

WTM/AB/IVD/ID19/14342/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11A, 11B (1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(1), 12A(2) and 23I of Securities Contracts (Regulations) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

Noticee No.	Name of Noticees	PAN
1.	ARSS Infrastructure Projects Limited	AADCA4203D
2.	Mr. Subash Agarwal	AATPA3716A
3.	Mr. Rajesh Agarwal	ACEPA5209R
4.	Mr. Swarup Chandra Parija	AGAPP2620B
5.	Mrs. Rima Dhawan	AAMPD6994L
6.	Mr. Krishna Chandra Raut	AHPPR0441L
7.	Mr. Sunil Agarwal	AATPA3718Q
8.	Mr. Soumendra Keshari Pattanaik	AFNPP7713B

In the matter of ARSS Infrastructure Projects Limited

(Aforesaid entities are hereinafter individually referred to as by their respective name or noticee number and collectively as “the Noticees”).

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1. The present proceeding emanates from show cause notice dated August 19, 2020 (hereinafter referred to as “**SCN**”) issued to the Noticees by the Securities and

Exchange Board of India (hereinafter referred to as “**SEBI**”). The SCN was issued to the Noticees asking them to show cause as to why suitable directions be issued and/or penalty be not imposed, as deemed fit under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) read with Sections 15A(a), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Sections 12A(1) and 12A(2) read with Sections 23E and 23H of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) against them. The SCN, *inter alia*, alleged that ARSS Infrastructure Projects Limited (hereinafter also referred to as “**AIPL**” / “**the Company**”) had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company. It was further alleged that AIPL had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature. It was also alleged that the directors, Chief Executive Officer (hereinafter referred to as “**CEO**”) and the Chief Financial Officer (hereinafter referred to as “**CFO**”) (i.e. Noticee nos. 2 to 8) of Noticee no.1 had failed to exercise duty of care, by misrepresenting the financials/misusing the funds. It was observed that the directors, CEO and the CFO of Noticee no. 1 had failed to discharge their fiduciary responsibility. The SCN also alleged that Noticee no.1 and its directors, CEO and the CFO (Noticees no. 2 to 8) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company and such acts were found to be fraudulent in nature as they induced the investors to trade in the securities of the Company and had the potential to mislead the investors.

2. On the basis of the same, the SCN alleged that the Company has violated Section 12A (a) (b) & (c), Section 11(2)(i) and 11(2)(ia) of the SEBI Act,1992 and

Regulations 3(b), (c) & (d), 4(1) and 4(2) (f) & (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulation, 2003**”), Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3),(6) & (12), 13(3), 17(6), 17(7), 17(9)(a), 17(9)(b), 18(3), 23(3), 33(1)(d), 33(2)(a), 34(2)(b), 34(3), 36(3) and 48 of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) read with Clause 50 of the erstwhile Listing Agreement and Section 21 of SCRA, 1956. The SCN further alleged that the directors of the company i.e., Mr. Subash Agarwal (noticee no. 2), Mr. Rajesh Agarwal (noticee no. 3), Mr. Swarup Chandra Parija (noticee no. 4), Mrs. Rima Dhawan (noticee no. 5), Mr. Krishna Chandra Raut (noticee no. 6), Mr. Sunil Agarwal (noticee no. 7) and Mr. Soumendra Keshari Pattanaik (noticee no. 8) have violated Section 11(2)(i) and 11(2)(ia), 12A (a), (b) and (c) of the SEBI Act, Regulations 3(b), (c) and (d) and 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, 2003, Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6) & (12), 13(3), 17(6), 17(7), 17(8) read with Part B of Schedule II, 17(9)(a), 17(9)(b), 18(3), 23(3), 33(1)(d), 33(2)(a), 34(2)(b), 34(3), 36(3) and 48 of the LODR Regulations, read with Clause 50 of erstwhile Listing Agreement and Section 27 of SEBI Act, 1992 and Section 21 of SCRA, 1956.

3. The following annexures were provided with the SCN:

Annexure no.	Particulars
Annexure 1	Interim Order
Annexure 2	Forensic Audit Report

4. The Noticees, vide their respective replies to the SCN have submitted as follows:

- a) Noticee no. 4 (Mr. Swarup Chandra Parija) vide joint letter dated December 14, 2020 has submitted that he is a retired IRS Officer and has served more than 38 years in service. That he is currently 79 years old and had retired as the Chairman of the Income Tax Settlement Commission. That he is an individual of great stature and has had an unblemished record over all these years during his service as a member of the Indian Revenue Services. The Noticee has submitted that he is a Non-Executive Independent Director of AIPL since November 27, 2007.
- b) Noticee no. 5, (Mr. Krishna Chandra Raut) vide joint letter dated December 14, 2020 has submitted that he is a retired banker. That he is currently 75 years old. The Noticee has submitted that he joined SBI as a probationary officer on December 24, 1970 and retired as Chief General Manager from SBI Kolkata local head office on April 30, 2005 with an unblemished service record. The Noticee has submitted that he is SBI's Nominee Director on the board of Balasore Alloys Limited. The Noticee has submitted that he was nominated to AIPL board when the Company was put under CDR by the consortium of banks led by the State Bank of India. The Noticee has submitted that he became a director of AIPL on May 11, 2013 and has no role to play in the affairs or day to day management of the company. Further, he has submitted that there was no question of proceeding against any nominee director of a public sector bank in respect of any act done or omitted to be done in discharge of its duties as a director/unless it was established that he had acted in bad faith and was complicit in commission of any such offence.
- c) Noticee no. 6, (Ms. Rima Dhawan) vide joint letter dated December 14, 2020 has submitted that she is a practicing Chartered Accountant and currently serves on the board of AIPL as a Non-Executive Independent Director. Noticee no. 6 has submitted that she is the proprietor of M/s RDA, Chartered Accountants. She has

been serving on the Board of AIPL from December 17, 2017 as a Non-Executive Independent Director.

- d) Noticees no. 4, 5 and 6 vide joint letter dated December 14, 2020 have further submitted that the law on the liability of an independent director is required to be noted as follows:
- (i) The circular dated 29.07.2011 issued by the Government of India, Ministry of Corporate Affairs, expressly provides for an independent director not being held liable for any act or omission by the company or any officer of the company which occurred without his knowledge attributable through board process and without his consent or connivance or where he has acted diligently in the Board process.
 - (ii) Section 149(12) of the Companies Act 2013 also expressly provides that notwithstanding anything contained in the Act, an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.
 - (iii) Under section 27 of the SEBI Act, a director is if it is proved that the contravention was committed with his consent or connivance, or is attributable to his neglect; the director not liable if the contravention was committed without his knowledge or that he had exercised due diligence.
- e) The Company and key managerial personnel i.e. Noticees no. 1, 2, 3, 7 and 8 have through common letter November 21, 2020, submitted detailed response to each allegation in the SCN, which is discussed in subsequent paras.

Consideration of submissions and findings:

5. I have considered the SCN, replies received, and submissions made by the Noticees during the personal hearing granted to them. The SCN alleges the violation of the following provisions of law by the Noticees:

Relevant extract of the provisions of SEBI Act, 1992:

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for:

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(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

.....

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly-

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

be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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Relevant extract of provisions of SCRA, 1956:

“Conditions for listing.

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

Relevant extract of the provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a)
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

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(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial

statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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(r) planting false or misleading news which may induce sale or purchase of securities.

.....”

Relevant extract of the provisions of LODR Regulations:

“Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d)

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) ...

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

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(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

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(i) Disclosure of Information:

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- (2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors-

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- (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
- (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

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(iii) Other responsibilities:

- (3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

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- (6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

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- (12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

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Grievance Redressal Mechanism.

13. (3) The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

Board of Directors.

17. (6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(d) Independent directors shall not be entitled to any stock option.

(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

(9) (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.

(b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

Audit Committee.

18.(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

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Related party transactions.

23. (3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

(b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;

(c) the omnibus approval shall specify:

- (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
- (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
- (iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

Financial results.

33. (1) While preparing financial results, the listed entity shall comply with the following:

- (d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself /herself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

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(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

- (a) The quarterly financial results submitted shall be approved by the board of directors:
Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

Annual Report.

34. (2) The annual report shall contain the following:

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- (b) consolidated financial statements audited by its statutory auditors;

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

Documents & Information to shareholders.

36. (3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

- (a) a brief resume of the director;
- (b) nature of his expertise in specific functional areas;
- (c) disclosure of relationships between directors inter-se;
- (d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and
- (e) shareholding of non-executive directors;

Accounting Standards.

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

6. Before proceeding on the merits of the matter, it will be relevant to discuss the background of the present proceedings.
7. SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office, dated May 23, 2017 which contained the list of shell companies along with their inputs. SEBI, vide its letter dated August 07, 2017, had advised stock exchanges i.e. BSE, NSE and MSEI to identify the companies listed on their respective exchanges from the said list and initiate the surveillance action/measures stated in the letter.
8. Thereafter, NSE vide notice dated August 07, 2017 issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 07, 2017 in

respect of all the listed companies, as identified by MCA and communicated by SEBI, with effect from August 08, 2017. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of these companies like compliance with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.

9. In the meantime, aggrieved by the aforesaid letters/notice dated August 07, 2017 issued by SEBI and stock exchange, AIPL filed an appeal before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**SAT**"). Hon'ble SAT vide order dated September 11, 2017 directed SEBI to consider the appeal itself as a representation made by AIPL and dispose of the same on merits within a period of two weeks, subject to AIPL furnishing the information by September 12, 2017.
10. Pursuant to the decision of Hon'ble SAT, SEBI vide letter dated September 14, 2017, granted an opportunity of hearing to AIPL on September 15, 2017. Thereafter, SEBI passed an interim order in the matter on September 25, 2017 (hereinafter referred to as "**interim order**") wherein *inter alia* following directions were issued:

"22...

- i. *The trading in securities of AIPL shall be reverted to the status as it stood prior to issuance of letter dated August 07, 2017;*
- ii. *Exchange shall appoint an independent forensic auditor inter-alia to further verify:*
 - a. *Misrepresentation including of financial and/or business of AIPL, if any;*
 - b. *Misuse of the funds/books of accounts of the company, if any.*
 - c. *Whether AIPL has actually executed the contracts claimed to have been undertaken by AIPL from PACL, PGFL, M/s Rajesh Projects (India) Pvt. Ltd., M/s Aerens Goldsouk International Ltd and M/s Mahaveer Infra Engineering (P) Ltd. and if not executed, the extent of value of artificially inflated revenue of AIPL in view of such non execution and the illegal gain if any, earned by AIPL as commission from these contracts.*

- iii. *The promoters and directors in AIPL are permitted only to buy the securities of AIPL. The shares held by the promoters and directors in AIPL shall not be allowed to be transferred for sale, by depositories.”*

It was further directed that:

“26. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, ARSS Infrastructure Projects Limited is advised to file its reply/objections to this interim order. The Company, within 30 days from the date of receipt of this Order, may file its reply, if any, to this Order and may also indicate in the reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. In the event of ARSS Infrastructure Projects Limited failing to file such reply within the said 30 days, the preliminary findings of this Order and ad-interim directions at paragraph 22 above shall stand confirmed automatically, without any further orders.”

11. AIPL did not file any reply/objections to the interim order with SEBI within 30 days from the date of the interim order. Accordingly, the preliminary findings of the interim order and ad-interim directions at paragraph 22 of the interim order stood confirmed automatically, without any further orders. Based on the directions given in the interim order, a forensic auditor KPMG India, was appointed by NSE vide letter dated December 11, 2017 to conduct forensic audit of AIPL for the FY 2015-16 and 2016-17. On July 04, 2018, forensic auditor appointed by NSE submitted a Forensic Audit Report (hereinafter referred to as “**FAR**”) to NSE. Thereafter, based on the FAR which was forwarded by NSE to SEBI vide letter dated November 20, 2018, SEBI carried out an investigation in the matter. Based on the findings of investigation, SCN was issued on August 19, 2020 and thereafter, the matter was placed before me on November 23, 2020 for giving an opportunity of hearing and passing a final order in the matter.
12. The SCN was delivered to all the Noticees. An opportunity of personal hearing was granted to the Noticees on January 25, 2021. The Noticees through joint email

dated January 04, 2021 sought for an adjournment. Accordingly, another opportunity of personal hearing was granted to the Noticees on February 24, 2021. On February 24, 2021, advocate representing all the Noticees appeared via video conferencing and sought for an adjournment stating that it was in the process of filing settlement application in the matter. The Noticees were advised to file their settlement application by March 08, 2021 and a final opportunity of personal hearing was granted to the Noticees for May 21, 2021. On May 21, 2021, advocate representing all the Noticees appeared via video conferencing and made submissions. The advocate sought further time to file additional documents and a weeks time was granted to the advocate. However, no additional documents have been filed by the Noticees.

13. I observe that in the SCN, the allegations against the Noticee no. 2 to 8 flows from the allegations against Noticee no.1. Noticees no. 2 to 6 have been charged in their capacity as directors of Noticee no.1, Noticee no. 7 has been charged as the CEO and Noticee no. 8 has been charged as the CFO, of Noticee no.1. Therefore, in the following paras, various allegations made against Noticee no. 1 in the SCN have been examined to find out as to whether the violations alleged in the SCN against Noticee no. 1 have been made out so as to determine liabilities of Noticees no. 2 to 8 also, which is flowing from violations alleged against Noticee no. 1.
14. The main allegations against the Company as contained in the SCN, are discussed below:

I. Misrepresentation including of financials and misuse of funds/books of accounts:

15. The allegations made in the SCN with respect to misrepresentation of financials and misuse of funds/books of accounts and my findings therein are given in the following sub-paras.

15.1 Discrepancies pertaining to Related party transactions:

15.1.1 It is alleged in the SCN that the company failed to disclose certain related party transactions. The FAR has made the following observations in this regard:

“9.3.1 On KPMG's review of the books and records of AIPL and the disclosures provided in the annual report, KPMG noted that transactions between AIPL and Shivam Condev (P) Ltd (SCPL), which is a related party were not appropriately disclosed in the annual report of AIPL. The details are set out as below:

- AIPL had purchased plant and machinery of INR 25.18 crore (127 items) in FY 2015-16 from SCPL.*
- AIPL had sold plant and machinery of INR 11.33 crore (106 items) in FY 2016-17 to SCPL.*
- AIPL's loan of INR 9.54 crore from SREI Equipment Finance Ltd was repaid by SCPL.”*

15.1.1.1 From the above, I note that the Company has failed to disclose transactions related to the Shivam Condev (P) Ltd, an associated concern, in its annual reports for FY 2015-16 and 2016-17. The Company has submitted that they had made disclosures about the related party transactions in the Annual Report for FY 15-16. However, that due to inadvertence, the transaction with Shivam Condev (P) Ltd were inadvertently not disclosed in the Annual Report and is a technical breach without any intention to hide the said transaction. Further, that the said transaction was done at arms length and was appropriately reflected in the accounts of AIPL and there was no misrepresentation to the shareholders of the company and no loss or prejudice was caused to any shareholder. In this regard, I note that the transactions with Shivam Condev (P) Ltd were not minor or negligible amounts but were amounting to Rs. 46 crores

i.e. Rs. 36.52 crores for plant and machinery and Rs. 9.54 crore for repayment of AIPL's loan from SREI Equipment Finance Ltd. Therefore, AIPL cannot conveniently dismiss the failure to disclose the said transactions on account of an inadvertent error for not one but three transactions. Hence, the contention that these related party transactions were inadvertently not disclosed in the annual report is untenable.

