issue of Power Finance Corporation Ltd.

- (k) For the abovementioned reasons and to protect the interest of Noticee's stake holders, on 05.05.2011 Noticee issued stop-payment instructions to their bankers instructing them to return the cheque issued in the IPO of VIL.
- (l) Pursuant to Noticee's application in the IPO of VIL in the NII category, various factors came to the knowledge of the Noticee w.r.t. the IPO of VIL which were not considered while putting in the application. The same have been mentioned above.
- (m) Regulation 86 (3) of the ICDR Regulations imposes a restriction on QIB from withdrawing their bids after the closure of the issue. However, no such restriction is imposed on investors in the NII and Retail Institutional Investor category.
- (n) On perusal of the details pertaining to the applications received under NII category and the market Trend during the relevant period i.e. 29.04.2011 to 05.05.2011 it was submitted that the Noticee merely followed the market trend and had no other motive or intention or interest while applying and withdrawal of IPO of VIL.
- (o) It is pertinent to mention that 29.04.2011 was a Friday. Pertinently, on 30.04.2011 and 01.05. 011 (Saturday and Sunday) there was no bidding. Further, from 03.05.2011 there were lot of market rumours and news that the IPO was not doing well and that Qualified Institutional Buyers ("QIB") were not bidding. Noticee closely watched the response of QIB since they do extensive and intensive research about company's background, history, future prospectus, market response, etc. Their response (bids) to an IPO greatly influences the response of the other investors.
- (p) Noticee realized that such news and rumors would adversely affect sentiment in the IPO and instead of making profits Noticee may suffer huge losses. Further, the secondary market and in particular Small Market Capital Segment which pertained to VIL was categorized, had

also been continuously falling at that time, which also weakened sentiments and prospectus.

- (q) While the issue/bidding closed on closing day 03.05.2011 article of the internet on 03.05.2011 stated that at the end of Day 2 the issue was subscribed only 1.26 times with absolutely no bids from QIB's and only 43% bids from retail investors that implied that the IPO was overpriced as compared to similar companies; that VIL was operating at very low margins; that, its EPS did not support the IPO prices (Exhibit 2A and Exhibit 2B, Page No. 32 to 34 of the Rejoinder dated 13.05.2015)
- (r) From Noticee's past experience it can be seen that bulk of the IPO Investors traditionally bid at the highest price of the price band. This is evident from an analysis of Noticee's data of 66 IPOs during the period from July 2009 till April 2011 where the allotment was done at the highest price range of the Price band. List of IPOs under Book Building Process wherein shares were allotted at the Highest Price of the Price Band was annexed as Exhibit 1 (Page No. 30 and 31) of Rejoinder dated 13.05.2015.
- (s) SEBI had not found any fault with any of the said 66 IPO's. From the said 66 IPO's, it is evident that the bulk of the bidders bid at the highest level of the prescribed price belt and anyone who bid at less than the highest price in the prescribed price belt would have got no allotment of shares at all.
- (t) Therefore, it cannot be held that there was anything at all wrong with placing bids at the highest level of the prescribed price band.
- (u) Further, investors such as the Noticee invest in IPO's not with an intention of holding the shares for very long term investment. In fact, large number of IPO investors apply for shares with the intention of selling off the same within a day or two of listing, hoping to make quick profits. Therefore, to ensure that they get the maximum allotment, they bid at highest price to ensure that they get shares, because the excess amount would be refunded to them in case of partial allotments or if the

cut-off/ allotment price is lower than their bid price made at the highest price of the permitted price band.

- (v) During the course of Investigation conducted by SEBI during June 2011 in the IPO of VIL, various documents were collected and information was sought from RSL including on behalf of the Noticee with regard to application made in IPO and availability of funds.
- (w) Noticee fully co-operated in the course of Investigation carried out by SEBI and provided all the relevant documents to RSL more particularly Bank Statements, information about sources of funds, amount receivable from Total Holding and Finvest Pvt. Ltd. ("Total Holding") and also the funds available with Total Holding at the relevant time. Thus detail and discreet information was sought from RSL up to the grass root level and therefore it appears us that no allegation with regard to availability of funds is made against the Noticee in the SCN. Noticee also provided a Chartered Accountant Certificate to prove that it had adequate funds available with itself at the time of making application in IPO of VIL (Ref. Exhibit - BB, Page No. 234 and 235 of Appeal Book).
- (x) Further, in its letter dated 22.08.2016, under Para 7(i), Noticee had mentioned that for an application for 6,12,240 shares of VIL Noticee had issued cheques worth Rs 2,99,99,760/- on the basis of funds available in its Bank account of Around 3.65 crores and also surplus funds of Rs 3.54 Crores lying with Total Holding, a NBFC Registered with RBI. The documents were annexed under Exhibit - C to the letter dated 22.08.2016.
- (y) Noticee had much larger funds available through its connected group concerns. In this regard it is pertinent to note that its group concerns consist of:-
  - I. One public company being Rikhav Securities Ltd;
  - II. Five private limited companies
    - a) Rikhav BPO & Software Services Pvt .Ltd
    - b) Rikhav Commodity Brokers Pvt. Ltd

- c) Total Holdings & Finvest Pvt. Ltd
- d) AHL Investment Consultants Pvt. Ltd
- e) Noticee i.e. Rikhav Brokers Pvt. Ltd

III. One Limited Liability partnership firm named PJS Securities and

IV. One partnership firm of M/s. Lakhani and Lakhani

(z) In proceedings against Rikhav Securities Ltd., SEBI had inter alia called upon Rikhav Securities Ltd. also to substantiate that the Noticee had available funds for making the said application in the said IPO of VIL. The details of fund availability along with documents were duly furnished. SEBI then passed an order dated 13.03.2015 inter alia holding that although the Noticee had shown availability of Total funds of over Rs. 5.4 crores at the relevant time, it only had about Rs. 1.86 crores in its bank accounts and the remaining Rs.3.54 crores was lying with its group company of NBFC firm, Total Holding and Finvest Pvt. Ltd, and on this basis purported held that required funds were not available. The purported order dated 13.03.2015 was passed without giving an opportunity of hearing or any show cause notice to the Noticee and the same is therefore not in any manner binding on the Noticee. Further merely because the bank account balances were only Rs. 1.86 crores, can never lead to any conclusion that the Noticee did not have the required funds. Noticee also furnished a letter/ certificate from Bank of India inter alia recording that apart from having about Rs 4.64 lakh in our bank accounts, we were entitled to a "Temporary overdraft facility" of Rs. 360 Lakhs, on the basis of which cheques issued by us would have been honoured. It is pertinent to note that Noticee's cheque in support of its said bids/ application was for less than Rs. 3 crores. The same proves beyond doubt that Noticee had access to the required funds. (Ref. Exhibit 4, Page No. 36 of Rejoinder dated 13.05.2015).

(aa) One Bajaj Group (consisting of 10 entities) had bid for 43,68,240 shares and on the next day after the closure of the issue, they had

withdrawn their bids/application for 11,22,720 shares by "stopped payment of cheques" and for 32,45,520 shares, bid applications were not banked. (Ref Para 8 on page 3 of Order dated 07.08.2013).

(bb) Similarly another Bachawat Group (consisting of 7 entities) had made applications for 18,360 shares each which were withdrawn due to the reason of "Insufficient funds". (Ref. Para 7 and 8 on page 3 of Order dated 29.11.2013).

(cc) Adjudication proceedings were also initiated against the Bajaj and Bachawat group entities separately and they were exonerated from the allegations made against them and no penalty was imposed. Copy of the SEBI's Adjudication orders dated 07.08.2013 and 29.11.2013 were annexed as Exhibit Z (Page No. 209 to 222) and Exhibit - AA (Page No. 223 to 233) respectively to the Appeal.

(dd) Up to 100% of the bids placed under the NII category were withdrawn in case of other syndicate and sub-syndicate members due to similar reasons like applications withdrawn/ Cheques not banked etc. which were similar to the reasons found for withdrawals for various applications made through RSL. The details of such withdrawals through other sub-syndicate members are as follows:-

Name of Syndicate/Sub-syndicate members	No. of bids	No. of shares bid	No. of shares rejected	% of rejection to the total bids of the broker
Karvy Stock Broking Ltd.	10	43,68,240	43,68,240	100
Ashika Stock Broking Ltd.	5	18,36,480	18,36,480	100
Enam Securities Pvt. Ltd.	8	15,01,560	15,01,560	100
Motilal Oswal	23	12,81,240	11,72,160	91.49

Securities Ltd.				
Amit Jasani	6	12,24,000	12,24,000	100
Matalia Stock Broker Ltd.	63	7,64,400	7,64,400	100

(ee) These applicants included group entities of large corporate houses viz; Bajaj Group and Bachawat Group. These applications were much larger in size than the group companies of the Noticee (Rikhav Brokers Pvt. Ltd. and AHL Investment Consultants Pvt. Ltd). As aforesaid the proceedings against those applicants were initiated, conducted and disposed of without any punitive or regulatory action and no proceedings was initiated on or after the applicants of other Sub-Syndicate Members. Comparative data of such withdrawals vis-a-vis the other group of applicants is as follows:

Group name	No. of entities	No. of shares bid	Reasons for Invalid bids
Bajaj Group	10	11,22,720	Stop payment
Bajaj Group	7	32,45,520	Not banked
Noticee's Group companies (Rikhav Brokers Pvt. Ltd. and AHL Investment Consultants Pvt. Ltd.)	2	8,16,240	Stop payment

(ff) SEBI has ignored the fact that Noticee have no connection with VIL, its promoters and/or its directors. Further, Noticee has no relation with the Syndicate Member or the Lead Manager.

