BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 29.02.2016
Date of Decision : 13.05.2016

Appeal No. 275 of 2014

Almondz Global Securities Ltd.
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Fredun Devitre, Senior Advocate with Mr. Ankit Lohia, Mr. Ajai Achuthan, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 276 of 2014

Mr. Sanjay Dewan
Almondz Global Securities Ltd.
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Ankit Lohia, Advocate with Mr. Ajai Achuthan, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 301 of 2014

Mr. Vinay Mehta
B 96/2, East of Kailash,
New Delhi – 110 065. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Gaurav Joshi, Senior Advocate with Mr. Ankit Lohia, Mr. Ajai Achuthan, Advocates for the Appellant.
Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 207 of 2015

Almondz Global Securities Ltd.
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Fredun Devitre, Senior Advocate with Mr. Ankit Lohia, Mr. Ajai Achuthan, Advocates for the Appellant.
Mr. Mihir Mody, Advocate with Mr. Harekrishna Ashar, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh

1. In this bunch of four Appeals, the Appellants have raised a common question of law and fact and, hence, with the consent of the parties, they are being heard together and being disposed of by this common order taking the facts of Appeal No. 275 of 2014 as the lead case.

* 1A. However, the appellant in Appeal No. 301 of 2014, has advanced some additional submissions which are being dealt with below paragraph nos. 22 and 64.

"APPEAL Nos.: 275, 276 and 301 of 2014"

2. Appeal No. 275 of 2014 has been preferred by the company (hereinafter referred to as "the Appellant"), Appeal No. 276/2014 has been filed by the Compliance Officer of the Appellant, namely - Mr. Sanjay Dewan, and Appeal No. 301/2014 has been preferred by the Managing Director-cum-Chief Executive Officer of the Appellant against a common impugned order dated 21st March, 2014, passed by the Learned Whole Time Member of the SEBI under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, prohibiting the three Appellants from taking up any new assignment or involvement in a new issue of capital, including Initial Public Offering (IPO), follow-on issue, etc. in the Securities Market for a period of five years.

3. The impugned order dated 21st March 2014 has been, *inter alia*, passed for the alleged violation of Regulations 8(2)(b), (e)-(f); 64(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereinafter referred to as "ICDR Regulations", and violation of Regulation 13 read with Clauses 1-4, 6-7 and 21 of the Code of Conduct prescribed under Schedule-III of the SEBI (Merchant Banker) Regulations, 1992. The abovesaid regulations and provisions are reproduced herein for the sake of convenience :

SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009

> "8(2). The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-

regulation (2) of regulation 6 if the Board has not issued observations :

(a) …… ;
(b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;
(c) ……..;
(d) ……;
(e) a due diligence certificate as per Form D of Schedule VI, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken;
(f) a due diligence certificate as per Form E of Schedule VI, after the issue has opened but before it closes for subscription."

"64(1). The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of the disclosure in the offer documents."

SEBI (Merchant Banker) Regulations, 1992

"13. Every merchant banker shall abide by the Code of Conduct as specified in Schedule III. [**Merchant banker not to associate with any business other than that of the securities market**.] :

Schedule III

Code of Conduct for Merchant Bankers

Clause 1. A merchant banker shall make all efforts to protect the interests of investors.
Clause 2. A merchant banker shall maintain high standard of integrity, dignity and fairness in the conduct of its business.
Clause 3. A merchant banker shall fulfill its obligations in a prompt, ethical, and professional manner.
Clause 4. A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.
Clause 5. ……
Clause 6. A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.
Clause 7. A merchant banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.
Clause 8. to Clause 20 ……..……..

Clause 21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

"APPEAL No. 207/2015"

4. In addition to the debarment of five years imposed on the company the Appellant along with its Compliance Officer and the M.D.-cum-C.E.O., SEBI simultaneously initiated proceedings against the Appellant for violation of the provisions of SEBI (Intermediaries) Regulations, 2008, hereinafter referred to as "Intermediaries Regulations" and imposed a punishment of prohibition of two years on the same entities in a vague manner. Relying upon the report submitted by the Designated Authority "D.A", the Learned WTM of SEBI passed Impugned Order dated 20th March, 2015, by practically agreeing with the D.A. and observing that the effect and consequence of the two years' prohibition recommended by D.A. to be imposed on the Appellant would be substantially the same as contained in order dated 21st March, 2014, and held that "*while finding Almondz guilty of contravening the provisions of ICDR Regulations and the Merchant Banker Regulations, I, however, find that no further direction needs to be issued in these proceedings since Almondz has already been prohibited for the aforesaid misconduct.*" Counsel for both parties state that the present appeal i.e. Appeal No. 207/2015 may also be disposed of on the basis of arguments advanced in the lead Appeal No. 275/2014. For the reasons recorded in our order in Appeal No. 275/2014, as more particularly set out hereinbelow, we uphold the decision of WTM that the charges levelled against the appellant stand partly established. Since the WTM of

SEBI has not imposed any additional penalty, we uphold the order of WTM which is impugned in Appeal No. 207 of 2015.

Misc. Application No. 130 in Appeal No. 275 of 2014 :

5. During the pendency of the above said Appeals, the respondents issued yet another Show Cause Notice dated 7th January, 2015 to the Appellant stating therein that the appellant did not satisfy the criteria for "fit and proper person" under Regulation 8 read with Regulations 6A and 8A(5) of the SEBI (Merchant Banker) Regulations, 1992 and Schedule-II of the SEBI (Intermediaries) Regulations, 2008. The genesis of this Show Cause Notice issued to the Appellant can be traced to the Impugned Order dated 21st March, 2014 by which the Appellant was found to be lacking in carrying out "reasonable due diligence" in the matter of IPO of above said the Issuer Company Company while acting as a BRLM. The Show Cause Notice dated 7th January, 2015, under Regulation 25 (1) of Intermediaries Regulation, 2008, seems to have been issued in response to an application dated 7th February, 2014, preferred by the the Appellant to the respondents seeking renewal of Merchant Banking registration, which was to expire on 30th April, 2014. This Tribunal, vide its order dated 21st April, 2015, directed that the respondents shall not take any further action pursuant to the Show Cause Notice dated 7th January, 2015, annexed at Exhibit-VI with the Miscellaneous Application No. 130/2015. This Miscellaneous Application No. 130 of 2015 is being considered and disposed of more appropriately, alongwith certain other similar Miscellaneous Applications, in Appeal No. 222 of 2015 which is also being finally decided today itself between the same parties. The relevant regulations are reproduced hereinbelow for the sake of convenience :

SEBI (Merchant Banker) Regulations, 1992

Consideration of application.

"6. The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to merchant banker and in particular the applicant complies with the following requirements, namely :-

[(a) the applicant shall be a body corporate other than a non-banking financial company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), as amended from time to time : [**Provided** that the merchant banker who has been granted registration by the Reserve Bank of India to act as a primary or satellite dealer may carry on such activity subject to the condition that it shall not accept or hold public deposit;]

Grant of certificate of initial registration

"8. (1) The Board, on being satisfied that the applicant is eligible, shall grant a certificate of initial registration in Form B and shall send an intimation to the applicant.

(2) The certificate of initial registration granted under sub-regulation (1) shall be valid for a period of five years from the date of its issue to the applicant.

(3) The merchant banker who has already been granted certificate of registration by the Board, prior to the commencement of the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2011, and has not completed a period of three years, shall be deemed to have been granted a certificate of initial registration for a period of five years from the date of its certificate of registration, subject to payment of fee for the remaining period of two years, as prescribed in Schedule II of these regulations.

(4) On the grant of a certificate of initial registration the merchant banker shall be liable to pay the fee in accordance with Schedule II of these regulations."

Grant of certificate of permanent registration

"8**A**. (1) to (4) .....

(5) The application for permanent registration made under sub-regulation (1) or (2) shall be dealt with in the same manner as if it were a fresh application for grant of a certificate of initial registration."

SEBI (Intermediaries) Regulations, 2008

Schedule II

> "For the purpose of determining as to whether an applicant or the intermediary is a 'fit' and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer and the key management persons by whatever name called –
>
> (a) integrity, reputation and character;
> (b) absence of convictions and restraint orders;
> (c) competence including financial solvency and net worth."

6. Regulation 6 of the MB Regulations lays down the criteria to be taken into consideration while judging an application for registration as MB on its merits. Regulation 8 makes provisions for the grant of initial registration to an entity satisfying the requirements of Regulation 6. Further Regulation 8A speaks of the grant of permanent registration for which another application is required to be made. Regulation 6A lays down that every entity applying for registration as an MB shall be a fit and proper person in terms of Schedule II of the Intermediaries Regulations. Schedule II of the Intermediaries Regulations lays down the criteria which need to be fulfilled before an entity can be considered to be fit and proper and consequently be deemed eligible for a registration as an MB.