15.1.1.2 In this regard, I note that para 23 of Accounting Standard 18- Related Party Disclosures, states as follows:

"If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following: (i) the name of the transacting related party; (ii) a description of the relationship between the parties; (iii) a description of the nature of transactions; (iv) volume of the transactions either as an amount or as an appropriate proportion; (v) any other elements of the related party transactions necessary for an understanding of the financial statements; (vi) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and (vii) amounts written off or written back in the period in respect of debts due from or to related parties".

15.1.1.3 Since the Company has admittedly failed to disclose the related party transactions with Shivam Condev (P) Ltd in the Annual Report of FY 2015-16 and 2016-17, as observed in the FAR, I find that AIPL has not complied with Accounting Standard-18 and has thus, violated Regulation 48 of the LODR Regulations.

15.1.2 The SCN alleges that the omnibus approval granted by the audit committee for related party transactions did not specify the indicative

base price / current contracted price and the formula for variation in the price. The FAR has made the following observations in this regard:

“9.3.3 An omnibus approval was granted by the audit committee for related party transactions, such approval did not specify the indicative base price / current contracted price and the formula for variation in the price if any, in violation of section 23(3) of LODR.”

- 15.1.2.1 AIPL has submitted that they have been taking appropriate omnibus approval at the first meeting of the audit committee held during the financial year. That the said approvals also specify the names of the related parties, nature of transaction, period of transaction, maximum amount of transactions etc. Further that AIPL is engaged in contract work and therefore gets work on a bidding procedure for each project and also sub contracts the work after reserving some margin for itself. AIPL has submitted that hence, the price at which the sub contract would be given would be dependent on the facts of each case and no ready formula can be arrived at during the start of the year and therefore, AIPL is not mentioning the indicative base price. Further, AIPL have submitted that most of the transactions are on an ongoing basis therefore as a control measure, AIPL mentions the limit of transaction which shall be done within one financial year. AIPL have submitted that KPMG has completely failed to appreciate these facts and have mindlessly made a remark without appreciating the fact that proper controls are in place in AIPL to ensure that there is control of the audit committee on the related party transactions.

15.1.2.2 In this regard, I note that Regulation 23(3) of the LODR Regulations states that the Audit committee of a listed company may grant omnibus approval for related party transactions proposed to be entered into by it subject to certain conditions. One of the conditions, as specified in Regulation 23(3)(c)(ii), is that omnibus approval shall specify the indicative base price/current contracted price and the formula for variation in the price if any. Therefore, I note that under Regulation 23(3), for an audit committee to grant omnibus approval for related party transactions, it is mandatory for the omnibus approval to specify the indicative base price/current contracted price and the formula for variation in the price if any. I note that the only circumstances where the audit committee may grant omnibus approval where the need for related party transaction cannot be foreseen and aforesaid details are not available is if the value of the transaction does not exceed Rs. 1 crore per transaction. I note that in the present case, the only argument by the company for not specifying the indicative base price/current contracted price and the formula for variation in the price in the omnibus approval is that since AIPL is engaged in contract work through a bidding procedure for each project and also sub contracts the work after reserving some margin for itself, the price at which the sub contract would be given would be dependent on the facts of each case and no ready formula can be arrived at during the start of the year. From the minutes of Audit Committee meetings from 2015 to 2017, I note that the value of the related party transactions are ranging from Rs. 1 crore to Rs. 150 crores. Therefore, since it is not the case of the Company that the value of the transactions does not exceed Rs. 1 crore per transaction, I find the aforesaid contention of AIPL is untenable as it is mandatory for the Company to specify the

indicative base price/current contracted price and the formula for variation in the price, which the audit committee of AIPL has failed to do so, while granting omnibus approval. In view of the above, I agree with the observations made in the FAR that the omnibus approval granted by the audit committee for related party transactions, did not specify the indicative base price / current contracted price and the formula for variation in the price, in violation of Regulation 23(3) of the LODR Regulations.

- 15.1.3 It is also alleged in the SCN that sale of plant & machinery was made by AIPL to a related party at loss. Additionally, plant & equipment was transferred to creditors in settlement of their dues by providing for higher depreciation. The FAR has made the following observations in this regard:

“Sale of fixed assets: Sale of plant & machinery was made to a related party at loss. Additionally, plant & equipment was transferred to creditors in settlement of their dues by providing for higher depreciation.”

- 15.1.3.1 AIPL has submitted that there are no detailed particulars provided about the said charge in the SCN and on this ground alone, the charge is liable to be dropped. AIPL has submitted that it charged depreciation on Plant and Machinery as per the rate prescribed under the Companies Act, 2013, both for earthmoving and non-earthmoving assets. AIPL has submitted that it charged depreciation on Plant and Machinery sold till the date of disposal and no separate depreciation rate or calculation formula was adopted on sale of plant and machinery to related party. That whatever loss/gain arising from sale of plant and machinery is as

per the regular accounting principle adopted by them and therefore, there is no different treatment for sale to related parties, as alleged.

15.1.3.2 In this regard, I note that it was also observed in the FAR that:

“In FY 2016-'17, plant and equipment worth INR 20.35 crore and a WDV of INR 13.99 crore was sold to a related party Shivam Condev Pvt. Ltd. for INR 11.33 crore, at a loss of INR 2.67 crore. The sale deed for this transaction was not provided for KPMG's review.”

15.1.3.3 From the aforesaid observation, I note that AIPL had sold plant and equipment to a related party Shivam Condev Pvt. Ltd. for a loss of Rs. 2.67 crores. Further, I note that the sale deed for this transaction was not provided to the forensic auditor. I note that AIPL has neither made any submission with respect to the aforesaid observation in the FAR in its reply to the SCN nor has it submitted a copy of the said sale deed and has therefore, avoided giving any mention or explanation to its transaction with Shivam Condev Pvt. Ltd. to whom AIPL sold plant and equipment for a loss of Rs. 2.67 crores. Therefore, since AIPL has failed to provide any explanation to its aforesaid loss making transaction with Shivam Condev Pvt. Ltd., I find the submissions of AIPL that no separate depreciation rate or calculation formula was adopted on sale of plant and machinery to related party or that there is no different treatment for sale to related parties, is untenable. In view of the above, I agree with the observations in the FAR that sale of plant & machinery was made by AIPL to a related party at a loss.

15.2 Not placing certain information before the Board/Audit Committee:

15.2.1 It is alleged in the SCN that management discussion and analysis of financial condition and results of operations were not placed before the audit committee. The FAR has made the following observations in this regard:

“9.3.2 On KPMG’s review of the minutes of the audit committee meetings, KPMG observed management discussion and analysis of financial condition and results of operations were not placed before the audit committee during the review period in violation of section 18(3) of LODR.”

15.2.1.1 The Company has submitted that they have properly placed the management discussion and financial planning at the Board Meeting as well as in Audit Committee meeting which are usually convened one hour before the Board Meeting. Further, that they have been properly giving presentation on the annual operating plans and budgets and highlights the deviations if any, from such target. The Company has submitted that while the issues were placed and discussed by the Board, the same were not recorded in the minutes of the meeting and therefore, the allegation is on the basis of perusal of board minutes without getting into any detail about the other events during the board meeting.

15.2.1.2 In this regard, I note that Section 118 of the Companies Act, 2013, makes it mandatory for a company to prepare minutes of every meeting of its Board of Directors or of every committee of the Board and signed in such manner as may be prescribed and that the minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. I note that Sub-section (7) states that *“The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein”*. Further, under

sub-section (12), it is a punishable offence to tamper with the minutes of the proceedings of meeting. I note that the minutes of the board meeting/audit committee did not record any such placing/discussions, as claimed by the Company and accordingly, I agree with the observations made in the FAR that the management discussion and analysis of financial condition and results of operations were not placed before the audit committee of AIPL during the review period in violation of Section 18(3) of LODR Regulations.

15.2.2 It is alleged in the SCN that the Company was not placing certain information before the Board. The FAR has made the following observations on this subject:

“The following information was not placed before the Board of Directors of AIPL:

- 1. Annual operating plans and budgets and any updates*
- 2. Capital budgets and any updates*
- 3. fees or compensation, if any, paid to non-executive directors, including independent directors”*

15.2.2.1 I note that the FAR has observed that the Company has failed to place the various information before the Board in violation of Regulation 17(7) of the LODR Regulations which provides that the minimum information specified in Part A of Schedule II shall be placed before the Board.

15.2.2.2 The Company has submitted that as per the requirement of Regulation 17(7) of LODR Regulations, they have properly placed before the Board, a sheet containing all the information as required under the said Regulation. Further, that AIPL has also properly disclosed and discussed before the Board by way of presentation on

the Annual Operating Plans and budgets and highlights the deviations if any, from such target. AIPL has submitted that, as already recorded in the KPMG report, the Company is undergoing restructuring and has been declared as an NPA. Since there is no plan for capital expansion therefore, the Board usually does not end up discussing on this matter. Further, AIPL have submitted that they have not paid any compensation to non-executive directors except sitting fees and this fact is mentioned in directors report each year.

15.2.2.3 In this regard, I note that AIPL has not submitted any documentary evidence to elaborate and prove their submission that they have properly placed before the Board, a sheet containing all the information as required under the said Regulation. Further, AIPL has not submitted any documentary evidence to prove that it properly disclosed and discussed before the Board by way of presentation on the Annual Operating Plans and budgets and highlights the deviations if any, from such target. I find that the submissions made by AIPL are just empty claims without any evidentiary backing of documents to support their claim and are therefore, untenable. In view of the above, I agree with the observations made in the FAR that AIPL has failed to place information pertaining to annual operating plans and budgets, capital budget and updates before the Board of directors in violation of Regulation 17(7) of the LODR Regulations.

15.2.3 It is alleged in the SCN that the Company did not lay down procedures to inform members of board of directors about risk assessment and minimization procedures. The FAR has made the following observations on this subject:

“The listed entity did not lay down procedures to inform members of board of directors about risk assessment and minimization procedures.”

15.2.3.1 AIPL has submitted that in accordance with the provisions of the erstwhile listing agreement, the Board of directors of AIPL at its meeting held on February 12, 2015 had constituted a risk management committee. That this committee comprised of 3 members i.e. Mr. Rajesh Agarwal - Managing Director (Chairman of the Committee), Mr. S.K. Pattanaik – Director (CFO) (Member of the Committee) and Mr. Sunil Agarwal – Chief Executive Officer (Member of the Committee). Further, that the said Committee did the risk assessment from time to time and informed the members of the Board about the same.

15.2.3.2 I note that the FAR has observed that AIPL has failed to lay down procedures to inform members of board of directors about risk assessment and minimization procedures in violation of Regulation 17(9)(a) of the LODR Regulations. I note that AIPL has submitted that board of directors had constituted a risk management committee and the risk committee informed the members of the Board about the risk assessment done from time to time. In this regard, I note that AIPL has not submitted any documentary evidence to elaborate and prove their submission that such committee was formed or that such committee submitted any information about risk assessment to the board of directors. Further, AIPL has not submitted any proof that procedures were laid down to inform members of board of directors about risk assessment and minimization procedures. I find that the submissions made by AIPL are just empty claims without any evidentiary backing of documents to support its claim and are therefore, untenable. In view of the above, I agree with the

observations made in the FAR that AIPL has failed to lay down procedures to inform members of board of directors about risk assessment and minimization procedures in violation of Regulation 17(9)(a) of the LODR Regulations.

15.3 Non-disclosures by the Company

15.3.1 The SCN alleged that the Company failed to disclose the relationship between directors in the Notices of AGM held on September 29, 2015 and September 28, 2016. The FAR has made the following observations on this subject:

“9.4.1 On review of the notices and proceedings of AGMs, it was noted that on re-appointment of Rajesh Agarwal and Subash Agarwal on the Board of AIPL, their relationship inter-se was not disclosed, in non-compliance of Section 36(3) (c) of LODR.”

15.3.1.1 AIPL have submitted that in the notice of the Annual General Meeting held on September 29, 2015 and September 28, 2016, in the explanatory statement, AIPL has specifically mentioned that *“Except Mr. Rajesh Agarwal, Mr. Anil Agarwal and Mr. Sunil Agarwal (being his relatives), none of the other Directors and Key Managerial Personnel of the Company and their relatives is concerned or interested in any way, financial or otherwise, in the said resolution”* for relative resolutions. AIPL have submitted that it is not a case of non-disclosure but a case where the disclosure was not made at the appropriate place. That there was no intent to hide the relationship as the same was already disclosed in the explanatory statement. Therefore, the allegation levelled in the KPMG report is completely false on the face of the record. Further, AIPL have submitted that it is trite law that a case of complete non-

disclosure has to be distinguished from a case of non-disclosure at the relevant place. The present case is of non-disclosure at the relevant place and therefore as such cannot be termed as non-disclosure of relationship.

15.3.1.2 In this regard, I note that Regulation 36(3)(c) of the LODR Regulations states that in case if the appointment of a new director or re-appointment of a director, the shareholders must be provided with disclosures of relationships between directors inter-se. I note that the AIPL has contended that it is not a case of non-disclosure but a case where the disclosure was not made at the appropriate place. In this regard, I note that AIPL has submitted copy of the Notices of AGM held on September 29, 2015 and September 28, 2016. From the Notice of AGM held on September 29, 2015, I note that in the para Item no. 7 pertaining to the *“Re-appointment & remuneration of Mr. Rajesh Agarwal, Managing Director”*, there is no disclosure or mention of his inter-se relationship with other directors as required to be disclosed under Regulation 36(3) (c) of LODR Regulations. I note that there is a mention in the latter part pertaining to *“Other Information”* that *“Except Mr. Subash Agarwal, Mr. Anil Agarwal and Mr. Sunil Agarwal (being his relatives), none of the other Directors and Key Managerial Personnel of the Company and their relatives is concerned or interested in any way, financial or otherwise, in the said resolution”*. I note that as per Regulation 36(3) (c) of LODR Regulations, the shareholders must be provided with disclosures of relationships between directors inter-se. The said disclosure made by the Company that except the 3 directors who are relatives other directors do not have any interest in the resolution concerned, does not indicate or can be

considered to indicate relationship of directors inter-se as it does not mention or give clarity on how they are related to one another. Further, said disclosure in the explanatory statement is with respect to interested directors in that particular resolution and hence, it can't even be construed to mean that except these 3 directors, no other director had relationship with other directors of the Company. Hence, the contention of AIPL that it is not a case of non-disclosure but a case where the disclosure was not made at the appropriate place, is untenable. Thus, I find the observation made in this regard in the FAR is correct and APL is in violation of Regulation 36(3)(c) of LODR Regulations.

15.3.2 The SCN alleges that the Company failed to disclose investor grievances and made delayed disclosures in submission of investor grievance report on the stock exchanges. The FAR has made the following observations in this regard:

“For the quarter ending December 2016 the statement of redressal of shareholder grievances including the number of investor complaints pending at the beginning of the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter were not submitted to the stock exchange by AIPL”

“For the quarter ended June 2016 the statement of redressal of shareholder grievances was not submitted within 21 days of the end of the quarter by AIPL.”

15.3.2.1 The Company has submitted that compliances under Regulation 13(3) of the LODR Regulations were done at time for the both quarters ending June 16 and December 16, 2016. That the same are also reflected on the BSE website and also uploaded on the NSE website. Further, that there have been no investor complaints

during the said period and therefore, it cannot be said that any loss or prejudice was caused to any investor or any other stakeholder. AIPL has submitted that why the said information is not reflecting on NSE's website is something only NSE can respond to. That the entire allegation under this charge stems from para 10.22 of the KPMG report and the said charge also does not specify in any detail as to how the same has been arrived at.