- (gg) In the NII category, bids for a total of 1,56,71,160 shares were withdrawn, and in the RII category, bids for 1,31,35,200 shares were withdrawn / rejected, aggregating to total withdrawn/ rejected bids of 2,88,06,360 shares. On the other hand, Noticee had only withdrawn bids worth 6,12,240 shares i.e. 2.13% of the total bids withdrawn/ rejected. Hence, Noticee's bids withdrawn were too miniscule to have any impact on the market.
- (hh) Noticee is in no manner whatsoever connected to Manba Investment & Securities Pvt. Ltd. and Manba Broking Services Pvt. Ltd.
- (ii) Noticee has not been a beneficiary of any unfair gain/advantage in respect of its dealings in the IPO of VIL.
- (jj) There is nothing on record to prove that the Noticee's act is repetitive in nature.
- (kk) Despite cheques being returned, despite withdrawal of bids and despite technical rejections, the IPO was oversubscribed by 1.28 times. Further, SEBI has suppressed that 358 applications / bids for 16,71,360 shares were rejected for "technical" reasons.
- (ll) Noticee's 6,12,240 shares was a mere 1.47% of the total number of shares bid / applied for in the IPO of VIL. SEBI has wrongly attempted to inflate this by comparing the Appellant's application to the issue size. Further, there is no justification or basis or rationale to club the application of Manba with the Noticee's application. There is no connection or nexus between us and Manba, nor is there any connection between the Noticee and VIL or its promoters, nor is the same even alleged by the Respondent.
- (mm) It is wholly untenable for any authority to arrive at a finding of 'fraud' solely on the basis of Noticee having dealt in the scrip of a company.

17. During the hearing conducted through videoconferencing on 06.09.2021, Shri Kushal Shah, Chartered Accountant and Authorised Representative of the Noticee 1 reiterated submissions made vide letter dated 27.08.2021. Certain submissions dated 24.06.2013 stated to have been made before the previous

Adjudicating Officer as well as submissions dated 22.08.2016 made after the SAT Order dated 10.08.2016 restoring the matter to the AO, were also referred to. The Authorised Representative undertook to submit post-hearing consolidated written submissions with all documents as referred to in paras. 5-7 of SAT Order dated 10.08.2016 in Appeal 240/2014, within two weeks.

18. Vide post-hearing submissions dated 16.09.2021, Noticee 1 stated the following:-

(a) The SAT order dated 25.04.2014 observed that *“during the said period of Issue, the QIB category was barred from withdrawing the bids as per Clause (j) of Schedule XI read with regulation 28 of the ICDR Regulations, however, there was no bar for withdrawal of bids by the NII & RII categories in IPO under said ICDR Regulations. It is on records that the Noticees were not the QIBs, but were NII-HNI. It was only from October 12, 2012, the NII category was also barred from withdrawing or lowering the size of bids at any stage of IPO. Therefore, as per the ICDR Regulations, the Noticees could withdraw their bids from the IPO during the said period of Issue.”*

(b) One Bajaj Group (consisting of 10 entities) had bid for 43,68,240 shares and on the next day after the closure of the issue, they had withdrawn their bids/ application for 11,22,720 shares by "stopped payment of cheques" and for 32,45,520 shares, bid applications were not banked. Similarly another Bachawat Group (consisting of 7 entities) had made applications for 18,360 shares each which were withdrawn due to the reason of "Insufficient funds". Pertinently adjudication proceedings were initiated against them and vide Orders dated 07.08.2013 and 29.11.2013 respectively passed by the Ld. AO, SEBI they were exonerated from the said proceedings without drawing any adverse inference. Hence, if their dealing in the IPO of VIL was considered normal and genuine, no allegation against the Noticee is sustainable in fact and in Law.



- (c) In order dated 24.04.2014, the Adjudicating Officer SEBI observed that *“the making of bids and subsequent withdrawal of the same is not per - se fraudulent / manipulative, except where the bidding pattern or the other relevant circumstance suggest otherwise”*
- (d) It is submitted that the reason for drawing adverse inference against the Noticee was pertaining to the allegation that the Noticee had placed its bids without having sufficient funds since it had allegedly failed to provide the proof of the same.
- (e) After the matter was remanded back Noticee had vide letter dated 22.08.2016 filed its Submission of Documents.
- (f) W.r.t the availability of funds to the tune of Rs. 2,99,99,760 from 29.04.2011 to 06.05.2011 Noticee submitted relevant details and documents under Exhibit C of the said submission dated 22.08.2016. On perusal of the same it is submitted that Noticee had made the application of IPO of VIL on the basis on funds available to the tune of Rs 3.65 crores in its Bank Accounts and also surplus funds of Rs 3,54,00,000 lying with M/S Total Holding & Finvest Private Limited, a NBFC registered with RBI. A copy of Noticee's Submission of Documents dated 22.08.2016 along with Exhibits referred thereto is enclosed hereto marked as "Annexure 2".
- (g) Noticee had applied for the shares in the IPO of VIL in good faith. Pertinently, because of the changes of the market situation we had issued stop payment instructions to our Banker. Pertinently, withdrawal of bids by the NII & RII was allowable as per ICDR Rules and was not fraudulent in nature.
- (h) The hearing is provided after around 5 years from the date being remanded back from the Hon'ble Tribunal and more than of 10 year from the date of IPO. Hence, great prejudice is caused to the Noticee in regards to the delay caused.
- (i) Adjudication proceedings initiated against Bajaj Group and Bachawat Group who had also withdrawn their bids were disposed of. Pertinently,

they were the major applicants whose bid applications were withdrawn/ rejected in the IPO of VIL.

- (j) Noticee had provided its bona fides with adequate documents that it had funds available with it at the relevant time of making application in IPO of VIL.
- (k) No loss is caused to an investor or group of investors as a result of Noticee's dealings as well as of Noticee's clients in its dealings in IPO of VIL
- (l) Noticee has not attained any unfair gain/ advantage as a result of its dealings in IPO of VIL.

19. In Annexure 2 (submissions dated 22.08.2016) to the reply of Noticee 1 dated 16.09.2021, the following were the key submissions:-

- (a) The Noticee has contended that its bid and the subsequent withdrawal were motivated by a desire to earn profit and based on the prevailing market scenario.
- (b) The Noticee has submitted that it had sufficient funds available with them at the time of the application, but was constrained to issue stop payment instructions to its bankers and withdraw its bid due to changed circumstances, otherwise the bankers would have honoured the cheques on the basis of the Noticee's financial credentials.
- (c) It was also submitted that the requirement to maintain balance in bank account is not at the time of bidding but at the time when the cheque is presented for clearance.
- (d) Noticee made an application for 6,12,240 shares and submitted a cheque for Rs. 2,99,99,760 on the basis of funds available in its bank account of around Rs. 3.65 crores and also surplus funds of Rs. 3,54,00,000 lying with M/s. Total Holding and Finvest Pvt. Ltd. (THFPL)/ "Total Holding").
- (e) Documents evidencing the above were enclosed as Exhibit C to the Noticee's submissions dated 22.08.2016/Annexure 2. Annexure 1 to Exhibit C was a copy of the certificate from Chartered Accountant

certifying that the Noticee had adequate funds to honour the cheque for the application money of Rs. 2,99,99,760/-. Annexure 2 contains a statement of available fund position during 29.04.2011 to 06.05.2011 with the Noticee across various bank accounts held by the Noticee and also the credit balance of the Noticee in Total Holding. Total Holding is an NBFC registered with RBI. Annexure 2 is based on bank statements of the Noticee and ledger confirmation of Total Holding at Annexures 3-15. Annexure 15 is a receipt of Inter Corporate Deposit advanced by the Noticee to Total Holding which was repayable prior to the tenor upon serving 24 hours written notice to the lender i.e. the Noticee. Annexure 16 contains a statement of available fund position during the period 29.04.2011 to 06.05.2011 in Total Holding across various bank accounts held by Total Holding.

- (f) The Noticee submitted that it did not keep any balance at the end of the day with itself. But to make optimum/effective use of funds it transferred the majority of balance to Total Holding to earn day to day interest.

20. In the compilation of pleadings and other documents placed before the SAT (Exhibit B to the submissions dated 22.08.2016) following submissions were made by Noticee 1:-

- (a) The Noticee had made submissions regarding the fact that a bid is not an offer under the Indian Contract Act and can be withdrawn anytime before acceptance
- (b) As per Regulation 86 (3) of the ICDR Regulations at the relevant time, only QIBs were restricted from withdrawing their bids after closure of the issue, no such restrictions were imposed on NIIs and RIIs.
- (c) QIBs for whom 50% of the issue size quota was reserved under the book building process are professional and large investors who are backed by research. Under market dynamics, their response/bids to an IPO influences the response of other investors. That is why QIBs bids are vetted and they are prohibited from withdrawing their bids. The law

does not consider the response of other investors such as NIIs and RIIs to have such influential power, so they are allowed to withdraw their bids to protect their interests. These investors withdraw when they discover that the response of the QIBs has not been in tune with their expectations or a better investment opportunity has appeared in the meantime. Thus, under regulations as then prevailed, withdrawal of bid was a legal right of NII/RII.

- (d) Regulation 99 of the ICDR Regulations expressly contemplated the possibility of subscription levels falling below the minimum levels on account of withdrawals made subsequent to the closure of the issue. While the prospectus at page 204 prohibited QIBs from withdrawing from the issue after closure, no such restriction was imposed upon NIIs and RIIs.
- (e) It is on record that in the IPO of VIL for 2785 bid applications cheques were returned and 666 bid applications were not banked. Hence the Noticee was not the only one but large number of applicants withdrew their applications on account of undersubscription in the QIB category which came to their knowledge only after the closure of the issue.
- (f) Every IPO witnesses withdrawals, though the extent varies. This does not mean that the applicants inflate the order book. There is no way to distinguish between a heavy withdrawal and not-so-heavy withdrawal.
- (g) Applicants may withdraw bids by asking sub-syndicate member to withdraw or not bank cheques, by not making available adequate balance in their account, by issuing stop payment instruction to the respective banks or approaching the RTI to withdraw the applications.
- (h) In the case of IPO under book-building process, the lead manager/merchant banker decides the price-band in consultation with the issuer company after considering various qualitative factors such as background of promoters, their brand and quantitative factors i.e valuations arrived at by factor such as Price Earning Ratio, Earning Per Share, Book Value and Return on Networth. The price band is invariably finalized before filing of RHP with the RoC and incorporated

in the offer document which is made available to investors at large. Thus the price band is predetermined as aforesaid and the Noticee had no role or involvement in determining the same.