7. In this background, we now proceed to deal with the Impugned Order dated 21st March, 2014, in respect of Appeal Nos. 275, 276 and 301 of 2014, taking the facts of Appeal 275 of 2014 pertaining to the Company as the lead case. Briefly stated the facts of the case are that the Appellant was incorporated as a Company in June, 1994, and since then it has been dealing in various branches of the Securities Market, including acting as Merchant Banker. The Appellant was appointed as Book Running Lead Manager "BRLM" to the IPO of P.G. Electroplast Limited "the Issuer Company" on 7th June, 2010. A Draft Red Herring Prospectus "DRHP" was, accordingly, filed on behalf of the Issuer Company by the Appellant on 23rd September, 2010. On 29th December, 2010, SEBI granted the

clearance/approval for opening of the IPO of the Issuer Company. On approval of the said Red Herring Prospectus "RHP" by the Board of Directors of the Issuer Company on 17th August, 2011, the same day it was immediately filed with SEBI, and with the Registrar of Companies, NCT of Delhi and Haryana "ROC".

8. After completion of the above said formalities, the IPO of the Issuer Company was opened on 7th September, 2011 for Public Subscription and was closed on 12th September, 2011. Accordingly, the Prospectus was filed with the ROC as per the requirement of law on 15th September, 2011. The very next day the Prospectus was also filed with SEBI. The shares of the Issuer Company, thus, came to be listed on the Bombay Stock Exchange ("BSE") and the National Stock Exchange ("NSE").

9. After listing of the shares of the Issuer Company on the Stock Exchanges, SEBI found certain fluctuations in the share price and undertook an investigation. Noticing *prima facie* violation of ICDR and M. B. Regulations, the Respondent straight away passed an ad-interim ex-parte order dated 28th December, 2011 ("Interim Order"), prohibiting the Appellant from taking any new assignment or involvement in any new issue of capital, including IPO, follow-on issue, etc. from the Securities Market till further orders. Said Interim Order was confirmed against the Appellant on 11th September, 2012, which continued till 21st March, 2014, when the Impugned Order dated 21st March, 2014 came to be passed against the Appellant.

10. The debarment of five years imposed on the Appellant by the Impugned Order dated 21st March, 2014, has been primarily premised on the finding that there was "complete failure to carry out reasonable due

diligence" while preparing the RHP and the Prospectus of the the Issuer Company for the purposes of IPO in question.

11. We have heard the learned senior counsel Shri Devitre and Shri Ankit Lohia, Mr. Ajai Achuthan, learned counsel for the Appellants and Shri Rustomjee along with Shri Mihir Mody for the respondents. We have also minutely perused the pleadings and records / written submissions and other material submitted by the parties during the course of hearing before us.

12. The core issue, which falls for our consideration, is, therefore, whether the steps taken by the Appellant in light of various provisions of the ICDR Regulations and the Code of Conduct towards the due diligence of the affairs of the Issuer Company are sufficient and adequate in law? If the answer is in the negative, the next question that would arise for our consideration is whether the punishment of debarment imposed upon the Appellants for a rather long period of 5 years is just and proper in the facts and circumstances of the case ? The purposes of the IPO in question, as seen in the Prospectus, were as mentioned below :-

- Prepayment of the portion of the term loan and line of credit facility proposed to be availed by the Issuer Company for expansion under phase 1 – (₹ 24.10 Crore)
- Expansion of manufacturing facility at Unit III, Greater Noida under phase 2 – (₹ 13.84 Crore)
- Expansion of manufacturing facility at Unit IV, Ahmednagar under phase 2 – (₹ 37.31 Crore)
- Meeting long-term working capital requirements – (₹ 15.00 Crore)
- General Corporate Purposes – (₹ 21.39 Crore)
- Issue Expenses – (₹ 9 Crore)

13. A perusal of the SCN and the Impugned Order shows that all the violations, alleged to have been committed by the three Appellants, can be summarised as under :

(1) Failure to ensure disclosure of material fact in the RHP and Prospectus, such as :-

(i) Funds raised by the Issuer Company through Inter Corporate Deposits "ICDs", which were in the nature of a bridge-loan.

(ii) Decision by the Board of Directors of the Issuer Company to invest in ICDs of other companies.

(iii) Purchase orders placed by the Issuer Company for plant and machinery.

(iv) Names of certain companies in the list of suppliers of plastic granules.

(v) Agreements and Memorandum of Understandings entered into by the Issuer Company with certain entities for purchase of land; and

(2) Failure to prevent misrepresentation in respect of amount of term-loan availed by the Issuer Company.

14. No other allegation is to be found in the Show Cause Notice and, as such, the arguments of the parties were confined to the five allegations of non-disclosure summarized herein above.

15. The first allegation pertains to failure on the part of the Appellant to ensure disclosure of inter-corporate deposits (ICDs) received by the Issuer Company, i.e., the Bridge Loans received by it. The case of the respondent, in this regard, is that this aspect should have been disclosed in the RHP/Prospectus to enable the investors to take an informed decision to invest in the IPO or not. Shri Devitre, learned senior counsel for the

Appellant, dealt with this aspect in a threadbare manner and submitted that the Appellant was only provided with an extract of the Resolution passed in the Board Meeting held on 17th August, 2011, and that the Minutes of the Board Meeting, were not provided to the Appellant by the Issuer Company. He also submitted that the Loan Committee had a limited term of reference and was authorised to avail of loans from Banks but not to raise loans through ICDs from other companies.

16. It is further argued by Mr. Devitre that the Appellant, as a legitimate part of its due diligence exercise, had obtained various Statutory Auditors' Certificates, including Certificate dated 13th September, 2011, to the effect that they had read the Minutes of the Meetings of the Board of Directors and of the Committees up to 10th September, 2011, and, in addition, had also read the unaudited financial statements for the period 1st April, 2011 to 31st August, 2011 and found no material change in the share capital, liabilities, loans, etc. of the Issuer Company. Therefore, there was no reason for the Appellant to develop any suspicion as regards the financial affairs, etc. of the Issuer Company as on 22nd September, 2011, when the RHP was filed.

17. It is also argued on behalf of the Appellant that even though the requirement of obtaining SA's certificates is statutory in nature yet, it did not solely rely upon the said Auditors' certificates and had made its own exhaustive enquiries independently as well with the management of the company commencing from June 2010 onwards. In addition, the Appellant had obtained relevant updated certificates, undertakings and affirmations certifying that there was no material change before presenting the draft RHP to the Respondent. Further, during the due diligence process, Appellant had periodic meetings with the promoters and management of the Issuer Company wherein Appellant, *inter alia*, discussed with them the

business of the Issuer Company, their experience, visited various premises of the Issuer Company including its manufacturing units to better understand their products, production processes and, plant and machinery etc. All this was done purely with a view to keep a tab on the progress of the objects of their proposed IPO. Appellant had also verified various documents relating to the business, properties, capital structure, litigation, objects of the issue, government approvals, management, promoter and promoter group entities, etc. of the Issuer Company. During the process of due diligence of the Issuer Company, Appellant had also sought from the Issuer Company various documents/information as per the Appellant's exhaustive checklist and had properly verified and documented the same in the data room.

18. It is further submitted by the Learned Counsel for the Appellant that the Appellant had also, *inter alia*, relied upon the various certifications and undertakings given by the Issuer Company in respect of the disclosures made in the Offer Document at various stages of the IPO as required by the Regulations. At the time of obtaining the certifications and undertakings from the Issuer Company, the Issuer Company was specifically made aware about the reason and purpose for which the same were being obtained by the Appellant, i.e., for disclosure in the RHP / Prospectus.

19. The Appellant had also obtained the 'Due Diligence Report' and 'Supplementary Due Diligence Report' of the Legal Advisor to the IPO of the Issuer Company dated 17th September, 2010 and 16th August, 2011 respectively. The Due Diligence Report issued by the Legal Advisor comprised sections on general corporate information, management, promoters and promoter group, IPO related agencies, manpower, website, share capital, statutory records and registers, corporate governance, operations, branches & offices, financial data, immovable properties and

fixed assets, intellectual property rights, contracts and commitments, insurance, taxation (direct and indirect), litigations and claims, regulations and policies, government approvals and licensing arrangements, competition and trade regulations, holdings, subsidiary and group companies and material developments. Further, the Supplementary Due Diligence Report covered the Legal Due Diligence conducted by them for the period from date of DRHP till the date of RHP. This supplementary Due Diligence Report of the Legal Advisor contained all updates in respect of each of the segments covered in its previous report. In addition to relying on the reports of the Legal Advisor, the Appellant also had various meetings with the Legal Advisor to discuss the various aspects of legal due-diligence conducted by them. These meetings were jointly conducted at the Issuer Company's office and also on a one to one basis at the office of the Legal Advisor and at the Appellant's offices. The outcome of these efforts was that all adverse observations were either rectified or appropriately disclosed in the offer documents, as pointed out by SEBI or otherwise.