15.3.2.2 I note that Regulation 13(3) of the LODR Regulations provides that the listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty-one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter. I note that the FAR has made its observations on the basis of the extract of investor grievance report and statement provided by NSE. I note that AIPL has merely submitted that they had submitted the compliances under Regulation 13(3) of the LODR Regulations for both quarters ending June 16 and December 16, 2016 and the same was uploaded on the NSE website and that the said information not reflecting on NSE's website is something only NSE can respond to. In this regard, if AIPL had uploaded the same on the NSE website for both quarters ending June 16 and December 16, 2016 and if the same was not reflecting on the NSE website then as a listed entity it should have communicated the same to NSE to ensure that such information was uploaded on the NSE website for dissemination of information to the public and for ensuring compliance of Regulation 13(3) of the LODR Regulations. However, I find that AIPL has not

provided any proof or evidence that it had uploaded the same on the NSE website or that it had followed up with NSE upon it not being reflected on the NSE website. Further, AIPL has not provided any acknowledgement receipt/email received from NSE that the information was uploaded on its website, to support its claim that they had uploaded the same on the NSE website. Hence, the contention of the Company that it has uploaded the same on the NSE website and it is for NSE to explain why it is not reflecting on its website, is untenable.

15.3.2.3 Further, for the reasons discussed in the aforesaid para, the contention of AIPL that the said charge also does not specify in any detail as to how the same has been arrived at, is baseless and untenable as the allegation is clear that the statement of redressal of shareholder grievances for the quarter ending December 2016 was not submitted to NSE as the same was not showing on the NSE website, and for the quarter ended June 2016 the statement of redressal of shareholder grievances was not submitted within 21 days of the end of the quarter by AIPL. As discussed, AIPL cannot abdicate its responsibility on the stock exchange without showing any evidence that the information was submitted to NSE or uploaded on the NSE website. Further, the contention that there have been no investor complaints during the said period and therefore, it cannot be said that any loss or prejudice was caused to any investor or any other stakeholder, is immaterial to the requirement under Regulation 13(3) of the LODR Regulations and hence, untenable. In view of the above, I agree with the aforesaid observations made in the FAR that AIPL has failed to comply with Regulation 13(3) of the LODR Regulations.

15.3.3 The SCN has also alleged that the Company made incomplete disclosure of a fire incident at the Company. AIPL had claimed that it suffered a fire outbreak on October 29, 2013 at its registered office in Bhubaneswar. They provided a fire certificate issued by the Office of the Chief Fire Officer, Cuttack Odisha, issued on January 21, 2014 for this incident. However, disclosure about the fire incident has not been made in the Annual Report of FY 2013-14. The FAR has made the following observations on this subject:

6.3.1 AIPL claims that it suffered a fire outbreak on 29 October 2013 at its registered office in Bhubaneshwar. They provided a fire certificate issued by the Office of the Chief Fire Officer, Cuttack Odisha, issued on 21 January 2014 for this incident (set out in Exhibit 9).

6.3.1.1 Public domain searches could not provide news of fire incident at its registered office appearing in any newspaper even though AIPL is a fairly well known company in Bhubaneshwar.

6.3.1.2 It was observed that the fire certificate was issued approx. 3 months after the incident on request of AIPL.

6.3.1.3 Disclosure about the fire incident has not been made in the Annual Report of FY 2013-14.

6.3.1.4 As pointed out by SEBI, AIPL did not mention about any of its records being destroyed in the fire in their Annual Report.

6.3.2 *To verify the incidence of the fire KPMG wanted to review the information that would be typically available with any entity, such as:*

i. Fire insurance policy and its coverage

ii. Claim filed under the said policy and the details of the damage

iii. Surveyors report on such claim

iv. Insurance companies, acceptance of such claim and payment of damages, if any.

6.3.3 *However, in spite of several follow ups, AIPL did not produce the papers submitted to the insurance company against fire claim.*

15.3.3.1 AIPL has submitted that it was an unintentional mistake made by them by not mentioning it in the financial report in FY 2013-14. However, considering the time period that has passed since the alleged violation, AIPL has submitted that they not be penalized or punished for the same and have undertaken to be more careful in the future about the said practices.

15.3.3.2 In this regard, I note that AIPL has admitted that they have failed to disclose about the fire incident in the Annual Report FY 2013-14 and submitted that it was an unintentional mistake. I also note that AIPL had informed the forensic auditor that all the documents and accounting data software stored in Tally was destroyed in the fire. Therefore, I note that it becomes even more relevant for such information to be disclosed in the Annual Report, which the Company has failed to do so. In view of the above, I agree with the observations made in the FAR that AIPL failed to make disclosure in the Annual Report 2013-14 about the fire outbreak at its registered office in Bhubaneswar on October 29, 2013.

15.4 Inadequate responsibility of Board: The board of directors of AIPL were not explicitly made responsible for framing, implementing and monitoring the risk management plan for the listed entity.

15.4.1 The FAR has made the following observations on this subject:

“The board of directors of ARSS were not explicitly made responsible for framing, implementing and monitoring the risk management plan for the listed entity”

15.4.2 AIPL has submitted that the entire allegation under this charge stems from para 10.22 of the FAR and the said charge also does not specify in any detail as to how the same has been arrived at. Further, that there is no particulars or details as to how was the said charge arrived at.

15.4.3 I note that the FAR has observed that the board of directors of ARSS were not explicitly made responsible for framing, implementing and monitoring the risk management plan for the listed entity, in violation of Regulation 17(9)(b) of the LODR Regulations, as observed from the Minutes of Board Meeting of AIPL. I note that Regulation 17(9)(b) states that the board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity. In this regard, I note that neither the FAR nor the SCN has elaborated on how this allegation has been arrived at. I find that the allegation is unclear and does not explain or provide details as to how the board of directors were not “explicitly” made responsible for framing, implementing and monitoring the risk management plan for the listed entity, as alleged. Hence, I find that the allegation does not hold.

15.5 The Annual report of AIPL for the financial year ended 2016 did not include consolidated financial statements

15.5.1 The FAR has made the following observations on this subject:

“The Annual report of AIPL for the financial year ended 2016 did not include consolidated financial statements. As per a statement given by the directors in the annual report, this consolidation did not take place due to a dispute which had arisen between AIPL and its subsidiary ARSS Bus Terminal Private Limited.”

15.5.2 AIPL has submitted that the reason for not including consolidated financial statements in the Annual Report for FY 2015-16 was due to disputes with one of their subsidiary, ARSS Bus Terminals Pvt. Ltd. Further, that AIPL had also transferred its 51% stake of its subsidiary to Welspun Enterprises Ltd. on September 06, 2015 and this prevented AIPL in preparing the consolidated financial statements for the year. AIPL have submitted that the said fact was disclosed in the annual report for the year 2014-15. AIPL has submitted that there were disputes between the joint venture partners which prevented the preparation and finalization of the joint ventures's financial statements and in the absence of finalized statements from the joint venture, it was not possible to prepare the consolidated financial statements. Further, that the same was made known to the readers of the financial statements by way of the notes in the accounts. The Company has provided a copy of the Writ Petition (C) filed against State Government and the Order dated December 20, 2012 passed by the Hon'ble High Court of Orissa, wherein, AIPL claims that the above dispute has been clarified. That the consolidated financial statements can only be prepared if the financials of the subsidiary are finalized and in cases of joint venture's, if there are disputes between joint venture partners, there are situations when the statements are not prepared.

15.5.3 In this regard, I note that it has been observed in the FAR that as per a statement given by the directors in the annual report, the consolidation did not take place due to a dispute which had arisen between AIPL and its subsidiary ARSS Bus Terminal Pvt. Ltd. In this regard, I note from the corporate announcement made by the Company on the stock exchanges on September 15, 2015 that the Company had *inter alia* informed that there was a dispute between the company and one of its subsidiary

named ARSS Bus Terminal Private Limited and in order to end the long pending disputes, the Company has agreed to transfer its 51% shareholding of ARSS Bus Terminal Private Limited in favor of Welspun Enterprises Limited. Therefore, I note that the said dispute and transfer of shareholding of the subsidiary to another company was disclosed on the stock exchange. Since the Company's 51% shareholding in the subsidiary ARSS Bus Terminal Private Limited was transferred to Welspun Enterprises Ltd. in September 2015, the subsidiary may not have been co-operating and delayed the process for AIPL to prepare its consolidated financial statements for the financial year ended 2016. Further, I note that there are no adverse observations in the FAR with regard to the said explanation/reasons given by the Company for not including consolidated financial statements in the Annual Report for FY 2015-16. Therefore, no adverse inference can be drawn against AIPL on the basis of this observation.

15.6 Discrepancies and inconsistencies in financials of AIPL

15.6.1 It is alleged in the SCN that the chartered accountant Mr. Ajay B. Garg, who issued the limited review reports and audit reports of AIPL did not hold a valid certificate issued by the Peer Review Board. The FAR has made the following observations in this regard:

"The limited review reports and audit reports of AIPL were issued by Ajay. B. Garg - Chartered Accountant. KPMG could not locate his name in the list of Chartered Accountants who had subjected themselves to peer review process of ICAI and held a valid certificate issued by the Peer Review Board."

15.6.1.1 The Company has submitted that the entire allegation stems from para 10.22 of the FAR, wherein, the allegation is that the auditor was not a peer reviewed auditor and therefore the charge has been

made. Further, that the basis of the said charge is that they could not find the name in the ICAI database. AIPL has submitted that the said charge is completely baseless and has been made in a lazy manner as the said auditor, Mr. Garg, was a peer reviewed auditor and the proof of the same has been sought from him. Considering the time sensitivity of the matter, AIPL has sought leave to file the same in due course as and when the same is provided to them.

15.6.1.2 I note that the FAR has observed that the chartered accountant Mr. Ajay B. Garg, who issued the limited review reports and audit reports of AIPL did not hold a valid certificate issued by the Peer Review Board in violation of Regulation 33(1)(d) of the LODR Regulations, which provides that the listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself /herself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India. I note that AIPL has contended that the said charge is completely baseless as the chartered accountant Mr. Ajay B. Garg was a peer reviewed auditor and proof of the same has been sought from him and would be provided to SEBI. However, I note that till the date of passing this order, AIPL has not submitted any proof that Mr. Ajay B. Garg was a peer reviewed auditor. Therefore, I find that there is no document on record before me to prove that Mr. Ajay B. Garg was a peer reviewed auditor holding a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India. In view of the above, I agree with the aforesaid observations made in the FAR, that the chartered accountant Mr. Ajay B. Garg, who issued

the limited review reports and audit reports of AIPL did not hold a valid certificate issued by the Peer Review Board in violation of Regulation 33(1)(d) of the LODR Regulations.

15.6.2 The SCN also alleged that there were inconsistencies in the accounting and financial data of the Company. The FAR has made the following observations in this regard:

"6.3.5 On KPMG's review of the books and records of AIPL, KPMG observed certain inconsistencies in the accounting and financial data that was submitted to us during the review. KPMG has not been provided any explanation for the inconsistency and in the absence of explanations KPMG is unable to determine if this is an error or a manipulation of the underlying information submitted to us at various points of time- Such observations raise doubts on the reliability of the underlying information and supporting information submitted to us. The variations identified by us are set out as under:

i. PACL (Delhi)'s ledger provided to us at two different points of review indicates varying information for the period 1 April 2010 to 31 March 2011.

.....

ii. On tracing receipt entries from 27 July 2010 to 30 August 2010 totaling to INR 17.64 crore appearing in the bank book of Axis Bank (BBSR) with the customer ledger. KPMG noted that the entries do not tie up with the receipt amounts appearing in the ledger of PACL (Kolkata). The total amount of difference is INR 0.36 crore. Given the transactions are recorded at the same time in bank book and ledger, this appears to be an inconsistency, which has not been explained.

Entry-wise details have been set out below.

Date	Amount in Axis Bank (BBSE) Book	Amount in PACL India Ltd (Kolkata) Ledger	Amount of Discrepancy
27/07/2010	19,600,000	20,000,000	(400,000)
27/07/2010	9,800,000	10,000,000	(200,000)
28/07/2010	9,800,000	10,000,000	(200,000)
28/07/2010	9,800,000	10,000,000	(200,000)
29/07/2010	9,800,000	10,000,000	(200,000)
29/07/2010	19,600,000	20,000,000	(400,000)

30/07/2010	9,800,000	10,000,000	(200,000)
31/07/2010	9,800,000	10,000,000	(200,000)
18/08/2010	9,800,000	10,000,000	(200,000)
20/08/2010	9,800,000	10,000,000	(200,000)
21/08/2010	9,800,000	10,000,000	(200,000)
25/08/2010	9,800,000	10,000,000	(200,000)
27/08/2010	9,800,000	10,000,000	(200,000)
28/08/2010	9,800,000	10,000,000	(200,000)
30/08/2010	9,800,000	10,000,000	(200,000)
30/08/2010	9,800,000	10,000,000	(200,000)
Total	176,400,000	180,000,000	(3,600,000)

iii. On tracing the receipt entry of INR 9,800,000 in the bank book of Axis Bank (BBSR) on 8 June 2010 with the customer ledger, KPMG noted that it does not tie up with the receipt amount appearing in the PACL (Delhi). The corresponding entry in the ledger is:

. Version 1 - INR 8,761,231

. Version 2 - INR 10,000,000

Bank book and PACL (Delhi) ledger have been set out in Exhibit 11.

6.3.6 AIPL had an outstanding balance of INR 57.59 lakhs to be recovered from PACL as on 31 March 2010 (ledger code: PACL India Ltd). KPMG were provided two ledgers for the same entity for the period 1 April 2010 to 31 March 2011 for PACL (Delhi) and PACL (Kolkata) and noted the opening balance for both the ledgers was Nil. Ideally the closing balance of FY 2009-10 will be the opening balance for FY 2010-11 for the same account head. Though PACL account is not appearing in FY 2010-11 and the nomenclature have been changed but the reasons for the variations between the closing and opening balance are unexplained. Relevant extract of the ledgers is set out in Exhibit 12.

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6.3.7 KPMG had requested banks statements from AIPL to verify the transactions reported in its books of account. KPMG has not been provided any bank statement for the review period and it has been a key limitation to KPMG's exercise. KPMG were informed that the bank statement were not available since they were burnt in 2013. On KPMG's insistence, AIPL claimed that they have requested duplicate bank account statements but the same were

not made available to us till the completion of field work. The copies of some of the letters written to banks are set out in Exhibit 13.

- 15.6.2.1 AIPL has submitted that it has submitted two ledger copy of PACL, one in the name of PACL India Ltd (Delhi) and second one is PACL India Ltd (Kolkata) and there is no such other account in the name of PACL. Further, that KPMG has referred the discrepancy in transaction with PACL is for an amount of Rs. 36 lakhs. AIPL has submitted that the difference is due to TDS of 2%. AIPL has submitted that there is no such difference in accounts.
- 15.6.2.2 With regard to the submissions made by AIPL, I note that page 34 and 35 of the FAR provides the screenshot of Ledger Version 1 and 2 of PACL (Delhi) ledger provided to the forensic auditor by AIPL at two different points of review. From the said screenshots, I note that both version 1 and version 2 have the Ledger Account stated as 'PacL India Ltd (Delhi)'. Therefore, the submission of AIPL that it had submitted two ledger copies of PACL, one in the name of PACL India Ltd (Delhi) and second one is PACL India Ltd (Kolkata) is untenable, as both the ledgers shown in the FAR have the Ledger Account stated as 'PacL India Ltd (Delhi)'. Hence, I agree with the observation made in the FAR that the PACL (Delhi) ledger provided by AIPL to the forensic auditor at two different points of review indicates varying information for the period April 01, 2010 to March 31, 2011 and this shows that there are inconsistencies in the accounting and financial data of AIPL.
- 15.6.2.3 Further, with regard to the observation in the FAR that entries from July 27, 2010 to August 30, 2010 totaling to Rs. 17.64 crore appearing in the bank book of Axis Bank (BBSR) with the customer

ledger do not tie up with the receipt amounts appearing in the ledger of PACL (Kolkata), showing a difference of Rs. 36 lakhs, I note that AIPL has submitted that the difference is due to TDS of 2%. In this regard, I note that the difference for each entry is 2%. However, AIPL has not submitted any evidence or relevant tax forms to show that the same was on account of TDS. Further, I note that the forensic auditor was not provided any explanation for the inconsistency during its review and the said explanation that it was due to TDS of 2%, has been submitted only now in reply to the SCN, but without any supporting evidence. It has also been observed in the FAR that AIPL had not provided any bank statement for the review period as requested by the forensic auditor and I note that AIPL has not responded to the same in its reply to the SCN. In view of the above, I agree with the observations made in the FAR that there were inconsistencies in the accounting and financial data submitted by AIPL.