- (i) The Noticee's role in the IPO of VIL was that on 29.04.2011 it tendered an application dated 03.05.2011 for 6,12,240 shares in HNI category to RSL and the same was withdrawn by informing its bankers on 05.05.2011 to stop payment of the cheque.
- (j) During the course of investigation conducted by SEBI during June 2011 in IPO of VIL, various documents were collected and information was sought from RSL on behalf of the Noticee with regard to application made in the IO and availability of funds. Noticee fully co-operated in the course of the investigation and provided all documents including bank statements, information about sources of funds, amount receivable from Total Holding and funds available with Total Holding at the relevant time.
- (k) The Noticee was connected to RSL, a sub-syndicate member and member of both NSE and BSE and also DP with CDSL, itself a pointer to prove financial capabilities of the Noticee. Noticee is a bonafide, genuine entity and not a bogus company.
- (l) Under extra ordinary circumstances as it prevailed in the IPO of VIL, WTM SEBI had passed an ad interim order dated 11.07.2011 issuing certain directions to VIL. Aforesaid facts have been recorded in order dated 29.11.2013 passed by Adjudicating Officer in respect of Sunil Mangilal Bachawat HUF and Ors. which stated – *“Also, at that point of time, no restriction under ICDR Regulations was applicable for the NII category in withdrawing bids applications. Further, there were several other investors whose bids were also either withdrawn or rejected at large scale. The important fact cannot be ignored that the Noticees were having the sufficient money to honour their entire bid applications in the IPO of VIL and no collusion or any relation of Noticees with VIL was alleged. It is also noted that Whole Time Member (WTM) of SEBI vide ad-interim order dated July 11, 2011 issued certain directions to*

*the VIL and the same was challenged by the VIL before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated August 25, 2011 with certain modifications of aforesaid WTM's order, also inter-alia directed the VIL to provide withdrawal option to the investors of RII category to the extent of 15,00,348 shares, within 7 days from date of order. The Hon'ble SAT further directed the VIL to make bonus shares to the investors in this IPO at the ratio of one share for every four shares held. Keeping in mind the entirety of case, it is difficult to hold the Noticees liable for such serious charge of fraudulent exercise in the matter.,”*

(m) Noticee's subscription compared with total subscription application for 4,145, 90,560 shares received in IPO of VIL was 1.47% of total subscription. Noticee has no connection with the Manba group entities (Noticees 3 and 4 in the SCN).

(n) In the case of Vinodkumar Bajaj and Company HUF and Ors, Adjudicating Officer SEBI held that *“In accordance with the general practice and time lag for updating & consolidating the data on Stock Exchange website, which has been admitted by SEBI in paragraph 11 of its order dated 11th January 2012, in the matter of Rikhav Securities Limited, the data in respect of applications made by the Noticees at 1.30 p.m. would not have been updated by NSE & displayed on NSE website before 2.30 / 2.45 p.m. and the data in respect of applications made at 2.47 p.m. would not have been updated by NSE & displayed on NSE website prior to the closing of the issue at 3 p.m. Thus the data for bids of Rs.12 crores made at 1.30 p.m. by Noticee no.2,4,6 to 9 would not be available to public before the closing of the issue at 3 p.m.*

..

*25. The Noticees submitted that since the prior applications by other applicants in the NII Category were made at Rs 49/- ( i.e. the cap price), therefore, they were bound to make their applications at the cap price in order to be allotted any shares. The Noticees also submitted*

*that due to under-subscription in the QIB Category, more than 3813 applications by various other investors had been withdrawn, which came to their knowledge only after the closure of the Issue, and for that reason, Noticees also withdrew their applications. It was submitted by them that the category wise breakup of over subscription figures becomes available on the NSE website only at the end of the day at about 8 p.m. Considering the general trend in IPOs, they expected that the QIB portion would be subscribed on the last day, however, upon observing at around 8 p.m. on 3rd May 2011, they realized that the QIB portion of the issue was undersubscribed to a substantial extent. Such under subscription also created doubt about the fundamentals of the VIL which affected merits of the investment decision and therefore, they withdrew their applications on 4th & 5th May 2011."*

- (o) The demand schedule in an IPO is not available online on the exchange website on a real-time basis.
- (p) The Hon'ble Delhi High Court in the case of SEBI v. APL Industries Ltd (decided on January 14, 2013) held that *"It is well settled that the prospectus is an invitation to offer and that an applicant desirous of applying for shares, if any, of a listed company or otherwise can withdraw his offer prior to its acceptance...an offer of an applicant culminates into a contract only upon allotment of shares.."*
- (q) There is no allegation of collusion amongst applicants
- (r) There is no basis for selectively picking only the Noticee out of applications for 2,88,06,360 shares which were withdrawn/rejected. In the NII category, 137 out of 145 applications for 1,56,71,160 shares out of 1,69,30,800 shares were withdrawn and most of the withdrawals were made in respect of applications received on 29.04.2011.
- (s) Noticee got no unfair advantage from the alleged violation.

21. Noticee 2 stated the following vide reply dated 11.01.2022:-

- (a) A compilation of pleadings and other documents of AHL Investment Consultants Pvt. Ltd. in the matter of VIL were enclosed, containing

appeal book filed before SAT, and letter dated 23.08.2016 submitting documents to SEBI regarding availability of funds.

- (b) The present matter is more than 10 (Ten) years post the IPO of VIL. Therefore, it is extremely difficult, if not impossible to locate each and every paper pertaining to the matter and great prejudice is caused to the Noticee to defend its case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself.
- (c) Even after the matter was remanded back by the Hon'ble Tribunal and pursuant thereto, Noticee had filed its Documents, the opportunity for hearing is given to it nearly after 5 years.
- (d) AHL Investment Consultants Pvt. Ltd. is private limited company incorporated on 26.05.2005 under the Companies Act, 1956 and registered with the Registrar of Companies Maharashtra, Mumbai.
- (e) Noticee 2 is part of "Rikhav group" which is engaged in the business of stock broking, finance, investment and trading in the stock market for last more than a decade.
- (f) At present its directors are Mr. Vaibhav Suresh Shah and Mrs. Mittal Vaibhav Shah. Noticee 2 and its directors submit that Noticee 2 has been functioning as a law abiding entity/person with a clean and unblemished track record and has never been penalized by SEBI for any violation of the SEBI Act and rules & regulations framed thereunder, save and except present proceedings initiated against them.
- (g) On 29.04.2011, Noticee 2 had submitted an application dated 03.05.2011 in the IPO of VIL in the Non-Institutional Investor category ('NII') for 2,04,000 shares and had tendered cheque for Rs. 99,96,000/- in favour of "Escrow Account Vaswani – R" to RSL.
- (h) At the time of submitting applications, Noticee 2 had genuine desire to get allotment of VIL shares and gain profit on listing of VIL shares.
- (i) However subsequently, on closure of VIL issue, Noticee 2 came across negative news about the VIL Company and from market sources Noticee 2 realized that the issue may get listed at discount to the issue



price. In fact, while issue/bidding was closing on 03.05.2011, an article on the internet stated at the end of day 2 that the issue is subscribed 1.26 times with absolutely no bids from QIB's and only 43% bids from retail investors; that impliedly the IPO was overpriced as compared to similar companies; that VIL was operating at very low margins; that its EPS did not support the IPO price; that capacity utilization was low and fundamentals did not merit investment and investors should stay away from the IPO. A similar article and recommendation was also published on 04.05.2011. (Ref. Exhibit 2A and 2B, Page No. 34 to 36 of Rejoinder dated 31.08.2015).

- (j) Hence, to protect the interest of its stake holders, on 05.05.2011 Noticee 2 issued stop payment instructions to its bankers instructing them to return the cheque issued in the IPO of VIL.
- (k) It is pertinent to mention that pursuant to Noticee 2's Application in the IPO of VIL in the NII category, various factors came to its knowledge w.r.t the IPO of VIL which was not considered while putting in the application. Pertinently, the market perception was that the issue would get listed on a discount.
- (l) Under the securities law, a bid is not an offer. It only becomes an offer when it is complete in all respects, including the receipt of the subscription amount. Further, under the Indian Contract Act, 1872, it is stated that an offer can be withdrawn before its acceptance.
- (m) Regulation 86(3) of ICDR Regulations imposes a restriction on QIB from withdrawing their bids after the closure of issue. However, no such restriction is imposed on investors in NII and Retail Institutional Investor ("RII") category. Other than these, it is perfectly legal for others to withdraw the bid as permissible under the general law, the special law and the offer document.
- (n) On perusal of the details pertaining to the applications received under NII category and the market Trend during the relevant period i.e. 29.04.2011 to 05.05.2011 it was submitted that Noticee 2 merely

followed the market trend and had no other motive or intention or interest while applying and withdrawal of IPO of VIL.

- (o) Immediately after taking the decision on 05.05.2011 to withdraw the application in IPO of VIL, Noticee 2 applied for 2,35,270 shares in the IPO of Sanghvi Forging and Engineering which had opened on 04.05.2011 and issued cheque No. 547129 of Rs 1,99,97,950/- from its account maintained with Bank of India which is the same account from which cheque of Rs 99,96,000/- was issued in the IPO of VIL. (Ref. Exhibit S to U, Page No. 178 to 181 of Appeal Book (Appeal No. 241 of 2014).
- (p) 29.04.2011 was a Friday. Pertinently, on 30.04.2011 and 01.05.2011 (Saturday and Sunday) there was no bidding. Further, from 03.05.2011 there were lot of market rumors and news that the IPO was not doing well and that Qualified Institutional Buyers ("QIB") were not bidding. Noticee 2 closely watched the response of QIB since they do extensive and intensive research about company's background, history, future prospectus, market response, etc. Their response (bids) to an IPO greatly influences the response of the other investors.
- (q) Regulations 99 of the ICDR Regulations, which deals with minimum subscription, expressly contemplates the possibility of the subscription levels falling below the minimum levels on account of withdrawals made subsequent to the closure of the issue. The Prospectus of VIL at page 204 prohibited QIBs from withdrawing from the issue after closure, no such restriction was imposed upon NIIs and RIIs. It is on record that in the IPO of VIL for 2,785 bid Applications cheques were returned and 666 bid Applications were not banked (Ref. Page No. 18 and 19 of the Investigation Report). Hence, Noticee 2 is not the only one but large number of applicants withdrew their applications on account of under-subscription in the QIB Category which came to the knowledge only after the closure of the issue. A copy of the relevant pages of the Prospectus of VIL dated 06.05.2011 is annexed as Exhibit – R (Page No. 151 to 153) of the Appeal Book.