20. The Statutory Auditor of the Issuer Company completed restatement of audited financial statements of the last five years ending 31st March, 2010 and submitted their report which was duly reproduced in its entirety in the DRHP. The same was updated in the RHP with the restated financials for the year ending 31st March, 2011, based on the updated report of the Statutory Auditor. As part of the due diligence process, the Appellant had also relied upon the confirmations/submissions of the Issuer Company's Statutory Auditor (Comfort Letters) specifically intended to provide an update of any material developments in the Issuer Company, subsequent to the date of the last audited financial statements. Further, in respect to the material disclosures, the Comfort Letters issued by the Statutory Auditor categorically confirmed that except as disclosed in the RHP, no material

change was there in share capital, increase in current liabilities, secured and unsecured loans, deferred payment liabilities, contingent liabilities or total liabilities or decrease in current assets, loans and advances, fixed assets, total assets or net worth of the Issuer Company, etc. In addition to the above, Appellant had periodic discussions with the Statutory Auditor at various stages during the due diligence process. The Appellant submits that the Statutory Auditor's certificates in the nature of limited review of quarterly financial statements are recognized by the stock exchanges as required in the listing agreement. Thus, the submission of the Appellant is that it had done its own due diligence expected of an MB in respect of matters known to it and contained in the RHP/Prospectus.

21. To reinforce its argument, the Appellant has also relied upon a manual issued by the Association of Investment Bankers of India (the AIBI Manual) to the effect that the reliance on Comfort Letter placed by the Appellant in the course of the process of due diligence was valid. It is submitted that AIBI is a self regulating organization of the investment bankers of India, as recognized by SEBI. The objective of AIBI is the setting up of professional standards and practices in the field of banking and finance. The AIBI Manual stipulates that Comfort Letters should be obtained from Statutory Auditors for purposes of conducting Due Diligence Exercises. Furthermore, the Comfort Letter obtained by the Appellant fits the parameters prescribed under the "Guidance Note On Reports In Company Prospectuses" issued by Institute of Chartered Accountants of India as on July 1, 2010. Therefore, the finding in the Impugned Order that the Appellant should not have relied upon the Auditors' Comfort Letters is erroneous.

22. In the context of the first charge, it is lastly submitted by the Learned Senior Counsel for the Appellant, Shri Devitre that the non disclosure of

the Loan Committee in the RHP / Prospectus was inconsequential inasmuch as Schedule VIII Part-A and VIII(E)(7) of the ICDR Regulation and the Listing Agreement do not have any requirement to do so. Moreover, the Loan Committee exceeded its terms of reference and it did not inform the Company's Bankers about the approval of the ICDs. Similarly, it did not take any consent from the Company's Bankers for that purpose. The Loan Committee, therefore, in this regard, kept the Appellant in total dark. There were four meetings held by the Loan Committee on previous occasions, particularly, on 9th December, 2010; 24th February, 2011; 27th May, 2011 and 20th June, 2011, which were brought to the notice of the Appellant. In all these four meetings, the discussion revolved around availing credit facilities from the Banks. It was, therefore, not within the reasonable apprehension of the Appellant as a Merchant Banker that the Loan Committee would conduct itself in this manner at its fifth meeting on 17th August, 2011.

***** 22A. The case of the appellant in Appeal No. 301 of 2014 is that he was appointed as Managing Director (MD) and Chief Executive Officer (CEO) of the BRLM company i.e. Almondz Global Securities Ltd. (Almondz) in May 2006 because of his vast experience of having worked in various banks in different high positions. However, the appellant submits that in the capacity of MD and CEO of Almondz, he was only engaged in strategic growth of organization and its subsidiaries by developing new businesses etc. The appellant contends that he was not actively involved in the day to day affairs of the Almondz including the due diligence aspect involved in the issuance of an IPO. According to the appellant, it is the duty of the compliance officer of Almondz to ensure proper compliance with the statutory requirements regarding true disclosures in the offer documents. The appellant, therefore, submits that it is not the responsibility of MD and

CEO to ensure that the due diligence process was followed in the matter of issuance of an IPO in question in accordance with the rules and regulations prescribed by SEBI. In this context, the appellant places reliance on Regulation 28A of the ICDR Regulations. The appellant also contends that SEBI has erred in holding that the appellant as the person in-charge was responsible for the overall business of Almondz.

23. Per contra, Shri Rustomjee, learned senior counsel for the Respondent has firstly submitted that the Appellant could not ensure disclosure of funds raised by the Issuer Company through ICDs in the nature of a Bridge Loan, i.e., the loan taken by the Issuer Company through ICDs in the form of a Bridge Loan, which would bridge the gap until it arises. Secondly; Shri Rustomjee submitted that the RHP and Prospectus did not disclose the Board's decision to invest the IPO proceeds in the ICDs of other companies. The Appellant's failure to ensure disclosure of these facts regarding taking and decision to grant loans through ICDs would amount to lack of due diligence. Therefore, the finding in the Impugned Order that the Appellant, as a Merchant Banker of the Issuer Company, for the IPO in question, had failed to ensure genuine and true disclosure of material facts regarding the decision of the Issuer Company to make such investments cannot be faulted with. This would allegedly have been clear to the Appellant had it gone into the Minutes of the Meeting of the Board of Directors held on 17th August, 2011. Pursuant to such a Board decision, the the Issuer Company had entered into identically worded ICD Agreements dated 20th September, 2011, with three entities namely – M/s. Saptarishi Suppliers Pvt. Ltd., M/s. Raw Gold Securities Pvt. Ltd. and M/s. Watkins Commerce Pvt. Ltd. In all, the Issuer Company paid a total of ₹ 32 Crore to these entities. It is, thus, argued by Shri Rustomjee that if the Appellant had looked into the entire Minutes of the Board Meetings dated 17th

August, 2011, and not merely the extract thereof, it would have been evident that the Company intended to invest in the ICDs of other Companies out of the IPO Project.

24. In this connection, it is further submitted on behalf of the respondent that the Minutes of the Meeting of the Board of Directors on 14th November 2011, *inter alia*, contain the following in Sl. No. 7 :

> "7. TO TAKE NOTE OF THE INTER CORPORATE DEPOSITS MADE BY THE COMPANY
> The chairman informed the Board that in the initial public offering of the Company there was some surplus funds which were not required to be deployed immediately towards objects of the issue hence with a view to not to keep these funds idle, pending utilization of issue proceeds out of the issue, it was temporarily invested by way of Inter Corporate Deposits with the Companies …….. The Board took note and confirms the same."

> A perusal of the Minutes of the Meetings dated 17th August 2011 and 14th November 2011 makes it clear that during the meeting of 17th August 2011, a resolution was passed with respect to investment of IPO proceeds, *inter alia*, in ICDS, and during the meeting of 14th November 2011 the Board of Directors took note of the specific ICD Agreements which had been entered into by the Company in pursuance of the earlier Board Resolution. The fact that on 14th November 2011 the Board took note of the specific investments in ICDs which had been made does not mean that the board had not discussed investment in ICDs earlier."

25. Regarding the Comfort Letters issued by the Statutory Auditors and reliance placed by the Appellant thereon, Shri Rustomjee submits that the said letters are qualified. The Statutory Auditors had stated that they were unable to express an opinion on the financial position/results of operations or cash flows of the the Issuer Company for a period post 31st March, 2011. This should have acted as a "red-flag" and the Appellant should have done further independent due diligence for the correct facts to be revealed in the RHP/Prospectus for public consumption. Various qualifications mentioned in the Statutory Auditors certificate negate their value in the eyes of law.