15.6.3 The SCN also alleged that there were inconsistencies within Tally data of the Company. The FAR has made the following observations in this regard:

6.4.2 *On KPMG's review of the bank summary generated from Tally for FY 2008-09 and FY 2009-10, KPMG noted that the closing balances of four banks for FY 2008-09 are not reflecting as opening balances for FY 2009-10. The summary is set out below:*

Name of Bank Account	Closing balance as per Bank Summary for FY 2008-09 (INR)	Opening balance as per Bank Summary for FY 2009-10	Variation(INR)
Bank of India(TL)	35,068,847	-	35,068,847
SBI Commercial Branch(TL)	247,722,876	-	247,722,876
SBI Jajpur Town(TL)	3,540,993	-	3,540,993
SBI Jajpur Town(TL1)	181,856,749	-	181,856,749
Total	468,189,465	-	468,189,465

KPMG were not provided with appropriate explanations for the above stated variations in the bank summaries of the two years by AIPL. Hence KPMG are unable to confirm the impact of the variations in the financial statements.

6.4.3 KPMG compared the closing balance of the bank accounts, as per Tally data, with the year-end numbers reported in the annual report. The summary is set out below:

Financial Year	Bank Balance as per Annual Report (credit balance)	Bank Balance as per Tally (credit balance)	Variation
	A	B	A-B
2006-07	(215,891,383)	(215,891,383)	-
2007-08	(510,438,736)	(510,438,736)	-
2008-09	(1,654,251,658)	(1,623,057,546)	(31,194,111)
2009-10	(2,409,522,532)	(2,409,522,532)	-
2010-11	(5,266,769,650)	(5,266,769,650)	-

At this stage KPMG do not have appropriate explanation for the above stated differences in the bank balance as per Tally and balance as per the annual report for FY 2008-09.”

15.6.3.1 I note that AIPL has not made any submission to the aforesaid observation on inconsistencies within tally data in the FAR. From the aforesaid observations of the FAR, I note that the closing balances of four bank accounts for the FY 2008-09 are not reflecting as opening balances for FY 2009-10. The variation is amounting to a total of Rs. 46,81,89,465/-. I note that AIPL did not provide any explanation for the said variation and hence, the forensic auditors were unable to

confirm the impact of such variation amounting to Rs. 46.81 crores in the financial statements. Further, it was observed in the FAR that upon comparing the closing balance of the bank accounts as per tally data with the year-end numbers reported in the annual report, there was a variation of Rs. 3.11 crores for the FY 2008-09. I note that AIPL have not provided any explanation to the forensic auditor with regard to the said variation of Rs. 3.11 crores and neither have they made any submissions now with regard to the same in their reply to the SCN. In view of the above, I agree with the observations made in the FAR that there are inconsistencies within tally data.

15.7 Overstatement of revenue and sub-contracting expenses:

15.7.1 The FAR has made the following observations on this subject:

6.1.2.1 As per the interim order, SEBI had requested AIPL to provide contract details from five entities viz. PACL India Ltd (PACL), PGF Ltd (PGF), Rajesh Projects (India) P. Ltd. (RPI), Aerens Goldsouk international Ltd (AGI) and Mahaveer Infraengineering (P) Ltd.(MIE) (hereafter referred to as, "the five entities"). KPMG noted that the focus of the inquiry was to understand the association of AIPL with the five entities, breakup of the transaction value recorded in the financials and revenue reconciliation of the contracts with the five entities.

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6.1.2.4 KPMG requested for the work orders from the five entities received by AIPL and were provided the following details:

Work order review

(Amount in INR crore)

Sr. No	Name of the Entity	Total revenue for the period FY 2006-07 to FY 2010-11 (A)	% of revenue to total revenue (B)	Date of work order	Value of work orders provided for review (C)	% of value of work orders provided by AIPL as compared to the total revenue (D)	No of villages as per work order
1	PACL	314.34	71.64%	1 June 2010	148.47	52.00%	276
				5 April 2007	15.00		1
2	RPI	54.78	12.48%	12 December 2010	34.36	62.72%	12
3	AGI	45.21	10.30%	5 January 2011	44.91	99.33%	657
4	MIE	14.70	3.35%	4 August 2010	14.70	100.00%	47
5	PGF	9.78	2.23%	3 October 2006	-	-	2
Total		438.81	100.00%		257.44	58.67%	995

6.1.2.5 On KPMG's review of all the work orders/agreements KPMG noted the following:

- i. Identification number of the pieces of land under scope such as survey number/khata/khasra number/plot number etc. are not mentioned. KPMG inquired for such details but was not provided. This is a key issue raised in the SEBI order. KPMG was made to understand by AIPL that such information is not maintained by them. The work orders are set out in Exhibit 1.
- ii. Details of ownership of land, title, municipal / panchayat records of the land where situated etc. have not been mentioned in any of the work orders.
- iii. The scope of work for AIPL is "Earth work for development of Agriculture land including clearance, excavation, levelling, dressing etc. of agriculture land earmarked site" which is similar in all the work orders. Extract of the orders with similar scope of work have been set out in Exhibit 2.
- iv. The format and language of all the documents appears similar to each other and all the clauses of the contract are identical except for duration of work and appear in the same order. Extract of the orders with identical clauses have been set out in Exhibit 3.
- v. KPMG noted that AIPL was the service provider to the five entities. However, it was observed that in agreement dated October 3, 2006, AIPL had contracted the work to PGF for "leveling the surface including dressing" up to "inform height" and "clearing grubbing and uprooting of vegetation" for a value of approx. INR 10

crore. KPMG inquired from AIPL the payment of such services to PGF and the rationale for such transactions, however, they were not provided sufficient details to verify the payout and business logic for the said transactions.

- vi. KPMG conducted public domain checks on the villages listed in the work orders and have set out below the key observations:

(Amount in INR crore)

Entity Name	Details from Contract			Parameters for analysis					
	Total no of villages as per contract	Sample villages reviewed		Village not found with exact name or name variation (A)		Villages found but with name variations (B)		Villages found in different geography (C)	
		Count	Value of contract	Count	Value of contract	Count	Value of contract	Count	Value of contract
PACL	276	30	62.72	7	3.63	13	48.16	1	0.00
	1	1	15	NIL	NIL	1	15.00	NIL	NIL
RPI	12	7	20.40	4	12.91	3	7.49	NIL	NIL
AGI	657	40	23.09	20	5.37	16	17.71	1	0.00
MIE	47	30	12.99	17	8.49	10	4.50	NIL	NIL
PGF	2	2	19.55	NIL	NIL	1	17.07	NIL	NIL
Total	995	110	153.75	48	30.41	44	109.93	2	0.01

- vii. Public domain search conducted on a sample list of 110 villages of the 995 villages mentioned in the work orders revealed that (A) 48 villages could not be located exact name or with name variations (multiple spelling variations); (B) 44 villages were located with name variations and (c) 2 villages were found to be in different geographical location other than that mentioned in the work order. List of these instances identified have been set out in Annexure – 6. Details of some of the examples are set out below.

a.

b.

.....

- e. Multiple instances were noted wherein village names in the list were used in multiple spelling variations in a sequence.

S.No	VILLAGE	DISTT.	T. AREA (In Cum)
154	RASIGAPURAM x	THENI	99.17
155	RASIMGAPURAM y	THENI	74.38
156	RASINAPURAM x	THENI	99.17
157	RASINGAAPURAM x	THENI	247.93
158	RASINGAPAUAM x	THENI	247.93
159	RASINGAPUAM x	THENI	226,669.42
160	RASINGAPURAM x	TUTICORIN	49.59
161	RASINGAPURMA x	THENI	99.17
162	RASINGAUPRAM y	THENI	49.59
163	RASINGAUPURAM x	THENI	421.49
164	RASINGAURAM x	THENI	123.97
165	RASISNGAPURAM x	THENI	99.17
166	RASINGAPURAM x	THENI	24.79
167	RASUBGAOYRAN x	THENI	247.93
168	RASUBGAPURAM x	THENI	49.59

224	SARAAMANGALAM	TIRUCHIRAPALLI	495.87
225	SARAAMANKALAM	TIRUCHIRAPALLI	24.79
226	SARADAMAGALAM	TIRUCHIRAPALLI	74.38
227	SARADAMAGNALAM	TIRUCHIRAPALLI	99.17
228	SARADAMAKALAM	TIRUCHIRAPALLI	74.38
229	SARADAMANAGALAM	TIRUCHIRAPALLI	99.17
230	SARADAMANAGAM	TIRUCHIRAPALLI	23,974.29
231	SARADAMANGALAM	TUTICORIN	74.38
232	SARADAMANGALM	TIRUCHIRAPALLI	49.59
233	SARADAMANGKAM LAN	TIRUCHIRAPALLI	24.79
234	SARADAMANGLAM	TIRUCHIRAPALLI	58,710.74
235	SARADAMANKALAM	TIRUCHIRAPALLI	49.59
236	SARADAMANKULAM	TIRUCHIRAPALLI	74.38
237	SARADAMNKALAM	TIRUCHIRAPALLI	24.79
238	SARADANAGALAM	TIRUCHIRAPALLI	24.79
239	SARDAMANBALAM	TIRUCHIRAPALLI	198.35
240	SARDAMANGALAM	TIRUCHIRAPALLI	173.55
241	SARDAMANKALAM	TIRUCHIRAPALLI	49.59
242	SARDARAMANGALAM	TIRUCHIRAPALLI	49.59
243	SASDHURBAHAM	TIRUCHIRAPALLI	148.76
244	SASVARIMANGALAM	TUTICORIN	223.14
245	SATTANKULAM	TIRUNELVELLI	49.59
246	SAURBAGHAM	TIRUCHIRAPALLI	99.17
247	SAVAIMANGALAM	TUTICORIN	74.38
248	SAVARAIMANGALAM	TUTICORIN	99.17

6.1.2.6 KPMGs discussions with AIPL management regarding sources of contracts from five entities indicated the following:

- AIPL informed us that Mr. Bajrang Lal Agarwal (Consultant with DIN number 00549616), obtained contracts from PACL/PGF on behalf of the company.

- ii. AIPL's personnel including the Chairman, CFO and the AVP Finance and Accounts informed that the company did not play any role in the dealings with the customers and do not have direct contact with any of the involved customers (PACL/PGF).*
- iii. KPMG were explained that only the consultant (Mr. Bajrang Lal Agarwal) is aware of the transactions and no payment to Mr. Bajrang Lal Agarwal was made as commission / professional fees for the dealings. KPMG are not clear on the consideration for which he worked for AIPL. KPMG identified his linkages with few other entities. Further details are set out in Annexure 7.*

6.1.2.7 On inquiring about these transactions, Mr. Bajrang Lal Agarwal responded that:

- i. He was contacted by one of his acquaintances who worked in the administration department of PACL and was offered to route the transactions through AIPL. He claimed that he acted only as a consultant to AIPL, while the responsibility of execution of the projects, including appointment of sub-contractors, remained with the customer PACL.*
- ii. He also informed that he is a cousin of the promoter Mr. Subash Agarwal. As per information available in public domain, the consultant is a past director of AIPL during the period 1 July 2006 to 31 October 2007. KPMG requested him to provide documentation regarding the transactions, however, the same were not provided by him.*

6.1.2.8 KPMG requested for the ledger details for all the five entities to review the transactions and the payments received from them and observed that, during FY 2007-08, 2008-09 and 2010-11, full payment has been received against all the invoices booked in the respective years and no receivable is outstanding at the end of any of the years. Interestingly KPMG noted that the debtors' turnover ratio at the entity level is in the range of 21.89 days to 46.47 days for FY 2007-08, FY 2008-09, FY 2009-10 and FY 2010-11 but for these customers payments were received within the same financial year in which invoices were booked. Relevant extracts of the entities' ledgers are set out in Exhibit 5.

6.1.2.9 Analysis of AIPL's business contract with PACL

- i. KPMG observed that out of the five stated entities, 71.64% of the revenue was from PACL. Further analysis of the available information indicate that entire work*

was outsourced to nearly 25 sub-contractors (details of the subcontractor are set out in Annexure 8)

ii.

.....

6.1.2.10 Review of sample PACL work orders dated 5 April 2007 and 1 June 2010 indicate that land levelling work was to be undertaken in Madhya Pradesh. However, from the list of names and addresses of the sub-contractors provided by AIPL, it was observed that none of the sub-contractors were from Madhya Pradesh. This is contradictory to AIPL's claims stating that generally in the cases where sub-contractors are to be deployed, they are hired from the local vicinity. KPMG has set out in Annexure 8 details of sub-contractors and the addresses.

6.1.2.11 Ramesh Prasad Agarwal is a sub-contractor for PACL project and INR 7.08 crore was paid to him. KPMG cross checked his PAN number provided by AIPL and observed that he is connected to AIPL in various capacities

- i. Employee – In the employee master provided by AIPL it was observed that Ramesh Prasad Agarwal is an employee of AIPL from March 2010 and held that position of Project Director.*
- ii. Director in Subsidiary – Public domain searches revealed that Ramesh Prasad Agarwal is a current director of the subsidiary – ADHTPL from 7 Jan 2015 (DIN 07396729)*
- iii. Shareholder – From the shareholding pattern of AIPL, it was observed that Ramesh Prasad Agarwal was one of the shareholders within the Promoter and Promoter Group holding, 3000 shares as on 31 March 2017. (Set out in Annexure 10)*
- iv. Relative – As per draft prospectus of AIPL, it was noted that Ramesh Agarwal is the cousin of Chairman Subash Agarwal.*

Mr. R.R. Singh (AVP- Finance & Accounts) confirmed that Mr. Ramesh Prasad Agarwal is a past employee of the company but did not mention that he is a shareholder and relative of the promoters and also received payment from AIPL in the past in the capacity of a sub-contractor. This is contradictory to AIPL's claim that the sub-contractors hired for

executing contract with PACL, were not known to AIPL and were approached and contracted by PACL solely.”

15.7.2 AIPL has submitted that they have not overstated any revenue and its corresponding sub-contracting expenses. That the revenue which the company has booked from the 5 entities is very much appearing in annual consolidated credit statement u/s 203AA (26AS) of the Income Tax Act 1961. That they have already explained the nature of income from the above parties to the forensic auditors and different forum of investigations that the above works were executed through the sub-contractors on back to back basis. Further, that they have also given the list of sub-contractors to KPMG through which they had executed the work. AIPL have further submitted that KPMG has made a report on the basis of “google searches” without actually getting into the issues of facts or investing the same. Merely because an item does not exist on google does not mean that the same is fictitious. AIPL has submitted that the entire manner in which the allegations have been made are baseless and cannot be sustained. Further, that the investigation done by KPMG is completely baseless and ought to be disregarded.