- (r) While the issue/bidding closed on closing day 03.05.2011 article of the internet on 03.05.2011 stated that at the end of Day 2 the issue was subscribed only 1.26 times with absolutely no bids from QIB's and only 43% bids from retain investors that implied that the IPO was overpriced as compared to similar companies; that VIL was operating at very low margins; that its EPS did not support the IPO prices. (Ref. Exhibit 2A and Exhibit 2B, Page No. 34 to 36 of our Rejoinder)
- (s) Withdrawal of bids by the NII & RII was allowable as per ICDR Rules.
- (t) From past experience it can be seen that bulk of the IPO Investors traditionally bid at the highest price of the price band. This is evident from an analysis of data of 66 IPOs during the period from July 2009 till April 2011 where the allotment was done at the highest price range of the Price band. For ready references List of IPOs under Book Building Process wherein shares were allotted at the Highest Price of the Price Band is annexed as Exhibit 1 (Page No. 32 and 33) of Rejoinder dated 31.08.2015.
- (u) SEBI had not found any fault with any of the said 66 IPO's. From the said 66 IPO's, it is evident that the bulk of the bidders bid at the highest level of the prescribed price belt and anyone who bid at less than the highest price in the prescribed price belt would have got no allotment of shares at all. Therefore, it cannot be held that there was anything at all wrong with placing bids at the highest level of the prescribed price band.
- (v) Investors invest in IPO's not with an intention of holding the shares for very long term investment. In fact, large number of IPO investors applies for shares with the intention of selling off the same within a day or two of listing, hoping to make quick profits. Therefore, to ensure that they get the maximum allotment, they bid at highest price to ensure that they get shares, because the excess amount would be refunded to them in case of partial allotments or if the cut-off / allotment price is lower than their bid price made at the highest price of the permitted price band.

- (w) Even after disregarding all the bids which were withdrawn, all bids for which cheques were returned or for which payment was stopped and all bids for which cheque was returned or for which payment was stopped and all bids which were rejected on technical reason, allotment was made at Rs 49/- which indicates that all the applications (100%) had bid at the highest level of the prescribed price belt.
- (x) The observation/findings of “.....*making bids without sufficient funds*” in the Order dated 25.04.2014 is beyond the allegations made in the SCN and is based on a totally erroneous and untenable assumptions and presumptions hence in violation of basic principles of natural justice.
- (y) Noticee 2 in the Memo of Appeal before SAT has attached a certificate dated 14.07.2014 of Statutory Auditor of Noticee 2 duly certifying that Noticee 2 had adequate funds available to honour the Application of VIL. (Ref. Exhibit – X, Page No. 183 and 184 of Appeal Book). Further, in proceedings against RSL, SEBI had inter alia called upon RSL to substantiate that Noticee 2 had available funds for making the said application in the said IPO of VIL. The details of fund availability along with documents were duly furnished. SEBI then passed an Order dated 13.03.2015 inter alia holding that *“as per the HDFC bank account statements of AHL Investments, Rs. 1 crore was received on May 06, 2011 through RTGS from Shreeji Darshan Enterprises. The same was immediately debited and the closing balance in the said account was Rs. 36,199/-. This leads to the inescapable conclusion that as on May 06, 2011, AHL Investment did not have sufficient funds in their accounts during the period of making application to IPO’* (Ref Bullet Point 2 under Para 6.5.11 on internal Page 17 of the SEBI’s Order dated 13.03.2015). Indeed, it is pertinent to reiterate that the purported Order dated 13.03.2015 was passed without giving an opportunity of hearing or any show cause notice to Noticee 2 and the same is therefore not in any manner binding to Noticee 2. Further, merely because the closing balance was Rs. 36,199/- can never lead to any

conclusion that Noticee 2 did not have the required funds. In this regard, Noticee 2 relied upon the Statutory Auditors Certificate dated 10.08.2015 to substantiate utilization of funds and to establish that, whenever required, funds were transferred through RTGS. (Ref. Exhibit – 4, Page No. 38 and 39 of our Rejoinder dated 31.08.2015).

(z) Noticee 2 in its letter dated 23.08.2016, under Para 6(i), had mentioned that for an application for 2,04,000 shares of VIL Noticee 2 had issued cheques worth Rs 99,96,000/- on the basis of funds available in our Bank account, amount due on demand from M/s. Shreeji Darshan Enterprises of around 1,80,00,000/- crores and also surplus funds of Rs 1,97,00,000/- Crores lying with Total Holding, a NBFC Registered with RBI which together were approximately Rs 4 crores. The documents were annexed under Exhibit – B to the letter dated 23.08.2016 (Total 37 Pages).

(aa) Major observation made in respect of Exhibit – B were mentioned under Para 6 (iii), Page No. 3 and 4) of letter dated 23.08.2016.

(bb) On 12.05.2011 Noticee 2 had applied for shares of Sanghvi Forging Ltd. amounting to Rs 1,99,97,950/-. The balance in the bank account was made available by Loan Return Back from Total Holding of Rs 2 crores on 12.05.2021 which proves the fact that Total Holding used to return back loans of Noticee 2 as and when required and hence Noticee 2 had sufficient funds to apply to the IPO of VIL.

(cc) In fact, Noticee 2 had much larger funds available through its connected group concerns. immediately after taking decision on 05.05.2011 to withdraw application in the IPO of VIL, Noticee 2 applied for 2,35,270 shares in the IPO of Sanghvi Forging and Engineering Ltd. ("SFEL") which had opened on 04.05.2011 and issued cheque No 547129 for Rs. 1,99,97,950 favouring "ESCR-SFEL-R" from bank account of Noticee 2 maintained with Bank of India that is from the same account number from which cheque for Rs. 99,96,000/- was issued in the IPO of VIL. The said cheque was honoured/cleared by the Bank and allotment of 2,35,270 shares was received by Noticee 2.

Blank application form for making application in the IPO of SFEL (since copy of duly filled in application form of us tendered to RSL is not preserved by us), Certificate from the Banker dated 21.05.2014 confirming payment in the IPO of SFEL and copy of relevant transaction statement of Demat account of Noticee 2 showing credit of shares allotted to Noticee 2 are annexed as Exhibit – S, Exhibit – T and Exhibit – U (Page No. 154 to 157) respectively of Appeal Book.

(dd) One Bajaj Group (consisting of 10 entities) had bid for 43,68,240 shares and on the next day after the closure of the issue, they had withdrawn their bids/application for 11,22,720 shares by “stopped payment of cheques” and for 32,45,520 shares, bid applications were not banked. (Ref Para 8 on page 3 of Order dated 07.08.2013).

(ee) Similarly, another Bachawat Group (consisting of 7 entities) had made applications for 18,360 shares each which were withdrawn due to the reason of "Insufficient funds". (Ref. Para 7 and 8 on page 3 of Order dated 29.11.2013). The Adjudication proceedings were also initiated against them separately and they were exonerated from the allegations made against them and no penalty has been imposed. Hence, if their dealing in the IPO of VIL was considered normal and genuine, no allegation against Noticee 2 is sustainable in fact and in Law.

(ff) Up to 100% of the bids placed under the NII category were withdrawn in case of other syndicate and sub-syndicate members due to similar reasons like applications withdrawn/ Cheques not banked etc. which were similar to the reasons found for withdrawals for various applications made through the RSL. The details of such withdrawals through other sub-syndicate members are as follows:

<b>Name of Syndicate/Sub-syndicate members</b>	<b>No of Bids</b>	<b>No. of shares bid</b>	<b>No of shares rejected</b>	<b>% of rejection to the total bids of the broker</b>
Karvy Stock Broking Ltd.	10	43,68,240	43,68,240	100.00
Ashika Stock Broking Ltd.	5	18,36,480	18,36,480	100.00
Enam Securities Pvt. Ltd.	8	15,01,560	15,01,560	100.00
Motilal Oswal Securities Ltd.	23	12,81,240	11,72,160	91.49
Amit Jasani	6	12,24,000	12,24,000	100.00
Matalia Stock Broker Ltd.	63	7,64,400	7,64,400	100.00

(gg) These applicants included group entities of large corporate houses viz; Bajaj Group and Bachawat Group. These applications were much larger in size than the group companies of the Noticee (Rikhav Brokers Pvt. Ltd and AHL Investment Consultants Pvt. Ltd). As aforesaid, the proceedings against those applicants were initiated, conducted and disposed of without any punitive or regulatory action and no proceedings was initiated on or after the applicants of other Sub-Syndicate Members. Comparative data of such withdrawals vis-à-vis the other group of applicants is as follows:

<b>Group Name</b>	<b>No of entities</b>	<b>No of Shares bid</b>	<b>Reasons for Invalid Bids</b>
Bajaj Group	10	11,22,720	Stop Payment
Bajaj Group	7	32,45,520	Not Banked
Noticee and Group Company (Rikhav Brokers Pvt. Ltd and AHL	2	8,16,240	Stop Payment

Investment Consultants Pvt. Ltd).			
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- (hh) Noticee 2 has no connection with VIL, its promoters and/or its directors, with the Syndicate Member or the Lead Manager. Noticee 2 is also unconnected to Manba Investment & Securities Pvt. Ltd. and Manba Broking Services Pvt. Ltd.
- (ii) In the NII category, bids for a total of 1,56,71,160 shares were withdrawn, and in the RII category, bids for 1,31,35,200 shares were withdrawn / rejected, aggregating to total withdrawn/ rejected bids of 2,88,06,360 shares. On the other hand, Noticee 2 had only withdrawn bids worth 2,04,000 shares i.e. 0.71% of the total bids withdrawn/ rejected. Hence, bids withdrawn by Noticee 2 were too miniscule to have any impact on the market.
- (jj) Before the allotment, only the syndicate member of IPO has first right to access the subscription, no. of application not banked and the no. of cheques returned. In the case of VIL in spite the fact that large no. of applications had been withdrawn, not banked, cheque returned and withdrawn from the registrar before allotment, the Syndicate Member viz. Ashika Capital Ltd. have not taken any corrective action, to protect the investors.
- (kk) Despite cheques being returned, despite withdrawal of bids and despite technical rejections, the IPO was oversubscribed by 1.28 times. Further, SEBI has suppressed that 358 applications / bids for 16,71,360 shares were rejected for “technical” reasons.
- (ll) Application of Noticee 2 for 2,04,000 shares was a mere 0.49% of the total number of shares bid / applied for in the IPO of VIL. SEBI has wrongly attempted to inflate this by comparing application of Noticee 2 to the issue size. Further, there is no justification or basis or rationale to club the application of Manba with the application of Noticee 2. There is no connection or nexus between Noticee 2 and Manba, nor is there any



connection between Noticee 2 and VIL or its promoters, nor is the same even alleged.