26. At this stage we deem it appropriate to summarise the basic submissions of the Appellant as under :

- That the scope of due diligence is to conduct the review and examination of information provided by the Issuer Company to a practical and reasonable extent. The Respondent has not managed to point out any red flag in its investigation which should have aroused the suspicion of the Appellant in the affairs of the Issuer Company.
- In 2012, the AIBI published its Due Diligence Manual basically comprising of the standards of the banking industry which had been adhered to so far while conduct such due diligence exercised by MBs in general. The Manual clearly identifies that the reports of Statutory Auditors and legal advisors are fundamental to the process of conducting the due diligence.
- No action has been taken against the Statutory Auditors, nor have the Comfort Letters issued by them been called into question by the Respondent.
- The Issuer Company did not provide the Appellant with minutes of the Board meeting held on August 20, 2011. This has been admitted by the Respondent in its order dated September 3, 2012. In fact it is also admitted in the same order that no proposal for raising of funds through ICDs was brought before the Board on August 17, 2011. The Appellant was instead provided with the extract of the Board Resolution, which admittedly did not contain any reference to the raising of the funds by the Issuer Company through ICDs.
- That the transactions reported by the Respondent such as the ICDs etc. came to the Appellant's notice for the first time after the ex parte order was passed.

- The Issuer Company informed the Appellant vide letter dated September 14, 2011 that there had been no material developments after the date of filing the RHP.

27. Let us first analyse the Regulations pursuant to which the entire process of an IPO is to be conducted. These are the ICDR Regulations, the MB Regulations and the Intermediaries Regulations. One of the statutory measures by which SEBI is required to protect the interests of the investors in the securities market is specifically provided in Section 11(2)(b) i.e., by registering and regulating the working of a number of intermediaries including the MBs. Chapter V of the SEBI Act, 1992 deals with the Registration Certificate. Section 12 provides that various intermediaries, including an MB, are required to deal in securities only under and in accordance with the conditions of a certificate granted by SEBI in accordance with the relevant regulations, applicable to a class of intermediaries, in this case being the MB Regulations. The Intermediaries Regulations and the MB Regulations have already been dealt with hereinabove; we move onto the the ICDR Regulations, primarily in accordance with which IPOs are regularly issued in the market.

28. SEBI (Issue of Capital Disclosure and Requirements) Regulations, 2009 consist of 11 Chapters and 20 Schedules. Chapter 1 deals with Preliminary issues and provides for definitions etc. Some of the definitions provided in Regulation 2 are relevant for the present purpose and are dealt with hereinafter. Regulation 2(1)(f) explains book building as the process whereby the demand and price of certain securities is assessed and determined. Regulation 2(1)(g) defines a book runner as an appointed by the issuing company to undertake the book building process. Regulation 2(1)(r) defines issuer as any person, meaning any judicial entity, making an

offer of securities. Regulation 2(1)(x) defines the term 'offer document' as red herring prospectus, prospectus, shelf prospectus and information memorandum in case of a public issue and letter of offer in case of a rights issue. Regulation 2(1)(zc) defines "public issue" as initial public offer and further public offer. Regulation 2(2) states that all words and expression not defined in the ICDR Regulations shall be the ascribed meaning as per the Companies Act, the SCRA and the Depositaries act, and rules and regulations made thereunder.

29. Chapter 2 deals with Common Conditions for Public Issues and Rights Issues. Regulation 4 contained in this chapter provides for initial steps to be taken and conditions to be fulfilled by an issuing company before the filing of the draft offer document. This regulation needs to be read with regulations 25 and 26. Regulation 25 states that on the day of filing the draft offer document with SEBI and with the ROC, all conditions prescribed in Chapter 3 should be met with. Regulation 26 Regulation 26 puts forth certain conditions which need to be satisfied by the IC before an IPO can be made. Regulation 5 enshrined in Chapter 2 provides for the Appointment of Merchant Bankers and other intermediaries which lays down that the Issuer Company shall appoint merchant bankers, one of whom shall be a lead merchant banker. The Issuer Company shall also appoint other intermediaries registered with SEBI in consultation with the lead merchant banker. It shall be the duty of the MB to independently evaluate the intermediaries and accordingly advise the IC regarding their appointment. Regulation 6 deals with the Filing of Offer Documents and puts forth that an IC shall be eligible to make a public issue or a rights issue only after a draft offer document has been filed with SEBI for tis comments through the MB 30 days prior to filing it with the ROC or filing the letter of offer with the designated stock exchange in question. Once the changes as

proposed by SEBI have necessarily been incorporated in the offer document by the IC and the MB, it is registered with the ROC, while simultaneously filing it with SEBI. As per Regulation 7, in-principle approval should be obtained from all stock exchanges in which certain specified securities are proposed to be listed.

30. Regulation 8 stipulates that along with the draft offer document the MB shall also provide SEBI with other documents such as, *inter alia*, a copy of the agreement entered into between the issuer and the lead merchant bankers; a due diligence certificate as per **Form A of Schedule VI;** a certificate in the format specified in **Part D of Schedule VII**, confirming compliance with the conditions mentioned therein. Further, once SEBI has issued its comments, or the time period within which SEBI ought to have issued comments as per Regulation 6(2) has expired, the MB shall submit the following documents to SEBI: a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document; a due diligence certificate as per **Form C of Schedule VI**, at the time of registering the prospectus with the Registrar of Companies; a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue; a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution; a due diligence certificate as per **Form D of Schedule VI**, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken; a due diligence certificate as per

Form E of Schedule VI, after the issue has opened but before it closes for subscription. Once the offer document has been displayed on the websites of SEBI and the stock exchanges for a period of 21 days as per Regulation 9 for the public's comments, the merchant bankers shall file with SEBI a statement giving information of the comments received by them or the IC on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.

31. Regulation 12 puts the responsibility of dispatching the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance on the MB. Regulation 13 provides for underwriting obligations to be imposed upon merchant bankers and book running lead managers. It lays down that if the book building process is adopted, such issue shall be underwritten by book runners or syndicate members. The issuer shall enter into underwriting agreement with the book runner, who in turn shall enter into underwriting agreement with syndicate members. If the syndicate members fail to fulfill their underwriting obligations, the lead book runner shall fulfill the underwriting obligations.

32. Chapter 3 deals with Provisions as to Public Issues. Part II of this chapter makes provisions for Pricing in Public Issue. Regulation 28 states that an issuer may determine the price of securities either in consultation with the lead MB or through the book building process as per schedule XI. As per Regulation 30, the IC may cite a price or price band in the prospectus of red herring prospectus and then determine the price later before filing it with the ROC. Regulation 31 lays down the method to be followed by an IC to fix the face value of equity shares for the purposes of an IPO. Regulation 32 of Part III of Chapter 3 deals with Minimum

promoters' contribution and lays down, among other things, that in case of an initial public offer the promoters' contribution should not be less than 20% of the post issue capital. Further, Regulation 35 enshrined in Part IV of Chapter 3 states that the securities shall not be transferable for certain periods beginning from the date of allotment in the proposed public issues. This period shall be known as the "lock-in" period. Regulation 41 of Part V of Chapter 3 lays down that the minimum offer to the public in an IPO should be either 10% or 25% of the post issue capital. Regulation 44 puts forth the concept of a safety net arrangement wherein the IC provides such an arrangement under which a person offers to purchase specified securities from the original allottees at the issue price. Regulation 45 delineates the green-shoe option and lays down the conditions and parameters within which such an option can be made available in an effort to stabilize the post-listing price of the securities offered in a public issue. Regulation 46 prescribes the minimum and maximum period for which a public issue must be kept open for subscription, viz., 3 days and 10 days respectively. Regulation 49 stipulates that the IC shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees. Regulation 50 lays down that the allotment procedure shall be spelt out by the managing director along with the lead post-issue MBs in a fair and proper manner in accordance with Schedule XV of the ICDR Regulations. Regulation 51 stipulates that the post-issue lead merchant banker shall ensure that the amount received in respect of the issue is released to the IC as per section 73 of the Companies Act, 1956. Finally, Regulation 51A provides that the information provided in the offer document shall be updated annually by the IC in accordance with the manner prescribed by SEBI.

33. Chapter 5 deals with Manner of Disclosures in the Offer Documents. Regulation 57 thereof deals with the manner of disclosures in the offer document and lays down that the offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

34. Chapter 6 deals with General Obligations of Issuer and Intermediaries with respect to Public Issue and Rights Issue. As per Regulation 63, the IC shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances. In accordance with Regulation 64, the lead merchant banker shall exercise due diligence and assure himself about all the aspects of the issue including the accuracy and satisfactoriness of disclosure in the offer documents. The MB shall further call upon the issuer, its promoters or directors to fulfill their obligations as disclosed by them in the offer document. Regulation 65 provides for the submission of post-issue reports to SEBI in the following manner: (a) initial post issue report as specified in **Parts A and B of Schedule XVI,** within three days of closure of the issue; (b) final post issue report as specified in **Parts C and D of Schedule XVI,** within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue. Also, the lead merchant banker shall submit a due diligence certificate as per the format specified in **Form G of Schedule VI**, along with the final post issue report. Regulation 68 stipulates that the merchant banker shall be responsible for ensuring that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than six months old from the date on which the issue opened.