15.7.3 With regard to the contention of the Noticees that the allegations and investigation done by the forensic auditor are completely baseless, my findings on the observations in the FAR are as follows. I note that it is observed in the FAR that AIPL provided details of only 58% of work orders for the five entities over five years for review by the forensic auditors. Therefore, I note that AIPL was unable to furnish details of 42% of work orders with the five entities. Further, even for the work orders furnished by AIPL, I note that the Khasra number or any other location identifier were not provided for all the villages. I also note that the scope of work, as observed in the FAR, was quite similar in all the work orders,

which is *"Earth work for development of Agriculture land including clearance, excavation, levelling, dressing etc. of agriculture land earmarked site"*.

15.7.4 I note that AIPL was the service provider to the five entities. However, I note that in the FAR, it was observed that in agreement dated October 3, 2006, AIPL had contracted the work to one of the five entities instead, for a value of approx. Rs. 10 crore. I note that the forensic auditor had sought information from AIPL regarding the said payment and rationale for such transaction, however, AIPL did not provide any details for the forensic auditor to verify the payout and business logic for the said transactions. I note that the public domain checks were also conducted by the forensic auditor on a sample list of 110 villages out of 995 villages listed in the work orders. I note that out of the 110 villages, 48 villages could not be located with exact name or even with name variations i.e. multiple spelling variations. FAR observed that 44 villages were located with name variations and 2 villages were found to be in different geographical locations other than that mentioned in the work order. I note from the observations of the FAR, details/list of which have been reproduced in the para above, that same village names from a single district were used with multiple spelling variations in sequence and therefore, it is evident that many of them may not exist.

15.7.5 Further, I note that one Mr. Bajrang Lal Agarwal, who was a consultant on pro bono basis for AIPL and related to Noticee no. 2 (Subash Agarwal) as his cousin, obtained contracts from 2 of the 5 entities on behalf of AIPL. I note that AIPL had informed the forensic auditor that the company did not play any role in the dealing with these entities and only the consultant Mr. Bajrang Lal Agarwal, who was not paid any

commission or professional fees, was aware of the transactions. I note that the forensic auditor sought documentation of the transactions from Mr. Bajrang Lal Agarwal, however, the same were not provided. Further, from the observations in the FAR, I note that contrary to AIPL's claim that the sub-contractors are from the nearby vicinity of the project, it was observed by the forensic auditor in a sample review that none of the sub-contractors were from the state where project was to be carried out. Further, contrary to AIPL's claim that the sub-contractors hired, were not known to AIPL and were approached and contracted solely by the entity, it was observed in the FAR that one of the sub-contractor i.e. Mr. Ramesh Prasad Agarwal (who received Rs. 7.08 crore from AIPL) was connected to AIPL as a past employee of the company, a director in a subsidiary of AIPL, one of the shareholders within the Promoter and Promoter Group holding and was the cousin of Noticee no. 2 (Subash Agarwal).

- 15.7.6 From the above, I note that AIPL were unable to furnish details of 42% of work orders undertaken by them. Even among the details of work orders submitted by them, there were various discrepancies, as discussed above, which would raise questions on the genuineness of the work orders and whether they were executed. Further, I note that there were various discrepancies in the appointment of the consultant and sub-contractors and no documents pertaining to the transactions in the work orders were provided to the forensic auditors by the consultant, who the company claimed was responsible for all the five entities which brought in majority of the Company's revenue. Accordingly, I find the submission of AIPL that they have not overstated their revenue and its corresponding sub-contracting expenses and that the observations in the FAR are completely baseless, is untenable as the various discrepancies in the

work order have been clearly brought out in the FAR and AIPL have failed to address/explain the same in their replies to the forensic auditor and also in their replies to the SCN. In view of the above, I agree with the observations made in the FAR that AIPL have overstated their revenue and sub-contracting expenses.

15.8 Contract-wise surplus/loss has neither been ascertained nor recognized in compliance with the requirements of para 34 and 35 of AS-7 “Construction Contracts”

15.8.1 The FAR has made the following observations on this subject:

“On our review of the financials for FY 2015-16 and FY 2016-17, we noted following key qualifications in the audit report:

.....

- *Contract-wise surplus/loss has neither been ascertained nor recognized in compliance with the requirements of para 34 and 35 of AS-7 “Construction Contracts”.*

15.8.2 I note that para 34 and 35 of AS-7 are as follows:

34. *When the uncertainties that prevented the outcome of the contract being estimated reliably no longer exist, revenue and expenses associated with the construction contract should be recognised in accordance with paragraph 21 rather than in accordance with paragraph 31.*

Recognition of Expected Losses

35. *When it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognised as an expense immediately.*

15.8.3 With regard to the aforesaid observation, AIPL has submitted that compliance with accounting standards is something which lies within the exclusive domain of the Ministry of Corporate Affairs/ROC and not with

SEBI and therefore the present matter is sub-judice and cannot be decided in this SCN. Further, AIPL has submitted that without prejudice to the aforesaid, AIPL has already received notices from the ROC and has responded to the same. That the said issue is sub-judice and is pending before the concerned ROC. AIPL have submitted that the reason for not following AS-7 was already disclosed in the Annual Report for the year 2016-17, and is reproduced herein below:

“The company’s secured debts are under Corporate Debt restructuring and the liability and interest payable does not commensurate with the turnover and cannot be justified as there is limited support from financial institution. During the execution period there is also escalation claim, revision of contract value, extension of completion period, etc. due to which unpredictable variation in reliable estimation of revenue and cost. Also, the allocation of combine operating overhead, Head office overhead and financial cost is not possible due to combine use of high swapping of resources, size of the contracts. In absence of the overheads and financial cost allocation the Company is unable to determine contract wise surplus/deficit”.

AIPL has therefore submitted that if and when there was a deviation from AS-7, the same was appropriately disclosed in the Annual Report and also to the regulator in charge of ensuring the compliance with the said provisions.

- 15.8.4 In this regard, I note that under Section 11A of the SEBI Act, 1992, without prejudice to Section 21 of the SCRA, 1956, SEBI may specify the requirements for listing of securities. Accordingly, every listed company must comply with the provisions of the LODR Regulations and Regulation 48 of the LODR Regulations states that the listed entity shall comply with all the applicable and notified Accounting Standards from time to time. Further, Clause 50 of the Listing Agreement provided that *“the company will mandatorily comply with all the Accounting Standards issued by*

Institute of Chartered Accountants of India (ICAI) from time to time". Hence, AIPL must comply with all the applicable and notified Accounting Standards. In this regard, I note that in the matter of **Oasis Securities Limited & Ors vs. SEBI** in Misc. Application no. 649 of 2019 and Appeal no. 316 of 2018, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") vide its Order dated March 17, 2020, held that:

"15. As regards the contentions relating to non-compliance of accounting standards that it is not the mandate of SEBI cannot be accepted given the language of Clause 50 of the Listing Agreement which reads as follows :-

"the company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time".

It is to be reiterated that the Listing Agreement is the result of Section 21 of SCRA which reads as follows: -

"21. Conditions for Listing.-Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange".

16. From a reading of Section 21 of the SCRA as above which states that "such person shall comply with the conditions of the listing agreement" and the language of Clause 50 of the Listing Agreement that "the company will mandatorily comply with the accounting standards issued by ICAI", we do not find any merit in the appellants' submission that SEBI does not have any mandate / jurisdiction on ensuring that accounting standards are followed in compliance with the listing obligations."

15.8.5 Therefore, as held in the aforesaid Order of the Hon'ble SAT, I find the submission of AIPL in the present matter that SEBI has no jurisdiction on compliance of accounting standards, is untenable.

15.8.6 Further, with regard to the reason submitted by AIPL for not following AS-7, which they claim was already disclosed in the Annual Report for the year 2016-17, I note that AIPL have submitted that due to escalation claim, revision of contract value, extension of completion period, etc. due to which there is unpredictable variation in reliable estimation of revenue and cost. Further, that due to allocation of combine operating overhead, head office overhead and financial cost allocation the Company is unable to determine contract wise surplus/deficit. However, I note that AIPL have not submitted any documentary evidence to prove the aforesaid reasons, such as revision of contract value or extension of completion period etc. due to which there is unpredictable variation in reliable estimation of revenue and cost. Therefore, without any documents to prove the said submissions, they merely appear to be bald assertions. In view of the above, I agree with the observations made in the FAR that contract-wise surplus/loss has neither been ascertained nor recognized in compliance with the requirements of para 34 and 35 of AS-7.

15.9 Potential overstatement of revenue by recognizing revenue on claims receivable where the claims are still in arbitration and the fate of the claim is uncertain

15.9.1 The FAR has made the following observations on this subject:

7.1.10.1 KPMG obtained breakup of long term loans and advances, which is set out below:

<i>(Amount in INR crore)</i>			
Particulars	As on 31 March 2015	As on 31 March 2016	As on 31 March 2017
Share application money pending allotment	12.79	7.57	-
Claims Receivable (Long term)	734.39	927.21	879.04
Total	747.18	934.78	879.04

7.1.10.2 KPMG analyzed claims receivable in detail since it was a significant component of Long term loans and advances. The breakup of claims receivable is set out below:

(Amount in INR crore)		
Particulars	As on 31 March 2016	As on 31 March 2017
Long term claims receivable	927.21	879.04
Short term claim receivable	105.14	325.49
Total claims outstanding as at the year end	1,032.35	1,204.53
Claims recorded off the balance sheet	3,397.97	2,630.98
Total claims	4,430.32	3,835.51

7.1.10.3 KPMG has been explained that certain contracts received from government departments were cancelled / revoked by the customer after initiation of work by AIPL / JVs of AIPL. Thus, claims receivable is made up of the expenses already incurred on the project before cancellation of contract, opportunity cost on losing/cancelling a contract by a customer plus interest and arbitration expenses etc. All these expenses have not been acknowledged by the customer and hence, the claims are under arbitration. The break-up of the status of these claims are as under:

(Amount in INR crore)	
Particulars	As on 31 March 2017
Claims in the process of arbitration	1,199.88
Claim received	4.65
Total claims	1,204.53

7.1.10.4 KPMG obtained an understanding of the accounting of the said transactions in AIPL's books and was further explained that annual revenue was recognized and corresponding claims were created against various customers. KPMG has not been provided complete reconciliation of all the claims made so far, realizable value booked as revenue each year and claims outstanding at end of the year.

7.1.10.5 On KPMG's review of the accounting standard 11 (IND-AS), KPMG noted the following:

- i. "Paragraph 32: When the outcome of a construction contract cannot be estimated reliably:
 - revenue shall be recognized only to the extent of contract costs incurred that it is probable will be recoverable; and
 - contract costs shall be recognized as an expense in the period in which they are incurred. An expected loss on the construction contract shall be recognized as an expense immediately in accordance with paragraph 36".
- ii. "Paragraph 36: When it is probable that total contract costs will exceed total contract revenue, the expected loss shall be recognized as an expense immediately."

7.1.10.6 According to IND-AS 11 and the limited facts of the case provided to us, it appears that amount currently appearing as claims receivable may be required to be expensed off and impact recognized in the profit and loss account of AIPL. Principle of conservatism also indicates that if the revenue is not certain it should not be recognized unless the underlying situations change.

7.1.10.7 In the current case, the revenue could be recognized, if the arbitration/court orders are in the favor of AIPL. However, the exact value of such claims is currently unknown. Additionally, the value of revenue corresponding to the expenses incurred cannot be reasonably estimated as KPMG do not have following information i.e.

- i. Original terms of agreement with the customer including termination clause
- ii. Expenses incurred on the project before cancellation of contract
- iii. Opportunity cost on losing/cancelling a contract by a customer
- iv. Interest and arbitration expenses etc.

7.1.10.8 KPMG analyzed copies of following claims filed by AIPL against Rail Vikas Nigam Ltd. (RVNL). These claims are out of those which were assigned to SREI in FY 2016-17 as mentioned in section 7.1.4 and hence do not form part of the total claims outstanding as on March 31, 2017.

.....

7.1.10.9 KPMG reviewed the available documentation for both the claims and noted that various sub-claims have been made towards following major categories:

.....

7.1.10.10 On analyzing above break up, it is noted that 43% to 51% of claim amount is towards 'idling cost of machinery due to time overrun', in the form of opportunity cost. The calculation provided in the claim document cannot be verified since critical information such as the list of idle equipment, deployment status of each equipment after the cancellation of project, the market rate of rentals etc. has not been provided for review.

15.9.2 From the aforesaid observations, I note that it is alleged that AIPL has made potential overstatement of revenue by recognizing revenue on

claims receivable where the claims are still in arbitration and the fate of the claim is uncertain. AIPL has submitted that SCN does not specify the financial year for which the allegation is made or for which particular dispute the allegation is being made. AIPL has submitted that the company has a standard policy on revenue recognition for sub judice matters and generally consults its advocates on the possibility of success before recognizing the revenue. AIPL has booked revenue on claims made to different authorities regarding unauthorized termination of work. The claim made by AIPL is on the basis of work completed till the date of termination, bank guarantee invoked, other incidental expenses made for this project. AIPL has submitted that considering the past experience in such cases, the possibility of getting the claim amount, the analysis by management and advocates and other factor, if the possibility of getting the claim amount is high, AIPL accounts for the claim in revenue instead of showing it in contingent asset.

- 15.9.3 With regard to the submission of AIPL that SCN does not specify the financial year for which the allegation is made or for which particular dispute the allegation is being made, I note from the FAR that the forensic auditor has reviewed the claims made by AIPL as on March 31, 2017 and does not pertain or need to pertain to a specific or particular dispute, as the observations of the forensic auditor with regard to the aforesaid allegations on the particulars of its claims are clearly brought out in the FAR as reproduced in the aforesaid para. I note that AIPL has submitted that the company has a standard policy on revenue recognition for sub judice matters and generally consults its advocates on the possibility of success before recognizing the revenue. With regard to the said contention, I note that AIPL has not provided copy of such standard policy on revenue recognition that it claims to follow or the advises it

received from the advocates regarding realizing of the claims as contended by it. Further, I note that AIPL has not provided the forensic auditor complete reconciliation of all the claims made so far, realizable value booked as revenue each year and claims outstanding at end of the year. Hence, the contention of AIPL that it has a standard policy and consults advocates is irrelevant and untenable in view of the fact that the AIPL has failed to provide relevant information and documents pertaining to the claims.

- 15.9.4 I note that as per Para 14 of the accounting standard 11 (IND-AS), claims are included in contract revenue only when:
- (a) negotiations have reached an advanced stage such that it is probable that the customer will accept the claim; and
 - (b) the amount that it is probable will be accepted by the customer can be measured reliably.
- 15.9.5 In this regard, I note that AIPL has also submitted that claims made by AIPL is on the basis of work completed till the date of termination, bank guarantee invoked, other incidental expenses made for the project and considering the past experience in such cases, the possibility of getting the claim amount, the analysis by management and advocates and other factor, if the possibility of getting the claim amount is high, AIPL accounts for the claim in revenue instead of showing it in contingent asset. However, since AIPL has failed to provide the forensic auditor or in these proceedings complete reconciliation of all the claims made so far, realizable value booked as revenue each year and claims outstanding at end of the year, the aforesaid submissions of AIPL that it makes an analysis of various factors before it accounts for the claim in revenue instead of showing it in contingent asset, is wholly unreliable and

untenable. Further, I note that AIPL has not submitted any documents/evidence of such policy decisions, management analysis or advocate consultations that it claims to adopt. Therefore, given its failure to provide the forensic auditor with the relevant information/documents pertaining to its claims and also failure to substantiate its company policy/management analysis with any documentary evidence, I find that the submissions of AIPL are after thoughts. In view of the above, I agree with the observations made in the FAR that AIPL has made potential overstatement of revenue by recognizing revenue on claims receivable where the claims are still in arbitration and the fate of the claim is uncertain.