(mm) SEBI has ignored its own finding that in the NII category, bids for a total of 1,56,71,160 shares were withdrawn, and in the RII category, bids for 1,31,35,200 shares were withdrawn / rejected. On the other hand, Noticee 2 bid / withdrawal was for only 2,04,000 shares i.e. 0.49% of the total bids withdrawn.

(nn)Ld. AO, SEBI has observed that the making of bids and subsequent withdrawal of the same by is not per - se fraudulent. Relevant Extract is reproduced herein for your kind perusal: (Ref. Para 20, Page No. 12 of the said Order dated 24.04.2014).

(oo)It is wholly untenable for any authority to arrive at a finding of 'fraud' solely on the basis that Noticee 2 dealt in scrip of VIL.

22. During the hearing conducted by videoconferencing on 20.01.2022, the Authorised Representative of Noticee 2, Mr. Kushal Shah, reiterated the submissions made in its reply.

23. Further, vide post-hearing submissions dated 22.01.2022, Noticee 2 submitted the following:-

(a) On the subject matter of the proceedings it is submitted that the reason for drawing adverse inference against Noticee 2 was pertaining to the allegation that Noticee 2 had placed its bids without having sufficient funds since Noticee 2 had allegedly failed to provide the proof of the same.

(b) Noticee 2 made the application of IPO of VIL on the basis on funds available in its Bank Account, Amount due on demand from M/s Shreeji Darshan Enterprise of around Rs 1.80 crores and also surplus funds of around Rs 1.97 crores lying with M/s Total Holding & Finvest Private Limited, a NBFC company registered with RBI which altogether was approximately 4 crores. Further, by certificate dated 17.08.2016, M/s Mayur B. Mehta, Chartered Accounts, the statutory auditor of AHL

Investment Consultant Pvt. Ltd. has inter alia certified that during the period 26.04.2011 to 06.05.2011 Noticee 2 had adequate funds/resources to honour the cheque of Rs 99,96,000/-. Relevant Extract from the same is reproduced herein under: (Ref. Submission of Documents dated 23.08.2016, Exhibit B, Annexure – 15, Page No. 338 to 340 of Annexure – 3 of our Additional Submissions)-

*“On perusal of the Books of Accounts and other records, we certify that during the period from 26.04.2011 to 06.05.2011, AHL had adequate funds/resources available with it to honour cheque No. 547127 dated 03/05.2011 for Rs. 99,96,000/- issued in favour of “Escrow Account – Vaswani – R” from its Bank Account Number 005027110000014 maintained with Bank of India, Mulund – (East) Branch, if presented for Payment/clearance.”*

24. Noticee 3 i.e. Manba Investments & Securities Pvt. Ltd. vide reply dated 15.01.2022 submitted the following:-

- (a) The present matter is more than 10 (Ten) years post the IPO of VIL. Therefore, it is extremely difficult to locate each and every paper pertaining to the matter and great prejudice is caused to us to defend their case at this stage and on this ground only SCN deserves to be dismissed at the threshold itself. Even after the matter was remanded back by the Hon’ble Tribunal and pursuant thereto, the opportunity for hearing is given to Noticee 3 after more than 5 years.
- (b) Manba Investment and Securities Private Limited incorporated on 13.03.2001 as a private limited company under the Companies Act, 1956 and registered with the Registrar of Companies, Mumbai. Noticee 2 is part of “Manba group” engaged in the business of finance, investment and trading in the capital market for last more than a decade.
- (c) At present Mr. Manish Kiritkumar Shah and Mrs. Nikita Manish Shah are the directors of the Company. Pertinently, Noticee 3 is functioning as a law abiding entity/ person with a clean and unblemished track

record and have never been penalized by SEBI for any violation of the SEBI Act and rules & regulations framed thereunder, save and except the present proceedings.

- (d) On 29.04.2011, Noticee 3 had submitted an application dated 03.05.2011 in the IPO of VIL in the Non-Institutional Investor category ('NII') for 4,08,120 shares and had tendered cheque for Rs.1,99,97,880/- to the sub – syndicate member i.e. RSL. The said application dated 03.05.2011 were submitted on 29.04.2011 for the reason as stated herein under:

*“.....only to avoid last minute hassle/rush without any desire to bid the application on the first day itself....”*

- (e) At the time of submitting applications, Noticee 3 genuinely desired to get allotment of VIL shares and gain profit on the listing of the VIL shares.
- (f) However subsequently, on closure of VIL issue, it was known from exchange website that the Qualified Institutional Bidders (“QIB”) who are the guiding factors for other investors, have hardly subscribed to the issue and further from market whispers, Noticee 3 realized that the issue of VIL is not worth applying. Since as a policy, Noticee 3 is very conservative in making investment decisions and particularly in a grimy situation that prevailed during the relevant time, Noticee 3 became over cautious. Therefore on 04.05.2011, Noticee 3 decided to withdraw its application and for that purpose Noticee 3 approached RSL, the Sub Syndicate member conveying the decision of Noticee 3 in writing to withdraw the application.
- (g) Pursuant to the Application of Noticee 3 in the IPO of VIL in the NII category, various factors came to our knowledge w.r.t the IPO of VIL which was not considered while putting in the application.
- (h) Under the securities law, a bid is not an offer. It only becomes an offer when it is complete in all respects, including the receipt of the subscription amount. Until that time, it is only an indication and has no legal implications or consequences whatsoever.

- (i) Under the India Contract Act, 1872, it is stated that an offer can be withdrawn before its acceptance. Bid, which is not even an offer, can always be withdrawn unless specifically prohibited in the special law.
- (j) Regulation 86(3) of ICDR Regulations imposes a restriction on QIB from withdrawing their bids after the closure of issue. However, no such restriction is imposed on investors in NII and Retail Institutional Investor ("RII") category. Other than these, it is legal for others to withdraw the bid as permissible under the general law, the special law and the offer document.
- (k) Whilst the Red Herring Prospectus ('RHP') of VIL at page 204 prohibited QIBs from withdrawing from the issue after closure, no such restriction was imposed upon NIIs and RIIs. (Ref. Exhibit – 15 on Page No. 144 of Appeal Book). It is on record that in the IPO of VIL for 2,785 bid Applications cheques were returned and 666 bid Applications were not banked (Ref. Page No. 18 and 19 of the Investigation Report). Hence, Noticee 3 is not the only one but large number of applicants withdrew their applications on account of under-subscription in the QIB Category which came to the knowledge only after the closure of the issue.
- (l) Every IPO witnesses' withdrawals, though the extent varies. This does not necessarily mean that the investors/applicants inflate the order book market, only to withdraw afterwards. Besides, there is no way to distinguish between heavy withdrawal and not-so-heavy withdrawal and attribute heavy withdrawal to inflated market. The extent of withdrawal depends mainly on the response of QIBs to the IPO, and to some extent on emergence of new investment opportunities and developments affecting the issuer in the meantime.
- (m) It is a right of NIIs / RIIs to bid and withdraw their bids and they exercise their right in every IPO.
- (n) The withdrawal of bids takes different forms. The applicants:
  - I. may ask the sub-syndicate member to withdraw the bids or not to bank cheques;

- II. do not make available adequate balance in their account so that the cheques get dishonored;
  - III. issue 'stop payment' instruction to their respective banks,
  - IV. approach RTI to withdraw the applications
- (o) During the relevant time, withdrawal of an application under HNI category was permissible under ICDR regulations. Hence the aforesaid act and activity was permissible, legitimate and not in violation of any provision of law as applicable to them as an investor of stock market.
- (p) On perusal of the details furnished in the tabular format on page 19 of the Investigation Report pertaining to the applications received under NII category, it is noticed as under:

Details of Applications under NII category

Sr. No.		Particulars	No. of Shares	No. of Shares
1		Total Subscription received		1,69,30,800
	1.a	Applications which are not banked	41,01,960	
	1.b	Application for which cheque returned	1,09,63,200	
	1.c	Withdrawals/Technical rejections	6,06,000	
2		Total withdrawals		1,56,71,160
3		Applications considered for allotment		12,59,640

- (q) On perusal of the above details, it is submitted that out of the total subscription of 1,69,30,800 shares, Noticee 3 had made application for only 4,08,120 shares which comes to 2.41% of the total subscription received in NII category. Further out of the total withdrawals of 1,56,71,160 shares, withdrawal ratio of Noticee 3 comes to 2.60%. Hence it is minuscule % to have impact in the subscription and

withdrawal of applications in the IPO of VIL. Further Noticee 3 had merely followed the market trend and had no other interest, motive or intention while applying and withdrawing application in IPO of VIL.