35. Further, the rest of the chapters deal with the following topics. Chapter 4 deals with Rights Issue. Chapter 7 deals with Preferential Issue. Chapter 8 makes provisions with respect to Qualified Institutional Placement. Chapter 9 deals with Bonus Issue. Chapter 10 deals with the Issue of Indian Depositary Receipts. Chapter 11 deals with certain miscellaneous provisions.

36. We now deal with the allegation regarding non – disclosure of suppliers and agreements for purchase of granules. From a perusal of the facts of the matter at hand we note that a list of suppliers was disclosed in the RHP on page 76 and page 44, based on the information provided by the Issuer Company, which was duly verified by the Appellant thereafter from the Issuer Company's records. It appears that the names Nimbus Industries Ltd. or Supreme Communications Ltd have not been mentioned anywhere in the list. This fact has been corroborated by SEBI's observations in its ad interim order dated 28th December 2011 stating "the names of Nimbus Industries Ltd. and Supreme Communications Ltd. do not appear in the list of its suppliers provided by the Issuer Company in the offer document". It is thus borne out that the Issuer Company had never entered into any long-term supply agreement for purchase of plastic granules. This has been reinforced by the Issuer Company in their response letter dated 3rd December 2011 wherein they have stated that *"There are no sale/purchase agreements with our customers and suppliers, we receive periodical orders from our customers on the basis of which we place orders to our suppliers"*. SEBI has rightly observed in its ad interim order dated 28th December 2011 that the reply of the Issuer Company in relation to this is in contradiction to the documents provided by it. The Issuer Company's decision of radically altering it's purchasing pattern for a routine commodity immediately after the filing of the RHP, combined with the

facts, seems to be consistent with the appellant's submission that the bonafides of these agreements are suspect and that they may have been entered into as an afterthought.

37. We now turn our attention to the fourth and fifth allegations against the Appellant viz. non-disclosure of agreements for purchase of land; and non-disclosure of purchase orders placed by the Issuer Company for Plant & Machinery. With respect to agreements for purchase of land, it appears from a perusal of documents placed before us that details of the agreements between the Issuer Company and Eastern Resorts Pvt. Ltd., as well as the one between the Issuer Company and Safeco Projects Pvt. Ltd. were neither available in the public domain nor in the minutes of the company's Board Meetings. Further, the Merchant Banker submits that while performing its due diligence exercise, it did not come across any plan of the Issuer Company for expansion or any project which would require the purchase of land, and hence, the MB in all reasonableness could not have been expected to go to the extent of imagining and anticipating the execution of any such agreements, which the Issuer Company seems to have been determined to conceal from the Merchant Banker.

38. As far as the submission of the Respondent regarding non-disclosure of purchase of plant and machinery is concerned, it is a matter of record that details of quotations received by the Issuer Company for procurement of Plant & Machinery, purchase of utilities etc. at Unit III & Unit IV were provided to the Merchant Banker. These details have been duly mentioned by the Merchant Banker on pages 42 and 43 of the RHP. It appears that in the absence of any other disclosures made by the Issuer Company, the Merchant Banker did not have any means of knowing the existence of any purchase orders except the ones disclosed in the Offer Document. Furthermore, we find nothing in the SCN or the Impugned Order to suggest

the contrary. The Offer Document does not mention the Purchase Orders placed on Modi Alloys or Aggarwal Steel nor does it mention the payments made to them because at the relevant time, the Issuer Company had not disclosed the same to the Merchant Banker.

39. Be that as it may, in relation to the charges with respect to non-disclosure of agreement for purchase of plastic granules, land, plant and machinery, these three appear to be acts undertaken by the the Issuer Company in the post-IPO stage and hence, in our considered opinion, the Appellant could not have incorporated the same despite any degree of DD that could have been applied. SEBI itself has accepted that the Appellant was not privy to the Issuer Company's intentions, and the Appellant's conduct to that extent is undisputedly unimpeachable. As held hereinabove, the Appellant ought to have perused the bank statements of the company, particularly regarding the period in respect of which even the Statutory Auditors had not gone through the unaudited accounts of the company i.e. ranging from 1st September, 2011 to the date of discharge of Escrow.

40. Moving on to the contradictory disclosure regarding Term Loan alongwith Line of Credit availed by the Issuer Company, undoubtedly, the Appellant has mentioned in the table on page 30 that the amount disbursed by the Bank was 'NIL'. However, disclosures by the Issuer Company to the Merchant Banker regarding the amounts availed as term loan and line of credit have been duly captured by the Appellant in the RHP on multiple occasions as can be verified from page numbers 29, 40, 87, 171 and 172 of the RHP. Therefore, adequate disclosures regarding the availment of cash credit limit have been made in the RHP in a number of places. Given the reiteration and consistency of these disclosures, we conclude that there was

no underlying intention of concealment or non- disclosure but rather an inadvertent oversight of the Appellant.

41. Let us now turn our attention to the main allegation pertaining to the fund raising through ICDs and their subsequent deployment. Intimately connected with this issue is the charge of giving loans through ICDs to other companies out of the IPO Proceeds. The Issuer Company states that this was done through a Loan Committee. On a perusal of Order dated 3rd September, 2012 passed by the Respondent, it emerges that an independent Director of the Issuer Company, who was a signatory to the RHP as well as the Prospectus, however made the following statements on record; firstly,

- that the loan committee had a term of reference limited only to availing of various credit facilities from the banks. The Loan Committee had no authority to borrow money through ICDs and secondly;
- that no such proposal regarding availing of loans through ICDs was tabled at the meeting of the Board of Directors dated 17th August, 2011.

42. In light of these factual revelations, it is evident that the Loan Committee could not have permitted the raising of money through ICDs since this was not part of its mandate.

43. On an appreciation of the above rival submissions made by the Learned Senior Counsel for both the parties, it becomes evident that an extract of the Board Meeting dated 17th August, 2011, was duly provided by the Issuer Company to the Appellant and the Appellant was called upon to go ahead with the filing of the RHP on the same very day. From the facts emerging from a perusal of the pleadings and documents brought on record by the parties in this regard, it becomes somewhat difficult of

believe that the the Issuer Company had not only held a Board Meeting on 17th August, 2011, but also prepared the minutes on the same date to be supplied to the Appellant for the purpose of filing the RHP before the appropriate authority. Had the minutes of the meeting actually been supplied to the Appellant on August 17, 2011 itself, there would have been no occasion for the the Issuer Company to provide an extract of the Board Meeting dated 17th August, 2011, over and above the minutes. This would have been superfluous. It would lead to the erroneous conclusion that RHP was approved in the same meeting held on 17th August, 2011 in which the ICDs were allegedly approved by the Board. This situation, if accepted, would lead to an inherent dichotomy inasmuch as it is unfathomable that the ICDs were approved in the same meeting wherein the RHP, without containing this factum regarding approval of ICDs, was also approved. In the absence of any evidence to the contrary, we, therefore, find that the Appellant was only supplied with an extract, and not the minutes of the Board Meeting dated 17th August, 2011, by the the Issuer Company. In this factual backdrop the Appellant cannot be condemned for not disclosing the matter regarding the raising of funds through ICDs by the Issuer Company in the Offer Documents.

44. As far as the decision of deployment of funds through ICDs is concerned, it appears from the facts of the case that this was only done once the IPO proceeds had been transferred from the Escrow Account to the company's account, i.e. this was a post-IPO transaction which the Appellant could not have had any control over whatsoever. As per regulation 16 of the ICDR, a monitoring agency is mandatorily appointed in cases wherein the issue size exceeds ₹ 500 crore, which also necessitates the submission of half yearly reports. However, in the instant case, no monitoring agency was appointed since the issue size was less than 500

crores. Further, it is a matter of record that the Issuer Company entered into somewhat identically worded agreements on September 20, 2011 to invest in the three companies, namely, Saptshri, Raw Gold and Watkins, a substantial amount of the IPO by giving ICDs these three companies. From a perusal of the Ex-parte Order of SEBI dated 28th December, 2011 it is borne out that the Issuer Company's Board of Directors was informed of the execution of said ICD agreements only at the meeting held on 14th November 2011, ie, after the receipt of SEBI's letter dated November 9, 2011. Paragraph 9.2 of the Ex-parte Order being relevant is reproduced hereinbelow:

> "*the Issuer Company has entered into ICD agreement with Saptarshi, Wattkins and Raw Gold on September 20, 2011. It is noted from the minutes of meeting held on November 14, 2011 that the Chairman of the Issuer Company had informed about the ICDs in the meeting of the BOD. The ICDs were informed to the BOD much later than the date of agreements and the date of BOD meeting is after receiving SEBI's letter dated November 9, 2011.*"

45. In this context it is pertinently noted that that all the crucial events or developments with respect to the IPO in question were over before the Issuer Company decided to invest the IPO proceeds on September 20, 2011 in the three companies mentioned above by way of ICDs. These events, which are as under, may be recapitulated even at the cost of repetition :

- September 23, 2010 – DRHP filed with SEBI by the Appellant after concluding a thorough Due Diligence exercise.
- December 29, 2010 – After duly vetting the DRHP, SEBI issued exhaustive comments to be incorporated in the DRHP before it could be converted into the RHP.
- August 17, 2010 – Necessary steps taken by the Appellant as an MB and after receiving the extract of the Issuer Company's Board Resolution dated August 17, 2011, filed the same before SEBI on

the same date itself. Subsequently, it was also filed with the concerned ROC on August 20, 2011.