15.10 Inaccurate summation of claim amount in the claim document

15.10.1 The FAR has made the following observations on this subject:

“7.1.10.11 KPMG noted instances of inflated claims where the demanding rates used in the calculation of those claims, have not been referenced to the original agreement / contract with RVNL and KPMG are unable to verify the accuracy of the claim value. E.g. in claim 1, unpaid quantity of work under changed scope of work has been claimed at the rate of INR 865 per unit instead of agreed rate of INR 295, resulting in overstatement of claim amount by approx. INR 14.51 crore as mentioned in the claim document. This amount of INR 14.51 crore was also found to be incorrect and higher by INR 17.10 lakh as compared to the correct calculation. The calculation in the claim document is set out as below:

Therefore, payment due on this account would become:

$$185507.90 \times (865-295) + 43563 \times 865 = \text{Rs. } 14, 51, 31,498/-$$

Whereas the correct amount as per correct calculation is as below:

Unpaid Quantity	Unmeasured quantity	Agreed rate	New Rate	Correct differential Amount
185507.90 cu.m	43563 cu.m	INR 295	INR 865	INR 143,421,498

15.10.2 AIPL has submitted that neither the SCN nor the KPMG report seeks to describe what is being alleged here and in the absence of any particulars, the charge is liable to be dropped.

15.10.3 Since the aforesaid allegation in the SCN is vague and does not substantiate or provide the particulars of what or which claim document are being referred to and its relevant details, it cannot be ascertained as to what is the charge or allegation against the Company. In view of the same, I find that the allegation does not hold.

15.11 Non-provision of interest on outstanding bank borrowings

15.11.1 The FAR has made the following observations on this subject:

“AIPL has obtained various loan facilities from consortium of various banks and NBFCs. The total outstanding bank loan as of March 31, 2017 was INR 1,471 Crore. It was observed that the interest on loan has been provided for in the profit and loss account until 30 June 2016. Interest for the period from 1 July 2016 till 31 March 2017 has not been provided, as noted in the SEBI order. The total interest on loan not provided for amounts to INR 119.68 crore as on 31 March 2017 (Working provided by AIPL has been set out in Exhibit 8).

The statutory auditors of AIPL – Ajay B. Garg has qualified the audit report for FY 2016-17 due to non-provision of interest on loan in the books. AIPL verbally informed us during the review that they had insufficient funds to provide for the interest amount for the remaining nine months of the year.”

15.11.2 AIPL has submitted that, as recorded in the FAR, the Company has been under restructuring since 2013 and the bank borrowings became NPA since July, 2016. That the current position of AIPL is such that it will never be able to pay the accrued interest and would definitely need a write off of principal by banks during the negotiation. Therefore, AIPL has

submitted that the said interest is incapable of being paid and recognition of the same would show an incorrect picture of the accounts. Further, that the company was also in the process of OTS with the various banks and is seeking a full waiver of interest and some principal.

15.11.3 In this regard, I note that the total interest of Rs. 119.68 crore due on loans outstanding has not been provided for in the books of accounts of FY 2016-17, due to which the amount of current maturities of long term borrowings have reduced from Rs. 186.09 crore to Rs. 13.90 crore, as observed in the FAR. Further, I note that the statutory auditors of AIPL have qualified their audit report for FY 2016-17 regarding non-provision of interest on loan (Rs. 119.68 crore) in the books of AIPL. I note that the contention of AIPL to the aforesaid observation is that the said interest is incapable to being paid by the Company and recognition of the same would show an incorrect picture of the accounts. As a listed entity, the Company is obligated to give a true and fair view of its financial statements. Failing to disclose the total interest of Rs. 199.68 crore that is outstanding on the ground that the Company is incapable of paying it and thereby also failing to provide an explanation as how the current maturities of long term borrowings have considerably reduced in the FY 2016-17, is an outright misrepresentation of the financial statement of the company and a total failure on the part of the Company to make adequate and accurate disclosures to the stock exchanges and investors as a listed company under the LODR Regulations. I find that the Company was obligated and required to give accurate and not misleading information in its financial statement. In view of the above, I agree with the observation made in the FAR that the Company has not provided the interest in the profit and loss account for the period from 1 July 2016 till

31 March 2017 and has therefore, violated Regulation 4(1)(c) of the LODR Regulations.

15.12 Claims on customer: Instances of inflated claims where the demanding rates used in the calculation of those claims, have not been referenced to the original agreement / contract with RVNL and we are unable to verify the accuracy of the claim value

15.12.1 The FAR has made the following observations on this subject:

“Higher claims on customers: We noted instances of inflated claims where the demanding rates used in the calculation of those claims, have not been referenced to the original agreement / contract with BVNL and we are unable to verify the accuracy of the claim value.”

15.12.2 AIPL has submitted that the said allegation is completely unsustainable and cannot be said to be a violation of the LODR Regulations. That the LODR Regulations do not prescribe as to how a company can make a claim against other parties and claims as such are to be adjudicated upon by a civil forum. Without prejudice to the aforesaid, AIPL have also submitted that there are some expenses which AIPL has claimed in their claim report like machinery ideal cost, loss of profit, increase of toll tax, increase of diesel price, loss of goodwill, etc. which were not part of the original agreement under the general law of contract. That the unauthorized termination of work leads to certain additional expenses which is part and parcel or indirectly expenses to the original contract, and for that reason some additional expenses was also included in their claim. Further, that such claims for damages need to be adjudicated by a civil forum and neither SEBI nor KPMG is competent to adjudge whether

a listed entity has made claims in accordance with an agreement or outside an agreement.

15.12.3 In this regard, I find that the observation made in the FAR about instances of inflated claims are unclear and have not been substantiated and do not give any clear or cogent findings on the lapses by the Company. Further, with regard to the forensic auditors inability to verify the accuracy of the claim values, I note that it that the failure to provide the forensic auditor with complete reconciliation of all the claims made so far, realizable value booked as revenue each year and claims outstanding at end of the year, has already been discussed in para 15.9.5 above. In view of the above, no adverse inference may be drawn against AIPL on the basis of the aforesaid observation in the FAR.

15.13 Expenses of Rs. 19.53 crore across two financial years recorded through potentially non-operative entities and a sub-contractor with an outstanding of Rs. 0.62 crore as on March 31, 2017 and Rs. 1.01 crore as on March 31, 2016, with no online presence

15.13.1 The FAR has made the following observations on this subject:

“KPMG identified a sub-contractor (Piyus Enterprises) with an outstanding of INR 0.62 crore as on 31 March 2017 and INR 1.01 crore as on 31 March 2016, with no online presence, hence no additional information could be gathered.”

15.13.2 AIPL has submitted that KPMG has once again perversely responded that three entities as non-operative as they have no online presence and that the same shows complete lack of skill, care or diligence and reflects on the quality of investigation undertaken by KPMG. AIPL has submitted that Long Life Developers Advisory Pvt. Ltd. was in operation with them

up to FY 2015-16 and its MCA status as on date is “under strike off”. Further, AMC Engineering (India) Pvt. Ltd was in operation with them till FY 2018-19 and its MCA status is “Active” as on date. AIPL has submitted that KPMG is neither authorized nor capable of making such allegations which are on the basis of surmises and conjectures and is completely baseless. Further, it has submitted that Piyus Enterprises is a proprietorship firm and continues to be in business with AIPL and there is no law that mandates an entity to have online presence.

15.13.3 In this regard, I note that entering into transactions with entities which are alleged to be potentially non-operative may raise questions as to whether such transactions are in the interest of investors. However, I note that there is no allegation or observation on the transactions that took place between AIPL with the said entities. Further, I find that the entity not having an online presence does not have any cogent or persuasive bearing on the allegation. Since, the observation in the FAR is only on the potentially non-operative and suspicious aspect of the entities and not on any specific transaction or transactions, I find that the no adverse inference can be drawn against AIPL on the basis of this observation.

16. The SCN, further, alleges that AIPL has violated Regulations 4(1)(a),(b),(c),(g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1)(3),(6) & (12) and Regulations 33(2)(a) of LODR Regulations. From the discussions above, I find that AIPL, has already been found to be in violation of Regulations 4(1)(c), 13(3), 17(7), 17(9)(a), 23(3), 33(1)(d), 34(2)(b), 36(3) and Regulation 48 of the LODR Regulations. Regarding the violations of Regulation 4, I note that Regulation 4 of LODR Regulations, lays down principles governing disclosures and obligations of the listed entity under the LODR Regulations. Specific clauses of Regulation 4(1), the violation of which has been alleged in the SCN, provides that the listed entity which has listed securities shall

make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
- (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

17. In para 15, it has already been found that AIPL has failed to comply with Regulations 4(1)(c), 13(3), 17(7), 17(9)(a), 23(3), 33(1)(d), 34(2)(b), 36(3) and Regulation 48 of LODR Regulations of the LODR Regulations, therefore, its disclosures were not in accordance with the principles laid down in the aforesaid clauses of Regulation 4(1) and hence, AIPL is also in violation of 4(1)(a), (b), (c), (e) and (g) of LODR Regulations. Regarding the violations of Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1)(3),(6) & (12) of the LODR Regulations by AIPL, as alleged in the SCN, I find that Regulation 4(2)(f) enlists the responsibilities of board

of directors of listed entities. Clause (i) of Regulation 4(2)(f) deals with disclosure of information, Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is of the board of directors of the listed entity. Therefore, I find that AIPL cannot be said to be in violations of Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1)(3),(6) & (12) of the LODR Regulations which pertain to obligations of the board of directors.

18. SCN further alleges that AIPL has violated Section 21 of SCRA, 1956. In this regard, I note that Section 21 of SCRA, 1956 provides that where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. I note that securities of AIPL are listed on BSE. The relevant extract of the two of the conditions, as contained in uniform listing agreement, as mandated by SEBI Circular No. CIR/CFD/CMD/6/2015 dated October 13, 2015, is as under:

“.....1. That the Issuer shall comply with the extant provisions of all the applicable statutory enactments governing the issuance, listing and continued listing of securities.

2. That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following:—

i. the SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

iii. such other directions, requirements and conditions as may be imposed by SEBI/Exchange from time to time.....”

19. Above two are the conditions of listing agreement which every issuer company, whose securities are listed on a recognised stock exchange, is required to comply. As can be seen from the above-quoted conditions, one of the conditions is compliance with LODR Regulations. In the present case, AIPL is a company whose securities are listed on NSE, which is a recognised stock exchange. AIPL being a company having its securities listed on NSE was also required to sign the said uniform listing agreement with NSE and in view of the provisions of Section 21 of SCRA, 1956, AIPL was bound to comply with the conditions of the uniform listing agreement, as extracted above. AIPL has been found to be in violation of the provisions of the LODR Regulations, as discussed above, therefore, AIPL is in violation of the condition of the listing agreement and hence, is also in violation of Section 21 of SCRA, 1956.

II. Violations of PFUTP Regulations, 2003:

20. AIPL has submitted that there was no misrepresentation to the shareholders of the company and no loss or prejudice was caused to any shareholder.
21. In this regard, I note that the scope of work, as was assigned to the forensic auditor by NSE, as stated in the FAR, was as follows:

"1. Possible misrepresentation including its financials and / or businesses and / or violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as "LODR Regulations") and/or

2. Possible misuse of books of accounts/funds of the Company including facilitation of accommodation entries and/ or entering into transactions to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP), including the following

For the aforesaid reasons, the audit inter alia should cover the following:

- a. Suspicious transactions/items as provided in the SEBI / Exchange Order: both in the "Queries" vide letters/emails and "Consideration".*

- b. To seek specific inputs as may be shared by SEBI, if any*
- c. Wherever applicable, the cash flow analysis to trace source of funds and end use of funds*
- d. Independent and/or physical verification of the underlying transactions.*
- e. In addition, examine the Books of Accounts and backup records of the Company for the period of two years including the year of transactions referred in SEBI / Exchange Order to:*
 - I. Assess genuineness of revenue, expenditure, assets/liabilities for the period of two years which shall also include the ageing analysis of loans and advances/borrowings/investments etc.*
 - II. Assess genuineness of the debtors/ receivables and creditors / payables, reconciliation of debtors / creditors as stated by the Company vis-à-vis the actual position and the prospects of recovery (focus on top debtors)/payment.*
 - III. Analysis of related party transactions.*
 - IV. High value bank transactions to ascertain their relevance to the business of the company*
 - V. Assess genuineness of expenditure (capex as well as other goods and services) and review of top vendors/suppliers/customers*
 - VI. Analysis if the bank accounts of the company (and its subsidiaries if any) to identify the potential round-tripping of funds or accommodation transactions.*
 - VII. The nature of business along with the investments made by the company in subsidiary companies along with the relevant fund flows, if any.*
 - VIII. Assess genuineness of investments both listed and unlisted with appropriateness of valuation and flow of funds. If investment in listed companies then reconciliation to be done with independently sourced statements from NSDL/CDSL.*
 - IX. Assessment of share application money including the share premium amount received by the company including the reversals, if any. For share premium assessment of utilisation of funds, if any, in terms of provisions of Companies Act.*
 - X. Comment on the shareholding pattern for the period under consideration- promoter holding, public shareholding, no. of such shareholders and their relationship with promoter and promoter group, if any, whether the company is promoter driven/professionally managed.*

- f. *Wherever applicable, the relevant funds flow including analysis of relevant bank statements (also source and utilization of funds).*

3. *Conduct background checks, site visits, assessment of company's business model and meetings with key stakeholders including company auditors and directors. Background checks include:*

- a. *Background / reputation checks based on public domain information related to promoters, nature/ line of business, genuineness of business activities of the Company.*
- b. *Discussions with key stakeholders like promoters/ senior management/ HODs, vendors, customers, Company auditors, etc.*
- c. *Business history, directorship searches and litigations.*
- d. *Assessment of size and scope of business.*
- e. *Site visit for verifying existence of the Company's premises, assets, place of execution of services, etc.*
- f. *Interactions with the entities/persons involved in day to day affairs of the company.*

22. From a reading of the scope of work of the FAR, I note that it was mainly limited to examination of possible violation of LODR Regulations by AIPL and the misuse of books of accounts/ funds by AIPL. The conclusion of the FAR was summarized therein as follows:

A. Violation of SEBI LODR Regulations:

- *.Non-disclosure of Related party transactions*
- *Management discussion and analysis of financial condition and results of operations were not placed before the audit committee*
- *Omnibus approval granted by the audit committee for related party transactions did not specify the indicative base price / current contracted price and the formula for variation in the price*
- *Non-disclosure of relationship between directors*
- *Following information not placed before the Board:*
 - *Annual operating plans and budgets and any updates*
 - *Capital budgets and any updates*

- *Fees or compensation, if any, paid to non-executive directors, including independent directors*
- *Inadequate information to Board: The listed entity did not lay down procedures to inform members of board of directors about risk assessment and minimization procedures.*
- *Inadequate responsibility of Board: The board of directors of AIPL were not explicitly made responsible for framing, implementing and monitoring the risk management plan for the listed entity.*
- *Non-disclosure of investor grievances and Delay in submission of investor grievance report*
- *The Annual report of AIPL for the financial year ended 2016 did not include consolidated financial statements*
- *Discrepancies in financial statements*

B. Misrepresentation and/or misuse of books of accounts / funds of the Company as evident from the following findings:

- *Overstatement of revenue and sub-contracting expenses*
- *Contract-wise surplus/loss has neither been ascertained nor recognized in compliance with the requirements of para 34 and 35 of AS-7 "Construction Contracts"*
- *Inconsistencies in the accounting and financial data*
- *Inconsistencies within Tally data*
- *Potential overstatement of revenue by recognizing revenue on claims receivable where the claims are still in arbitration and the fate of the claim is uncertain*
- *Inaccurate summation of claim amount in the claim document*
- *Non provision of interest on outstanding bank borrowings*
- *Incomplete Disclosure of Fire incident: AIPL claims that it suffered a fire outbreak on October 29, 2013 at its registered office in Bhubaneswar. They provided a fire certificate issued by the Office of the Chief Fire Officer, Cuttack Odisha, issued on January 21, 2014 for this incident. Disclosure about the fire incident has not been made in the Annual Report of FY 2013-14*
- *Claims on customer: Instances of inflated claims where the demanding rates used in the calculation of those claims, have not been referenced to the original agreement / contract with RVNL and we are unable to verify the accuracy of the claim value*
- *Sale of plant & machinery was made to a related party at loss. Additionally, plant & equipment was transferred to creditors in settlement of their dues by providing for higher depreciation*

- Expenses of INR 19.53 crore across two financial years recorded through potentially non-operative entities and a sub-contractor (Piyus Enterprises) with an outstanding of INR 0.62 crore as on March 31, 2017 and INR 1.01 crore as on March 31, 2016, with no online presence

23. It is observed that the Investigating Authority, after examining the FAR, incorporated the findings of FAR as part of investigation report, and consequently, the same was reproduced in the SCN. However, the SCN additionally states, *“From the above, it was observed that the company (noticee no. 1) and its directors and the Chief Financial Officer (noticee no. 2 to 8) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature.”* Consequently, the SCN, *inter alia*, additionally, includes allegation of violation of provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003. I observe that while including the above violations in the findings of the stated SEBI investigation and consequently, in the SCN, there is no additional facts or findings provided, which is not in the FAR. It is observed that these Noticees have been charged with the violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) of PFUTP Regulations, 2003 which can be in relation to dealing in securities. However, no details of trading by these Noticees viz: name of the scrip traded, number of shares traded, price at which shares were traded, date of the trading, etc., have been provided. Nor is there any analysis as to how each of the finding of FAR such as non-compliance with provisions of LODR Regulations or related party transactions without approval or misrepresentation such as of loans as trade receivables, income from interest as operating income, attract each of the PFUTP Regulations, 2003 as alleged.
24. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 deals with

fraud/manipulation/unfair trade practices while dealing in securities and in relation to securities market. Section 12A (a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or issue or subscription of securities by any of the Noticees.