- (r) Noticee 3 had no connection with RSL-Sub syndicate member, ACL-Syndicate member/Merchant Banker and VIL Issuer company and other noticees.
- (s) As a market practice, Noticee 3 submitted its application at the cap price, in line with all other NII applications so as to get allotment of shares at the then determined issue price.
- (t) During the course of Investigation conducted by SEBI Noticee 3 had submitted various documents w.r.t Bank statements for the relevant period.
- (u) after perusal of the documents / information / data, the investigation findings as recorded are reproduced as under.
- (v) Ref. Page No. 45 of the Investigation Report:

*“d. The major shareholders and directors of the Manba group companies are Mr. Manish K. Shah and Mrs. Nikita M. Shah who together hold 95% of shareholding in the company. Statement of Manba group entities was recorded and they stated that they were into investments in IPOs and on the basis of their own analysis of the prospectus for the issue as well as the company/its directors they decide to invest in an issue. In the case of VIL they had decided to invest in the issue but subsequently due to bad conditions in the market and the fact that there were indications in the market that issue was not very good and in order to save their capital they decided to withdraw their applications. Vide their letters dated 4.5.2011 they had placed their withdrawal request with Rikhav citing that due to some reason they do not wish to apply in the issue. Analysis of their bank account statements revealed that at the time of making the application there was sufficient balance in their accounts. Manba group had a client broker relationship with Rikhav. The explanation of the Manba group that market conditions had become bad does not hold good as*

*no major deterioration in the market conditions were observed subsequent to these days of bidding. Also by their own admission they used to invest only after studying the.....”*

- (w) Vide letter dated 31.05.2014, the Branch Manager; Saraswat bank inter alia stated that “... *Having current Account Number CAPUB 1087 In Favour of “Escrow Account- Vaswani – R” would have been cleared on presentation, if it had come to us for the clearance Between 29/04/2011 to 10/05/2011, considering available balance / funds in their group bank accounts maintained satisfactory with us.*” to prove that Noticee 3 had adequate funds available with us at the time of making application in IPO of VIL. (Ref. Exhibit – 18A, Page No. 170 of Appeal Book).
- (x) In the course of proceedings initiated against us, SEBI had inter alia stated that Noticee 3 had available funds for making the said application in the said IPO of VIL. The details of fund availability along with documents were duly furnished. Further merely because the bank account balances were lesser than bid price, can never lead to any conclusion that Noticee 3 did not have the required funds. Noticee 3 also furnished a letter/ certificate from Saraswat bank.
- (y) Noticee 3 had no connection with VIL, its promoters and/or its directors. Further, we have no relation with the Syndicate Member or the Lead Manager. Pertinently, Noticee 3 was not even connected to Rikhav Brokers Pvt. Ltd and AHL Investment consultants Pvt. Ltd. (Co-Noticees to the SCN).
- (z) Out of total withdrawn / rejected bids of 2,88,06,360 shares, Noticee 3 had only withdrawn bids worth 4,08,120 shares. Hence, its bids withdrawn were too miniscule to have any impact on the market.

25. During the hearing conducted by videoconferencing on 20.01.2022 the Authorised Representative of Noticees 3 and 4, Mr. Prakash Shah, Advocate, reiterated the written reply of Noticees 3 and 4.

26. Further, vide post-hearing submissions dated 25.01.2022, Noticee 3 submitted the following:-

- (a) In Para 6, Internal Page No. 3 of the SCN it is incorrectly mentioned that we have “..... *made the bid application in the said IPO through the terminal of said sub-syndicate member*”. In this regard, Noticee 3 stated that it had not bid the application through the terminal of Sub syndicate member since in its understanding terminal id is never used by investor. In fact Noticee 3 had submitted application physically to sub-syndicate member viz Rikhav Securities Ltd (“RSL”).
- (b) In the table under Para 6 of the SCN, details of day - wise bids in the IPO of VIL and subsequent withdrawal/ rejection is tabulated. In this regard, it is pertinent to mention that the names of Reeta Jain, Indira Jain & Shahrukhkhan Sharfazakha (“SS”) are also mentioned and the said persons are not part of the present proceedings even though the reason of withdrawal/rejection was “Chq Returned”. Pertinently SS had applied for 6,12,240 shares which is higher than its bid of 4,08,120 shares. Hence, Noticee 3 submitted that there is a pick and choose method in initiating present proceedings against Noticee 3.
- (c) Application of Noticee 3 is dated 03.05.2011 (Ref Exhibit – 2A on page No. 51 of Appeal Book) and not 29.04.2011 as mentioned in table under Para 6 of the SCN. For ready references, a copy of acknowledgement slip for Bidder dated 03.05.2011 is enclosed hereto mark as Annexure – “1”.
- (d) Vide letter dated 04.05.2011 addressed to RSL Noticee 3 had conveyed that it did not want to apply for the said application and hence requested them to not to do banking of the said application and return it to Noticee 3. It is pertinent to mention that no objection/grievance was raised by RSL on the same and no query as to why Noticee 3 was withdrawing the application was raised by them as the circumstances prevalent at the relevant time were very well known to them also. For ready reference, the aforesaid letter dated



04.05.2011 written to RSL on the subject “Non-submission of Application” is enclosed hereto marked as Annexure – “2”.

- (e) It is pertinent to mention that the said application was also not forwarded to escrow bankers.
- (f) Under Para 7 of the SCN, it is incorrectly mentioned that “...*Noticee No. 3 & 4 placed bids for 816240 shares which also contributed to 8.16% of the total issue size...*” In fact, Bids were registered for 4,18,54,920 shares against issue size of 1 crore. (Ref. Annexure – II of SCN). Hence contribution of Noticee 3 ought to be considered as 1.95% instead of 8.16% as alleged in the SCN. Therefore, Noticee 3 stated that exaggeration is made in the SCN since in its view instead of issue size, total bidding ought to have been considered for comparing its contribution in the Bid.
- (g) Para 8 of the SCN is totally based on surmises and conjectures without any supporting documents and evidence. Further, it is erroneously alleged in the SCN that Noticee 3 in concert with the said syndicate member placed bids with prior design to withdraw the application. In this regard, Noticee 3 placed reliance on Page 45 of the Investigation Report (Ref Page 141 of the Appeal Book), wherein it is mentioned that “...*Rikhav Brokers Pvt. Ltd. and AHL Investment Consultants Pvt Ltd. have acted in concert with Rikhav in order to give misleading appearance of subscription in the issue and bid at the highest price band.*” Hence, there is contradiction indicating inconsistencies in the findings of the Investigation Report and the SCN. In fact, no allegation of acting in concert with RSL can be levelled against Noticee 3, since it had purely Broker-client relationship with them.
- (h) In response to Para 9 of the SCN, it was stated that the Para was misdirected towards Noticee 3 as the said Para pertained to bidding done by various entities in totality. On perusal of the Annexure – 1 of the SCN, Noticee 2 understood that proceedings were initiated against large number of entities. However on perusal of the SEBI’s website, it was understood that proceedings against almost all persons / entities

mentioned in Annexure – 1 of the SCN were dropped and they were discharged without issuing any directions against them.

- (i) Noticee 3 had applied in NII category wherein 15,00,000 shares were offered and the subscription received was 1,69,30,800 i.e. 11.29 times the issue was subscribed. Incidentally the total withdrawals / technical rejections were 1,56,71,160 shares which included applications not banked, cheques returned, withdrawals and technical rejections. Thus, Noticee 3 was amongst large number of persons / entities who had withdrawn / rejected application. Hence no adverse inferences be drawn against Noticee 3.
- (j) In the Annexure II of the SCN, it is mentioned that 666 applications for 63,92,040 equity shares which were figuring in bid file but the concerned application has not been received through any of escrow bankers. However no details has been provided in the SCN about any action taken against them.
- (k) The SCN does not anywhere mention what is or should be a bidding pattern or the other relevant circumstances. Be the case as it may, bidding pattern and also relevant circumstances do not suggest anything abnormal as alleged in the SCN or otherwise.
- (l) In Para 22 of the said Order, it is mentioned that Noticee 3 had not provided Bank statements. During investigation conducted by SEBI, Noticee 3 were summoned to appear before the Investigation Officer, SEBI. During Statement recording, under covering letter dated 03.12.2012, Noticee 3 had submitted the bank statements which were directed to submit as mentioned in the summons. For ready references, a copy of the summons dated 30.11.2012 and copy of Noticee 3 reply dated 03.12.2012 were enclosed hereto marked as Annexure – “3” and Annexure – “4” to the reply respectively.
- (m) Further, SCN does not place on record the statement recorded of Noticee 3's authorized representative viz. Mr. Jay K. Mota, rather it places reliance on statement recorded of Mr. Hitesh Lakhani, which is part of Annexure – III of the SCN. Further, if reliance was placed on the

statement recorded of Mr. Hitesh Lakhani then, in the interest of justice, Noticee 3 should be given an opportunity to cross examine him so as to seek clarification on the allegations levelled in the SCN against us. These itself will provide Noticee 3 an opportunity to prove and establish that allegation levelled against Noticee 3 are untenable.

- (n) The statement recorded of Noticee 3 authorized representative i.e. Mr. Jay K. Mota has not been provided to Noticee 3.
- (o) Bank certificate dated 30.09.2013 issued by Branch Manager of Saraswat Bank states that *"This is to certify that Cheque No. 160607 of Rs. 1,99,97,880/- dated April 29, 2011 issued by Manba Investment & Securities Pvt Ltd in favour of "Escrow Account – Vaswani – R" would have been cleared on presentation, if it had come to us for the clearance on 6<sup>th</sup> May, 2011, considering available balance/funds in their group bank accounts maintained satisfactorily with us."* (Ref Page No. 57 of Appeal Book). This certificate also proves that Noticee 3 maintained sufficient balance in its bank account and was capable of honouring its payment if the said cheque was presented for payment. For ready reference a copy of the above referred certificate dated 30.09.2013 issued by The Branch Manager of Saraswat Bank Ltd. is enclosed hereto marked as Annexure – "5".
- (p) Pursuant to passing of the Adjudication Order dated 25.04.2014 Noticee 3 had approached the Branch Manager of Saraswat Bank and he had issued another certificate. Therein it is inter alia mentioned that relevant cheque *"..... would have been cleared on presentation, if it had come to us for the clearance Between 29/04/2011 to 10/05/2011, considering available balance / funds in their group bank accounts maintained satisfactory with us."* (Ref. Exhibit – 18A, Page No. 170 of Appeal Book). For ready reference, a copy of aforesaid certificate dated 31.05.2014 issued by Branch Manager; Mulund (E) Branch, Saraswat Bank Ltd. is enclosed hereto marked as Annexure – "6".
- (q) Further the Investigation Report of SEBI itself mentioned that *"...Analysis of their bank account statements revealed that at the time*

*of making the application there was sufficient balance in their accounts. Manba group had a client broker relationship with Rikhav...*" (Ref Page No. 141 of Appeal Book). The aforesaid investigation report of SEBI authenticates that Noticee 3 had sufficient bank balance. For ready reference relevant Page No. 45 of investigation report was enclosed hereto marked as Annexure – "7".

- (r) Under Para 23 of the said Adjudication Order, it is mentioned that the bank certificate did not mention Bank Account Number of the Noticee. The certificate was issued by Saraswat Bank hence any clarification required on the said certificate should have been asked from Noticee 3 or from Saraswat Bank or the branch manager should have been summoned to give clarification as provided u/r 4(6) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.
- (s) Bank Account number CAPUB/1087 of Noticee 3 is mentioned in the statement submitted by us to Investigating Officer, SEBI.
- (t) Noticee 3 had applied for the shares in the IPO of VIL in good faith. Pertinently, because of the changes in the market situation, Noticee 3 had issued instructions to RSL to not Bank the Application as permissible under SEBI (ICDR) Regulations, 2009.
- (u) It was only one solitary instance of applying and withdrawal in the IPO of VIL and such act or behavior is not repetitive in nature.