- September 7, 2011- Accordingly, the IPO opened on for public subscription.
- September 12, 2011 – The public subscription was closed.
- September 14, 2011 – Thereafter, the final Prospectus after incorporating the changes suggested by the ROC as per the requirement of law.
- September 16, 2011 – The Prospectus was preferred before SEBI as well.
- September 16, 2011 – Shares were, thus, allotted to the public investors.
- September 26, 2011 – Shares listed on BSE and NSE.

46. The above chronology makes it abundantly clear that the Appellant could not have incorporated such a fact of giving ICDs to the three companies taken by the Issuer Company after the conclusion of the IPO in the DRHP, RHP or even in the Prospectus. This charge, therefore, can also not be sustained against the Appellant. However, it must be said that the Appellant seems to have acted in a hurry to issue the RHP on the same date. It should have been more vigilant and careful in filing the RHP on August 17, 2011 itself. As such, we would hasten to add that the filing of Prospectus, which was done two days after the closure of the Issue on 14th September, 2011, issue opened on 7th and closed on 12th September, 2011, the Appellant could have detected all these developments had it undertaken inspection of the Bank accounts of the the Issuer Company. To this extent, we are in agreement with the finding in the Impugned Order that the Appellant did not perform its duty properly in the matter of due diligence.

47. However, for this lapse in judgment, a punishment of five years of debarment is extremely harsh and highly disproportionate. It is settled law that due diligence means reasonable diligence expected from a Merchant Banker. A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker. A Merchant Banker cannot be expected to act like an investigating agency and start with a note of suspicion as regards the bona fides of the company, on whose behalf it is entrusted with the task of drafting and preparing the DRHP, RHP and the Prospectus, etc. After the signing of a Memorandum of Understanding by the MB with the the Issuer Company to draft and finalise the offer documents required for the IPO, a relationship of trust and confidence ensues between the two and cannot be unilaterally breached by any of the parties from the date of signing of the Memorandum of Understanding till the conclusion of the IPO. The Memorandum of Understanding has to be signed as per Regulation 5 read with Schedule II of the ICDR Regulations and includes, *inter alia*, certain undertakings to be given by the the Issuer Company to the MB from time to time to be relied upon by the MB for disclosure purposes. Accordingly, the Appellant entered into such a Memorandum of Understanding, the salient features delineating the respective responsibilities of both the Appellant as well as the the Issuer Company are as follows:

- Clause 4 lays down all the duties of the the Issuer Company with respect to the issue. For instance, clause 4.2 states that the the Issuer Company undertakes to provide relevant information to the BRLM to cause the BRLM to file such reports as required by law; clause 4.4 states that the the Issuer Company undertakes to provide the BRLM with all information required to prepare the offer documents in accordance with legal requirements; vide clause 4.5 the Issuer

Company declared that any information made to the BRLM by the the Issuer Company shall be true and accurate and under no circumstance would any information be withheld; vide clause 4.9 the the Issuer Company undertook to update the information provided to the BRLM in case of any material change subsequent to the submission of the DRHP and upto the listing of the Equity Shares of the company.

- Clause 5 puts forth provisions regarding independent verification to be conducted by the BRLM to ascertain the true state of affairs of the the Issuer Company.
- Clause 8 provides for duties of the BRLM and states that the BRLM shall follow the code of conduct as provided in the MB Regulations. Further, the BRLM shall also perform all duties stemming from the Memorandum of Understanding.

48. From the abovesaid, it is evident that the the Issuer Company is primarily responsible for making complete and accurate disclosures in the Offer Documents through the MB. Undoubtedly, the MB has to employ its own independent Due Diligence, but in effect an MB relies upon the information / documents / records furnished by the Issuer Company to be included in the Offer Documents at various stages of the IPO. It is pertinent to mention here that the MB will conduct its due diligence based on the material brought before it by the the Issuer Company, but it cannot be expected to perform this duty in a vacuum when information is not made available to it.

49. It is also true that the responsibility of a Merchant Banker continues from the date of DRHP till the allotment of shares and even the discharge of the funds in the Escrow account, but this does not mean that a Merchant Banker would remain stationed at the premises of the company to watch each and every movement of the Promoters / Directors or its officers for the

purpose of due diligence. There is no especially prescribed manner or procedure under the MB Regulations or for that matter under any other law in force according to which the MB is supposed to conduct the due diligence process. It seems that the Regulations purposely lay down a flexible procedure which may be followed by an MB in the facts and circumstances of a given case of IPO, Rights Issue etc. The Appellant, however, in furtherance of the process of the Due Diligence had inter alia taken the following steps :

- Conducted independent due diligence from various sources.
- The Appellant obtained the The Due Diligence Report and Supplementary Due Diligence Report of the Legal Adviser to the IPO of the Issuer Company dated September 17, 2010 and August 16, 2011 respectively.
- Various Certifications and undertakings were obtained from the the Issuer Company from time to time.
- Various Comfort Letters obtained from Statutory Auditors dated at different stages of the IPO as required by the ICDR Regulations.

50. Undoubtedly, a Comfort Letter issued by a Statutory Auditor cannot be a complete substitute for the exercise of due diligence by the Appellant, however, it must be remembered that such Comfort Letters are issued by none other than the Statutory Auditors of the the Issuer Company, in respect of which RHP / Prospectus is to be filed by the Merchant Banker before the authorities. Such an instrument does carry value and cannot be brushed aside lightly. A Comfort Letter is not an ordinary certificate which can be procured by the the Issuer Company for general purposes in a routine manner from any auditor. Therefore, it is inapposite to question the materiality of a Comfort Letter obtained from a Statutory Auditor particular in light of the fact that Statutory Auditors are also governed and regulated

by SEBI. Although, a Comfort Letter cannot be treated as an excuse for an independent due diligence to be undertaken by a Merchant Banker, yet it is a statutorily recognized step in furtherance of due diligence undertaken by an M.B. and, hence, its value cannot be undermined. The requirement of the Statutory Auditors' Certificate (Comfort Letter) flows from Schedule VIII Section IX of the ICDR Regulations and it is provided therein that audited statements for the purposes of the Offer Document are needed for periods above six months and not before. The Comfort Letters obtained by the MB have been for specifically those periods which had not been covered in the last audit, which had been conducted less than six months ago. It is the admitted position that 4 Comfort Letters were provided by the Statutory Auditors which have not been assailed in any manner, nor have the Statutory Auditors been called upon to explain the statements made therein by the Respondent.

51. In fact, a perusal of the Comfort Letters, in question, clearly reveals that the Statutory Auditor did take into account and definitely read the unaudited accounts of the company till September. As mentioned in Point I of Comfort Letter dated September 13, 2011, the Statutory Auditors have pointed out that the Issuer Company informed them that no financial statements were available subsequent to 31st August, 2011. In such an eventuality, the Statutory Auditors went to the extent of confirming with persons in charge of the company's financial affairs namely, Mr. Vishal Gupta, Mr. Naveen Gupta, Mr. Naveen Chandra Joshi and as stated in the Comfort Letter at points I(a) and (b), the Statutory Auditors noted that there had been no material change in the share capital, current liabilities etc. of the Issuer Company from 1st September, 2011 to 13th September 2011. The expression current liabilities would undoubtedly include ICDs. Further, we have compared the Comfort Letter as provided to the Appellant with the

format prescribed by the ICAI and it is evident that the Statutory Auditors have followed the format in its entirety. Therefore, it emerges that there was no reason for the Appellant to doubt the Comfort Letter issued under the signature of the Statutory Auditors.