25. It is further observed that Regulation 4(1) of PFUTP Regulations, 2003, at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. The common thread through these provisions is that the ingredients of fraud or manipulation or unfair trade practices must be satisfied. In this regard, I note that the Explanation inserted to Regulation 4(1) of PFUTP Regulations, 2003 with effect from October 19, 2020 clarifies as follows:

“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Thus, as per the aforesaid explanation also any device, scheme or artifice to manipulate the books of accounts or financial statement of a company, in order to be termed as manipulative, fraudulent and an unfair trade practice in the securities market must directly or indirectly result into manipulation of the price of securities of that company. In the present case, there is no allegation of manipulation of price

shares of AIPL such as from any issue of securities or siphoning off of assets or earnings of AIPL. I note that FAR does not allege any diversion/misutilisation of funds which as per the aforesaid explanation can be termed as manipulative, fraudulent and an unfair trade practice in the securities market without there being any direct or indirect manipulation of the price of the securities of the Company. I note that there is no bar on taking action by SEBI on the basis of a FAR, invoking provisions of PFUTP Regulations, 2003 and other similar provision of SEBI Act, 1992 related to fraud, if, after examination of the matter, including the FAR, SEBI finds that there was impact on the securities market or the price of the scrip, which are ingredients to prove violations of PFUTP Regulations, 2003. I further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in **Securities and Exchange Board of India and Ors. v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753**, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to trading in securities by Noticees or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

26. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find that the allegations of violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the Noticees. However, SEBI is at liberty to issue fresh show cause notice to pursue violations of PFUTP Regulations, 2003 by bringing out specific case/ingredients under PFUTP Regulations, 2003.

III. **Non furnishing of information/Non-cooperation by the company:**

27. The SCN has alleged that the company failed to co-operate with the forensic auditor during the course of the forensic audit. It is alleged that the Exchange vide letter dated December 22, 2017 informed the company about the appointment of forensic auditor in line with SEBI order dated September 25, 2017 (i.e. date of interim order). In the same letter, the exchange requested the company to provide information to the forensic auditor. However, the company did not furnish the required information/supporting documents as sought by the forensic auditor. I note that the list of information/supporting documents not made available to the forensic auditor has been provided as Annexure 1 to the FAR.
28. In this regard, I note that AIPL has denied the same and submitted a table containing details of the request from the forensic auditor and their response to the same, which is reproduced as under:

Details of information sought by NSE in respect of Forensic Audit			
Name of the concerned person of NSE/KPMG	Mode of Submission	Matter	Date of Submission
Ms. Swati Sapore	Physical Submission	Details of Directors, Chief Financial Officer, KMPs and Promoters of Company as on August 07, 2017	08.10.2018
Mr. Hiren Shah	Physical Submission	Information as per requirements of KPMG for Forensic Audit	29.03.2018
Mr. Hiren Shah	Physical Submission	Preliminary information as per requirements of KPMG for Forensic Audit	07.02.2018

Mr. Hiren Shah	Physical Submission	Preliminary information as per requirements of KPMG for Forensic Audit	31.01.2018
Mr. Hiren Shah	Physical Submission	Information as per requirements of KPMG for Forensic Audit	22.03.2018
Mr. Hiren Shah	Physical Submission	Information as per requirements of KPMG for Forensic Audit	21.03.2018
Ms. Swati Sopare	stambe@nse.co.in	Information as per requirements of KPMG for Forensic Audit	05.03.2018
Mr. Janail Jain	janailj@nse.co.in	Information as per requirements of KPMG for Forensic Audit	20.12.2018
Ms. Anisha Sharma	anishas@nse.co.in	Information as per requirements of KPMG for Forensic Audit	06.11.2019
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	02.03.2018
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	12.02.2018
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	05.03.2018
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	20.03.2018
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	05.04.2018
Ms. Sonali Sawant	sonalisawant@kpmg.com	Information as per requirements of KPMG for Forensic Audit	28.02.2018

29. I note that the FAR was submitted on July 04, 2018 and it has been stated in the FAR that the report is based on information and evidence obtained as a result of work completed until April 03, 2018 and subsequent clarifications obtained till May 05, 2018. From the aforesaid details in the table provided by AIPL, I note that AIPL provided the name of the concerned person (NSE/KPMG) to whom the letter/email

was sent to, the mode of submission, what “matter” it was pertaining to and the date of submission. In this regard, it appears that AIPL has sent 15 letters/emails of their submissions to the forensic auditor/NSE. I note that the details under the heading “matter” is very vague. Other than the first matter submitted on October 08, 2018, the remaining 14 matters simply state ‘*Information or Preliminary information as per requirements of KPMG for Forensic Audit*’. There are no details given regarding what information was submitted in those letters. Further, I note that out of the 15 letters/emails, three of the letters have been submitted in October 2018, December 2018 and November 2019, which is after the FAR was submitted to NSE. Nonetheless, I note that AIPL has not provided any copies of the aforesaid letters/emails to prove that they had sent the same to the forensic auditor/NSE as sought for the forensic audit. Further, it has already been discussed in the aforesaid paras that there were various documents/information that had not been provided by AIPL such as the tally data of AIPL, its subsidiaries and Joint Ventures, supporting documents of select sample transactions pertaining to FY 2015-16 and 2016-17, details of work orders, etc. to which AIPL has still not provided in its reply to the SCN. In view of the above, I find the submission of AIPL that it had submitted the aforesaid letters/emails to the forensic auditor/NSE, is untenable, as there is no documentary evidence to support the same. Further, I note that NSE was directed to appoint a forensic auditor for carrying out forensic audit of AIPL vide SEBI order dated September 13, 2017. Thus, the forensic audit was being carried out pursuant to a direction of SEBI. Being a listed entity, non-cooperation with such an audit cannot be accepted. In view of the same, I find that AIPL has failed to furnish information sought from it by SEBI as well as the forensic auditor. I also note that Section 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992 has been invoked against the Noticees 1 to 8. On a reading of these Sections, I observe that Section 11(1) of the SEBI Act, 1992 lays down the functions of SEBI, and in carrying out the said functions, SEBI is empowered, under 11(2) (i) and 11(2) (ia) of the SEBI Act, 1992, to call for records from intermediaries and other entities. In the facts and

circumstances of the present case, a forensic auditor appointed through an order of SEBI who seeks information from an entity must be treated with the same seriousness as if the information is being sought by SEBI. In view of the non-furnishing of the information sought by the forensic auditor, I find that AIPL has violated Sections 11(2)(i) and (ia) of SEBI Act, 1992.

30. SCN further alleges that by virtue of the provision of Section 27 of the SEBI Act, 1992, Noticee no. 2 to 8, who were the directors/CFO of AIPL at the relevant time, are liable for the violations alleged to be committed by AIPL viz: Section 12A (a) (b) & (c) and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, Regulations 4(1) (a), (b), (c), (e) & (g), 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6) & (12), 13(3), 17(6), 17(7), 17(8) read with Part B of Schedule II, 17(9)(a), 17(9)(b), 18(3), 23(3), 33(1)(d), 33(2)(a), 34(2)(b), 34(3), 36(3) and 48 of LODR Regulations read with Section 21 of SCRA, 1956. Thus, the SCN imputes all the allegations which are levelled against AIPL, automatically, on the directors of AIPL, including independent directors. As already discussed in the forgoing paras, as regards the violations of Section 12A (a), (b) and (c) of the SEBI Act, 1992, Regulations 3(b), (c) & (d) and 4(1) and 4(2) (f) & (r) of the PFUTP Regulations, 2003, as alleged in the SCN, liberty has been given to SEBI to further investigate and proceed with the matter and the role of directors/CFO qua these violations may also be examined by SEBI. In the previous paras, it has been found that AIPL was in violation of Sections 11(2)(i), 11(2)(ia) of SEBI Act, 1992, Section 21 of SCRA, 1956, Regulations 4(1) (a), (b), (c) & (g), 13(3), 17(7), 17(9)(a), 18(3), 23(3), 33(1)(d), 34(2)(b), 36(3) and Regulation 48 of the LODR Regulations. Therefore, in the context of Noticees no. 2 to Noticee no. 8, it has to be determined whether these Noticees are liable for those violations for which AIPL has been found to be in violation, either by virtue of Section 27 of the SEBI Act, 1992 or otherwise. Regarding applicability of the Section 27 of the SEBI Act, 1992, I note that during

the relevant period (i.e. Financial Years 2015-16 to 2016-17), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word “offence” with the word “contravention” in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by AIPL, with reference to LODR Regulations for which proceedings under Section 11, 11A, 11B and monetary penalty has been proposed, which are civil in nature.

31. Now, the question remains whether these Noticees can be held independently liable for the violations without any reference to vicarious liability under Section 27 of the SEBI Act, 1992. I note that amongst the violations of Regulations alleged against these Noticees, the Regulations 4(2)(f)(ii)(6) & (7) and 4(2)(f)(iii)(2), (3), (6) & (12) create specific and direct liability of the board of directors. As discussed above, Clause (ii) of Regulation 4(2)(f) deals with key functions of the board of directors and Clause (iii) deals with other functions of the board of directors. Thus, board of directors is responsible for complying with these principles. Any liability arising out of the violation of these principles because of violation of disclosure or other obligation of the listed entity under the LODR Regulations, is fastened on the board of directors of the listed entity. In the previous paras, it has been found that AIPL was in violation of Sections 11(2)(i), 11(2)(ia) of SEBI Act, 1992, Section 21 of SCRA, 1956, Regulation 4(1)(a), (b), (c), (e) and (g), 6(1), 13(3), 27(2)(a), 30(1), 30(4)(ii), 31(1), 33(2)(a), 33(3)(a), 33(1)(d), 34(1), 46(2)(a)&(b), 46(2)(l) and 48 of the LODR Regulations read with Clause 50 of the Listing Agreement and Section

21 of SCRA, 1956. In view of these violations by AIPL, the principles contained in Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6) & (12) stood violated for which Noticee no. 2 to 6, being part of the board of directors of AIPL are liable. Similarly, in terms of Regulation 33(2)(a) of LODR Regulations, the quarterly financial results are to be approved by the board of directors of the listed entity after being certified by the chief executive officer and chief financial officer. As the financials of AIPL were misrepresented, as discussed above, therefore, Noticee no. 2 to 6 who approved the quarterly financial results of AIPL for the financial year 2015-16 and 2016-17 are in violation of Regulation 33(2)(a) of LODR Regulations.

32. It is observed that as per the Annual Report 2015-16 and 2016-17 of AIPL, the details of the Board of Directors of AIPL during the investigation period are as follows:

Noticee no.	Name	Designation
2	Mr. Subash Agarwal	Chairman
3	Mr. Rajesh Agarwal	Managing Director
4	Mr. Swarup Chandra Parija	Independent Non-Executive Director
5	Mrs. Rima Dhawan	Independent Non-Executive Director
6	Mr. Krishna Chandra Raut	Nominee Director

33. I note that the SCN has been issued to the aforesaid Noticees as directors of the board of AIPL during the investigation period. I note that the SCN has also been issued to Noticee no. 7 (Mr. Sunil Agarwal) in his capacity as the CEO of AIPL and to Noticee no. 8 (Mr. Soumendra Keshari Pattanaik) as the CFO of AIPL. I note that Noticee no. 3 is the Managing Director of AIPL and in addition to the Managing Director, Noticee no. 7 has been appointed as the CEO of the Company but is not part of the board of directors. The SCN alleges that Noticee no. 7 who was CEO of AIPL and Noticee no. 8 who was the CFO of AIPL, during FY 2015-16 and 2016-17, have also violated all those provisions which have been violated by the directors of AIPL. I note that out of the violations alleged against the Noticees no. 7 and 8, only the violation of Regulation 17(8) and 33 of LODR Regulations is attributable to the

CEO and CFO, as amongst the alleged violated provisions only Regulation 17(8) and 33 of LODR Regulations creates a liability on the CEO and CFO. In this regard, I note that Regulation 17(8) of the LODR Regulations pertains to the responsibility of the chief executive officer and the chief financial officer to provide the compliance certificate to the board of directors as specified in Part B of Schedule II. I note that proviso to Regulation 33(2)(a) provides that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. In this regard, I note from the Annual Report for FY 2015-16 and 2016-17 that Noticee no. 7 has not signed the CEO/CFO Certification for both the FY 2015-16 and 2016-17. I note that it is Mr. Rajesh Agarwal (Noticee no. 3), who has signed the CEO/CFO certification as the Managing Director along with Mr. S. K. Pattanaik (Noticee no. 8) as the CFO of AIPL. Further, I note that Noticee no. 7 has not signed any of the other financial statements such as the Balance Sheet or the Consolidated Profit and Loss statements. I note that the CEO can be held liable under Regulation 17(8) and 33(2)(a) of the LODR Regulations, however, I note that Noticee no. 7, as the CEO, has not signed the CEO/CFO certification or the other financial statements and neither is he part of the board of directors or the audit committee of AIPL. Hence, I find that the allegations in the SCN against Noticee no. 7 as the CEO of AIPL, do not hold. On the other hand, Noticee no. 8 as the CFO of AIPL during the FY 2015-16 and 2016-17, having issued untrue certificates with respect to the financial statements of AIPL, as discussed above, has violated Reg. 17(8) r/w. Part B of Schedule II of LODR Regulations. Further, as the financials of AIPL were misrepresented, as discussed above, therefore, Noticee no. 8, is also in violation of Regulation 33(2)(a) of LODR Regulations. I note that Noticee no. 8 has not made any specific submissions on his role and liability as CFO of AIPL.