27. Noticee 4 vide its reply dated 15.01.2022 made submissions identical to those made by Noticee 3, with the following additional averments:-

- (a) Avalon Advisory and Consultant Services Pvt. Ltd. was incorporated on 16.03.2006 as a private limited company under the Companies Act, 1956 and registered with the Registrar of Companies, Mumbai.
- (b) Noticee 4 is part of "Manba group" engaged in the business of finance, investment and trading in the capital market for last more than a decade.

- (c) Mr. Manish Kiritkumar Shah and Mrs. Nikita Manish Shah are the directors of the Company. Pertinently, Noticee 4 is functioning as a law abiding entity/ person with a clean and unblemished track record and have never been penalized by SEBI for any violation of the SEBI Act and rules & regulations framed thereunder, save and except the present proceedings.
- (d) On 29.04.2011, Noticee 4 had submitted an application dated 03.05.2011 in the IPO of VIL in the Non-Institutional Investor category ('NII') for 4,08,120 shares and had tendered cheque for Rs.1,99,97,880/- to the sub – syndicate member i.e. RSL. The said application dated 03.05.2011 were submitted on 29.04.2011 *only to avoid last minute hassle/rush without any desire to bid the application on the first day itself. Ref. Exhibit 3B, Unnumbered Para – 2, Page No. 58 to 60 @ Page No. 58 of Appeal Book).*
- (e) At the time of submitting applications, Noticee 4 genuinely desired to get allotment of VIL shares and gain profit on the listing of the VIL shares.
- (f) However subsequently, on closure of VIL issue, it was known from exchange website that the Qualified Institutional Bidders ("QIB") who are the guiding factors for other investors, have hardly subscribed to the issue and further from market whispers, Noticee 4 realized that the issue of VIL is not worth applying. Since as a policy, Noticee 4 is very conservative in making investment decisions and particularly in a grimy situation that prevailed during the relevant time, Noticee 4 became over cautious. Therefore on 04.05.2011, Noticee 4 decided to withdraw its application and for that purpose it approached RSL, the Sub Syndicate member conveying its decision in writing to withdraw the application.
- (g) Out of the total subscription of 1,69,30,800 shares, Noticee 4 had made application for only 4,08,120 shares which comes to 2.41% of the total subscription received in NII category. Further out of the total withdrawals of 1,56,71,160 shares, its withdrawal ratio comes to 2.60%. Hence it is minuscule % to have impact in the subscription and

withdrawal of applications in the IPO of VIL. Further Noticee 4 had merely followed the market trend and had no other interest.

- (h) Findings of investigation in respect of Noticee 4 stated that “Analysis of their bank account statements revealed that at the time of making the application there was sufficient balance in their accounts”.
- (i) Vide letter dated 31.05.2014, the Branch Manager; Saraswat bank has inter alia stated that “... Having current Account Number CAPUB 1394 In Favour of “Escrow Account- Vaswani – R” would have been cleared on presentation, if it had come to us for the clearance Between 29/04/2011 to 10/05/2011, considering available balance / funds in their group bank accounts maintained satisfactory with us.” to prove that Noticee 4 had adequate funds available with it at the time of making application in IPO of VIL. (Ref. Exhibit – 18B, Page No. 171 of Appeal Book).

28. Vide post-hearing submissions, Noticee 4 made averments identical to those by Noticee 3 after the hearing on 20.01.2022.
29. In the light of the allegations contained in the SCN, the Noticee’s submissions in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

## **CONSIDERATION OF ISSUES AND FINDINGS**

30. The issues arising for consideration in the instant proceedings are:-
- I. Whether the Noticees violated provisions of Section 12 (a), (b) and (c) of the SEBI Act and Regulations 3 (b), (d) and 4 (1) and (2) (a) and (b) of the PFUTP Regulations
  - II. If yes, whether the Noticees is liable for imposition of monetary penalty under Section 15 HA of the SEBI act

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

**I. Whether the provisions of Section 12 (a), (b) and (c) of the SEBI Act and Regulations 3 (b), (d) and 4 (1) and (2) (a) and (b) of the PFUTP Regulations have been violated by the Noticees?**

31. The Noticees have made a preliminary contention that more than 10 years have elapsed since the date of the IPO. Further, opportunity of hearing was granted nearly 5 years after the matter was remanded by SAT on 10.08.2016. In this regard, I take note of the procedural delay in the matter after it was remanded by SAT.
32. The allegations levelled against the Noticees arise from the bids they placed during the IPO of VIL, which were subsequently withdrawn by them. It is alleged that they inflated the bid book and created misleading appearance of bidding. Noticee 1 placed the first bid on 29.04.2011 for 6,12,240 shares at the upper end of the price band of Rs. 45-49 per share, allegedly without having sufficient funds to make payment for the shares, and subsequently withdrew the bid. Noticee 2 placed bids for 204000 shares of VIL at 15:35:32 hrs on 29.04.2011, but withdrew the same as the cheque for payment was returned. The sub-syndicate member Rikhav Securities Limited ("RSL") and Noticee 2 had common directors, and Noticee 1 and Noticee 2 also had common directors, and were thus connected. Noticees 3 and 4 placed their bids at 13:37:03 hrs and 13:37:04 hrs for 408120 shares each, but the cheques were not banked as the applications were stopped by the Notices 3 and 4 before forwarding the cheques to the escrow banker. The bid applications by Noticees 1- 4 for shares in the IPO of VIL amounted to a substantial 16.32% of the issue size at the upper end of the price band. Oversubscription levels on closure of bids was 0.16 times for QIBs, 11.29 times for NIIs and 6.82 times for RIIs. However, after taking into account returned cheques, withdrawn bids and technical rejections,

oversubscription fell to 1.28 times and the issue price was fixed at Rs. 49 per share.

33. SAT, while remanding the matter to SEBI in its order of 10.08.2016, stated in para. 5-7 of its order that while the appellant/Noticee had contended that they had sufficient funds to subscribe to shares of VIL during its IPO, they failed to furnish proof to establish their claim before the Adjudicating Officer. However, during the hearing before the SAT, the Noticees, relying on a bank statement annexed to the memo of appeal and a bank certificate annexed to the affidavit in rejoinder, submitted that due to *bonafide* reasons the said documents could not be furnished to the AO. The SAT further held in para 8 as follows:

*“8. Admittedly, the AO of SEBI had no occasion to consider the aforesaid documents which are sought to be furnished for the first time before this Tribunal. Apart from the above, in para 18 of the impugned order, the AO has recorded the plea of the appellants in relation to the adjudication order passed in case of Bajaj Group (consisting of 10 entities and Bachawat Group (consisting of 7 entities). Admittedly, those two groups were the major applicants who had participated in the bid and had withdrawn their application like the appellants. It is the case of the appellants that as those group entities are exonerated, the appellants also ought to have been exonerated, because the case of the appellants is similar to the case of the above two group entities. On perusal of the impugned order, it is seen that the AO has not recorded any finding as to how the case of the appellant is different from those two group entities”*

34. In the context of the aforesaid observations by SAT, I note that a group of 7 entities including Sunil Mangilal Bachawat HUF entered bids on 02.05.2011 between 10:12 am to 10:40 am in the NII category through sub-syndicate member KGR Securities Ltd., and then withdrew cheques due to unexpectedly early presentment of cheques. In adjudication order dated 29.11.2013, the AO absolved the said group of entities from liability under the FUTP Regulations and the SEBI Act for bid-book inflation, considering the fact that the said entities



had sufficient funds to honour their bid applications and one of the entities Sunil M Bachawat was allotted 18,360 shares in the IPO.

35. Similarly, in order dated 07.08.2013, Vinodkumar Bajaj and Company HUF and a group of 9 other related entities who applied for shares of VIL in its IPO on 03.05.2011 through Karvy Stock Broking Ltd. were absolved from liability under the FUTP Regulations and the SEBI Act for bid-book inflation, as they were able to demonstrate that they had sufficient funds to honour their bid applications, and that their bids placed on 03.05.2011 towards the end of the day i.e. at the time of closure of the issue could not have impacted investment decisions of any ordinary investors.
36. In the order dated 25.04.2014 in respect of Noticees 1 to 4, AO held that *“Failure on the part of Noticee No. 1 & 2 in providing proof of availability of sufficient funds with them during the said bidding process, and the Noticee No. 3 & 4 not having the sufficient funds with them during bidding process as observed from aforesaid Bank statements coupled with the fact that Noticee No. 3 & 4 did not bank their cheque/application at all, clearly shows that their bid applications in the IPO of VIL were not genuinely made, but were made in order to withdraw at later stage with the object to artificially inflate the bid book and to create misleading appearance of bidding.”*
37. I have carefully gone through the submissions of the Noticees in the above context. I note that Noticees 1 and 2 have not denied that they are group companies of the sub-syndicate member RSL. Noticees 3 and 4 have averred that no allegation of connection with the sub-syndicate member (RSL) or the company VIL has been made out against them. I further take note of the Noticee’s submission that collusion with RSL, was implied on account of a statement of Mr. Hitesh Lakhani instead of Mr. Jay K. Mota who was the authorised Representative of Noticees 3 and 4, that no opportunity to cross-examine Mr. Hitesh Lakhani has been provided to them, and that the statement of Mr. Jay Mota has not been provided to them. I note that Noticee 2 and RSL, as well as Noticee 2 and Noticee 1 have been found to be connected on

account of common directors listed in letters from Noticees 1 and 2, at Annexures IV and V of the SCN. Therefore, the Noticees' argument that cross-examination of Mr. Lakhani was required to be provided is not acceptable.

38. I also take note of the submission of Noticee 3 that its bid application was dated 03.05.2011 and not 29.04.2011.
39. With regard to there being no prohibition on the Noticees from withdrawing their bids after closure of issue as per Regulation 86 (3) of then applicable ICDR Regulations, I note that as per sub-clause (i) of clause (12) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 ("ICDR Regulations") stated during the relevant period (upto 12.10.2012 when it was amended) that "*The investors may revise their bids*". Further, as per sub-clause (j) of clause (12) as it then read, "*The qualified institutional buyers shall not withdraw their bids after closure of bidding.*" Thus, NIIIs such as the Noticees were not barred from withdrawing their bids at the relevant time.
40. The Noticees have provided bank account statements, CA certificates and balance confirmation certificates to support their contention that they had sufficient funds at their disposal to honour the cheques they issued for payment in respect of their IPO applications. A copy of the bank certificate dated 27.06.2014 issued by Bank of India Tambe Nagar Branch for Noticee 1 for the period between 26.04.2011 to 06.05.2011 certified that considering their account balance and temporary overdraft facility of Rs. 3.6 crores available to Noticee1, it had sufficient funds to honour the cheque of Rs. 2,99,99,760 issued in favour of "Escrow Account – Vaswani – R". I take note of the Chartered Accountant's certificate dated 27.08.2016 produced by the Noticee 1, stating that Noticee 1 had adequate funds available with it during the period from 26.04.2011 to 06.05.2011 to honour cheque no. 000524 dated 29.04.2011 for Rs. 2,99,99,760/- issued in favour of Escrow Account-Vaswani from its bank account maintained with Bank of India, Tambe Nagar Branch, Mulund East, Mumbai, if presented for payment.

41. From Annexure 3 to the Noticee 1's reply dated 16.09.2021 I further note that as on 29.04.2011, Noticee 1 had Rs. 88,473.28 in its bank account with HDFC Bank, received Rs. 5,00,000 in the HDFC account on 30.04.2011, and the account balance on 02.05.2011 and 03.05.2011 (issue closure date) was Rs. 88,473.28 only. However, Annexure 9 to the Noticee's reply dated 16.09.2021 contains a copy of letter dated 27.06.2014 from Bank of India confirming that in two accounts of the Noticee 1, balances of Rs. 40,547.89 and Rs. 4,23,995.34 (i.e. a total of Rs. 4,64,543.23) were available everyday from 29.04.2011 to 06.05.2011. Further, Bank of India letter states that the Noticee was entitled to "temporary overdraft facility" (TOD) of Rs. 180 lacs in each account (i.e. a total of Rs. 360 lacs/Rs. 3.6 crores) if required to honour the cheque issued by Noticee 1. Therefore, I accept the submission of Noticee 1 that during the IPO, the Noticee had sufficient funds in its Bank of India accounts, taking into consideration the temporary overdraft facility, to honour the cheque of Rs. 2,99,99,760 to pay for the 6,12,240 shares it had bid for on 29.04.2011.
42. In respect of Noticee 2, Exhibit T of the Memorandum of Appeal filed by the said Noticee against SEBI's adjudication order dated 25.04.2014 consists of the said Noticee's bank statement in its Bank of India Mulund East Branch certifying that a cheque no. 547129 for Rs. 1,99,97,950/- favouring ESCR-SFEL-R" was debited to its Overdraft Account on 12.05.2011. Further, CA certificate dated 14.07.2014 was produced, certifying that adequate funds/resources were available to honour cheque no. 547127 dated 03.05.2011 for Rs. 99,96,000/- in favour of Escrow Account-Vaswani-R", as AHL/Noticee 2 was to receive on demand a sum of Rs 3.50 crore as on 25.04.2011 from M/s. Shreeji Darshan Enterprises, of which Rs. 1 crore was received on 26.04.2011, Rs. 70 lakhs on 30.04.2011 and Rs. 1 crore again on 06.05.2011 through RTGS. A copy of the ledger confirmation of Shreeji Darshan Enterprises was also provided in support of the CA certificate. Noticee 2 also explained that immediately after withdrawing its application in PO of VIL, it applied for 2,35,270 shares in the IPO of Sanghvi Forging and Engineering which had opened on 04.05.2011 and issued cheque no. 547129 of Rs. 1,99,97,950/- from its account with Bank of

India which was also used to issue cheque for bid application for IPO of VIL. Hence, I accept the contention of Noticee 2 that it had sufficient funds to honour the cheque of Rs. 99,96,000 issued by it against its bids.

43. Noticee 3 submitted a copy of certificate dated 30.09.2013 issued by Saraswat Bank Ltd. at Annexure 5 to its reply dated 25.01.2022, certifying that Cheque No. 160607 of Rs. 1,99,97,880 dated 29.04.2011 issued by Noticee 3 in favour of “Escrow Account – Vaswani –R” would have been cleared on presentation if had been presented for payment on 06.05.2011 considering available balance/funds in their group bank accounts maintained with it. Notices 3 and 4 have also submitted that page 45 of SEBI’s investigation report in the matter itself records that an analysis of their bank account statements revealed that at the time of making the application there was sufficient balance in their accounts (Annexure 7 of reply dated 25.01.22). A copy of the bank statement of the Manba Group for 01.05.2011 to 10.05.2011 submitted by them to SEBI vide letter dated 03.12.2012 was also produced (Annexure 4 to reply dated 25.01.22), which also shows that on the date of closure of the IPO, Noticee 3 had more than Rs. 2 crore in its bank account, sufficient to honour its cheque for bid of shares in the IPO of VIL.
44. The bank statement submitted by Noticee 4 at Annexure 4 to its reply dated 25.01.22 shows that it had a balance of approximately Rs. 2 crores on 07.05.2011. Further, Saraswat Bank, vide letter dated 30.09.13, had certified that the cheque no. 155165 for Rs. 1,99,97,880 dated 29.04.11 issued by Noticee 4 in favour of “Escrow-Vaswani-R” would have been cleared on presentation anytime between 29.04.11 and 10.05.11, considering available balance/funds in their group bank accounts.
45. I also take note of the submissions by Noticees that in the IPO of VIL for 2,785 bid Applications cheques were returned and 666 bid Applications were not banked, and that past experience showed that bulk of the IPO Investors traditionally bid at the highest price of the price band, as anyone who bid at less

than the highest price in the prescribed price belt would have got no allotment of shares. This was evident from an analysis of data of 66 IPOs during the period from July 2009 till April 2011 where the allotment was done at the highest price range of the Price band. I also take note of Noticee's submission that NIIs were not allowed to bid at the cut-off price, and that they bid at the highest possible price in the price-band to ensure a better chance of allotment.

46. With regard to the bids placed by the Noticees, the bid of Noticee 1 was the first one placed on 29.04.2011 and at the highest level of the price band of Rs. 45-49. The bid for 6,12,240 shares constituted 2.13% of the total bids withdrawn/ rejected and 1.47% of the total number of shares bid / applied for in the IPO of VIL. Similarly, Noticee 2 had withdrawn bids worth 2,04,000 shares i.e. 0.71% of the total bids withdrawn/ rejected and 0.49% of the total number of shares bid / applied for in the IPO of VIL. Noticee 3 and 4 both made application for only 4,08,120 shares which comes to 2.41% of the total subscription received in NII category. Out of the total withdrawals of 1,56,71,160 shares, withdrawal ratio of Noticee 3 and 4 each comes to 2.60%. Further, the Noticees cases are not different from those of the Bajaj Group and the Bachawat group entities described earlier.
47. While Noticees 1 and 2 are connected to each other, no connection is established of Noticees 1 and 2 with Noticees 3, 4 or with VIL. The bids withdrawn by them were individually not significant enough to artificially inflate the demand for IPO. I take note of Noticee's submission that their bids were amongst a total of 137 invalid applications in the NII category in the IPO of VIL (Annexure 6 on page 193 of spiral bound compilation of pleadings and documents – Annexure 2 to reply dated 16.09.2021) and 121 applications invalid due to "Cheque Returned". Of 87 HNI/NII applications on 29.04.2011, 80 including 1 application of the Noticee were invalid due to Cheque Returned, as per Annexures 4-7 of the spiral bound compilation of pleadings and documents (Annexure 2 to reply dated 16.09.2021).

48. The Noticees have submitted that they issued stop-payment instructions to their bankers or recalled their cheques issued in the IPO of VIL, because of factors which came to the knowledge of the Noticees after closure of issue, such as news about the soundness of VIL, undersubscription by QIBs, investors withdrawing applications, and good alternative opportunity for investment in the issue of Power Finance Corporation Ltd. The Noticees have submitted that withdrawal of bids was a market-wide phenomenon in the IPO of VIL, and negative news about the company VIL and undersubscription by the QIBs coupled with knowledge of alternative and better investment avenues motivated the Noticees to withdraw its bids.
49. The Noticees have also brought on record negative media reports about VIL which had been published during its IPO, indicating that there were likely to have been genuine reasons for withdrawal of bids by the Noticees. Exhibits 2A and 2B at page 339 of Annexure 2 to reply dated 16.09.2021 contain copies of media reports dated 03.05.2011 (issue closing date) which, based on an examination of the fundamentals of the company and the objects of the issue, stated that *“capacity utilisation was at a low 53% for sponge iron and an abysmal 12% for billets and ingots.”* and advising *“investors to stay away from this Company and look for better issues from forthcoming IPOs.”* Further, a media report on May 4, 2011 also stated that the response from QIBs was *“fairly muted”* and that *“a mere 16% of the IB quota was subscribed”*.
50. Considering the aforesaid, the fact that withdrawal of bids was permitted under the extant law at the relevant time, that Noticees have established that they had sufficient funds to honour the bids made by them, the fact that withdrawal of bids was a market-wide phenomenon on account of negative media reports and low QIB participation, and in view of orders passed in case of Bajaj Group and the Bachawat group entities, I find that the allegation that Noticees made bid applications for allotment of shares in the IPO of VIL to artificially inflate the bid book at the highest price and to create misleading interest for other investors/public to subscribe in the Issue is not established.

51. In view of the above, I find that the allegation of violation of Section 12 (a), (b) and (c) of the SEBI Act and Regulations 3 (b), (d) and 4 (1) and (2) (a) and (b) of the PFUTP Regulations by the Noticees does not stand established.
52. As the alleged violations by the Noticees are not established, Issues II and III do not merit consideration.

## **ORDER**

53. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticees vide SCN dated March 21, 2013 are disposed of.
54. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: FEBRUARY 25, 2022**  
**PLACE: MUMBAI**

**MANINDER CHEEMA**  
**ADJUDICATING OFFICER**