52. This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. Hon'ble Supreme Court in the case of **Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117** that due diligence in law means reasonable diligence and doing "*everything reasonable, not everything possible"*.

53. In the case of Chander Kanta Bansal, the Appellant and the Respondent, being the Members of a common co-operative housing society were jointly allotted a plot in New Delhi in the year 1981, and both of them constructed their respective portion. In the year 1986, a dispute arose as regards the driveway. The respondents before the Apex Court had filed a suit before the Trial Court. After the evidence was over, the Appellant before the Supreme Court filed an amendment application bringing on record a written agreement executed between the parties in the year 1982. The Trial Court allowed the amendment subject to certain cost but the High Court, in appeal, reversed the same. This is how the matter eventually reached the Apex Court. While interpreting Order 6 Rule 17 of the Code of Civil Procedure, the Hon'ble Supreme Court noted that Rule 17 makes it

clear that amendment of pleadings is permitted at any stage of the proceeding, but the proviso imposes certain restrictions and provides that after the commencement of trial no application for amendment shall be allowed. However, if it is established that in spite of "due diligence", the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application.

54. In this context, elaborating the concept of due diligence, Hon'ble Supreme Court has pertinently held as under :-

> *"……..The words 'due diligence' have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs…."*

55. Under somewhat similar circumstances, while dealing with similar allegation of lack of due diligence on the part of PNB Investment Services Limited, a leading Merchant Banker, SEBI, relying upon the verdict of Hon'ble Supreme Court in the case of Chandra Kanta (supra), and of course, relying upon certain divergence in the Designated Authority's report, the Learned WTM of SEBI in exercise of discretion / powers conferred upon him by virtue of section 19 read with section 12 (3) of the SEBI Act, 1992, and also Regulation 28 (2) of the SEBI (Intermediaries) Regulations, 2008, disposed of the show cause notice against the Merchant Banker without any further directions and held that "……*On and from the date of operation of this order, the directions issued vide the interim order*

dated 28th December, 2011, read with the confirmatory order dated 7th September, 2012, would not continue further against the noticee and Mr. L.P. Agarwal." In fact, the charge against the PNB Investment Services Limited was that in the matter of IPO of Taksheel Solutions Limited, it had failed to peruse the bank statements of the company, hence, it amounted to lack of due diligence. The following charges were levelled against PNB:

A. failed to make disclosure of cancellation of land allotted to TSL by Andhra Pradesh Industrial Infrastructure Corporation Ltd. (hereinafter referred to as "APIICL"), at Warangal in the offer document;
B. made incorrect disclosures about the presence of employees across various office of TSL in the offer documents;
C. failed to make disclosure on utilization of IPO proceeds for repayment of IDCs raised by TSL;
D. made incorrect disclosures about buy back arrangement of shares of TSL;
E. failed to make disclosure of related party transactions in the offer document of TSL
F. made incorrect disclosures of the business over view of TSL.
G. failed to carry out due diligence while verifying the address of Mr. Ramaswamy Kuchana, Director of TSL.

56. Further, in paragraph 10 of SEBI's order dated 5th August, 2014, it has been categorically held by the learned WTM while exonerating a similarly situated Merchant Banker, namely – PNB Investment Services Limited, held as under :-

> "*10. .....In view of the above, the due diligence expected from the merchant banker is reasonable diligence. Such obligation has to be enquired into and found out on the higher degree of preponderance of probability taking into account the facts and circumstances of the case. The merchant banker cannot be expected to look into each and every statement and information provided by the issuer with suspicion unless the facts and circumstances at the relevant time demand so. Accordingly, the obligation of the Noticee in this case has to be examined keeping in mind the above principles...."*

57. From the above-said we can conclude that SEBI itself has not taken as harsh a view as in the Appellant's case in imposing the punishment on a somewhat similarly situated entity, namely, PNB Investment Services Limited.

58. In this connection, Shri Rustomjee, Learned Senior Counsel for the respondent, has drawn our attention to a judgment of **this Tribunal dated 19th February, 2014, in the case of M/s. Keynote Corporate Services Limited Vs. SEBI [Appeal No. 84 of 2012]** in which, under somewhat similar circumstances, the Merchant Banker in that case was held guilty of lack of due diligence and, hence, the Appeal was dismissed by this Tribunal. Facts of Keynote as reflected in this Tribunal's order dated 19th February, 2014, given in para 2 of the order and read as under :-

> *"2. Appellant was Book Running Lead Manager (hereinafter referred to as BRLM or Merchant Banker), alongwith Ashika Capital Limited ("Ashika") as co-Book Running Lead Manager for IPO of ESL during 2009 and Respondent have held that Appellant failed to maintain satisfactory standards in all aspect of offering, veracity, and adequacy of disclosures in prospectus of ESL, in their role as BRLM, and thus failed to exercise due diligence, since details of Inter-Corporate Deposits (ICDs) availed by ESL and purchase orders issued to certain entities by ESL, availed by ESL between January 12, 2009 to January 23, 2009 were not incorporated by Appellant in prospectus dated February 17, 2009 and file don February 20, 2009 and hence Appellant failed to comply with clauses 5.1 (5.1.1, 5.1.2), 5.3.3.2 (ii) under Chapter 5 of SEBI (DIP) Guidelines, 2000 read with Regulation 111 of SEBI (ICDR) Regulations, 2009."*

59. We have gone through the judgment of Keynote. It is true that the Merchant Banker's Appeal was dismissed in that case. However, every case must be judged on its own facts. We find that the Keynote case is distinguishable and does not help the case of the Respondent for the reasons elucidated hereinafter except that the Bank statements of the the Issuer Company should be examined by an MB during the course of a due diligence exercise. Now, turning to the facts of Keynote, it has been pertinently held by this Tribunal, particularly in para 33 of the order dated 19th February, 2014, that there was a total failure on the part of Merchant Banker in the performance of his duties in the IPO of the Issuer Company, namely, ESL, in that case. From an examination of the facts of Keynote it

is borne out that ESL had siphoned off funds to the tune of ₹ 4.75 crore. Keynote had failed to report this since it based its Due Diligence on primarily two points. The first being a declaration for the Board of Directors stating simply that all statements in the approved offer document were true and correct. Secondly, Keynote relied on the Capitalisation Statement received from a Statutory Auditor, which did not fulfill the requirements of a Comfort Letter as understood from a reading of the relevant provisions of the ICDR as discussed above. In the case of Keynote, it was evident that nothing concrete was done to verify the statements of the Board of Directors and that everything as portrayed by ESL was accepted without question. Even after such a serious misconduct had been established against Keynote, it was penalized only with a monetary penalty of ₹ 10 lac. In this case however, it cannot be said that the Appellant did not take any proactive measure.

60 In fact, it is pertinent to point out, even at the cost of repetition, that the Appellant took the following steps to confirm the information provided to it by the Issuer Company:

- Detailed undertaking/confirmation obtained from the Issuer Company in respect of no material change or adverse events. It was further certified by the Issuer Company that since the date of last financial statements of the company , included in the RHP and prospectus, there has not been any material change in share capital, increase in current liabilities, secured and unsecured loans, deferred payment liabilities, contingent liabilities or total liabilities, or decrease in current assets, loans and advances, fixed assets, total assets or networth of the company, whether at consolidated level or at unconsolidated level; or any material decrease in total

income, profit before depreciation, amortization, interest and taxation, profit after taxation or basic and diluted earnings per share; whether at consolidated level or unconsolidated level except in all instances for changes, increases or decreases that the Final Prospectus discloses have occurred or may occur or as otherwise disclosed.

- Underwriting Agreement signed by the Issuer Company confirming that there has been no material adverse change in the company's position.
- Four Comfort Letters were sought and received from Statutory Auditors about no material change in the Company's financial position.
- MB had several meetings with the Promoters, the CFO, Compliance Officer to enquire about the changes in the position of the company.

61. It would have been, however, better if the Appellant, as a Merchant Banker, had also analyzed the bank accounts of the Issuer Company for a period from 1st April, 2011 till the date of filing of the RHP / Prospectus. The fund flow in the Company's Bank accounts for this period would have unearthed any diversion of the funds, etc. Mr. Devitre, in this context, has argued, and rightly so, that there is no requirement prescribed either in the ICDR or the AIBI Manual to look into the Bank Accounts of the the Issuer Company but we have our own reservations in completely accepting this argument in the present case. We must adopt a more pragmatic approach in this regard. Analysing the fund flow in the the Issuer Company's accounts for the relevant period, ie, from the signing of the Memorandum of Understanding till the conclusion of the IPO, would have revealed the true financial position of the the Issuer Company's financial dealings to

prospective investors more vividly. Such a disclosure is useful and hence essentially needs to be made in the Offer Documents. True and accurate disclosures are important for common investors to take an informed decision regarding investment in the upcoming IPO. The purpose for which the disclosures are required to be made will, thus, be frustrated if the same were inaccurate or untrue or incomplete.

62. Again, in the case of PNB Investment Securities Limited, it was clearly stated by the WTM that the MB could not be expected to look into each and every bank statement with suspicion unless there is a red flag which propels the Merchant banker to do so. However, apart from vital and material developments, there may be some trivial insignificant aspects which may be inadvertently overlooked by an M.B. without any mala fide intentions. In the absence of any connivance with the the Issuer Company, an M.B., therefore, cannot and should not be held liable for alleged lapses which may not have any effect on the decision-making process of the investors to invest or not to invest in the upcoming IPO.

63. Except, non-examination of the bank statement of the Issuer Company, we do not find any major lapse / flaw in the process of due diligence carried out by the Appellant. In fact, even here, there is no allegation that there was any collusion of the Appellant with the Issuer Company. In this context, **a judgment of this Tribunal dated 24th April, 2007, in the case of Worldlink Finance Limited Vs. SEBI [Appeal No. 36 of 2007],** while dealing with the issue as to whether the Appellant therein, as a Merchant Banker was guilty of lack of due diligence or not, held that the Appellant was at fault in not conducting due diligence as was required in that case. According to the Prospectus, in that case, the Promoters of the the Issuer Company were holding 5,33,800 shares which were allotted on 20th March, 1992, with a lock-in period of five years. In

fact, these shares had already been allotted by the Company to 26000 share holders in the year 1992 on private placement basis to various financial institutions and mutual funds, etc. But the Appellant, as a Merchant Banker, failed to take note of the factum of private placement of those shares to the third parties, who were not the Promoters. In fact, the 5,33,800 shares did not stand in the name of Promoters at all and a completely misleading picture was given in the Prospectus inasmuchas these shares were shown as belonging to the Promoters. After the Public Issue, the innocent investors, who had purchased those shares, could not get them transferred to their name because, in fact, the shares did not belong to the Promoters of the the Issuer Company. In this background, even while finding the Appellant guilty of lack of due diligence, this Tribunal reduced the period of debarment from three years to six months and held that :-

> "The question that now arises is – what penalty should be imposed on the appellant? The Securities and Exchange Board of India has debarred the appellant from dealing in securities or associating with any of the activities in the capital market for a period of three years. This penalty, in the circumstances of the case, appears to be too harsh and disproportionate to the gravity of the default committed by the appellant. The learned counsel for the appellant, however, contends that at the most the appellant could be said to have been guilty of lack of due diligence and nothing more and, therefore, mere censure would be enough. We do not agree with this submission. It is true that the appellant is guilty only of lack of due diligence in the performance of its duties but that had serious consequences for some of the investors who have lost their money when they purchased the shares as stated above. To carry out due diligence is the primary responsibility of the merchant banker and since the appellant failed in discharging that duty, we are of the view that it deserves to be debarred from dealing in securities or in carrying out any activities relating to the capital market. The ends of justice, in our view, would be adequately met if the period of debarment is reduced from three years to six months. We order accordingly. **We have reduced this period keeping in view the fact that there is no allegation that the appellant had colluded with the company in deliberately suppressing the true facts. The appeal is disposed of with a direction that the impugned order shall stand modified as stated above. There is no order as to the costs.**"

64. Albeit, it is not mandatory for an MB to look into the bank statements it would have been prudent for the Appellant to peruse the bank statements instead of merely relying on the Statutory Auditor's Report and the statement of the the Issuer Company. Although there is some merit in the charges levelled against the Appellants, as far as non-perusal of Bank statements of the Issuer Company (Appeal No. 275 of 2014) and disclosure of related party transactions (Appeal No. 129 of 2014) is concerned, in view of the fact that the punishment already undergone is far in excess of the punishment which the Appellants deserved against the charges in question, we quash the remnant punishment imposed vide the Impugned Order. Thus, Appeal Nos. 275, 276, 301 of 2014 and 207 of 2015 are partly allowed.

*64A. We have also carefully considered the points urged by the appellant in Appeal No. 300 of 2014. It is the admitted position that the appellant was the MD and CEO of Almondz at the relevant time when the IPO of a company, namely, PGIL was issued by Almondz acting as the BRLM for the IPO in question. It was, therefore, the duty of the appellant to ensure proper compliance with the legal norms to be adhered to by the officers of his own company i.e. Almondz. The appellant cannot pass on his responsibility merely by contending that Regulation 28A of the ICDR Regulations does not refer to MD and CEO but it talks of a compliance officer to monitor various compliance of the rules and regulations framed by SEBI particularly in the matter of bringing out an IPO by a merchant banker. In this connection, it is pertinent to note that Section 27(1) of the SEBI Act, 1992 clearly provides that *"27(1): Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the*

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

64B. On an analysis of section 27(1) of the SEBI Act, it emerges that the said section can be broken into the following ingredients:

a "*offence has been committed by a company*": The Order dated May 13, 2016 passed by this Tribunal holds the company, Almondz, guilty under the Act viz. the non-disclosure of material information in the offer documents.

b "*every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company*": It is a fact that Mr. Vinay Mehta was, at the time of the commission of the offence by Almondz, in charge of and responsible to the company for the conduct of the business of Almondz by virtue of being its Managing Director and Chief Executive Officer.

c "*as well as the company*": As stated above, the company Almondz was also held guilty of non-disclosure.

d "*shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly*".

e "Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence": The proviso to the section stipulates two situations in

> which an officer may not be held liable for the contravention of the company in question. One is if the officer proves that the offense happened without his knowledge and second that the officer exercised due diligence to prevent the contravention. It is the Appellant's responsibility to prove the existence of one of the two aforementioned situations.

From the foregoing analysis, it is borne out that the appellant herein cannot escape liability by trying to distance himself from the conduct of Almondz.

64C. It is difficult to believe the argument of the appellant that he had no knowledge about any due diligence conducted for the IPO of BGIL, or for that matter any IPO. The judgment of Hon'ble Supreme Court in the case of **[Sunil Bharti Mittal vs. CBI reported in 2015 (4) SCC 609]** is not attracted to the present case for the simple reason that appellant is not being prosecuted for any criminal act or criminal conspiracy. The impugned order seeks to hold the appellant responsible, alongwith compliance officer as well as other directors and the company itself, for breach of ICDR Regulations in the matter of lack of due diligence and untrue and insufficient disclosures in the offer documents by the Almondz in respect of the IPO of BGIL. Similarly, the case of [**SMS Pharmaceutical Ltd. vs. Neeta Bhalla reported in (2005) 8 SCC 89]** does not help the case of the appellant. In SMS Pharmaceutical Ltd, the Hon'ble Supreme Court has held that the liability of the director may arise on account of omission as well. The controversy related to the prosecution launched against the officers of that company under Sections 138 and 141 of the Negotiable Instrument Act, 1881. The appellant has not brought on record anything to show that as the MD and CEO, he was not an officer responsible for conducting affairs of his own company, namely, Almondz of which he was not only the MD but was also CEO. At this stage, it is pertinent to note that

in the case of **N. Narayanan vs. SEBI reported in 2013 (12) SCC 152,** it was argued on behalf of the Directors that role of each director being confined to his field of operation, holding appellant directors responsible is not justified, for they do not have expertise or knowledge of intricacies of accounts and finance or sit in judgment over decision of auditors. The Hon'ble Supreme Court repealed this contention urged on behalf of the directors by observing that the directors are expected to exercise their powers on behalf of company with atmost care, skill and diligence. Para 31 of the said judgment is relevant for the present purposes and reproduced hereinbelow for ready reference :-

> *"31. A company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar that : (SCC p. 620, para 45)*
>
> *"45 …… A director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially."*

Therefore, we have no hesitation in upholding the finding of SEBI qua the appellant that as MD and CEO of Almondz he failed in his duty to ensure that there was proper and strict compliance with the regulatory norms prescribed by SEBI in the matter in hand. Since we have already held that the company and the other directors have undergone excessive punishment of debarment of about four and half years as compared to the violation in question, we also hold in the case of the appellant in Appeal No. 301 of 2014 that the remaining punishment imposed in impugned order should

also be quashed and the appeal should be partly allowed. Ordered accordingly.

65. All appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

13.05.2016
Prepared & Compared by
PTM

*** Note : Inserted pursuant to the order dated October 7, 2016.**