34. With regard to the directors of the Company, Noticee no. 4 has submitted that he is a retired IRS Officer and is a Non-Executive Independent Director of the Company since November 27, 2007 and Noticee No. 5 has submitted that she is a practicing Chartered Accountant and served on the Board of AIPL as Non-Executive Director from December 17, 2014 to September 27, 2017. Noticees no. 4 and 5 have submitted that the circular dated July 29, 2011 issued by the Government of India, Ministry of Corporate Affairs, expressly provides for an independent director not being held liable for any act or omission by the company or any officer of the company which occurred without his knowledge attributable through board process and without his consent or connivance or where he has acted diligently in the Board process. Further, that Section 149(12) of the Companies Act 2013 also expressly provides that notwithstanding anything contained in the Act, an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. Noticee no. 6 has submitted that he is a Nominee Director and was nominated to AIPL board when the Company was put under CDR by the consortium of banks led by the State Bank of India. The Noticee no. 6 has submitted that he became a director of AIPL on May 11, 2013 and has no role to play in the affairs or day to day management of the company. Further, Noticees no. 4, 5 and 6 have submitted that the allegations pertain to the operational aspects of AIPL and not aspects that are attributable to the board process.
35. In this regard, as discussed above, I note that Regulations 4(2)(f) and Regulation 33 of the LODR Regulations creates a specific duty on the board of directors without making any distinction with independent directors or nominee directors. As per the Annual report of the company for the FY 2015-16, five meetings of the Board of Directors were held on May 12, 2015, August 07, 2015, September 06, 2015, November 07, 2015 and February 12, 2016. As per the Annual report of the

company for the FY 2016-17, five meetings of the Board of Directors were held on May 02, 2016 (adjourned), May 27, 2016 (adjourned meeting resumed), August 12, 2016, November 14, 2016, February 11, 2017 and March 28, 2017. The following are the details of the directors and the meetings attended by them during the investigation period, as stated in the Annual Report 2015-16:

Name of directors	Category	No. of Board meetings during the year 2015-16	
		Held	Attended
Mr. Subash Agarwal (Chairman)	Executive Director	5	4
Mr. Rajesh Agarwal (Managing Director)	Executive Director	5	5
Mr. Swarup Chandra Parija	Independent Non-Executive Director	5	4
Mrs. Rima Dhawan	Independent Non-Executive Director	5	5
Mr. Krishna Chandra Raut	Nominee Director	5	2

36. The following are the details of the directors and the meetings attended by them during the investigation period, as stated in the Annual Report 2016-17:

Name of directors	Category	No. of Board meetings during the year 2016-17	
		Held	Attended
Mr. Subash Agarwal (Chairman)	Executive Director	5	5
Mr. Rajesh Agarwal (Managing Director)	Executive Director	5	5
Mr. Swarup Chandra Parija	Independent Non-Executive Director	5	5
Mrs. Rima Dhawan	Independent Non-Executive Director	5	5

	Executive Director		
Mr. Krishna Chandra Raut	Nominee Director	5	5

37. Further, as per the Annual report of the company for the FY 2015-16, four meetings of the Audit Committee were held on May 12, 2015, August 07, 2015, November 07, 2015, and February 12, 2016 and for the FY 2016-17, four meetings of the Audit Committee were held on May 02, 2016 (Adjourned), May 27 (Adjourned meeting resumed), August 12, 2016, November 14, 2016 and February 11, 2017. The following are the details of independent directors who were members of Audit Committee and the meetings attended by them during the investigation period, as stated in the Annual Report 2015-16 and 2016-17:

Name of directors	Category	No. of meetings in the FY 2015-16	
		Held	Attended
Mr. Swarup Chandra Parija	Chairman	4	4
Mr. Krishna Chandra Raut	Member	4	2
Ms. Rima Dhawan	Member	4	4

Name of directors	Category	No. of meetings in the FY 2016-17	
		Held	Attended
Mr. Swarup Chandra Parija	Chairman	4	4
Mr. Krishna Chandra Raut	Member	4	4
Ms. Rima Dhawan	Member	4	4

38. From the above, I note that Noticee no. 4 had attended 4 out the 5 board meetings during the financial year 2015-16 and all the board meetings during the FY 2016-17. Further, he had also attended all the audit committee meetings, which he was the Chairman of, for the financial years 2015-16 and 2016-17. Noticee no. 5 had

attended all board meetings during the financial year 2015-16 and 2016-17 and had also attended all the audit committee meetings, which she was a member of, for the financial years 2015-16 and 2016-17. Noticee no. 6 had attended 2 out the 5 board meetings during the financial year 2015-16 and all the board meetings during the FY 2016-17. Further, he had also attended 2 of the 4 audit committee meetings in the FY 2015-16 and all the audit committee meetings during the FY 2016-17, which he was a member of, for the financial years 2015-16 and 2016-17.

39. Regarding the liability of the independent directors for the acts of commission and omission of a company reference may be made to Regulation 25(5) of the LODR Regulations which provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations. Further, with regard to the liability of Noticee no. 6 as a nominee director, I note that a General Circular dated March 02, 2020 was issued by the Ministry of Corporate Affairs on the clarification on prosecutions filed or internal adjudication proceedings initiated against independent directors, non-promoters and non-KMP non-executive directors. The said circular *inter alia* has clarified as follows:

“3. Section 149(12) is a non obstante clause which provides that the liability of an independent director (ID) or a non-executive director (NED) not being promoter or key managerial personnel would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. In view of the express provisions of section 149(12), IDs and NEDs (non-promoter and non-KMP), should not be arrayed in any criminal or civil proceedings under the Act, unless the above mentioned criteria is met. Typically, apart from IDs, non-promoter and non-KMP, NEDs, would exist in the following cases:

- a) Directors nominated by the Government on the public sector undertakings;*

- b) Directors nominated by Public Sector Financial Institutions, Financial Institutions or Banks having participating in equity of a company, or otherwise;*
- c) Directors appointed in pursuance to any statutory or regulatory requirement such as director appointed by the NCLT.”*

40. Therefore, from the aforesaid circular, it has been *inter alia* clarified that non-executive director would also include directors nominated by Public Sector Financial Institutions, Financial Institutions or Banks having participating in equity of a company, or otherwise, and liability of such non-executive director would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
41. In this regard, I note that Noticee no. 6 was the Nominee director, nominated by State Bank of India to AIPL board when the Company was put under CDR by the consortium of banks led by the State Bank of India. I note that Noticee no. 6, as director of the board and as member of the audit committee, had approved the financials of AIPL which had multiple discrepancies in its financials such as inconsistencies in the accounting and financial data including tally data, non-provision of interest on outstanding bank borrowings, etc. as discussed in para 15 above. I note that Noticee no. 6 has relied upon the letter dated January 19, 2015 issued by the Department of Financial Services, Ministry of Finance, submitting that it is noted in the said letter that the statutory public sector bank had specific provisions in the statute constituting those banks that stipulated that Nominated directors would not incur any obligation or liability by reason of being a director or for anything done or omitted to be done in good faith in discharge of his duties as a director. In this regard, I note that Section 35A of the State Bank of India Act, 1955, states as under:

“35A. Arrangement with the State Bank on appointment of directors to prevail.—(1)
Where any arrangement entered into by the State Bank with a company provides for the appointment by the State Bank of one or more directors of such company, such provisions

and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the State Bank in pursuance of the arrangement as aforesaid.

(2) Any director appointed as aforesaid shall—

(a) hold office during the pleasure of the State Bank and may be removed or substituted by any person by order in writing of the State Bank;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.”

42. The aforesaid provision provides that a nominee director shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto. Therefore, it is to be seen that whether in the present case acts/omissions of Noticee no. 6, can be said to have been done under good faith so as to afford him the protection envisaged under Section 35A of the State Bank of India Act, 1955. In this regard, I note that the Noticee was not just a director of the Company but a member of the audit committee and had attended 2 of the 4 audit committee meetings in the FY 2015-16 and all the 4 audit committee meetings during the FY 2016-17. Hence, the Noticee cannot take the plea that he acted in good faith as a director of the board in approving the financials that were provided to him by the audit committee, as the Noticee himself was a member of the audit committee whose role under Regulation 18(3) read with Part C of Schedule II of the LODR Regulations was *inter alia* to review the financial statement and auditors report with reference to disclosure of any related party transactions etc. and to ensure that the financial statement is correct, sufficient and credible. Therefore,

given the various discrepancies, failure to disclose and misrepresentations in the financial statements of AIPL, as discussed in the aforesaid paras, Noticee no. 6 being a member of the audit committee, cannot be said to have acted in a diligent manner and seek cover under Section 35A of the State Bank of India Act, 1955, as contended by Noticee no. 6.

43. In this regard, as discussed in previous paragraphs, the company has *inter alia* failed to make disclosure of related party transactions, failed to disclose relationship between directors, failed to place information of annual operating plans and capital budgets before the Board, failed to lay down procedures to inform the Board of directors about risk assessment and minimization procedures, discrepancies in financial statements, failed to comply with accounting standards, overstatement of revenue and sub-contracting expenses, inconsistencies in the accounting and financial data and within tally data, non-provision of interest on outstanding bank borrowings and incomplete disclosure of fire incident. The company has been found to be in violation of Sections 11(2)(i), 11(2)(ia) of SEBI Act, 1992, Regulation 4(1)(a), (b), (c), (e) and (g), 6(1), 13(3), 27(2)(a), 30(1), 30(4)(ii), 31(1), 33(2)(a), 33(3)(a), 33(1)(d), 34(1), 46(2)(a)&(b), 46(2)(l) and 48 of the LODR Regulations and Clause 50 of the Listing Agreement read with Section 21 of SCRA, 1956. In respect of the aforesaid violations by the Company, I note that Noticees no. 2, 3, 4, 5 and 6 have already been found to have violated Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6) & (12) of the LODR Regulations. I note that Noticee nos. 2, 3, 4, 5 and 6, being directors of AIPL and Noticees no. 4, 5 and 6 being part of the audit committee of AIPL, approved the financials of AIPL, as part of the board of directors of AIPL. Failure to raise any concern regarding the financials of AIPL, as member of the audit committee and/or the board of directors of AIPL, shows that these directors did not act diligently with respect to the provisions contained in the LODR Regulations. Therefore, the contention raised by Noticees no. 4, 5 and 6 that they were independent directors and nominee directors and the allegations in the SCN

pertain to the operational aspects of AIPL and not aspects that are attributable to the board process, is not tenable.

44. I note that, in case of listed companies, the continuous compliance of LODR Regulations is important, to enable the investors to take timely investment and disinvestment decisions. In view of the aforesaid violations committed by AIPL (which includes violations of misrepresentation in the financials), and its directors/CFO, I find that direction under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 and Section 12A (1) of SCRA, 1956, needs to be issued.
45. SCN in the matter, also calls upon the Noticees no. 1 to 8 to explain as to why appropriate penalty be not imposed upon them under Sections 15A(a), 15HA and 15HB of SEBI Act, 1992 and Section 23E of and 23H SCRA, 1956, for the violations alleged in the SCN. Relevant extract of these penalty provisions, as existing at the time of violations, is reproduced, hereunder:

Relevant extract of Section 15A (a) and 15HB of SEBI Act, 1992:

“Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to

twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.”

Relevant extract of Sections 23E and 23H of SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

46. From the analysis of the aforesaid penalty provisions, I find that penalty under Sections 15A(a) and 15HB of the SEBI Act, 1992, only, is attracted and not the penalties under Section 15HA of SEBI Act, 1992 and Sections 23E and 23H of SCRA, 1956. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 have not been made

out, therefore, penalty under Section 15HA of SEBI Act, 1992 is not attracted against the Noticees (i.e. Noticees no. 1 to 8). I also note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that AIPL is in violation of listing conditions, however, AIPL is not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA. I also find that penalty under Section 23H of SCRA, 1956 is not attracted in the case of Noticees no. 2 to 6 and 8, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the SEBI for which no separate penalty has been provided. As the Noticees no. 2 to 6 and 8, being directors and CFO of AIPL, have been found to be in violation of LODR Regulations, which is a regulation framed under the SEBI Act, 1992 and SCRA, 1956 by SEBI and not the “regulation” of stock exchange, as contemplated under Section 23H, and there is no violation of direction of SEBI directions alleged against these Noticees, therefore, Section 23H is not attracted in the case of Noticees no. 2 to 6 and 8.

47. I find that for non-furnishing of information to forensic auditor, as found above, AIPL is liable for imposition of penalty under Section 15A(a) of the SEBI Act, 1992 which provides penalty for failure to furnish information, *inter alia*, sought by SEBI under the provisions of SEBI Act, 1992. For the violation of LODR Regulations, AIPL is liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides for penalty for failure to comply with any provision of SEBI Act, 1992, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided. Since, LODR Regulations are framed under SEBI Act, 1992 also and penalty provisions under SEBI Act, 1992 (i.e. 15A to 15HB) does not separately provide for any penalty for violation of LODR Regulations, therefore, for violation of LODR Regulations by AIPL, as found in this

order, penalty under Section 15HB is attracted against AIPL. Similarly, Noticees no. 2 to 6 and 8 who are the directors and CFO of AIPL are liable for imposition of penalty, for the violations of LODR Regulations which are found to be committed by them, under Section 15HB of the SEBI Act, 1992.

48. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

49. I find that material available on record does not mention the amount of disproportionate gain or unfair advantage made as a result of the default. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees. I also note that out of the 21 observations made in the FAR, 16 observations have been sustained in this order. Further, I note that the violations have occurred over a period of two financial years. I also note that Noticee no. 4 and 5 were the

independent directors, Noticee no. 6 was a Nominee Director and Noticee no. 8 was the CFO of the Company.

Directions:

50. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act, 1992 and Section 12A(1) of SCRA, 1956 read with Section 19 and Section 11(2)(j) of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, direct as under:
- (i) The Noticee no. 1 (ARSS Infrastructure Projects Limited), Noticee no. 2 (Mr. Subash Agarwal), Noticee no. 3 (Mr. Rajesh Agarwal) and Noticee no. 8 (Mr. Soumendra Keshari Pattanaik) are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;
 - (ii) The Noticee no. 4 (Mr. Swarup Chandra Parija), Noticee no. 5 (Ms. Rima Dhawan) and Noticee no. 6 (Mr. Krishna Chandra Raut), are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order;
 - (iii) The Noticees no. 1 to 6 and 8, are hereby imposed with, the following penalties as specified:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalties
1.	ARSS Infrastructure Projects Limited	Section 15A(a) of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakh).
		Section 15HB of SEBI Act, 1992 and Section 23H of SCRA, 1956.	Rs. 15,00,000/- (Rupees Fifteen Lakh).
2.	Mr. Subash Agarwal	Section 15HB of SEBI Act, 1992	Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand)
3.	Mr. Rajesh Agarwal	Section 15HB of SEBI Act, 1992	Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand)
4.	Mr. Swarup Chandra Parija	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand)
5.	Ms. Rima Dhawan	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand)
6.	Mr. Krishna Chandra Raut	Section 15HB of SEBI Act, 1992	Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand)
8.	Mr. Soumendra Keshari Pattanaik	Section 15HB of SEBI Act, 1992	Rs. 3,00,000/- (Rupees Three Lakh)

- (iv) The aforesaid Noticees are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief,

Investigation Department, ID-19, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

- (v) The proceedings against Noticee no. 7 is disposed of for reasons stated in para 33 above.

51. The obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
52. This Order comes into force with immediate effect.

53. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.
54. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs, along with a copy of the Forensic Audit Report for their information.

Sd/-

Place: Mumbai

ANANTA BARUA

Date: November 25, 2021

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA