

WTM/AB/CFID/CFID\_1/20149/2022-23

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

**Under Sections 11(1), 11(4), 11(4A), 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.**

<b>Noticee No.</b>	<b>Name of Noticees</b>	<b>PAN</b>
1	Mr. Gautam Thapar	ABNPT6298B
2	Avantha Holdings Limited	AABCB6134E
3	Acton Global Private Limited	AAOCA2658K
4	Solaris Industrial Chemicals Limited	AAICS4672H
5	Mr. V. R. Venkatesh	AAKPV9947M
6	Mr. Madhav Acharya	ABOPA4250D
7	Mr. B. Hariharan	ADXPB2158A
8	Mr. K. N. Neelkant	ACOPK0151C
9	Mr. Atul Gulatee	AGHPG2150N
10	Aditya Birla Finance Limited	AABCB5769M
11	IndusInd Bank	AAACI1314G

**In the matter of CG Power and Industrial Solutions Limited**

*(Aforesaid entities are hereinafter individually referred to 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 May 21, 2021 (hereinafter referred to as “**SCN**”) issued to the aforesaid Noticees by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). On August 20, 2019, CG Power and Industrial Solutions Limited (hereinafter referred to as “**CG Power**”/ “**Company**”), vide a corporate announcement made to BSE and NSE, informed *inter alia* that the total liabilities of the Company and the CG Power Group

may have been potentially understated by approximately Rs. 1053.54 crore and Rs. 1,608.17 crore, respectively, as on March 31, 2018 and by Rs. 601.83 crore and Rs. 401.83 crore, respectively as on April 1, 2017. It was also informed that advances to related and unrelated parties of the Company and the CG Power Group may have been potentially understated by Rs. 1,990.36 crore and Rs. 2,806.63 crore respectively, as on March 31, 2018 and by Rs. 1,479.34 crore and Rs. 1,331.47 crore respectively, as on April 1, 2017. It was observed that the closing market price of the shares of CG Power decreased from Rs. 18.4 on August 19, 2019 to Rs. 14.75 on August 20, 2019, after the Company made an announcement that the total liabilities of the Company and the CG Power Group may have been potentially understated. SEBI suo moto had taken note of certain news articles published on August 20, 2019, in several national newspapers in relation to suspected 'fraud' at CG Power. SEBI sought information in the matter in order to examine the possible violations of securities laws. CG Power vide letter dated August 26, 2019, to SEBI, submitted a copy of the preliminary Investigation Report prepared by M/s Vaish Associates, an independent law firm appointed by CG Power to conduct an investigation on certain transactions, and aided by Deloitte, Chartered Accountants.

2. Thereafter, SEBI vide Interim Order dated September 17, 2019 (hereinafter referred to as "**Interim Order**"), restrained certain persons including Mr. Gautam Thapar (Noticee no. 1), Mr. V.R. Venkatesh (Noticee no. 5), Mr. Madhav Acharya (Noticee no. 6) and Mr. B. Hariharan (Noticee no. 7) from accessing the securities market as well as from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary. Further, vide said interim order, three companies, namely Avantha Holdings Limited (Noticee no. 2), Acton Global Private Limited (Noticee no. 3) and Solaris Industrial Chemicals Limited (Noticee no. 4), who were prima facie found to be the beneficiaries of the loans and advances extended by CG Power, were directed to retain funds / other assets to the extent of receivables shown as outstanding to CG Power and were restrained from disposing, selling or alienating, in any other manner, their assets or diverting funds to the extent of their liability. CG Power was directed to take all necessary steps to

recover the amounts due to CG Power, which were extended, either directly or indirectly, to the entities mentioned at paragraph 5.5A in Interim Order along with due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of CG Power.

3. Further, vide the Interim Order, BSE was directed to appoint an independent auditor/audit firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015-16 onwards till the date of interim order. BSE appointed MSA Probe Consulting Private Limited (hereinafter referred to as **"MSA"/ "Forensic Auditor"**) for conducting the forensic audit of the books of accounts of CG Power from FY 2015-16 till September 17, 2019 (hereinafter referred to as **"Investigation Period/ IP"**). Meanwhile, pending receipt of the forensic audit report from MSA and after considering the submissions of the entities mentioned in the interim order, SEBI passed a Confirmatory Order dated March 11, 2020 (hereinafter referred to as **"Confirmatory Order"**) in the matter, vide which the directions of Interim Order were confirmed. Subsequently, the forensic audit report (hereinafter referred to as **"FAR"**) was submitted by MSA to SEBI on March 18, 2020.
4. I note that Noticees no. 1, 2, 4 and 7, aggrieved by the directions in the Confirmatory Order, had filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"Hon'ble SAT"**). I note that the Hon'ble SAT vide its Order dated April 06, 2021, dismissed the appeal and *inter alia* held that:

*"40. As the restraint order is continuing since September 17th, 2019 it cannot be allowed to continue forever. Sufficient time is already passed, for the respondent to analyse the forensic report. We accordingly direct the respondent to issue the show cause notice, if any, within four weeks from today and thereafter decide the matter within six months from the date of receiving the replies in accordance with law after giving an opportunity of hearing."*

5. By the aforesaid Order dated April 06, 2021, the Hon'ble SAT had *inter alia* directed that SEBI issue the SCN within four weeks from the date of the Order and

thereafter decide the matter within 6 months from the date of receiving the replies in accordance with law after giving an opportunity of hearing. Accordingly, hearing was granted to the Noticees beginning from August 30, 2021 to April 13, 2022, upon the request of the Noticees, as detailed in para 16 below. I note that each Noticee has filed multiple replies as detailed in para 17 below over a period of time. During the same time, I note that Noticee no. 6 had also filed Appeal bearing no. 649 of 2021 before the Hon'ble SAT which was dismissed vide its Order dated November 24, 2021. Thereafter, Noticee no. 6 had filed another Appeal no. 24 of 2022 before the Hon'ble SAT which was dismissed by its Order dated January 27, 2022, as discussed in para 24 below. I note that the Hon'ble SAT had also *inter alia* held in its Order dated January 27, 2022 that "*At the moment we are of opinion that there is delaying tactic adopted by the appellant. All the other entities have filed their reply except the appellant and there is no reason why the appellant should not file the reply and the matter should not proceed further. There is a direction of this Tribunal to the authority to decide the matter in a time bound time.*" Upon the directions of the Hon'ble SAT, the Noticees no. 5 and 6 filed their replies dated February 01, 2022 and February 20, 2022, respectively. Upon the request of Noticees no. 5 and 6, an opportunity of hearing was granted to the Noticees on April 13, 2022. Thereafter, I note that Noticees no. 1, 2, 4, 5 and 6 had, pursuant to the Order dated February 18, 2022 of the Supreme Court in ***T. Takano vs. SEBI in Civil Appeal no. 487-488 of 2022***, sought for a copy of the investigation report and its annexures in the matter and the same were provided to the Noticees on April 22, 2022 (Noticees no. 1, 2 and 4) and April 26, 2022 (Noticees no. 5 and 6). Thereafter, the Noticees no. 1, 2 and 4 filed additional written submissions dated May 11, 2022 and July 04, 2022. Then Noticee no. 5 filed written submissions dated May 07, 2022 and Noticee no. 6 filed Additional and Written submissions dated May 20, 2022. I also note that Noticee no. 7 filed further additional submissions dated July 06, 2022. Hence, I note that Noticees have at multiple times filed replies, sought opportunity of personal hearing and filed additional/written submissions. The present order is being passed after considering the replies/written submissions/additional submissions filed and submissions made by the Noticees during hearings granted to them.

6. Based on the findings contained in the FAR dated March 18, 2020 submitted by MSA, and the detailed investigation carried out by SEBI, specific transactions were identified and based on these transactions, it has been *inter alia* alleged in the SCN that:
- a) the assets / funds of CG Power were diverted to the Noticee no. 2 Group Companies controlled by Noticee no. 1;
  - b) liabilities of CG Power were understated (but in actual the liabilities were increased) in the Financial Statements i.e. actual / increased liabilities of CG Power were not disclosed to public, however, artificially reduced liabilities of CG Power were disclosed to public. Thus, Financial Statements of CG Power for FY 2016-17 and FY 2017-18 were misrepresented;
  - c) requisite Board approval from CG Board were not obtained for Impugned Transactions; and
  - d) related Party Transactions were not carried out at arm's length and disclosed.
7. Therefore, it is alleged in the SCN that this fraudulent activity of concealment of these transactions from the Board of Directors of CG Power and from the public shareholders of CG Power had interfered with the normal mechanism of price discovery and integrity of securities markets and created a misleading appearance with respect to share price movement of CG Power, thus effectively manipulating the share price of CG Power. SCN further alleged that financial statements published by CG Power are relied upon by the investors in the securities markets to base their investment decisions and misrepresentation of the same is a fraudulent activity.

#### **Details of CG Power**

8. CG Power is a company incorporated under the provisions of the Companies Act, 1913. The Registered Office of the Company is at 6th floor, Crompton Greaves House, Dr. Annie Besant Road, Century Bazaar, Worli, Mumbai – 400030. The shares of the Company are listed on BSE and NSE.

(i) **Shareholding Pattern (source: BSE website)**

Category of shareholder	Year ended March 31, 2016	Year ended March 31, 2017	Year ended March 31, 2018	Year ended March 31, 2019	Quarter ended June 30, 2019	Quarter ended September 30, 2019
<b>Promoter</b>	34.42%	34.42%	34.42%	12.79%	0.00%	0.00%
<b>Public</b>	65.58%	65.58%	65.58%	87.21%	100.00%	100.00%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Name of Promoter	Year ended March 31, 2016	Year ended March 31, 2017	Year ended March 31, 2018	Year ended March 31, 2019	Quarter ended June 30, 2019
Avantha Holdings Limited (AHL)	34.42% (84.20% of which pledged)	34.42% (100% of which pledged)	34.42% (100% of which pledged)	12.79% (100% of which pledged)	0.00%
Avantha Realty Limited	0.00%	0.00%	0.00%	0.00%	0.00%
Varun Prakashan Private Limited	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Total</b>	<b>34.42%</b>	<b>34.42%</b>	<b>34.42%</b>	<b>12.79%</b>	<b>0.00%</b>

Note: AHL had pledged 100% of shares held in the Company which were invoked by the lenders during the quarters ended March 31, 2019 and June 30, 2019 upon non-payment of borrowings for which they were encumbered. Avantha Realty Limited and Varun Prakashan Private Limited had negligible holding in the Company (3,552 and 5,022 shares respectively) which they are still holding.

(ii) **The details of the Directors of CG Power during the Investigation Period are as under:**

Sl. No.	Name	Designation	Appointment Date	Cessation Date
1	Mr. Gautam Thapar	Non-Executive Chairman	August 7, 2005	August 29, 2019
		Non-Executive Director		October 9, 2019
2	Mr. Laurent Demortier	Managing Director & CEO	June 2, 2011	February 3, 2016
		Executive Director		March 31, 2016
3	Mr. K. N. Neelkant	Managing Director & CEO	February 3, 2016	September 30, 2019
4	Mr. Shirish Apte	Independent Director	April 18, 2013	April 1, 2017
5	Dr. Omkar Goswami	Non-Executive Director	January 27, 2004	December 14, 2019
6	Mr. B. Hariharan	Non-Executive Director	November 1, 2012	March 8, 2019
7	Mr. Sanjay Labroo	Independent Director	October 28, 2003	October 1, 2018

Sl. No.	Name	Designation	Appointment Date	Cessation Date
8	Dr. Colette Lewiner	Independent Director	January 28, 2013	March 14, 2016
9	Ms. Meher Pudumjee	Independent Director	July 26, 2007	May 28, 2016
10	Dr. Valentine Van Massow	Independent Director	January 25, 2006	August 5, 2019
11	Ms. Ramni Nirula	Independent Director	April 6, 2016	November 26, 2020
12	Mr. Madhav Acharya	Executive Director & CFO*	April 1, 2016	August 11, 2017
		Non-Executive Director	August 12, 2017	September 30, 2017
13	Mr. Jitender Balakrishnan	Independent Director	May 2, 2017	November 26, 2020
14	Mr. Ashish Kumar Guha	Independent Director	November 9, 2017	November 26, 2020
15	Mr. Sudhir Mathur	Independent Director	October 1, 2018	May 10, 2019
		Whole Time Executive Director	May 10, 2019	November 26, 2020
16	Mr. Narayan K. Seshadri	Independent Director	March 8, 2019	November 26, 2020

\* CFO since November 01, 2009 and Executive Director & CFO from April 1, 2016 to August 11, 2017

## Details of the Noticees in the SCN:

9. The details of the Noticees during the Investigation Period are as under:

Notice e No.	Name of Noticee	Designation/ Role/ Nature of Noticee w.r.t. CG Power	Appointment date, if any	Cessation date, if any
1	Mr. Gautam Thapar	Non-Executive Chairman	August 7, 2005	August 29, 2019
		Non-Executive Director		October 9, 2019
		Majority Shareholder (87%) in AHL	Since 2007	Not Applicable
		Director in AHL	February 2, 2005	Not Applicable
2	Avantha Holdings Ltd.	Promoter of CG Power.	Held 34.37% at start of the IP	Holding became Nil as pledged shares were invoked by June 30, 2019
3	Acton Global Pvt. Ltd.	Incorporated in March 2016	-	-
		Shareholders were employees of CG Power	-	-
4	Solaris Industrial Chemicals Ltd.	Part of Avantha Group	Since November 10, 2003	Not Applicable
5	Mr. V. R. Venkatesh	Prior to becoming CFO of CG Power, he was employed by Belgian division of CG Group which was later sold off due to recurring losses. He had also been Employee Director of CG Middle East since 2010.		
6	Mr. Madhav Acharya	Chief Financial Officer (CFO)	August 12, 2017	August 30, 2019
		CFO	November 1, 2009	March 31, 2016
		Executive Director and CFO	April 1, 2016	August 11, 2017
		Non-Executive Director	August 12, 2017	September 30, 2017
7	Mr. B. Hariharan	He was Group Director-Finance of Avantha Group, but was non-executive Director in CG Power.		
		Non-Executive Director	November 1, 2012	March 08, 2019

Notice No.	Name of Noticee	Designation/ Role/ Nature of Noticee w.r.t. CG Power	Appointment date, if any	Cessation date, if any
8	Mr. K. N. Neelkant	President – India Operations	2015	February 2016
		MD & CEO	February 3, 2016	September 30, 2019
9	Mr. Atul Gulatee	Head of Treasury	2015	November 2018
		Director in Blue Garden Estate Pvt. Ltd.	March 21, 2016	June 27, 2017
10	Aditya Birla Finance Ltd.	Lenders involved in some of the impugned transactions.		
11	IndusInd Bank			
12	Standard Chartered Bank			

10. Accordingly, the SCN was issued to the Noticees no. 1 to 12 asking them to show cause as to why appropriate directions under Section 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992 including debarring them from buying, selling or otherwise dealing in securities, for an appropriate period should not be issued against them:

- a) Noticee No. 1 for the alleged violation of provision of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and 4(1) and 4(2)(f) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) and Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) & (6) and 26(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations, 2015**”)
- b) Noticee No. 2, 3 & 4 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and 4(1) of PFUTP Regulations, 2003.
- c) Noticee No. 5 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 and Regulations 4(2)(f)(i)(2), 26(3) and 33(2)(a) of the LODR Regulations, 2015.
- d) Noticee No. 6 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) of



- PFUTP Regulations, 2003 and Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) & (6), 26(3) and 33(2)(a) of the LODR Regulations, 2015.
- e) Noticee No. 7 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and 4(1) and 4(2)(f) of PFUTP Regulations, 2003 and Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) & (6) and 26(3) of the LODR Regulations, 2015.
  - f) Noticee No. 8 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations, 2003 and Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) & (6) and 26(3) and 33(2)(a) of the LODR Regulations, 2015.
  - g) Noticee No. 9, 10, 11 & 12 for the alleged violation of provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d) and 4(1) of PFUTP Regulations, 2003.
11. The Noticees No. 1, 5, 6, 7, 8 and 9 were also called upon to show cause as to why appropriate directions under Section 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992, to not be associated with any listed entity or its material subsidiary or any intermediary, for an appropriate period, should not be issued against them for the violations of the provisions of SEBI Act 1992, PFUTP Regulations, 2003 and LODR Regulations, 2015 alleged to be committed by them, as mentioned above.
12. Further, Noticee No. 1, 5, 6, 7 & 8 were also called upon to show cause as to why appropriate monetary penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB of the SEBI Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) should not be imposed upon them for the alleged violations of the provisions of SEBI Act, 1992, PFUTP Regulations, 2003 and LODR Regulations, 2015, alleged to be committed by them, as mentioned above. Noticee No. 2, 3, 4, 9, 10, 11 & 12 were also called upon to show cause as to why appropriate monetary penalty under Sections 11B(2) and 11(4A) read with Section 15HA of the SEBI Act, 1992 read with SEBI Adjudication

Rules should not be imposed upon them for the alleged violations of the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, alleged to be committed by them, as mentioned above

13. The following annexures were provided with the SCN:

<b>Annexure no.</b>	<b>Particulars</b>
1	Letter dated August 18, 2020 from CG Power to SEBI
2	Emails dated October 27, 2017 and October 30, 2017 from Noticee no. 5 to Noticee no. 9
3	Email dated January 27, 2021 from CG Power to SEBI
4	Email dated April 13, 2021 from Noticee no. 10 to SEBI
5	Email dated April 12, 2021 from Noticee no. 11 to SEBI
6	Assignment-cum-Put Agreement dated September 28, 2018 entered into among Noticee no. 2, CG Power, Noticee no. 4 and Noticee no. 11
7	Application dated April 3, 2017 by Noticee no. 2 to ICICI Bank for an overdraft facility up to Rs.132 crore
8	Copy of the Board resolution dated August 30, 2016 of CG Power, certified to be true by Noticee no. 7
9	Email dated January 15, 2018 from Noticee no. 5 to Noticee no. 9
10	Note dated January 16, 2018 put up by Noticee no. 5 to Noticee no. 7 for approval

14. I note that Noticee no. 12 to the SCN, i.e. Standard Chartered Bank had filed a settlement application in terms of the SEBI (Settlement Proceedings) Regulations, 2018 proposing to settle, without admitting or denying the findings of fact and conclusions of law, through a settlement order, the enforcement proceedings initiated vide the present SCN dated May 25, 2021, against it. In this regard, I note that the said proceedings initiated against Noticee no. 12 vide the present SCN dated May 25, 2021 has been settled vide settlement order dated May 24, 2022.

Thus, the present order does not deal with SCN issued to Noticee no. 12 to the SCN.

15. I note that the SCN dated May 25, 2021 was issued and delivered to all the Noticees except Noticee no. 3. The particulars of the delivery of SCN and hearing notices to Noticee no. 3 is as under:

Particulars	Date	Letter / Email/ Newspaper publication	Email Id	Status
SCN	May 25, 2021	SCN issued by speed post and Email	'acton.globalpltd@gmail.com' (as per MCA21 portal)	Letter returned undelivered. Thereafter, affixture of SCN was done in July 2021 at the last known address of the Noticee as per MCA website.
Hearing Notice	August 04, 2021	Hearing Notice issued by speed post and Email	'acton.globalpltd@gmail.com' (as per MCA21 portal)	Letter returned undelivered
Hearing Notice	September 06, 2021	Hearing Noticee issued by Email and newspaper publication	'acton.globalpltd@gmail.com' (as per MCA21 portal)  And  'venki39@gmail.com' (Mr. V. R. Venkatesh who is noticee no. 5 in the instant proceeding, is also a director in Acton Global)	Newspaper publication was done in 3 newspapers viz. Times of India (English), Nav-Bharat (Hindi) and Nav-Rashtra (Marathi) on September 27, 2021, mentioning details of Show Cause Notice and the Hearing Notice.

16. An opportunity of personal hearing was granted to all the Noticees. Further, Noticee no. 7 had sought for the cross examination of Mr. P. Vardarajan, Company Secretary of CG Power and the same was granted and conducted by the advocates of Noticee no. 7 on September 16, 2021. The details of personal hearing granted to the Noticees, are as under:

Noticee No.	Noticee	Date of Hearing
1	Gautham Thapar	September 09, 2021
2	Avantha Holdings Limited	September 09, 2021
3	Acton Global Pvt. Limited	Hearing granted on August 30, 2021 and October 29, 2021 but Noticee did not appear.
4	Solaris Industrial Chemicals Ltd	September 09, 2021
5	V R Venkatesh	April 13, 2022
6	Madhav Acharya	April 13, 2022
7	B Hariharan	September 16, 2021 and October 04, 2021
8	K N Neelkant	August 30, 2021
9	Atul Gulatee	September 09, 2021
10	Aditya Birla Finance Ltd	August 31, 2021
11	IndusInd Bank	August 30, 2021

17. The Noticees have filed detailed replies to the SCN, including written submissions and additional submissions, the details of which are as under:

Noticee no.	Noticee	Letter/email dated
1	Mr. Gautam Thapar	June 15, 2021 (Joint reply to SCN of Noticees 1, 2 & 4) September 09, 2021 (Convenience Compilation) September 24, 2021 (Joint Written submissions of Noticees 1, 2 & 4) October 22, 2021 (Joint Additional limited Submission) May 11, 2022 (Joint Additional Written submissions) July 04, 2022 (Joint Additional Submissions)
2	Avantha Holdings Limited	June 15, 2021 (Joint reply to SCN of Noticees 1, 2 & 4) September 09, 2021 (Convenience Compilation) September 24, 2021 (Joint Written submissions of Noticees 1, 2 & 4) October 22, 2021 (Joint Additional limited Submission) May 11, 2022 (Joint Additional Written submissions) July 04, 2022 (Joint Additional Submissions)
3	Acton Global Private Limited	No reply filed till date
4	Solaris Industrial Chemicals Limited	June 15, 2021 (Joint reply to SCN of Noticees 1, 2 & 4) September 09, 2021 (Convenience Compilation) September 24, 2021 (Joint Written submissions of Noticees 1, 2 & 4) October 22, 2021 (Joint Additional limited Submission)

		May 11, 2022 (Joint Additional Written submissions) July 04, 2022 (Joint Additional Submissions)
5	Mr. V. R. Venkatesh	June 15, 2021 (Preliminary objection to SCN) January 21, 2022 filed on February 01, 2022 (Reply to SCN) May 07, 2022 (Written submissions)
6	Mr. Madhav Acharya	June 15, 2021 (Preliminary reply to SCN) August 21, 2021 (Reply to SCN) August 30, 2021 (Annexure – 16 Replaced) February 20, 2022 (Detailed Reply to SCN) April 12, 2022 (Annual Report of CG Power _ 2021-22) May 20, 2022 (Additional Submissions) May 20, 2022 (Written Submissions)
7	Mr. B. Hariharan	June 23, 2021 (Reply to SCN) August 26, 2021 August 30, 2021 (Additional Reply) October 04, 2021 (Additional Reply post cross examination containing Broad Overview, List of Dates and Note on impugned transactions) October 18, 2021 (Written Submissions) July 06, 2022 (Additional Submissions)
8	Mr. K. N. Neelkant	July 24, 2021 (Reply to SCN)
9	Mr. Atul Gulatee	August 02, 2021 (Reply to SCN) October 05, 2021 (Written Submissions)
10	Aditya Birla Finance Limited	July 15, 2021 (Interim reply to SCN) July 29, 2021 (Reply to SCN) October 01, 2021 (Written Submissions)
11	IndusInd Bank	June 22, 2021 (Reply to SCN) August 29, 2021 (Additional Reply to SCN) September 14, 2021 (Written Submissions)

18. Before dealing with the issues involved, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

**Relevant extract of the provisions of SEBI Act, 1992:**

**Section 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;*

**Relevant extract of the provisions of the PFTUP Regulations:**

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

*No person shall directly or indirectly –*

- (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.*

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

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

*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.*

- (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: —*

- (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

**Relevant extract of the provisions of the LODR Regulations:**

***Regulation 4. (2) (f) Responsibilities of the Board of Directors:***

*The Board of Directors of the Listed Entity shall have the following responsibilities:*

*(i) Disclosure of information:*

- (1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.*
- (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 –*

- (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.*

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

***Regulation 26(3): Obligations with respect to employees including senior management, key managerial persons, directors and promoters –***

*All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.*

***Regulation 33(2): Financial Results –***

*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.*

19. Before dealing with the merits of the various allegations levelled against the Noticees, it would be appropriate to first deal with certain preliminary issues raised by some Noticees.
20. Noticees have contended that there is violation of principles of natural justice as they have not been provided the necessary documents to defend themselves against the allegations made against them. In this regard, I note that the Noticees have filed their respective letters seeking copies of documents to enable them to file reply to the SCN. In this regard, I note that SEBI, upon the request made by the Noticees, has provided inspection of documents relied upon in the SCN to the Noticees, on the following dates:

Noticee No.	Noticee	Date of Inspection
1	Gautham Thapar	June 28, 2021 April 22, 2022
2	Avantha Holdings Limited	June 28, 2021 April 22, 2022
3	Acton Global Pvt. Limited	Did not seek inspection
4	Solaris Industrial Chemicals Ltd	June 28, 2021 April 22, 2022
5	V R Venkatesh	June 29, 2021 November 25, 2021 April 26, 2022
6	Madhav Acharya	July 01, 2021 April 26, 2022
7	B Hariharan	July 02, 2021



8	K N Neelkant	Did not seek inspection
9	Atul Gulatee	Did not seek inspection
10	Aditya Birla Finance Ltd	June 30, 2021
11	IndusInd Bank	July 05, 2021

21. Thereafter, I note that an opportunity of personal hearing was granted to all the Noticees as detailed in para 15 above. Noticees no. 1, 2, 4, 7, 8, 9, 10 and 11, then filed their detailed replies to the SCN, as detailed in para 17 above. I note that hearing was concluded for all the Noticees except for Noticee no. 5 and 6. I note that Noticee no. 6 had preferred a Miscellaneous Application no. 1128 of 2021 in Appeal no. 413 of 2019 before the Hon'ble SAT, *inter alia*, seeking directions to respondents therein to provide documents as sought by the Noticee. However, the Noticee withdrew the said Misc. Application with liberty to file a fresh appeal seeking documents from SEBI and the Company. Thereafter, the Noticee no. 6 filed an Appeal bearing no. 649 of 2021 before the Hon'ble SAT. The Hon'ble SAT vide its Order dated November 24, 2021 *inter alia* held that:

*"15. In the light of the aforesaid, the appeal is dismissed as not maintainable. We further observe that in the event the appellant files an appropriate application before the WTM for supply of certain documents the same shall be considered and dealt with in accordance with law by the WTM. In the circumstances of the case, party shall bear their own costs."*

22. Pursuant to the aforesaid directions, Noticee no. 6 filed a request letter dated December 06, 2021, *inter alia*, seeking production of documents as enumerated under the said letter dated December 06, 2021 and also requested to summon the witnesses for purpose of cross examination. Further, Noticee no. 5 also filed a request letter dated December 06, 2021. Accordingly, pursuant to the aforesaid directions of the Hon'ble SAT in its Order dated November 24, 2021, an opportunity of personal hearing was granted to Noticee no. 6 on January 03, 2022 and an opportunity of personal hearing was also granted to Noticee no. 5 on December 30, 2021. On December 30, 2021, the advocates for Noticee no. 5 appeared and *inter alia* made submissions that their representation dated December 06, 2021 be

considered. On January 03, 2022, the advocates of Noticee no. 6 appeared and *inter alia* made submissions that their representation dated December 06, 2021 be considered. Accordingly, the respective representations dated December 06, 2021 of Noticees no. 5 and 6 were examined and disposed of by the undersigned vide Record of Proceedings dated January 03, 2022. The observations on the documents sought by Noticees no. 5 and 6, as made in the Record of Proceedings, are as under:

**A. Documents sought by Noticee no. 6:**

Sl. No.	Documents Sought	Observations
1	Annual Compliance Certificate provided by all Board Members for the year 2016-17, 2017-18 and 2018-19.	<p>This request against all board members including independent directors for three financial years, is vague, sweeping and roving. Further, no such annual compliance certificate as stated by Noticee no. 6 has been relied upon in the SCN.</p> <p>However, copies of Compliance Report or Compliance Certificate signed by CEO &amp; MD for Q3 &amp; Q4 of FY 2016-17 and Q4 of FY 2017-18 and for all quarters of 2018-19 were provided for inspection on July 01, 2021.</p> <p>Hence, the request made by the Noticee is untenable.</p>
2	List of related party transactions that were provided to the RAC on August 30, 2016 and approved by them.	<p>No such list of RPTs, stated to be provided to RAC, has been relied upon in the SCN.</p> <p>However, minutes of RAC meeting dated August 30, 2016 was provided to the Noticee for inspection on July 01, 2021.</p> <p>Hence, the request made by the Noticee is untenable.</p>
3	Presentation made on August 30, 2016 to the RAC by the Noticee No. 6 on related party matter.	No such presentation stated to be made by Noticee no. 6 has been relied upon in the SCN.

		<p>However, presentation dated August 30, 2016 to Audit Committee by the Noticee no. 6 was provided to the Noticee for inspection on July 01, 2021.</p> <p>Hence, the request made by the Noticee is untenable.</p>
4	Presentation made on August 30, 2016 to the Board by the Noticee No. 6 on related party matter.	<p>No such separate presentation on RPT stated to be given by the Noticee No. 6 has been relied upon in the SCN.</p> <p>However, minutes of the board meeting dated August 30, 2016 were provided to the Noticee, for inspection, on July 01, 2021.</p> <p>Hence, the request made by the Noticee is untenable.</p>
5	Detailed treasury report presented to the Board on August 30, 2016, December 07, 2016, February 10, 2017 and May 26, 2017	<p>These documents has already been provided to the Noticee for inspection on July 01, 2021.</p>
6	Presentation made to Board on related party matters by the undersigned (Noticee no. 6) on December 07, 2016, February 10, 2017 and May 26, 2017	<p>No such presentation claimed to be made by the Noticee has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p> <p>However, minutes of the board meetings dated December 07, 2016, February 10, 2017 and May 26, 2017 were provided to the Noticee, for inspection, on July 01, 2021.</p>
7	Appointment letters of Abhishek Kabra, N Sayyapparaju, V R Venkatesh and Anirudh Chopra	<p>These documents have not been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p>
8	Monthly salary payments made to each of the above for the year 2016-17	<p>No such document has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p> <p>In the context of documents showing receipt of Rs. 5.85 crore as mentioned at point 14, below, the Company is directed to provide information alongwith supporting documents regarding the salary drawn by Noticee no. 6</p>

		during the period he was CFO of the Company and the severance package, if any, paid to Noticee no. 6 by the Company, within 10 days of receipt of the present record of proceedings, to SEBI alongwith a copy thereof to Noticee no. 6.
9	Attendance records of each of the above for the year 2016-17	No such document has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.
10	Leave applications of each of the above for the year 2016-17	No such document has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.
11	Fund Flow statement reviewed by RAC and Board on August 30, 2016 while approving RPT of Rs. 530 Crores.	No such specific documents have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.  However, Minutes of RAC and Board meetings dated August 30, 2016 were provided to the Noticee, for inspection, on July 01, 2021.
12	Planned fund flow reviewed by RAC and Board on August 30, 2016 while authorizing RPT up to Rs. 1000 Crores.	No such specific documents have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.  However, Minutes of RAC and Board meetings dated August 30, 2016 were provided to the Noticee, for inspection, on July 01, 2021.
13	Resolutions allegedly claim to have been misused by the Noticee No. 6.	The General Power of attorney, relied upon in the SCN, was provided to the Noticee for inspection on July 01, 2021.
14	Documents evidencing that money was paid to Noticee No. 6 for his role in the scheme of diverting funds from CG Power to promoter group companies.	Bank statements Acton Global Pvt. Ltd. (Acc. No. 4811742975) and Blue Garden Estates Pvt. Ltd. (Acc. No. 8311743173) of Kotak Mahindra Bank reflecting that amount of Rs. 5.85 crore (Rs. 1.5 crore on 17.02.2017 by Acton and Rs. 1.5 crore and Rs. 2.85 crore on 20.02.2017 and 17.08.2017, respectively, by Blue Garden) was transferred in the bank account of the Noticee No. 6, was provided to the applicant for inspection on July 01, 2021.

		Further, if there are other documents evidencing that money (other than Rs. 5.85 crore) was paid to Noticee no. 6 by promoter group entities, in possession of Noticee no. 6, then in terms of Section 15I (2) of SEBI Act, 1992 and Rule 4(6) of the Adjudication Rules, 1995, Noticee no. 6 is directed to produce the same within 10 days of receipt of the present record of proceedings.
15	Board approvals for RPT approved every quarter along with the list of transactions so approved.	This request for documents is sweeping and roving. No such document has been relied upon in the SCN. However, inspection of Minutes of Board meetings, starting from May 2015 to August 2019, was provided to the Noticee on July 01, 2021
16	Presentation made to Board every quarter from 11/08/2017 onwards.	<p>This request for documents is vague, sweeping and roving. No specific presentation stated to be made to Board every quarter from 11/08/2017 onwards has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p> <p>However, minutes of the board meetings from 11/08/2017 onwards were given to the Noticee for inspection on July 01, 2021.</p>
17	Recordings of Board Deliberations of all meetings held in May 2019.	This request for documents is sweeping and roving. No such document has been relied upon in the SCN. However, inspection of minutes of the board meeting held in May 2019 was given to the Noticee on July 01, 2021.
18	Organogram of operations upto CEO & MD for the year 2016-17 and 2017-18 with detailed functional responsibilities.	<p>This request for documents is sweeping and roving. No such documents have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p> <p>However, organization structure was provided to the Noticee for inspection on July 01, 2021.</p>
19	Procure to pay process structured in SAP for 2016-17.	This request for documents is sweeping and roving. No such documents have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.

20	Tri-partie agreements among CG Power, Blue Garden, Acton and Avantha Holdings Limited, that were accepted by statutory auditors and RAC and Board Members based on which netting of were carried out.	No such documents stated to be tri-partite agreements have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.
21	Documents signed by Noticee No. 6 authorizing treasury department of CG Power to issue PDCs to Yes Bank for loans of Avantha Holdings Limited.	No such stated documents have been relied upon in the SCN. Hence, request made by the Noticee is untenable.  However, if there are documents signed by Noticee no. 6 for issue of PDC/similar instruments to any bank (including Yes Bank) for loans of any promoter group entity, in possession of the Company – CG Power and Industrial Solutions Limited, then the Company is directed to furnish to Noticee no. 6 with a copy to SEBI, with in ten days.
22	Statement recorded by SEBI / Investigation Officials and replies filed by members of the audit committee and board of directors.	This request for documents is roving. No such statements have been relied upon in the SCN. Hence, the request made by the Noticee is untenable. However, inspection of reply received from the Company Secretary of the Company dated December 09, 2019 was provided to the Noticee on July 01, 2021.

**B. Cross examination sought by Noticee no. 6:**

Sl. No.	Name of the Witnesses	Observations
1	Mr. Omkar Goswami	Noticee no. 6 had not sought cross examination in its earlier letters and for the first time has requested for the cross examination vide his representation dated December 06, 2021. SEBI has recorded statement of only Mr. K. N. Neelkant and Mr. Parag Mehta. However, these statements have not been relied upon in the SCN. Hence, the request for cross examination of these entities by the applicant is untenable. Further, the
2	Mr. Shirish Apte	
3	Mr. Sanjay Labroo	
4	Mr. Jitendra Balkrishnan	
5	Mr. KN Neelkant	
6	Mr. Ravi Rajgopal	
7	Mrs. Ramni Nirula	
8	Mr. Parag Mehta	

9	Mr. Vinayak Padwal	request for cross examination of entities whose statement have not been recorded, is untenable.
10	Mr. Susheel Todi	
11	Mr. Ashish Guha	
12	Mr. Sudhir Mathur	
13	Mr. Shyam Pachisia	
14	Mr. Narayan Seshadri	
15	Present Company Secretary	

**C. Documents sought by Noticee no. 5:**

Sl. No.	Documents Sought	Observations
1	Copy of the investigation report of SEBI.	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have already been provided to the Noticee along with the SCN. Hence, the request made by the Noticee is untenable.
2	Copies of all statements recorded by SEBI during investigation in this matter.	This request for documents is sweeping and roving. Statements recorded by SEBI during investigation have not been relied upon in the SCN. Hence, the request made by the Noticee is untenable.
3	Copies of all statements recorded by the Forensic Auditor.	This request for documents is sweeping and roving. Forensic auditor has not recorded any statement and no such statement has been relied upon in the SCN. Hence, the request made by the Noticee is untenable.
4	Copy of the rules of procedure of CG Power.	The inspection of soft copy of CG Power Rules of Procedure approved on November 12, 2012, November 09, 2017 and May 10, 2019 was provided to the Noticee on November 25, 2021.
5	Copies of the list of related party transactions submitted to the Risk and Audit committee of CG Power every quarter including the summary of transactions for the quarter.	This request for stated documents is sweeping and roving. No such stated list of RPTs has been relied upon in the SCN Hence, the request is untenable.  However, inspection of Minutes of the RAC meetings was provided to the Noticee on June 29, 2021.

6	Copies of notes made by the Chairman of RAC (referred to in all the minutes).	<p>This request for stated documents is vague and roving. No such stated notes, claimed to be made by the Chairman of board of the Company, have been relied upon in the SCN. Inspection of Minutes of the RAC meetings was provided to the Noticee on June 29, 2021.</p> <p>Hence, the request is untenable.</p>
7	Copies of compliance Certificates signed by each of the Directors for the years ended March 2017, March 2018 and March 2019 confirming compliance with SEBI guidelines including on related party transactions.	<p>This request for documents is vague, sweeping and roving. No such documents have been relied upon in the SCN. Hence, the request made by the Noticee is untenable.</p> <p>However, copies of Compliance Report or Compliance Certificate signed by CEO &amp; MD for Q3 &amp; Q4 of FY 2016-17 and Q4 of FY 2017-18 and for all quarters of 2018-19 were provided to the Noticee for inspection on June 29, 2021.</p> <p>Further, the Company is directed to produce copy of the certificate signed by Noticee no. 5 as CFO of the Company in terms of proviso to Regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, within 10 days of receipt of the present record of proceedings with a copy to Noticee no. 5.</p>
8	Copies of all emails exchange between Ravi Rajgopal, Shikha Kapadia and KN Neelkanth for the period April 2018 to April 2019.	<p>This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN.</p> <p>However, the relevant emails relied upon in the SCN have been provided to the Noticee for inspection on June 29, 2021.</p>
9	Copies of the entire email box of Atul Gulatee for the period 1 Apr 2014 to October 31, 2018.	<p>This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN.</p>



		However, the relevant emails relied upon in the SCN have been provided to the Noticee for inspection on June 29, 2021.
10	Copies of the entire email box of Ravikanth Alam for the period 1 Apr 2014 to October 31, 2018.	This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN. No such documents/emails have been relied upon in the SCN. Hence, the request of the Noticee is untenable.
11	Copies of the entire email box of Susheel Todi for the period 1 April 2014 to March 31, 2016 and from 1 April 2017 to Aug 31, 2019	This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN. No such documents/emails have been relied upon in the SCN. Hence, the request of the Noticee is untenable.
12	Copies of the entire email box of Anil Gupta from the period April 1, 2016 to April 30, 2017	This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN. No such documents/emails have been relied upon in the SCN. Hence, the request of the Noticee is untenable.
13	Copies of the entire email box of Varun Sharda from the period April 1, 2013 to March 31, 201	This request for documents is vague, sweeping and roving. The request does not specify any particular document/email referred in SCN. No such documents/emails have been relied upon in the SCN. Hence, the request of the Noticee is untenable.
14	Copies of replies filed by the other Noticees in the said SCN including Aditya Birla Finance Limited, Indusind Bank Limited and Standard Chartered Bank	The present proceedings are not in the nature of adversarial proceedings or judicial proceedings for deciding <i>lis</i> between parties. These proceedings have emanated pursuant to issue of SCN to the respective Noticees and the respective Noticees are required to show cause as to why penalty/directions, as proposed in the SCN, should not be imposed/issued against them. No exchange of pleadings <i>inter se</i> Noticees or sharing of copy of cross examination of the parties, not cross examined by the Noticee seeking the copy, are required neither reply of one Noticee to be used or relied on against other Noticee.
15	Copies of any cross examinations conducted in the aforesaid matter which relates to the said SCN	

		Hence, the request of the Noticee is untenable.
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23. In view of the above, I find that the documents sought by the Noticees no. 5 and 6 have been considered. Further, as per the Record of Proceedings dated January 03, 2022, the Company i.e. CG Power was also directed as under:

- a. *If there are documents signed by Noticee no. 6 for issue of PDC/similar instruments to any bank (including Yes Bank) for loans of any promoter group entity, in possession of the Company, then the Company is directed to furnish to Noticee no. 6 with a copy to SEBI, with in ten days.*
- b. *The Company is directed to produce copy of certificate signed by Noticee no. 5 as CFO of the Company in terms of proviso to Regulation 33(2)(a) of SEBI (LODR) Regulations, 2015, within 10 days of receipt of the present Record of Proceedings with a copy to Noticee no. 5.*

24. The Noticees were directed to file their replies to the SCN within 14 days from the date of receipt of the record of proceedings. However, I note that Noticee no. 6 filed an Appeal no. 24 of 2022 before the Hon'ble SAT challenging the Record of Proceedings dated January 03, 2022. I note that the Hon'ble SAT vide its Order dated January 27, 2022, dismissed the appeal filed by the Noticee and held that:

“ .....

7. *In our opinion, it is not necessary for us to dwell into the contentions raised by the appellant at this stage and such contention are left open to be raised by the appellant at the appropriate stage. At the moment we are of opinion that there is delaying tactic adopted by the appellant. All the other entities have filed their reply except the appellant and there is no reason why the appellant should not file the reply and the matter should not proceed further. There is a direction of this Tribunal to the authority to decide the matter in a time bound time.*
8. *We are of the opinion that the appellant should file the reply and should take all the grounds that are available to him while filing the reply including the ground of non-supply of essential documents and cross examination of witness. Such grounds taken and raised at the time of hearing will be duly considered by the authority. Further, no such direction can be given by this*

*Tribunal to the Company to supply the documents at this stage since the Company is not arrayed as a party in this appeal.*

9. *For the reasons stated aforesaid, we are not inclined to interfere in the impugned order dated 3rd January, 2022 at this stage. The appeal is dismissed with the observation that it will be open to the appellant to challenge the impugned order after the final order is passed by the WTM by taking it as a ground as per the principles provided under Section 105 of the Code of Civil Procedure. Misc. Application no.71 of 2022 is also disposed of accordingly.*
10. *As a last opportunity, we direct the appellant to file a reply to the show cause notice on or before 20th February, 2022 failing which it will be open to the WTM to proceed from there onwards."*

25. I note that thereafter, pursuant to the directions of the Hon'ble SAT, the Noticee no. 5 filed his detailed reply to the SCN vide email dated February 01, 2022 and Noticee no. 6 filed his detailed reply to the SCN vide email dated February 20, 2022, *inter alia* reiterating their request for documents/inspection.
26. Thereafter, I note that Noticees no. 1, 2 and 4 vide their joint letter dated February 22, 2022, pursuant to the Order dated February 18, 2022 of the Supreme Court in ***T. Takano vs. SEBI in Civil Appeal no. 487-488 of 2022***, sought for a copy of the investigation report and its annexures in the matter. Noticees no. 5 and 6 also sought inspection of the investigation report pursuant to the aforesaid Order of the Hon'ble Supreme Court. Accordingly, inspection of the Investigation Report and its annexures were granted to the Noticees no. 1, 2 and 4 on April 22, 2022, wherein the advocates for the Noticees appeared and inspected the Investigation Report and its Annexures 1 to 20 in the matter and were provided copies of the same. Further, inspection of the Investigation Report and its annexures were granted to Noticees no. 5 and 6 on April 26, 2022, wherein the respective advocates for the Noticees appeared and inspected the Investigation Report and its Annexures 1 to 20 in the matter and were provided copies of the same. Thereafter, the Noticees no. 1, 2 and 4 filed additional written submissions dated May 11, 2022 and July 04, 2022. Further, Noticee no. 5 filed written submissions dated May 07, 2022 and Noticee no. 6 filed Additional and Written submissions dated May 20, 2022. I also

note that Noticee no. 7 filed further additional submissions dated July 06, 2022. I note that the other Noticees i.e. 3, 7, 8, 9, 10 and 11 did not seek copy of the investigation report post the aforesaid T. Takano case.

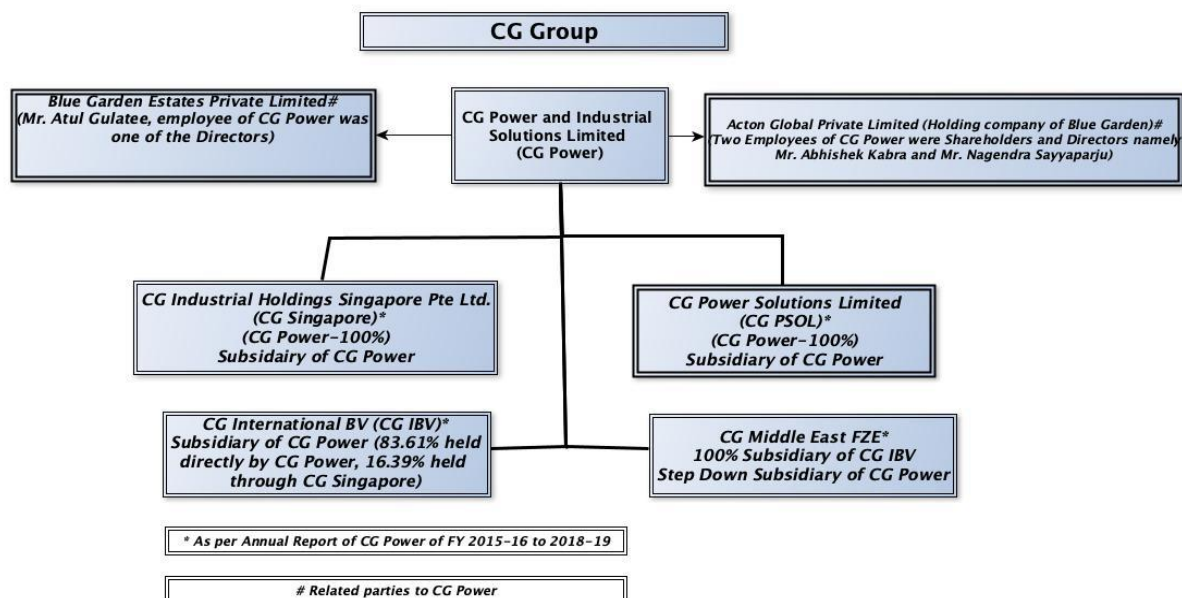
27. After seeking inspection of documents as discussed in the previous para and after the aforesaid Order dated January 27, 2022 passed by the Hon'ble SAT, Noticee no. 5 and 6 have filed their replies on February 01, 2022 and February 20, 2022, respectively, in addition to their earlier replies dated June 15, 2021 (by Noticee no. 5) and replies dated June 15, 2021, August 21, 2021 and August 30, 2021 (by Noticee no. 6). In these replies, *inter alia*, these Noticees have repeated the request for documents/cross examination as tabulated above. The Noticees no. 5 and 6 were also given hearing on April 13, 2022 and thereafter, filed their written submissions on May 07, 2022 and May 20, 2022, respectively. As can be observed from the aforesaid tables, on January 03, 2022, the request of the Noticees for documents/cross examination was not accepted as it was found that the documents and the statements for which those documents were sought, were not relied upon while issuing the SCN. I note that in terms of judgment dated February 18, 2022 of the Hon'ble Supreme Court in *T.Takano* matter, the requirement to provide documents has been shifted from "relied upon" to "relevant" documents. Though Hon'ble Supreme Court in its subsequent judgement dated September 14, 2022 passed in SLP (Civil) No. 15149 of 2021 in the matter of *Kavi Arora vs. SEBI*, has after relying upon the judgement of Hon'ble Supreme Court in *Natwar Singh vs. Directorate of Enforcement and Others* (2010) 13 SCC 255, observed that "*It is well settled that the documents which are not relied upon by the Authority need not be supplied*". However, the request of these Noticees have also been examined in the context of relevant documents also. A perusal of the said judgement in *T.Takano* matter shows that relevant document is the one though which may not have been relied upon in the SCN but may have bearing on the outcome of the proceeding. However, such a document should be in possession of the authority conducting the proceeding. On perusing the documents sought by the Noticees no. 5 and 6, I find that some of them, as mentioned in the table above, are part of the Investigation report and have been accordingly, provided to the Noticees after the inspection of

the investigation report given to the Noticees on April 26, 2022, pursuant to the judgement passed by the Hon'ble Supreme Court in *T. Takano* matter. Regarding other documents mentioned in the aforesaid tables, I note that those documents are not in possession of SEBI. Therefore, there is no question of providing these documents to these Noticees as they are neither relied upon documents nor are the documents which are relevant and in possession of SEBI. I note that the Noticees have also sought cross examination of certain persons whose statements are recorded by SEBI. I note that during the proceedings held on January 03, 2022 the request for cross examination of persons was rejected as the statement of these persons were not relied upon in the SCN. Now, going by the ratio in *T. Takano*, these Noticees may well ask for these statements to support their case. However, I note that Noticee are not asking these statements per se, on the contrary, these Noticees are asking cross examination of those persons whose statements have been recorded. I note that the purpose of cross examination is to illicit the truth from the person who has made certain statements by showing contradiction etc. which may develop between the answers given during cross examination and the statement of the such persons previously recorded. For impeaching credit worthiness of a statement through the process of cross examination, it is necessary that the statement of such person is relied upon in the SCN. If it is not so, then there is no point in allowing cross examination because in such cases, a cross examination has nothing to prove wrong. In view of this, I find that request for cross examination of those persons whose statements were recorded by SEBI but not relied upon in the SCN, is not tenable. In view of the above, I find the request for inspection of documents/cross examination is not tenable.

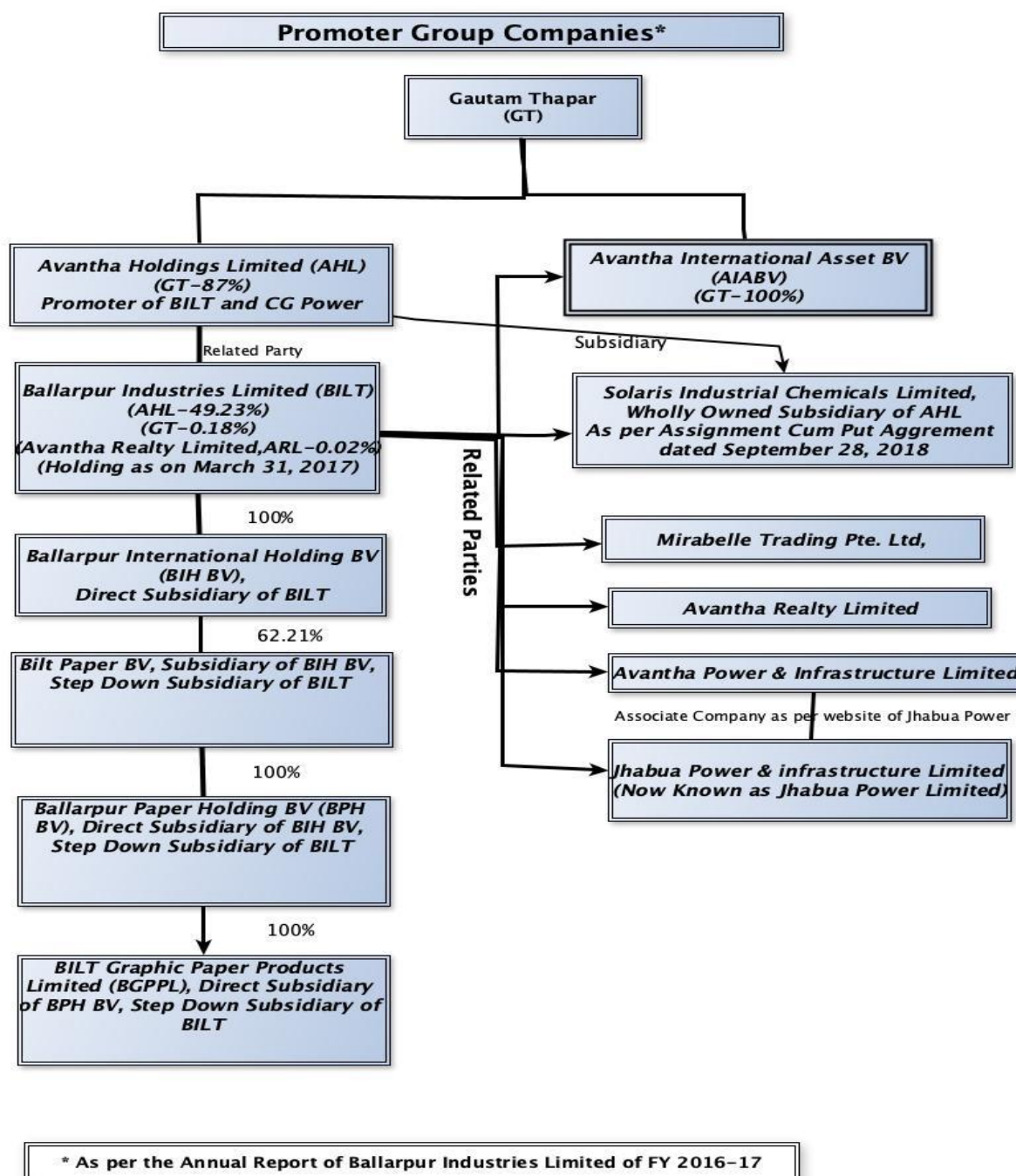
28. The allegations made in the SCN against each of the Noticees, submissions made by Noticees qua the allegations made against them and my findings thereon are dealt in the following 3 parts of the order:
- (i) Part A – Allegation of Diversion of Assets/ Income/ Funds from CG Power Group to various Promoter Group Companies controlled by Noticee no. 1.
  - (ii) Part B – Allegation of violation of provisions of LODR Regulations.
  - (iii) Part C – Allegation of Misrepresentation of Financial Statements of CG Power.

**Part A – Allegation of Diversion of Assets/ Income/ Funds from CG Power Group to Promoter Group Companies controlled by Mr. Gautam Thapar (Noticee no. 1):**

29. I note that the structure of the CG Group Companies, as alleged in the SCN, is as under:



30. The structure of Promoter Group Companies of CG Power, as alleged in the SCN, is as under:



31. In addition to the above, the SCN also alleges the following:

- (i) Noticee no. 4 is a wholly owned subsidiary of Noticee no. 2 and they both have the same registered address at "Thapar House, 124, Janpath, New Delhi".
- (ii) Jhabua Power Infrastructure Limited and Avantha Power and Infrastructure Limited have common directors. Further, in the past Noticee no. 8 and Noticee no.

6, employees of CG Power, both had also been directors in these two companies.

32. The aforesaid companies/entities are hereinafter referred to as follows:

<b>Sr. No.</b>	<b>Name of Company/Entity</b>	<b>Hereinafter referred to as</b>
1	Blue Garden Estates Private Limited	Blue Garden
2	Acton Global Private Limited	Acton
3	CG Industrial Holdings Singapore Private Limited	CG Singapore
4	CG Power Solutions Limited	CGPSOL
5	CG International BV	CGIBV
6	Avantha International Asset BV	AIABV
7	Ballarpur Industries Limited	BILT
8	Solaris Industrial Chemicals Limited	SICL
9	Ballarpur International Holding BV	BIHBV
10	Mirabelle Trading Private Limited	Mirabelle
11	Avantha Realty Limited	ARL
12	Bilt Paper BV	BPBV
13	Avantha Power and Infrastructure Limited	APIL
14	Jhabua Power and Infrastructure Limited	JPIL
15	Ballarpur Paper Holding BV	BPHBV
16	BILT Graphic Paper Products Limited	BGPPL
17	Avantha Realty and Jhabua Power	ARJP

33. The SCN has alleged that Noticee no. 1, who was the Chairman of CG Power at the relevant time and is also the majority shareholder (87%) of Noticee No. 2 which was the promoter of CG Power at the relevant time), was involved in the following impugned transactions to divert the funds from CG Group Companies to Promoter Group Companies, controlled / owned by Noticee no. 1. The impugned transactions in brief tabulated form along with the name of the entities through whom funds were diverted and the ultimate beneficiary, is given below:

<b>Impugned Transaction no.</b>	<b>Funds diverted from</b>	<b>Funds diverted to</b>	<b>Ultimate Beneficiary</b>	<b>Amount (in Rs. crore)</b>	<b>Related Transaction</b>
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1.	CG Power	Noticee no. 2	BGPPL	145	Assignment of Nashik Property to Blue Garden
	CG Power	Noticee no. 3	BGPPL	53	Assignment of Nashik Property to Blue Garden
2.	CG Power	Noticee no. 3	BGPPL	192	MOU with Blue Garden for transfer of Kanjurmarg Property
3.	CG Singapore	AIABV	AIABV	350*	Euro 44 Million Borrowing by CG Singapore
4.	CG PSOL	Noticee no. 4	ARJP	260^	USD 40 Million Loan by CG Middle East
5.	CG Singapore	Mirabelle	Mirabelle	93#	USD 13.5 Million Advances by CG Singapore
<b>Total Funds diverted</b>				<b>1093</b>	

\* Euro 44 Million = Rs. 350 crore at the relevant time

^USD 40 Million = Rs. 260 crore at the relevant time

# USD 13.5 Million = Rs. 93 crore at the relevant time

34. The aforesaid impugned transactions of fund diversion, as alleged in the SCN, are discussed as under:

#### **34.1 Impugned Transactions No.1: Sale of Nashik Property to Blue Garden Estates Private Limited:**

34.1.1 The allegations of fund diversion, as made in the SCN, are as under:

- (i) Blue Garden and Noticee no. 3 i.e. Acton Global (holding company of Blue Garden) were incorporated on March 21, 2016. Mr. Abhishek Kabra (Senior Manager – Treasury in CG Power) and Mr. Nagendra Sayyaparju (Assistant General Manager – MIS in CG Power) were inducted as shareholders as well as Directors of Acton on its date of incorporation. Mr. Atul Gulatee (Noticee No.9) (Head of Treasury in CG Power) and Mr. Raman Rajagopal were inducted as Directors of Blue Garden on its date of incorporation.
- (ii) CG Power entered into an Assignment Agreement dated May 9, 2016, with Blue Garden for assignment of its lease rights in a property in Nashik (hereinafter referred to as “**Nashik Property**”), for a consideration amount of Rs. 264 crores. This was done without obtaining approval from Maharashtra

Industries Development Corporation (hereinafter referred to as “**MIDC**”), who had leased the property to CG Power. The Assignment Agreement was executed by Mr. Madhav Acharya (Noticee No. 6) on behalf of CG Power and Noticee No. 9 for Blue Garden.

- (iii) Noticee no. 6 also executed a Power of Attorney (PoA) dated May 9, 2016, on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, *inter alia*, to avail loan from any financial institution against the security of the Nashik Property and to mortgage or charge all rights, title and interest of the said property.
- (iv) For payment of the consideration amount for this assignment, Blue Garden took a loan of Rs.200 crore from Aditya Birla Finance Limited (hereinafter referred to as “ABFL” or “Noticee no. 10), which was guaranteed by Noticee no. 2, vide Corporate Guarantee dated May 09, 2016, at the request of CG Power. The Nashik Property was itself also used as a ‘Collateral Security’ for the loan taken by Blue Garden from ABFL (by way of right of creation of mortgage).
- (v) CG Power also executed a Power of Attorney (PoA) in favour of ABFL through which it agreed to create a mortgage in respect of the Nashik Property in favour of ABFL.
- (vi) The aforementioned loan amount of Rs.200 crore was received by Blue Garden in two tranches of Rs. 150 crore (on May 12, 2016) and Rs. 50 crore (on August 17, 2016) from ABFL and the same was immediately paid to CG Power as an advance. Subsequently, CG Power paid an interest of 15% per annum on such advance to Blue Garden, despite such advance being purportedly for the assignment transaction.
- (vii) CG Power advanced Rs. 145 crore during May 13, 2016 to May 19, 2016 to Noticee no. 2 without any interest. In turn, Noticee no. 2 between May 13, 2016 to May 30, 2016 transferred Rs. 150 crore to BGPPL. BGPPL, prima facie, used

the said money to repay its liabilities i.e. Rs. 150 crore went to repay commercial papers of BGPPL. It is noted that BGGPL is a step-down subsidiary of BILT, a listed company promoted by Noticee no. 2.

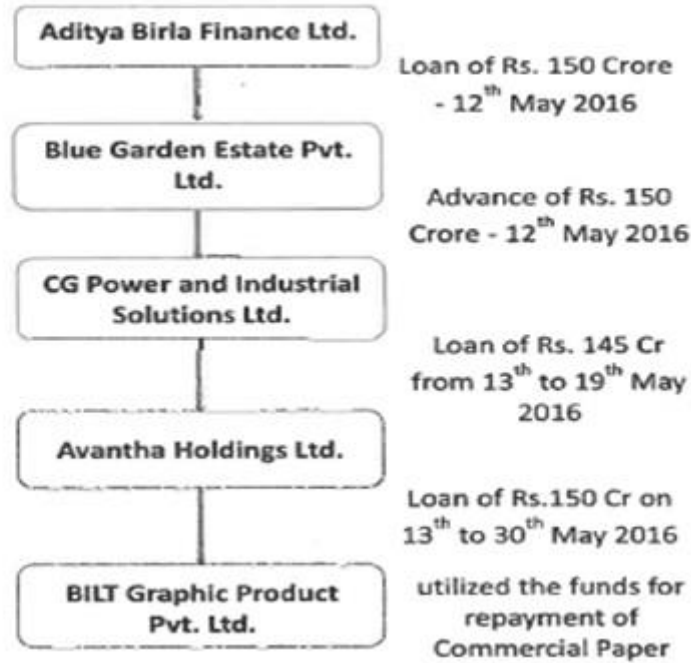
(viii) With regard to the loan given to BGPPL by ABFL, following is noted:

- (a) ABFL, vide letter dated May 6, 2016 addressed to Noticee no. 7 i.e. Mr. B. Hariharan (Group Director Finance of Avantha Group), had informed BGPPL that it was going to reduce the exposure on BGPPL by June 30, 2016 with respect to the facility of Rs. 50 crore sanctioned on December 29, 2015.
- (b) ABFL, vide email dated May 10, 2016, forwarded the said letter dated May 6, 2016 directly to BGPPL.
- (c) BGPPL, vide email dated May 12, 2016, assured to repay the loan (of Rs. 50 crore) by June 30, 2016.
- (d) As the loan was not repaid by BGPPL by June 30, 2016, ABFL sent an email to Noticee no. 7 to resolve the issue of loan repayment by BGPPL urgently. He also referred to the meeting between Noticee no. 1 and Mr. Ajay Srinivasan (Group CEO-ABFL) in presence of Noticee no. 7 (held in March 2016) wherein 'Thapar Group Strategy' was discussed according to which the facility of Rs. 50 crore sanctioned to BGPPL was to be closed before extending further loans by ABFL.
- (e) On August 10, 2016 CG power transferred Rs. 53 crore, purportedly as an advance, to Noticee no. 3 without any interest. Noticee no. 3 on August 10, 2016 purchased mutual fund of Rs. 51.57 crore from Birla Sun life. On August 12, 2016, the said mutual funds were marked as lien in favour of ABFL against loan of BGPPL. Later on the same were adjusted against loan of Rs. 50 crore taken by BGPPL from ABFL.
- (f) On August 17, 2016, Blue Garden received Rs. 50 crore from ABFL as loan amount for the assignment transaction of Nashik Property. The same was immediately paid to CG Power on August 17, 2016.
- (g) In summary, CG power transferred Rs. 53 crore to Noticee no. 3 and in turn, Noticee no. 3 effectively transferred Rs. 50 crore to ABFL on behalf of

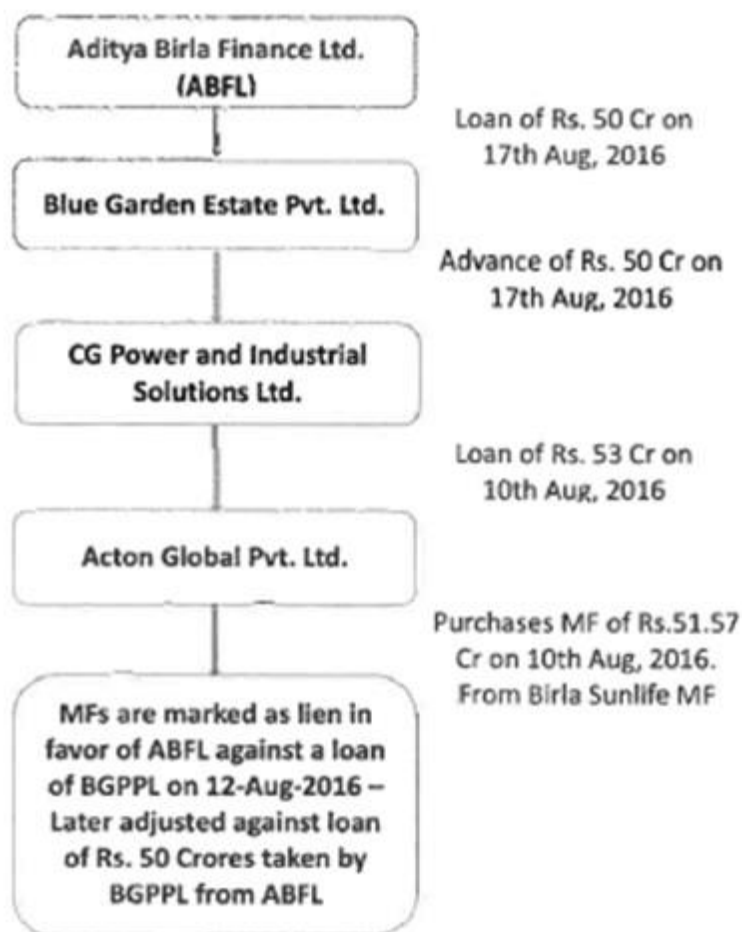
BGPPL to repay its loan liability.

- (ix) For ease of understanding, the fund flow for both Rs. 150 crore transaction and Rs. 50 crore transaction is shown diagrammatically as below:

**I. Summary - fund flow for assignment of land at Nashik – Rs. 150 Cr.**



**ii. Summary - Fund Flow for assignment of land at Nashik – Rs. 50 Cr.**



- (x) AHL and BGPPL are companies where Noticee no. 1 has a majority shareholding or exercises significant influence/ control. It is also observed that Noticee no. 1 had issued two “Letters of Awareness”, one undated letter regarding Rs. 150 crore and another letter dated January 23, 2017, regarding Rs. 50 crore, to ABFL towards the loan of Rs. 200 crore to Blue Garden for the purpose of assignment of lease rights of CG Power in the Nashik Property. Thus, Noticee no. 1 was aware of the aforesaid transactions.
- (xi) The aforesaid transaction i.e. the assignment of Nashik Property to Blue Garden was never reported to the Board of CG Power.
- (xii) In view of the above, I note that the SCN had alleged that a total of amount of Rs. 198 crores, received for the purported assignment of rights in Nashik Property, which was an asset of CG Power, was diverted through Noticee no. 2

and Noticee no. 3 and the end utilization of these funds was to repay the liabilities of BGPPL [(a) commercial papers of BGPPL and (b) loan taken from ABFL], BGPPL being a Promoter Group Company, controlled by Noticee no. 1. Hence, the SCN alleged that the aforesaid transactions are a misuse of the assets/ income/ funds of CG Power and amount to a diversion of funds through Noticee no. 2 and Noticee no. 3 in order to facilitate repayment of the liabilities of BGPPL, a Promoter Group company at the cost of effectively decreasing the assets/ increasing the liabilities of CG Power, for the ultimate benefit of a Promoter Group company i.e. BGPPL controlled by Noticee no. 1 and that this is a device / scheme / unfair trade practice/ fraud.

34.1.2 With regard to the aforesaid transaction of sale of Nashik property of CG Power to Blue Garden, the SCN alleges that the following Directors/employees were involved in the said transaction:

<b>Sr. No</b>	<b>Director/Employee</b>	<b>Involvement/Role</b>
1	Gautam Thapar (Noticee no. 1)	Had issued two “Letters of Awareness”, one undated letter regarding Rs. 150 crore and another letter dated January 23, 2017, regarding Rs. 50 crore, to ABFL towards the loan of Rs. 200 crore to Blue Garden for the purpose of assignment of lease rights of CG Power in the Nashik Property.
2	Madhav Acharya (Noticee no. 6)	<ul style="list-style-type: none"> <li>• The Assignment Agreement was executed by Noticee No. 6 on behalf of CG Power with Blue Garden.</li> <li>• Noticee no. 6 also executed a Power of Attorney (PoA) dated May 09, 2016, on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Nashik Property and to mortgage or charge all rights, title and interest of the said property.</li> </ul>
3	Atul Gulatee	Noticee no. 9 was the Head of Treasury in CG Power and also a director of Blue Garden and signed the Assignment

	(Noticee no. 9)	Agreement on behalf of Blue Garden.
4	B. Hariharan (Noticee no. 7)	Noticee no. 7 was a Non-Executive Director of CG Power and executed an Undertaking (Collateral security) on behalf of CG Power for assignment of lease of Nashik Property.
5	V. R. Venkatesh (Noticee no. 5)	Noticee no. 5 had executed a Mortgage Undertaking (in the event of default) in respect of Nashik Property.

34.1.3 The SCN alleges that there were various email correspondences between CG Power and ABFL in February 2016 i.e. even prior to the incorporation of Blue Garden and Atcon Global. I note from the email dated February 05, 2016 from Noticee no. 9 to Mr. Rakesh Pingulkar, Relationship Manager of ABFL, that the term sheet was signed and accepted and sent to ABFL as final copy. The signed term sheet attached with the said email, as also reproduced in the FAR provided to the Noticees, is as under:

Transaction Structure:

*New SPV A will be shareholder of orphan SPV B.*

Borrower Entity - Yet to be decided - Facility - Term Loan  
 Security / Co-Borrower or Guarantor - Shareholders of Borrower - Pledge of Shares of Borrower Entity.

Covenants/Conditions - One of the conditions for the facility would be that ABFL will be a member of the Board of the Borrower Entity and will have veto powers in case of all financial decisions.

Purpose of the Loan - To advance money to Crompton Greaves (CG) for purchase of property at Khanjur Marg. / *Any other property*

Agreement of Sale - Between Borrower Entity and CG on the following terms.

Agreement will be for a period of 3 years with the following conditions

- An advance of X amount to be paid by the Buyer at the time of executing the agreement
- Balance amount to be paid at the time of Registration of Sale Deed which will happen within 3 years of the date of Agreement
- For the advance amount paid by the Buyer, Seller will bear y% interest till the time of Registration of Sale Deed.
- In the event of default of payment of interest, non registration, any other obligation, Buyer can exercise the right of mortgage the property in its favour or register in its own name.
- Assignment of rights of Buyer to anybody *not* limiting to the Lenders of Buyer. *only in case of default.*
- Necessary POA will be executed by CG in favour of Buyer.

Guarantor for Sale transaction - Avantha Group - Corporate Guarantee in favour of Borrower Entity.

This Corporate Guarantee should have an assignment clause - to assign without consent of the Guarantor *only in case of default.*

Following documents need to be prepared

- Sanction Letter
- Term Loan Agreement
- Pledge Agreement

The above documents will be provided by ABFL

Agreement to Sell between the Borrower and CG will be prepared by CG with the above conditions and the same will be reviewed by ABFL. Same with Corporate Guarantee.

*[Signatures]*

34.1.4 With respect to the aforesaid term sheet, the FAR had observed as follows:

*"As per the mentioned transaction structure, it was decided that the borrower of the funds from Aditya Birla Finance Ltd., SPV-B (Special purpose Vehicle) will have SPV-A as its shareholder and SPV-A will pledge its complete shareholding of SPV-B against the loans given by ABFL.*



*From the chronology of events and the movements of funds, it is clearly established that the new entities Blue Garden and Acton were created as SPV-B and SPV-A, respectively, under the agreed "transaction structure".*

*Thus, it is pretty clear that Blue Garden and Acton Global were created under the mutually decided transaction structure with ABFL and their sole purpose as SPVs was to give effect to the proposed loan transaction."*

34.1.5 As also observed in FAR, I note that the creation of Blue Garden and Atcon Global as SPV's were part of the structured plan of ABFL and CG Power and were created and incorporated for the sole purpose of giving effect to an indirect transfer of funds from ABFL to CG Power. Further, vide email dated June 30, 2016, Mr. Devang Rawal from ABFL sent an email to Noticee no. 7 referring to the meeting (held in March 2016) between Noticee no. 1 and Mr. Ajay Srinivasan (Group CEO-ABFL) in presence of Noticee no. 7 wherein 'Thapar Group Strategy' was discussed according to which the facility of Rs. 50 Crore sanctioned to BGPPL was to be closed before extending further loans by ABFL.

34.1.6 Hence, from the aforesaid emails, it is evident that ABFL and Noticee no. 1 had planned the entire financial structure for indirectly providing funds to CG Power, for which Blue Garden and Atcon Global were incorporated. I note that Blue Garden was incorporated on March 21, 2016 and then entered into an assignment agreement dated May 09, 2011 with CG Power, whereby CG Power assigned its lease rights in a property in Nashik for a consideration amount of Rs 264 crores. For this consideration amount, Blue Garden availed a loan of Rs. 150 crore from ABFL on May 12, 2016, which was transferred by Blue Garden to CG Power on the very same day. The very next day CG Power transferred the amount of Rs. 145 crore to AHL who then transferred Rs. 150 crores to BGPPL and BGPPL utilized these funds for repayment of its loan to ABFL. Further, I note that BGPPL is a promoter group company of Noticee no. 1. Hence, it is evident that Noticee no. 1 had planned this entire fraudulent scheme from the start, whereby ABFL would indirectly provide funds to CG Power through its SPV i.e. Blue Garden and then the said funds would be diverted from CG Power to promoter group company of Noticee no. 1 to pay off its loans taken from ABFL.

34.1.7 In addition to the aforesaid emails, I note that the following observations have also been made in the FAR with respect to the Nashik property transaction:

- (i) Blue Garden was incorporated only on March 21, 2016 and the directors were all employees of CG Power. Further, the 100% equity shareholder of Blue Garden was Acton Global. The FAR had observed that given that ABFL had sanctioned loans of Rs. 400 crores to a new company without any strong promoter background and asset base clearly indicates that the company was created as part of the scheme to give effect to the loan arrangement between CG Power, ABFL and AHL.
- (ii) Acton Global was incorporated only on March 21, 2016, the directors were all employees of CG Power and 100% equity shareholder of Acton Global were the then employees of CG Power. The FAR observed that given that Acton Global has utilised all the loans that it had received from CG Power for repayment of loan of BGPPL which is an Avantha Group entity, it is clear that the company was floated with the sole intention of giving effect to the arrangement between CG Power, ABFL and AHL.
- (iii) The FAR observed that from examining the valuation report attached as part of loan sanction documents received from ABFL, the land at Nashik was not a barren unused piece of land but home to a huge and fully operational factory owned by CG Power, which is a major contributor to CG Powers business and provides employment to a large number of people. It was clear that the land cannot be transferred as a standalone asset, separate from the operational factory and hence, given the fact that just the land alone had been agreed to be sold under the arrangement with ABFL through Blue Garden, the FAR observed that this demonstrates that there was no actual intention to sale, but was just a loan agreement, which ABFL didn't want to give directly as loan to CG Power and wanted to give it as an advance for sale of land through a SPV.
- (iv) Further, the Nashik property was taken by CG Power on lease from Maharashtra Industrial Development Corporation (MIDC) vide lease

agreement dated December 02, 1980, and as per the lease agreement, CG Power could not assign, underlet or part with the possession of the demised premises or any part thereof or an interest therein without the previous written consent of the Chief Executive Officer. The FAR observed that it is very clear that the said property could not be transferred and no charge could be created against it without prior written approval of MIDC and the forensic auditor had not found any prior written approval from the documents submitted by ABFL or CG Power.

- (v) The FAR observed that the advances that have been given by Blue Garden to CG Power with regard to land parcels situated at Nashik and at Kanjurmarg were interest bearing advances and this interest on advance was predominantly to fulfill the interest obligation on the loan taken from ABFL. The FAR observed that since interest is being paid since the time the advances have been received by CG Power, it adds to the strength of their observation that the advance against property was not a sale transaction at all but just a structure on paper to give loans to CG Power through the SPV entities Acton and Blue Garden.
- (vi) In view of the above points, the FAR observed that this proves that the sale of land to a SPV was just a facade created to move the loans from ABFL to CG Power without giving it directly to CG Power. That the loan transaction to CG Power was cloaked in the form of an advance against sale of land.

34.1.8 In addition to the above observations of the FAR, I also note that:

- (vii) the aforesaid emails dated February, 2016 and June 2016 that the transaction structure was part of the “Thapar Group Strategy” and these email correspondences relating to the loans given by ABFL to Blue Garden were undertaken in February 2016, which is before Blue Garden was incorporated (on March 21, 2016). Further, the Assignment Agreement entered into between Blue Garden and CG Power was dated May 09, 2016, which is just after Blue Garden was incorporated. Hence, it is evident that Blue Garden was incorporated for this very purpose, as per the plan proposed by Noticee no. 1 with ABFL.

- (viii) The Assignment Agreement was executed by Noticee No. 6 on behalf of CG Power and Noticee No. 9 for Blue Garden, who was also the Head of Treasury of CG Power then. Hence, the assignment agreement was essentially signed by CG Power employees.
- (ix) The Nashik Property was itself also used as a 'Collateral Security' for the loan taken by Blue Garden from ABFL, after Noticee no. 6 executed a Power of Attorney on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, *inter alia*, to avail loan from any financial institution against the security of the Nashik Property and to mortgage or charge all rights, title and interest of the said property.
- (x) CG Power advanced Rs. 145 crore during May 13, 2016 to May 19, 2016 to Noticee no. 2 without any interest. The same has been observed by the FAR after analysing the financial statements and ledgers of AHL and Acton Global in the books of CG Power.

34.1.9 From the above, it is evident that the assignment agreement between CG Power and Blue Garden was just a façade created by Noticee no. 1 as part of his fraudulent scheme in securing funds of ABFL through CG Power and diverting the same to promoter group companies, which are either owned or controlled by him, for paying off their loans taken from ABFL.

34.1.10 Further, I note that the FAR has also observed that Board approval was not taken for the assignment agreement of the Nashik property. From the documents available before me, I note that there are no Board meeting minutes where approval of the Board of CG Power is recorded for entering into an assignment agreement of the Nashik Property with Blue Garden. I note that CG Power vide its letter dated August 18, 2020 had stated that the Board of Directors of CG Power has not passed any resolution to execute the Assignment Agreement with Blue Garden for assignment of lease rights of CG Power in the Nashik property to Blue Garden and neither was such proposal ever placed before the Board. Further, CG Power has also stated that there was no authorisation granted by the Board to Noticee no. 6 to execute assignment agreement with Blue Garden

for assignment of lease rights of Nashik property and neither was any such proposal placed before the Board. Hence, I agree with the observations of the FAR that Board approval was not taken for the sale of the Nashik property. I also find that the execution of the Power of Attorney (PoA) dated May 09, 2016, by Noticee no. 6 on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Nashik Property and to mortgage or charge all rights, title and interest of the said property, is also not recorded in any minutes of the meeting of the Board of CG Power.

34.1.11 With regard to the loan given by CG Power to AHL, as observed in the FAR, I note that the Rs. 145 Crores given to AHL by CG Power with regard to the Nashik property was a part of the amount of Rs. 530 Crore disclosed to the RAC of CG Power on August 30, 2016, and the loan of Rs. 53 crores given to Noticee no. 3 was part of the Rs. 680 crores disclosed to the RAC and Board of CG Power on December 07, 2016. However, in terms of whether approval of the Board was taken for the said loans, I note from the minutes of the said RAC Meeting dated August 30, 2016, that the members of the RAC had been informed telephonically during the week beginning August 22, 2016 about the loans given by CG Power to AHL aggregating to Rs. 530 crore in May-June 2016 to help it tide over some financial dues to certain banks. Subsequent to receiving this information telephonically, the RAC had asked the management of CG Power to obtain independent legal opinion about these related party transactions. Noticee no. 6, the Executive Director & CFO of the Company, informed the RAC that in case these RPTs were not regularized, banks would freeze all credit facilities to CG Power on grounds that it was a member of the Promoter Group. Given the circumstances that necessitated such a transaction and after considering the legal opinions, the RAC noted and post-facto approved these RPTs with AHL aggregating to Rs. 530 crore.

34.1.12 In view of the above, I find that there was no approval taken at the time of giving the loan of Rs. 145 crores to AHL from 13<sup>th</sup> to 19<sup>th</sup> May, 2016 and Rs. 53 crores

loan to Atcon Global on August 10, 2016. I find that these loans to AHL and Acton have only been post-facto approved by the RAC and the Board of CG Power on August 30, 2016. Further, I note that the post-facto approval is only limited to the loan given by CG Power to AHL and Atcon Global and the assignment agreement of the Nashik property was never informed or placed before the Board of CG Power.

34.1.13 In view of the above, I find that the entire transaction pertaining to the Nashik Property was created as part of the fraudulent scheme whereby loans were extended by ABFL to Blue Garden which was brought into the books of CG Power as consideration of Nashik property and was subsequently diverted to the benefit of the promoter group companies, which are controlled/owned by Noticee no. 1. I find that this transaction structure as proposed by Noticee no. 1 with ABFL, which was executed without the approval of the Board, has created an encumbrance on the assets of a listed company i.e. CG Power. I find that this has benefitted the Avantha Group Companies, which are directly or indirectly owned/controlled by Noticee no. 1, at the cost of CG Power.

34.1.14 I note that Noticees no. 5, 6, 7 and 9 have colluded with Noticee no. 1 in his fraudulent scheme by executing the agreements and creating encumbrances on the assets of CG Power for securing funds from ABFL. The role and involvement of Noticees no. 1, 5, 6, 7 and 9 in the entire fraudulent scheme has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

## **34.2 Impugned Transaction No.2: Sale of Kanjurmarg Property to Blue Garden:**

34.2.1 The allegations of fund diversion, as alleged in the SCN, are as under:

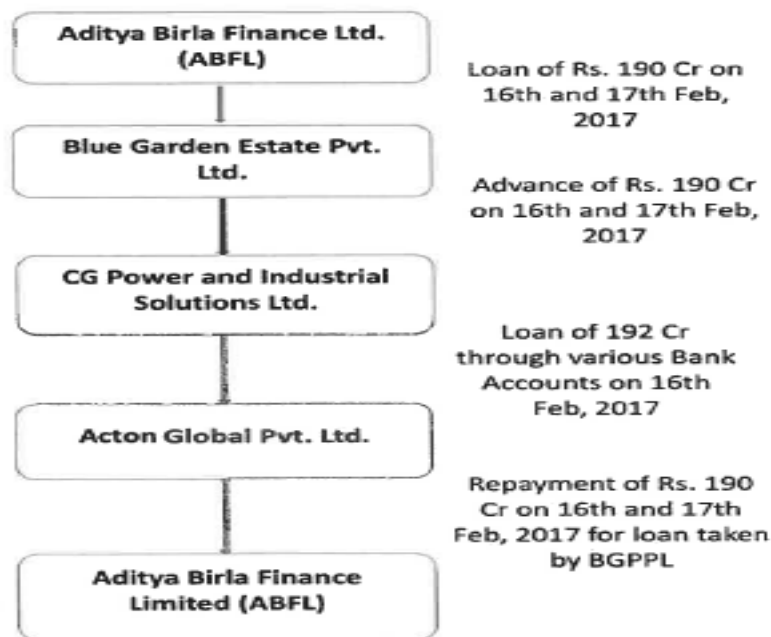
- (i) CG Power had entered into an Agreement dated October 28, 2015 to sell a property it owned in Kanjurmarg, Mumbai (hereinafter referred to as “**Kanjurmarg Property**”) to Evie Real Estate Private Limited (hereinafter referred to as “**Evie**”) for a consideration of Rs. 498.96 crore. CG Power had received Rs. 11 crore from Evie on July 26, 2014, as initial consideration. As per the agreement entered with

Evie on October 28, 2015, the last date for the condition precedent for the sale to be completed was October 27, 2019.

- (ii) It is noted that CG Power entered into a subsequent Memorandum of Understanding (“MOU”) dated February 1, 2017, with Blue Garden for transfer of the same property for a consideration amount of Rs. 498 crore (Rs. 189 crore to be paid as initial consideration) with a condition that the MOU would take effect only upon the failure of the Evie Sale Agreement.
- (iii) It is noted that the said MOU February 1, 2017 was executed by Mr. Madhav Acharya (Noticee No.6 / Madhav) on behalf of CG Power with Blue Garden to assign, sell and transfer the rights of Kanjurmarg property to Blue Garden in case the sale under Evie Sale Agreement did not go through within 42 months from the date of the agreement. However, it is observed that no Board approval for the MOU entered into with Blue Garden by Madhav was obtained, as was required under the Rules of Procedure of CG Power.
- (iv) It is further noted that at the time of execution of the MOU dated February 1, 2017, there was a charge in the form of negative lien created in favour of Yes Bank Limited (hereinafter referred to as “**Yes Bank**”) on Kanjurmarg Property. Despite such prior charges, a Power of Attorney was executed by Madhav on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Kanjurmarg Property and to mortgage or charge all rights, title and interest of the said property.
- (v) Even though the last date under the Evie Agreement had not yet passed, for payment of a part of the consideration amount under MOU, Blue Garden took a loan of Rs. 190 crore from ABFL. When the said amount was received by Blue Garden on February 16-17, 2017, it was immediately paid on the same dates by Blue Garden to CG Power in terms of the MOU. Thereafter, in turn, on February 16, 2017 through various bank accounts, CG Power advanced Rs. 192 crore to Acton without charging any interest. Acton, in turn, on February 16 – 17, 2016 utilized / transferred the aforementioned amount (Rs. 190 crore) towards repayment of loan taken by BGPPL i.e. to repay the liability owed by BGGPL to ABFL.

- (vi) For ease of understanding, the fund flow for Rs. 190 crore transaction is shown diagrammatically as below:

**Summary - Fund Flow of against land at Kanjurmarg, Mumbai – Rs. 190 Crores.**



- (vii) Thus, from the above, the SCN alleges that an amount of Rs. 190 crore, received by CG Power from Blue Garden as part consideration under MOU for the sale of Kanjurmarg Property, which was an asset of CG Power, was diverted through Acton and the end utilization of these funds was to repay the loan liability (taken from ABFL) of BGPPL, a Promoter Group Company, controlled by Gautam. Hence, it is alleged that the aforesaid transactions were devised as a scheme / unfair trade practice to use the assets/ income/ funds of CG Power to divert the funds through Acton in order to repay the liabilities of BGPPL, a Promoter Group company at the cost of effectively decreasing the assets of/ increasing the liabilities of CG Power, for the ultimate benefit of a Promoter Group company i.e. BGGPL controlled by Gautam.

34.2.2 With regard to the aforesaid transaction of sale of Kanjurmarg property of CG Power to Blue Garden, I note that as per the allegations made in the SCN, the following Directors/employees were involved in the said transaction:



Sr. No	Director/Employee	Involvement/Role
1	Gautam Thapar (Noticee no. 1)	BGPPL is a Promoter Group Company controlled by Noticee no. 1
2	Madhav Acharya (Noticee no. 6)	<ul style="list-style-type: none"> <li>MOU dated February 1, 2017 was executed by Noticee no. 6 on behalf of CG Power with Blue Garden to assign, sell and transfer the rights of Kanjurmarg property to Blue Garden in case the sale under Evie Sale Agreement did not go through within 42 months from the date of the agreement.</li> <li>Power of Attorney was executed by Noticee no. 6 on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Kanjurmarg Property and to mortgage or charge all rights, title and interest of the said property.</li> </ul>
3	Atul Gulatee (Noticee no. 9)	Noticee no. 9 was the Head of Treasury in CG Power and also a director of Blue Garden and signed various documents on behalf of Blue Garden including the MOU dated February 01, 2017.

34.2.3 From the emails, as discussed in paras 34.1.3 to 34.1.5 above, I note that ABFL and Noticee no. 1 had planned the entire financial structure for providing funds to CG Power, for which Blue Garden and Atcon Global were incorporated. I note that Blue Garden was incorporated on March 21, 2016 and then entered into a Memorandum of Understanding (“MOU”) dated February 1, 2017, with Blue Garden for transfer of the same property for a consideration amount of Rs. 498 crore (Rs. 189 crore to be paid as initial consideration). For this consideration amount, Blue Garden availed a loan of Rs. 190 crore from ABFL on May 12, 2016. When the said amount was received by Blue Garden on February 16-17, 2017, it was immediately paid on the same dates by Blue Garden to CG Power in terms of the MOU. Thereafter, on February 16, 2017 through various bank accounts, CG Power advanced Rs. 192 crore to Noticee no. 3 without charging any interest.

Noticee no. 3, in turn, on February 16 – 17, 2016 utilized the amount Rs. 190 crore towards repayment of loan taken by BGPPL i.e. to repay the liability owed by BGGPL to ABFL. Further, I note that BGPPL is a promoter group company of Noticee no. 1. Hence, it is evident that Noticee no. 1 had planned this entire fraudulent scheme from the start, whereby ABFL would indirectly provide funds to CG Power through its SPV i.e. Blue Garden and then the said funds would be diverted from CG Power to promoter group companies of Noticee no. 1 to pay off its loans with the ABFL.

34.2.4 In addition to the aforesaid emails, I note that the following observations have also been made in the FAR with respect to the Kanjurmarg property transaction:

- (i) Blue Garden was incorporated only on March 21, 2016 and the directors were all employees of CG Power. Further, the 100% equity shareholder of Blue Garden was Acton Global. The FAR had observed that given that ABFL had sanctioned loans of Rs. 400 crores to a new company without any strong promoter background and asset base clearly indicates that the company was created as part of the scheme to give effect to the loan arrangement between CG Power, ABFL and AHL.
- (ii) Acton Global was incorporated only on March 21, 2016, the directors were all employees of CG Power and 100% equity shareholder of Acton Global were the then employees of CG Power. The FAR observed that given that Acton Global has utilised all the loans that it had received from CG Power for repayment of loan of BGPPL which is an Avantha Group entity, it is clear that the company was floated with the sole intention of giving effect to the arrangement between CG Power, ABFL and AHL.
- (iii) From the email dated February 05, 2016 of Noticee no. 9 to Mr. Rakesh Pingulkar, Relationship Manager of ABFL, the FAR has observed that the loan sanctioned by ABFL to Blue Garden and Acton Global, was in conformity to the terms mentioned in the said email and it is clear that Blue Garden and Acton Global were created under the mutually decided

transaction structure with ABFL and their sole purpose as SPVs was to give effect to the proposed loan transaction.

- (iv) The FAR observed that the advances that have been given by Blue Garden to CG Power with regard to land parcels situated at Nashik and at Kanjurmarg were interest bearing advances and this interest on advance was predominantly to fulfill the interest obligation on the loan taken from ABFL. The FAR observed that since interest is being paid since the time the advances have been received by CG Power, it adds to the strength of their observation that the advance against property was not a sale transaction at all but just a structure on paper to give loans to CG Power through the SPV entities Acton and Blue Garden.
- (v) The FAR observed that the land situated at Kanjurmarg, Mumbai and owned by CG Power was not a freehold land available for sale by CG Power. Vide an agreement dated 28<sup>th</sup> October, 2015, CG Power had entered into an agreement with M/s Evie Real Estate Pvt. Ltd. (Evie) to sell the said land.
- (vi) Further based on agreement mentioned above, CG Power had also received advance of Rs. 11 crore against the said agreement. The FAR observed that as per bank statements of CG Power, ledger of Evie in the books of CG Power and copy of the cheque issued by Evie in favor of CG Power, it is clear that CG Power had received an advance of Rs. 11 crore from Evie for the said transaction.
- (vii) FAR thus observed that it is clear that the land at Kanjurmarg was not free for mortgage. In view of the above points, the FAR observed that this proves that the sale of land to a SPV was just a facade created to move the loans from ABFL to CG Power without giving it directly to CG Power. That the loan transaction to CG Power was cloaked in the form of an initial consideration against sale of the Kanjurmarg land.

34.2.5 In addition to the above observations of the FAR, the SCN has also alleged that:

- (i) At the time of execution of the MOU dated February 1, 2017, there was a charge in the form of negative lien created in favour of Yes Bank on Kanjurmarg Property. Despite such prior charges, a Power of Attorney was executed by Noticee no. 6 on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, *inter alia*, to avail loan from any financial institution against the security of the Kanjurmarg Property and to mortgage or charge all rights, title and interest of the said property. On this basis, the loan was taken by Blue Garden from ABFL.
- (ii) Even though the last date under the Evie Agreement i.e. October 27, 2019 had not yet passed, Blue Garden took a loan of Rs. 190 crore from ABFL for payment of a part of the consideration amount under MOU to CG Power in February 2017.
- (iii) Upon receiving the loan amount of Rs. 190 crore from ABFL on February 16-17, 2017, on the very same dates the amount was transferred to CG Power in terms of the MOU. CG Power then through various banks on February 16, 2017, advanced Rs. 192 crore as loan to Noticee no. 3 without charging any interest. Noticee no. 3, in turn, transferred the amount of Rs. 190 crore on the same day i.e. February 16, 2017 to ABFL towards repayment of loan taken by BGPPL. Hence, from the aforesaid series of transactions on the same day, it is evident that the above was all part of the elaborate scheme to repay off the liabilities of BGPPL with ABFL through CG Power.

34.2.6 From the above, it is evident that the MoU between CG Power and Blue Garden was just a façade created by Noticee no. 1 as part of his fraudulent scheme in securing funds of ABFL through CG Power and diverting the same to promoter group companies, which are either owned or controlled by him, for paying off their loans with ABFL.

34.2.7 Further, I note that the FAR had observed that Board approval was not taken for the sale of the Kanjurmarg property. Further, from the documents available before

me, I note that there are no Board meeting minutes where approval of the Board of CG Power was taken for the sale of the Kanjurmarg Property. I note that CG Power vide its letter dated August 18, 2020, had stated that the Board has not passed any resolution to execute a MOU with Blue Garden for sale of its Kanjurmarg property to Blue Garden and neither was such proposal ever placed before the Board. Further, CG Power has also stated that there was no authorisation granted by the Board to Noticee no. 6 to execute MOU with Blue Garden for sale of Kanjurmarg property and neither was any such proposal placed before the Board. In view of the above, I agree with the observations of the FAR that Board approval was not taken for the sale of the Kanjurmarg property.

34.2.8 With regard to the loan given by CG Power to Noticee no. 3, as observed in the FAR, I note that the Rs. 192 crore loan to Atcon Global by CG Power was disclosed to the RAC and Board of CG Power in the board meeting dated May 25, 2017 and May 26, 2017, respectively. However, in terms of whether approval of the Board was taken for the said loans, I note that the loan of Rs. 192 crores was advanced to Acton Global on February 16, 2017 and was only disclosed to the RAC and Board of CG Power in the board meeting dated May 25, 2017 and May 26, 2017, respectively. Hence, I find that at the time of advancing the loan of Rs. 192 crores to Acton Global, there was no Board approval taken and neither was it disclosed to the Board or the RAC then. Therefore, I find that only a post-facto approval was taken for the loan of Rs. 192 crore to Acton Global. However, I note that the post-facto approval is only limited to the loan given by CG Power to Atcon Global and the Memorandum of Understanding ("MOU") dated February 1, 2017, with Blue Garden for the Kanjurmarg property was never informed or placed before the Board of CG Power.

34.2.9 In view of the above and the observations of the FAR, I find that the entire transaction pertaining to the Kanjurmarg Property was created as part of the fraudulent scheme of Noticee no. 1, whereby loans were extended by ABFL to Blue Garden which was brought into the books of CG Power as a consideration of Kanjurmarg property and was subsequently diverted to the benefit of promoter

group company i.e. BGPPL for repayment of its loan taken from ABFL itself. I find that this transaction structure as proposed by Noticee no. 1 with ABFL has created an encumbrance on the assets of a listed company i.e. CG Power. I find that this has benefitted the Avantha Group Companies, which are directly or indirectly owned/controlled by Noticee no. 1, at the cost of CG Power. Therefore, I find that this entire fraudulent scheme has been deliberately created and executed to divert the funds of CG Power to Avantha Group Companies of Noticee no. 1.

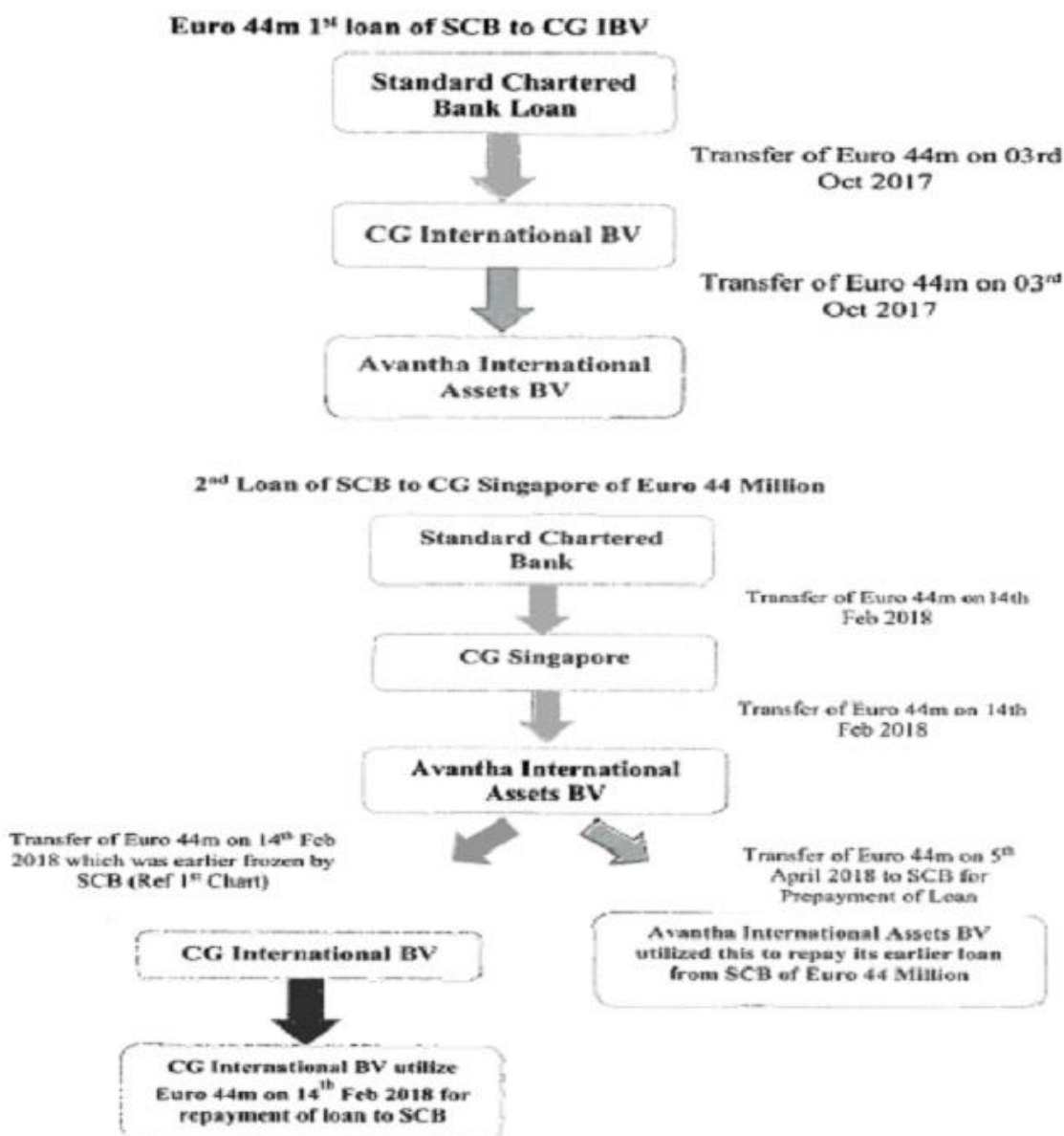
34.2.10 I note that Noticees no. 6 and 9 have colluded with Noticee no. 1 in his fraudulent scheme by executing the agreements and creating encumbrances on the assets of CG Power for securing funds from ABFL. The role and involvement of Noticees no. 1, 6 and 9 in the entire fraudulent scheme has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

### **34.3 Impugned Transactions No.3: Euro 44 Million Borrowing by CG Industrial Holdings Pte. Ltd (CG Singapore) from Standard Chartered Bank:**

34.3.1 The allegation of fund diversion, as alleged in the SCN, are as under:

- (i) Avantha International Asset BV ("**AIABV**") had taken a loan from Standard Chartered Bank (hereinafter referred to as "**SCB**") in the past (hereinafter referred to as "**Earlier Loan**"). On October 03, 2017, SCB disbursed a loan of Euro 44 Million to CG International BV ("**CGIBV**") (hereinafter referred to as "**First Loan**"). The said first loan was guaranteed by CG Power in 2017. On the same day i.e. October 03, 2017, the said funds (i.e. Euro 44 million) were further transferred by CGIBV to AIABV, which is 100% owned by Noticee no. 1. However, AIABV could not utilize the funds to repay its Earlier Loan from SCB as it was frozen by SCB till February 14, 2018 i.e., the funds remained unutilized by AIABV. Vide email dated February 14, 2020, to the Forensic Auditor, SCB informed that this was done to transfer the loan from CGIBV to CG Industrial Holdings Pte. Ltd. ("**CG Singapore**") in order to get Overseas Direct Investment (ODI) filing completed for the loan which was an important condition for the loan facility. CG Singapore is a subsidiary of CG Power.

- (ii) Subsequently, on February 14, 2018, SCB disbursed another loan of Euro 44 Million to CG Singapore (hereinafter referred to as “**Second Loan**”). As per the CG Power letter dated August 18, 2020, the second loan was also guaranteed by CG power and the said guarantee was mentioned in the audited annual accounts of CG Power for FY 2017-18. The receipt of second loan by CG Singapore from SCB was also disclosed to the Board of CG Power in board meeting dated February 14, 2018. It is noted that this second loan has the approval of the Board of both CG Power and CG Singapore.
- (iii) On February 14, 2018, CG Singapore transferred the funds (Euro 44 Million) received from second loan, to AIABV. It is observed that the transfer of Euro 44 Million by CG Singapore to AIABV was not informed to the Board of CG Power. On February 14, 2018, AIABV returned the funds received from the first loan (Euro 44 million) to CGIBV and subsequently CGIBV utilized this fund (Euro 44million) for repayment of first loan taken from SCB. On April 05, 2018, the funds received from the second loan of Euro 44 million were utilized for repayment of AIABV’s Earlier Loan of Euro 44 Million from SCB (approximately Rs.350 crore), i.e., for repayment of Earlier Loan taken by AIABV from SCB. In other words, a loan taken by CG Singapore, a subsidiary of CG Power, was used to repay the liability of AIABV, which is a Promoter Group entity that is 100% owned by Noticee no. 1.
- (iv) For ease of understanding, the fund flow for first loan and second loan is shown diagrammatically as below:



- (v) From the facility agreement executed by CG Singapore with SCB in the month of December 2017, it is noted that the second loan was to be used to finance the general corporate purposes, including the working capital, of the Borrower Group or any other member of CG Group. As per the facility agreement, “Borrower Group” is defined as CG Singapore and its subsidiaries. “CG Group” is defined as Parent and its subsidiaries. However, the transfer of funds (second loan) by CG Singapore to AIABV, which is not a CG Group company, was not authorized under the facility agreement.



- (vi) It is noted that AIABV is a Netherlands-registered entity and it is neither a subsidiary of CG Singapore nor of CG Power. AIABV is a Promoter Group Entity and is 100% owned by Noticee No. 1. It is also noted that the remittance instruction (i.e. transfer of second loan from CG Singapore to AIABV) dated February 14, 2018 was signed by Noticees no. 5 and 7.
- (vii) The Board resolution of CG Singapore specified that the second loan should be used to finance general corporate purposes, including working capital of CG Singapore and subsidiaries and any other member of the CG Group. Remittance to AIABV, signed by Noticees no. 5 and 7, which was not a part of the CG Group, was a breach of the resolution of the Board of CG Singapore.
- (viii) Thus from the above, SCN alleged that:
  - (a) The transfer of the funds received under second loan, to AIABV, is an unauthorized transaction and a diversion of funds and its use to repay the liabilities of AIABV is also an unauthorized transaction and constitutes a diversion of funds.
  - (b) Euro 44 Million (approximately Rs.350 crore) received by CG Singapore from SCB under second loan was diverted to AIABV (unauthorized diversion of the loan amount), a Promoter Group company and 100% owned by Noticee no. 1 to repay the liability of AIABV that has arisen through Earlier Loan.
- (ix) Hence, it is alleged that the aforesaid transactions were devised as a scheme / unfair trade practice to use CG Singapore (subsidiary of CG Power) to divert funds to AIABV in order to repay the liabilities of AIABV, a Promoter Group company at the cost of increasing the liabilities of CG Power Group, for the ultimate benefit of a Promoter Group company i.e. AIABV, which is 100% owned by Noticee no. 1.

34.3.2 With regard to the aforesaid transaction of Euro 44 million borrowing by CG Singapore from SCB to repay the liabilities of AIABV, I note that the following Directors/employees were involved in the said transaction:

Sr. No	Director/Employee	Involvement/Role
1	Gautam Thapar (Noticee no. 1)	Noticee no. 1 is the Chairman of CG Power and AIABV is a Promoter Group private investment entity and is 100% owned by Noticee no. 1.
2	B. Hariharan (Noticee no. 7)	Remittance instruction (i.e. transfer of second loan from CG Singapore to AIABV) dated February 14, 2018 was signed by Noticee no. 7 and Noticee no. 5
3	V. R. Venkatesh (Noticee no. 5)	Remittance instruction (i.e. transfer of second loan from CG Singapore to AIABV) dated February 14, 2018 was signed by Noticee no. 5 and Noticee no. 7.

34.3.3 From the above, I note that SCB had granted a loan of Euro 44 million to CGIBV which was transferred to AIABV. Thereafter, I note that Euro 44 million taken as loan by CG Singapore from SCB and guaranteed by CG Power and approved by the Board of both CG Power and CG Singapore, was diverted to AIABV without informing the Board of CG Power. AIABV then transferred the first Euro 44 million back to CGIBV and CGIBV repaid its Euro 44 million loan (first loan) taken from SCB. Thereafter, AIABV used Euro 44 million received from CG Singapore to repay its loan liabilities to SCB. Hence, I note that a loan taken by CG Singapore from SCB was diverted to AIABV, a 100% owned promoter group entity owned by Noticee no. 1, to repay its liabilities to SCB.

34.3.4 In this regard, I note that the FAR has *inter alia* made the following observations:

- (i) The Board of CG Power vide resolution dated November 09, 2017 i.e. Resolution No. 525.32.01 mentioned that, overseas subsidiaries can avail Banking facilities up to Euro 175 Million. This resolution was in suppression of earlier resolutions wherein the limit of overseas banking facilities was fixed at Euro 125 million. These banking facilities could be secured by hypothecation/mortgage on movable and immovable properties of these subsidiaries, guarantees/collateral/securities from the Company or any other CG Group Company and such other securities.

- (ii) Noticee no. 8, Noticee no. 5 and Noticee no. 9 were severally authorised to decide on actual amount of availment, and took final decision on terms and condition of facilities and subsidiaries to be leveraged for channelizing the funds through inter corporate loans. Noticee no. 5 (as CFO) and 9 (as Global Head Corporate Treasury) were authorized to sign all the documents and take action for giving effect to resolution.
- (iii) The aforesaid resolution did not give a specific reference to the above loan of Euro 44 Million Loan to CG IBV and CG Singapore. In the above resolution by CG Power, it was mentioned that each such facility availment shall be notified to the board at each meeting held immediately after such availment. CG Power have mentioned the availment and outstanding amount of Euro 44 million in its 531<sup>st</sup> Board Meeting held on 30th April 2018.
- (iv) CG Singapore passed a resolution dated 6<sup>th</sup> December 2017 to approve the availment of the loan facility from SCB. The resolution was signed by Noticee no. 5 and Noticee no. 7. A Facility Agreement was entered into by SCB with CG Singapore in the month of December 2017 for availing Euro 44 million loan. The loan was availed to finance the general corporate purposes, including working capital, of the Borrower Group and any other member of the CG Group (including by way of inter-company loans).
- (v) CG Power had issued a corporate guarantee for the aforesaid loan, for which an agreement of corporate guarantee was executed. However, it was observed that CG Power did not pass any specific resolution for providing this corporate guarantee, except for a general resolution.
- (vi) A utilisation request dated February 14, 2018 was made by CG Singapore to SCB for the drawdown of Euro 44 million. The utilization request was signed by Noticee no. 5 and Noticee no. 7. The funds were transferred to CG Singapore on February 14, 2018 and on the same day it further transferred to AIABV. AIABV ultimately utilized these funds for repayment of its own earlier loan with SCB.
- (vii) The FAR observed that the above utilisation is contrary to the provisions of the facility agreement, which required the term loan to be used only to

finance the general corporate purposes, including working capital, of the Borrower Group or any other member of CG Group. As per the facility agreement, "Borrower Group" is defined as CG Singapore and its subsidiaries. "CG Group" is defined as Parent and its subsidiaries. AIABV is a Netherlands registered entity and it is neither the subsidiary of CG Singapore nor CG Power's. From the name it suggests that the company is an Avantha Group Entity. AIABV is 100% owned by Noticee no. 1.

- (viii) Further, the facility agreement, though mentions the purpose for which the funds were utilized, however, it unusually stated that SCB is not bound to monitor or verify the application of any amounts borrowed pursuant to the facility agreement. At the same time the facility agreement does not even cast a basic obligation on CG Singapore to provide an end-use certificate.
- (ix) As per the financials, the total asset size of CG Singapore was Euro 42 Million (Rs. 302.58 Cr.) as on 31st March 2018, this is when the loan was not outstanding in the books. Thus, loan availed by the company was approximately 105% of the total asset size of the company.
- (x) The FAR observed that it is unusual that SCB sanctioned such a huge amount of loan, which reaffirms the observations that the loan was sanctioned to CG Singapore only to be ultimately utilized by AIABV to repay its own old SCB loans.
- (xi) Since the loan is a substantial portion of the asset size of the company, the FAR observed that all the directors and the auditors would have made some analysis over the purpose of the loan and its ultimate utilization and if they had found anything amiss, they should have informed to the board of CG Power, which hasn't been done.

34.3.5 From the above, I note that CG Singapore had availed a loan of Euro 44 million loan from SCB in the month of December 2017 for the purpose of financing the general corporate purposes, including working capital, of the Borrower Group and any other member of the CG Group (including by way of inter-company loans). The funds were transferred to CG Singapore on February 14, 2018 and on the same day, it was further transferred to AIABV, which utilized these funds for

repayment of its own earlier loan with SCB. Since AIABV is neither a subsidiary of CG Singapore or CG Power, I agree with the observations of the FAR that the above transfer of funds to AIABV was contrary to the provisions of the facility agreement, which required the term loan to be used only to finance the general corporate purposes, including working capital, of the Borrower Group or any other member of CG Group. Hence, I find that the remittance to AIABV, signed by Noticee no. 5 and Noticee no. 7, was in breach of the resolution of the Board of CG Singapore and has been fraudulently diverted to AIABV. Further, from the documents available on record, I find that the transfer of Euro 44 million by CG Singapore to AIABV was not informed to the Board of CG Power as none of the board minutes of CG Power contain any such decision or approval, as also stated by CG Power in its letter dated August 18, 2020. Hence, I find that the aforesaid transfer to AIABV without the approval of the Board of CG Power, shows the fraudulent nature of the transaction.

34.3.6 In view of the above, it is clear that the aforesaid transactions were devised as a scheme / unfair trade practice by Noticee no. 1, who was the 100% owner of AIABV, to use CG Singapore, a subsidiary of CG Power, to divert its funds to AIABV in order to repay the liabilities of AIABV, at the cost of increasing the liabilities of CG Power Group, for the ultimate benefit of a Promoter Group company i.e. AIABV, which is 100% owned by Noticee no. 1.

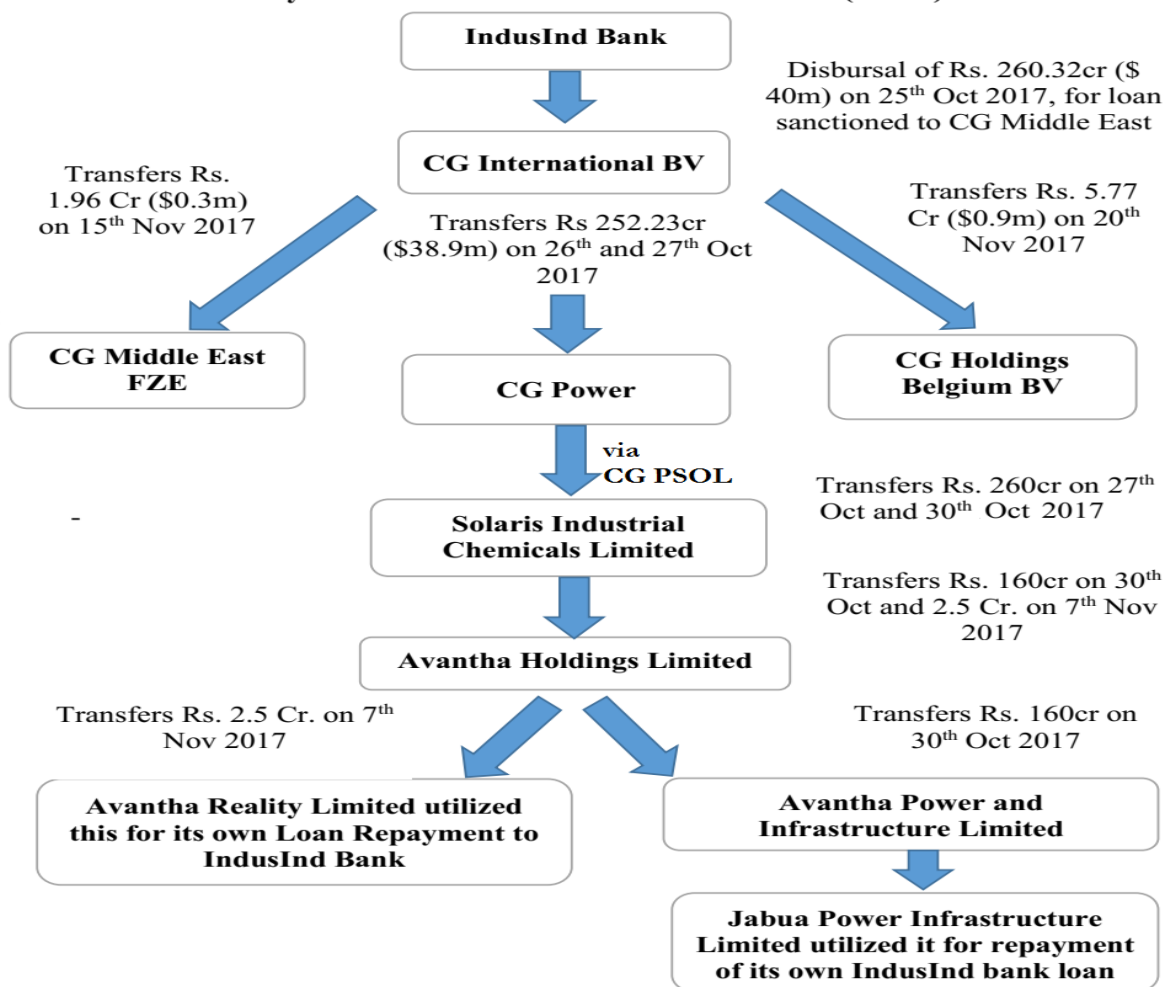
34.3.7 I also note that Noticees no. 5 and 7 have been instrumental in the aforesaid transaction by signing the remittance instruction for transfer of the Euro 44 million from CG Singapore to AIABV. Hence, I note that aforesaid diversion of funds has been executed and carried out by Noticees no. 1, 5 and 7 whose role and involvement in the entire fraudulent scheme has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

**34.4 Impugned Transactions No. 4: USD 40 Million Foreign Currency Term Loan to CG Middle East from IndusInd Bank India and Guaranteed by a Corporate Guarantee from CG IBV:**

34.4.1 The allegation of fund diversion, as alleged in the SCN, are as under:

- (i) On October 25, 2017, IndusInd Bank had sanctioned a loan of USD 40 Million (approximately Rs. 260 crore) to CG Middle East, an overseas subsidiary of CG Power. However, from a detailed fund flow trail, it was observed that on October 25, 2017 the amount of loan (USD 40 Million) was disbursed by IndusInd Bank at the request CG Middle East to CGIBV, 100% holding company of CG Middle East. On October 26-27, 2017, CGIBV advanced approximately USD 39 million to CG Power i.e., to its ultimate holding company, and CG Power further advanced it to CG Power Solutions Limited ("**CGPSOL**"), which is a subsidiary of CG Power and CGPSOL had further advanced the said funds to Solaris Industrial Chemical Limited ("**SICL**"), a Promoter Group Company. Subsequently, the funds were finally transferred to a Promoter Group companies i.e. Avantha Realty Limited (Rs. 2.5 crore on November 07, 2017) and Jhabua Power Infrastructure Limited (Rs. 160 crore on October 30, 2017), by SICL through AHL. On November 08, 2017 Avantha Realty Limited ("**ARL**") transferred Rs. 2.5 crores to IndusInd Bank and Jhabua Power Infrastructure Limited ("**JPIL**") transferred Rs. 160 crores to IndusInd Bank, thereby repaying its earlier loan.
- (ii) For ease of understanding, the fund flow for Rs. 260 crore is shown diagrammatically as below:

**Fund Flow Analysis of CG Middle East - Rs. 260.32 crore (\$ 40m)**



(iii) With respect to above impugned transaction, following is observed:

- (a) The sanction letter issued by IndusInd Bank with respect to the loan of USD 40 Million to CG Middle East and other documents such as CG Middle East Board resolution and drawdown letter are all dated October 25, 2017. The sanction letter from IndusInd Bank as well as the CG Middle East Board resolution has been acknowledged by signature, respectively, by Noticee no. 5, who was the sole director on the Board of CG Middle East at that time.
- (b) The Board of CG Power, vide resolution dated May 26, 2017, increased the limit of banking facilities to be availed by overseas subsidiaries to USD 175 Million. It was mentioned that each such facility shall be notified to the board at the meeting held immediately after availing such facility. However, there was no mention of sanction of USD 40 million loans to CG Middle East on

October 25, 2017 in CG Power board meeting dated February 12, 2018. Thus, the sanction of this loan to CG Middle East was never reported to the Board of CG Power.

- (c) A letter dated October 25, 2017 signed by Noticee no. 5 and Noticee no. 7 addressed to IndusInd Bank, states that Board of CG IBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities. There is no record of such a board resolution being passed by the Board of CG IBV for giving guarantee for the loan availed by CG Middle East.
  - (d) A letter dated October 25, 2017 signed by Noticee no. 5 on behalf of CG Power was issued to IndusInd bank, undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East. The said letter was issued without the approval of the Board of CG Power.
  - (e) Vide drawdown letter dated October 25, 2017 signed by Noticee no. 5 the loan sanctioned to CG Middle East was disbursed to CG IBV's account at request of CG Middle East.
  - (f) CG Power, vide letter dated August 18, 2020, inter alia, stated that the transfer of Rs. 160 crore on October 27, 2017 and Rs. 100 crore on October 30, 2017 by CG Power to CGPSOL and onward transfer to Solaris was under approval of / instruction by Noticee no. 5 (then-CFO of CG Power), vide emails dated October 27, 2017 and October 30, 2017.
- (iv) Thus, from the above, the SCN alleges that loan amount of USD 40 Million (approximately Rs. 260 crore) received by CG IBV on behalf of CG Middle East (overseas subsidiary of CG Power) from IndusInd Bank was diverted from CG Power to CG PSOL to Solaris, (Solaris is a Promoter Group company). It is further alleged that Solaris transferred as advances Rs. 162.5 crore to AHL, which in turn transferred the funds to other group entities, namely, Avantha Reality Ltd. (Rs. 2.5 crore) and Jhabua Power Infrastructure Ltd (Rs. 160 crore). The end use of the funds by Avantha Reality Ltd. ("**Avantha Reality**") and Jhabua Power Infrastructure Ltd. ("**Jhabua Power**") was to repay loans that they had taken from IndusInd Bank. In other words, it is alleged that loan taken by CG Middle East, an



overseas subsidiary of CG power, was utilized to repay the liabilities of entities belonging to Promoter Group.

- (v) Hence, the SCN alleges that the aforesaid transactions were devised as a scheme / unfair trade practice to divert the funds received from CG Middle East (overseas subsidiary of CG Power) from IndusInd Bank, which as was shown in the above chart becoming part of the assets of CG Power, to Promoter Group Companies in order to repay the liabilities of Avantha Reality and Jhabua Power to IndusInd Bank, at the cost of increasing the liabilities of CG Power Group, for the ultimate benefit of Promoter Group companies i.e. both Avantha Reality and Jhabua Power controlled / owned by Noticee no. 1.

34.4.2 With regard to the aforesaid transaction of USD 44 million borrowing by CG Middle East from IndusInd Bank to repay the liabilities of ARL and JPIL, I note as per the allegations made in the SCN that the following Directors/employees were involved in the said transaction:

Sr. No	Director/Employee	Involvement/Role
1	Gautam Thapar (Noticee no. 1)	Noticee no. 1 is the Chairman of CG Power and SICL is a Avantha Group Company of Noticee no. 1.
2	B. Hariharan (Noticee no. 7)	A letter dated October 25, 2017 signed by Noticee no. 7 and Noticee no. 5 addressed to IndusInd Bank, states that Board of CG IBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities.
3	V. R. Venkatesh (Noticee no. 5)	<ul style="list-style-type: none"> <li>The sanction letter from IndusInd Bank as well as the CG Middle East Board resolution has been acknowledged by signature, respectively, by Noticee no. 5, who was the sole director on the Board of CG Middle East at that time.</li> <li>A letter dated October 25, 2017 signed by Noticee no. 5 and Noticee no. 7 addressed to IndusInd Bank, states that Board of CG IBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit</li> </ul>

		<p>facilities.</p> <ul style="list-style-type: none"> <li>• A letter dated October 25, 2017 signed by Noticee no. 5 on behalf of CG Power was issued to IndusInd bank, undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East.</li> <li>• Vide drawdown letter dated October 25, 2017 signed by Noticee no. 5 the loan sanctioned to CG Middle East was disbursed to CG IBV's account at request of CG Middle East.</li> </ul>
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34.4.3 From the above, I note that IndusInd Bank had granted a loan of USD 40 million (approximately Rs. 260 crore) to CGIBV on behalf of CG Middle East was diverted from CG Power to CGPSOL to Solaris. Thereafter, Solaris transferred as advances Rs. 162.5 crore to AHL, which in turn transferred the funds to other group entities, namely, ARL (Rs. 2.5 crore) and JPIL (Rs. 160 crore). ARL and JPIL used these funds to repay loans that they had taken from IndusInd Bank. Hence, I find that the loan taken by CG Middle East, an overseas subsidiary of CG power, was utilized to repay the liabilities of ARL and JPIL, entities belonging to Promoter Group, to IndusInd Bank.

34.4.4 In this regard, I note that the FAR has *inter alia* made the following observations:

- (i) FAR observed that the Board of CG Power vide resolution dated May 26, 2017 increased the limit of banking facilities to be availed by overseas subsidiaries to 175 million from 125 million. Noticee no. 8, Noticee no. 6 and Noticee no. 9 were severally authorised to decide on actual amount of availment, take final decision on terms and condition of facilities and subsidiaries to be leveraged for channelizing the funds through inter corporate loans. Noticee no. 6 (as CFO) and Noticee no. 9 (as Global Head Corporate Treasury) were authorized to sign all the documents and take action for giving effect to resolution.

- (ii) Noticee no. 6 had resigned from CG Power on September 30, 2017. The loan was availed on October 25, 2017. In a board meeting dated November 09, 2017, Noticee no. 6 was replaced by Noticee no. 5. Noticee no. 5 being only director of the CG Middle East signed the resolution of CG Middle East for availing loan from IndusInd Bank on October 25, 2017.
- (iii) In the above resolution by CG Power, it was mentioned that each such facility availment shall be notified to the board at each meeting held immediately after such availment. The FAR observed that it had verified the board meetings dated February 12, 2018 but did not find any mention of this USD 40 million loan to CG Middle East.
- (iv) The FAR observed that CG Middle East on October 25, 2017 passed a board resolution to avail a USD 40 Million term loan from IndusInd Bank India by assigning its Book Debts and Inventory. The FAR observed that at the time of sanction of above loan i.e. on October 25, 2017, CG Middle East had only one Director, Noticee no. 5, who was also the CFO of CG Power at that time. The resolution also mentioned that all the documents for this loan shall be signed by Noticee no. 5.
- (v) The FAR observed that the assignment of Book Debts and Inventory was made on July 12, 2018 i.e. almost 8 months after the sanction and draw down of funds, which is an unusual course of business.
- (vi) CGIBV had given a corporate guarantee to IndusInd bank for the loan of CG Middle East of USD 40 Million from IndusInd Bank. FAR observed that the Board of CGIBV did not pass any resolution to give corporate guarantee for the loan of USD 40 Million of CG Middle East. However, CGIBV in its letter to IndusInd Bank India, dated October 25, 2017 duly signed by Noticee no. 5 and Noticee no. 7, mentioned that CGIBV will provide a copy of board resolution for executing corporate guarantee for the above credit facilities.
- (vii) In the draw down letter dated October 25, 2017, CG Middle East through its Director Noticee no. 5 had requested to IndusInd Bank the drawdown of loan in the bank account of CGIBV. The FAR observed that the loan was

approved by the board of CG Middle East, sanctioned and disbursed in one single day, which is unusual in banking business.

- (viii) The FAR observed that it had analyzed the financial statements of CG Middle East for FY 2017-18 and did not find any outstanding facility of IndusInd Bank as on March 31, 2018. Further, the audit report did not mention any comments on this transaction. The FAR also observed that in the financial statement of CG IBV too they did not find any mention of the corporate guarantee provided by the company to CG Middle East Loan and the audit report did not mention any comments on this transaction.

34.4.5 From the above, it is clear that there were multiple irregularities in the entire scheme of transfer of loan from IndusInd Bank to its ultimate beneficiary i.e. ARL and JPIL, who then used the funds to repay its loans with IndusInd Bank. From the aforesaid observations of the FAR and the documents available on record, I note that there was no mention of sanction of USD 40 million loan to CG Middle East (on October 25, 2017) in the CG Power board meeting dated February 12, 2018. Further, I note that there is no record of such a board resolution being passed by the Board of CGIBV for giving guarantee for the loan availed by CG Middle East. Furthermore, the letter dated October 25, 2017 of CG Power undertaking to comply with the terms and conditions for the loan sanctioned by IndusInd Bank to CG Middle East was alleged to be issued without the approval of the Board of CG Power and I find that none of the board minutes of CG Power contain such approval or decision in this regard. Thus, I find that the entire chain of events in the sanction of loan to CG Middle East by IndusInd, which was ultimately aimed at diverting the funds of CG Power to repay the liabilities of ARL and JPIL, was never done with the approval of the Board of CG Power. This is reaffirmed by the fact that the loan was approved by the board of CG Middle East, sanctioned and disbursed in one single day, which is unusual in banking business, and yet, the financial statements of CG Middle East for FY 2017-18, did not have any outstanding facility of IndusInd Bank as on March 31, 2018, and nor did the audit report mention any comments of this transaction. Therefore, I find that the records do not show that Noticee no. 5 had any such power or approval to sign all the loan

related documents and sanctioning all the aforesaid transfers, and the same was done as part of the fraudulent scheme of Noticee no. 1 to divert to the funds from CG Group companies to the promoter group companies.

34.4.6 In view of the above, I find that the aforesaid transactions were devised as a scheme / unfair trade practice to use CG Middle East, which is an overseas subsidiary of CG Power, to divert the funds received from IndusInd Bank (which as has been detailed in the above fund flow chart) to Promoter Group Companies in order to repay the liabilities of ARL (Rs. 2.5 crore) and JPIL (Rs. 160 crore) to IndusInd Bank, at the cost of increasing the liabilities of CG Power Group, for the ultimate benefit of Promoter Group companies i.e. both ARL and JPIL, which are controlled / owned by Noticee no. 1.

34.4.7 I note that Noticees no. 1, 5 and 7 have been involved in the transactions and have played a significant role in executing the transaction for taking loan from IndusInd Bank, which was ultimately aimed at diverting the funds of CG Power to repay the liabilities of ARL and JPIL to IndusInd Bank. The role and involvement of Noticees no. 1, 5 and 7 has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

#### **34.5 Impugned Transaction No. 5: Outstanding Advances to Mirabelle Trading Pte. Ltd. from CG Singapore**

34.5.1 The allegation of fund diversion, as alleged in the SCN, are as under:

- (i) CG Singapore, a subsidiary of CG Power, had made some high value payments of amounts USD 9 Million and USD 4.5 Million to Mirabelle Trading Pte. Ltd. ("**Mirabelle**") during the period of March-July 2018. The payments were shown as advances in the ledger of Mirabelle in the books of CG Singapore and were also mentioned as such in the financial statements of CG Singapore for the years ended March 31, 2018, and March 31, 2019. Payments to Mirabelle in 2018 were purportedly made pursuant to a service agreement dated January 15, 2013 (hereinafter referred to as "**Mirabelle Agreement**"), executed by Mirabelle with

CG Singapore.

- (ii) CG Power, vide letter dated August 18, 2020, has submitted that it has no record of the services being actually performed by Mirabelle either before or after the payment of the advances. Thus, it is noted that pursuant to said Mirabelle agreement, Mirabelle had not provided any services to CG Singapore or to CG Power.
- (iii) At the relevant time of executing the Mirabelle Agreement, Mirabelle was a 'related party' of CG Singapore. Mirabelle is also a related party to BILT, a Promoter Group company, and had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. Further, it was observed that the advances made to Mirabelle did not carry any interest.
- (iv) It is observed that there is time gap of 5 years between the date of the agreement and the payments made to Mirabelle i.e. while the Mirabelle Agreement was signed in the year 2013, payments were made to Mirabelle on March 28, 2018, July 26, 2018 and July 30, 2018. The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle, which were made by Noticees no. 5 and 7 on behalf of CG Singapore, were without any proper justifiable agreement / Board approval of CG Singapore.
- (v) It is also observed that the payments were made from CG Singapore, a CG Power subsidiary, to Mirabelle, a related party to BILT, a Promoter Group company, and is an entity substantially controlled / owned by Noticee no. 1.
- (vi) Upon examination of Mirabelle Agreement dated January 15, 2013, following is noted:
  - (a) On the first page of the Mirabelle Agreement, CG Singapore is described as a subsidiary of "CG Power and Industrial Solutions Limited". However, the

name of Crompton Greaves Limited was changed to CG Power and Industrial Solutions Limited only with effect from February 27, 2017.

- (b) The agreement has been signed only on the last page apparently by Noticee no. 6 on behalf of CG Power and not by a Director of CG Singapore. Noticee no. 6 had been a director of CG Singapore from November 1, 2013 to September 12, 2017, i.e., he was not a director of CG Singapore on the purported date of the agreement. Moreover, no authority letter from CG Power, which authorizes Noticee no. 6 to execute the agreement on behalf of CG Power, has been attached to the agreement.
- (c) None of the other pages bear any stamp or initials of any signatory. There is no date mentioned on the last page, i.e., page no. 12 of the said agreement where the signatories' signatures are available.
- (d) Thus, it is alleged that Mirabelle Agreement was not genuine and the same was created merely to "provide" some basis for the payments made to Mirabelle in 2018.

(vii) Thus, from the above, the SCN alleges that an amount of USD 13.5 Million (approximately Rs. 93 crore) in the year 2018 was diverted from CG Singapore (subsidiary of CG Power) to Mirabelle, a related party to BILT, a Promoter Group company, and is an entity substantially controlled / owned by Noticee no. 1.

(viii) Hence, the SCN alleges that the aforesaid transactions, including the purported agreement, were devised as a scheme / unfair trade practice to divert funds from CG Singapore (subsidiary of CG Power) to Mirabelle, an associate company of AHL, at the cost of decreasing the assets/ increasing the liabilities of CG Power Group, for the ultimate benefit of a Promoter Group company i.e. Mirabelle controlled / owned by Noticee no. 1.

34.5.2 With regard to the aforesaid transaction of outstanding advances to Mirabelle from CG Singapore, I note as per the allegations made in the SCN that the following Directors/employees were involved in the said transaction:

Sr. No	Director/Employee	Involvement/Role
1	Gautam Thapar (Noticee no. 1)	Mirabelle is an associate company of Avantha Holdings.
2	Mr. V. R. Venkatesh (Noticee no. 5)	The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement / Board approval of CG Singapore.
3	Mr. B. Hariharan (Noticee no. 7)	The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement / Board approval of CG Singapore.

34.5.3 From the above, the SCN has alleged that CG Singapore had made payments of USD 9 Million and USD 4.5 Million to Mirabelle pursuant to a service agreement dated January 15, 2013. It is alleged that CG Power, vide letter dated August 18, 2020 had submitted that it has no record of the services being actually performed by Mirabelle either before or after the payment of the advances. Further, that Mirabelle was a 'related party' of CG Singapore and also a related party to BILT, a Promoter Group company, and had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. I also alleged that the advances made to Mirabelle did not carry any interest. Further, it is alleged that the Mirabelle agreement was not genuine as there were various inconsistencies in the name of the Company, the signatures and stamps on the agreement.

34.5.4 In this regard, I note that the FAR has *inter alia* made the following observations:

- (i) The FAR observed that there were various discrepancies in the service agreement dated January 15, 2013 between CG Singapore and Mirabelle, as received from CG Power. Based on the discrepancies in the said



agreement, it raises questions on the genuineness of the agreement itself that has been shared by CG Power. No other agreement has been shared by CG Power or by Noticee no. 5, who was a director of the company when the payments were made to Mirabelle.

- (ii) The following executives of CG Power were on the board of CG Singapore when the payments to Mirabelle were made:

<b>Name</b>	<b>Date of appointment</b>	<b>Date ceased to be a member</b>
Tan Yee Tjen	15 Oct 2012	06 June 2019
Mr. V R Venkatesh	12 Sep 2017	30 Aug 2019
Mr. N K Neelakant	12 Sep 2017	14 June 2019

- (iii) The FAR observed that adequate information and documents were not made available to them by both CG Power and Noticee no. 5, to reach to a final conclusion whether any service, if at all, was received by CG Singapore against payments made to Mirabelle.
- (iv) The FAR also observed that there are indications that lead them to believing that the CEO of CG Power i.e. Noticee no. 8 and the statutory auditor of CG Power, Mr. Ashwin Mankeshwar, Partner, K.K. Mankeshwar & Co., joint auditor of CG Power for F.Y. 2018-19, SRBC & Co. LLP and the Risk and Audit Committee of CG Power as on February 12, 2019, must have had knowledge related to the purpose of the payment of advances made to Mirabelle. However, none of these parties and auditors mentioned above raised any objection about it at that time.

34.5.5 From the above, I note that the payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle, which were made by Noticee no. 5 and 7 on behalf of CG Singapore, were without any proper justifiable agreement of CG Singapore and none of the board minutes of CG Singapore contain any such approval or decision taken for the said agreement. This becomes evident from the fact that there were discrepancies in using the name of “CG Power and Industrial Solutions Limited” in the agreement dated January 15, 2013, when the name of the Company had changed from “Crompton Greaves Limited” to “CG Power and Industrial Solutions Limited” only

with effect from February 27, 2017. This clearly shows that the Agreement dated January 15, 2013, which was signed by Noticee no. 6 on behalf of CG Singapore even though he was not a director of CG Singapore on the purported date of the agreement, was not genuine and done in a fraudulent manner. Further, there is no record of an authority letter from CG Power, which authorizes Noticee no. 6 to execute the agreement on behalf of CG Power. Furthermore, I note that CG Power, vide letter dated August 18, 2020 has submitted that it has no record of the services being actually performed by Mirabelle either before or after the payment of the advances. This shows that the transaction was executed in a fraudulent and non-genuine manner for the ultimate purpose of diverting the funds of CG Group company to a promoter group company.

34.5.6 In view of the above, I find that the transfer of funds from CG Singapore to Mirabelle, was done without the approval of the Board of CG Singapore and the service agreement between CG Singapore and Mirabelle for USD 9 Million and USD 4.5 Million was non-genuine, no services were rendered and it was created purely for the purpose of diverting money from CG Singapore to Mirabelle, at the cost of increasing the liabilities of CG Power Group, for the ultimate benefit of Promoter Group companies i.e. Mirabelle, which was substantially controlled / owned by Noticee no. 1.

34.5.7 I note that Noticees no. 1, 5, 6 and 7 have been involved in the aforesaid transaction and have played a significant role in executing the aforesaid agreement and the transaction, which was ultimately aimed at diverting the funds of CG Power Group company to Mirabelle. The role and involvement of Noticees no. 1, 5, 6 and 7, has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

35. From the aforesaid 5 transactions, I find that funds to the total amount of Rs. 1093 crores from CG Power and CG Power Group companies have been diverted to promoter group companies, which are directly or indirectly controlled/owned by Noticee no. 1. I find that Noticees no. 5, 6, 7 and 9 have been responsible in executing

these transactions and I find that none of the board minutes of CG Power records any such approval of the Board for such transactions. Therefore, I find that Noticees no. 5, 6, 7 and 9 have colluded with Noticee no. 1 in his fraudulent scheme of diverting the funds of CG Power and CG Power Group companies to promoter group companies. I find that these promoter group companies are either directly or indirectly controlled/owned by Noticee no. 1 and therefore, Noticee no. 1 has benefited by utilising the funds that have been diverted from CG Power Group to repay the loans of the promoter group companies with banks. I find that the Noticee no. 1 along with Noticees no. 5, 6, 7 and 9, has through his fraudulent schemes, discharged the liabilities of the promoter group companies at the cost of creating encumbrances on the assets of a listed company i.e. CG Power.

### **Part B – Allegation of violation of provision of LODR Regulations**

36. It is noted that as per Rules of Procedure of CG Power, approval of Board of CG Power was required for the execution of transaction of value more than Rs 70 crore. Further, as per code of conduct of CG Power, all directors, senior management personnel, KMPs and employees of CG Power are required to comply with the Rules of Procedure of CG Power. As per Regulation 26(3) of LODR Regulations, 2015, all members of the Board of Directors and senior management personnel of a listed entity shall comply with the code of conduct of Board of Directors and senior management on an annual basis. Further, under Regulation 4(2)(f) of LODR Regulations, 2015, the Board of Directors of listed company shall maintain high ethical standards, 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 shall take into account the interests of stakeholders. Further, it is the responsibility of members of Board of Directors and KMPs to disclose to the Board of Directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed company and it is also the responsibility of the Board of Directors and senior management to 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.

37. In this regard, the impugned transactions that are in violation of provisions of the LODR Regulations, 2015, as alleged in the SCN, are discussed as under:

**37.1 Impugned Transaction No. 6: Post-dated Cheques issued by CG Power to Yes Bank against loan given to AHL:**

- 37.1.1 Yes Bank had sanctioned a credit facility amounting to Rs. 500 crore to AHL (87% shareholding held by Noticee no. 1), vide a Sanction Letter dated October 25, 2015. CG Power had issued a Letter of Comfort dated November 04, 2015 and had furnished 13 post-dated cheques (hereinafter referred to as “PDCs”), all dated May 29, 2016 and issued on November 04, 2015, for an aggregate amount of Rs. 210 crore in favour of Yes Bank for the aforementioned credit facility. These cheques were replaced periodically after every 3 months with fresh cheques in order to continue their validity and were accepted by Yes Bank.
- 37.1.2 The Letter of Comfort provided by CG Power confirms that it is in the nature of guarantee for the credit facilities availed by AHL. This letter has been signed by Noticee No.7 and it is observed that there is no approval of the Board of CG Power for such a guarantee, which is required for giving guarantee on behalf of CG Power to a non-CG Group company as per the Rules of Procedure of CG Power.
- 37.1.3 Earlier the PDCs were jointly signed by Noticee No. 6, Noticee No. 9 and Mr. Nagendra Sayyaparaju. From April 2018, PDCs were jointly signed by Noticees No. 5 and 7 and the last cheque was drawn on IndusInd Bank dated January 15, 2019 for Rs. 210 crore. The Board of CG Power became aware of the Comfort Letter and the PDCs only when a request was made by Yes Bank in April 2019, for renewal of these cheques. It is observed that previous Board meetings do not have any reference to this transaction.

37.1.4 Thus, from the above, it is alleged that no approval of the Board of CG Power was obtained for issuance of aforesaid Letter of Comfort and PDCs worth Rs. 210 crore to Yes Bank, which was required as per the Rules of Procedure of CG Power.

37.1.5 With regard to the aforesaid transaction of cheques issued by CG Power to Yes Bank against loan given to AHL, I note that the following Directors/employees were involved in the said transaction:

Sr. No	Director/Employee	Involvement/Role
1	Gautam Thapar (Noticee no. 1)	Noticee no. 1 was the Chairman of CG Power at the relevant time and was also a majority shareholder (87%) in AHL, a Promoter Company of CG Power, which received the credit facility of Rs. 500 crore from Yes Bank.
2	B. Hariharan (Noticee no. 7)	The Letter of Comfort provided by CG Power was signed by Noticee No.7.  From April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No. 5 and Noticee no. 7.
3	V. R. Venkatesh (Noticee no. 5)	From April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No. 5 and Noticee no. 7.
4	Madhav Acharya (Noticee no. 6)	Prior to April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No.6 and Noticee No. 9.
5	Atul Gulatee (Noticee no. 9)	Prior to April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No. 9 and Noticee No. 6.

37.1.6 With regard to the aforesaid allegations, I note that the FAR has observed as under:

- (i) Yes Bank had given a long term loan facility of Rs. 500 crore to AHL vide letter dated October 20, 2015 and the purpose of the loan was *inter alia* for advance payments to Solaris Chemtech Industries Limited (SCIL) for

entering into an agreement for purchase of SCIL's bromine production facilities for up to Rs. 500 crores.

- (ii) An addendum to the sanction was issued by the Yes Bank vide letter dated October 20, 2015, whereby:

- a. Additional security: Letter of comfort from Crompton Greaves Ltd for an amount of Rs. 210 crores.*
- b. Special terms and conditions: Existing PDCs of Rs. 210 crore extended by Crompton Greaves Ltd for Long term loan facility of Rs. 210 crore sanctioned to SCIL's to be extended for proposed facility along with PDC declaration; Crompton Greaves Ltd to furnish fresh PDC of Rs. 210 crores on or before 14th May, 2016 failing which this will be treated as an event of default under the facility.*

- (iii) The FAR has observed that cheques were replaced periodically after every 3 months with fresh cheque in order to continue their validity and was accepted by Yes Bank. Copies of the cheques were provided by Yes Bank to the forensic auditor.
- (iv) The FAR observed that issuing of PDCs for and on behalf of CG Power to Yes Bank towards loan of Rs 500 crores, commenced from May 2016, in addition to the Awareness Letter. There was regular replacement after every 3 months with fresh cheques. Earlier it was jointly signed by Noticee no. 6, Noticee no. 9 and Mr. Nagendra Sayyaparaju and from April 2018 it was jointly signed by Noticee no. 5 and Noticee no. 7 and the last cheque was drawn on IndusInd Bank no 903547 dated 15th January 2019 for Rs. 210 crores. This was brought to the notice of Board of CG Power after a legal notice under Section 138 of the Negotiable Instruments Act, 1881 was received for return of cheque no 903547 dated January 15, 2019 drawn on IndusInd Bank.
- (v) The FAR observed that the conclusion that can be arrived is that PDCs were given as a regular practice but it was not brought to the notice of the Board of CG Power till notice under Section 138 of the Negotiable Instruments Act, 1881, was received from Yes Bank.

- 37.1.7 From the above, it is clear that PDCs were being issued by CG Power to Yes bank as per the sanction letter dated October 20, 2015 for the long term loan facility of Rs. 500 crore provided to AHL by Yes Bank. From the documents available on record, I note that none of the board minutes contain any such approval for issuance of aforesaid Letter of Comfort and PDCs worth Rs. 210 crore to Yes Bank. As also observed in the FAR, the issue of letter of Comfort and PDCs worth Rs. 210 crores was brought to the notice of Board of CG Power only after a legal notice under Section 138 of the Negotiable Instruments Act, 1881 was received for return of cheque no 903547 dated January 15, 2019 drawn on IndusInd Bank. Further, I note that CG Power vide its letter dated August 18, 2020, have submitted that the Board has not passed any resolution to issue PDCs on behalf of the Company to Yes Bank against a loan sanctioned by Yes Bank to AHL on October 20, 2015 or anytime thereafter and neither was such proposal ever placed before the Board. In view of the above, I find that none of the board minutes contain any such approval obtained for issuance of aforesaid Letter of Comfort and PDCs worth Rs. 210 crore to Yes Bank.
- 37.1.8 From the above, I note that AHL, a promoter group company in which Noticee no. 1 had 87% shareholding, had taken loan from Yes Bank and Noticee no. 1 had fraudulently secured these loans by obtaining Letter of Comfort and PDCs worth Rs. 210 crore from CG Power to Yes Bank, without taking any approval from the Board. Hence, it is clear that Noticees no. 5, 6, 7 and 9 by signing the PDCs on behalf of CG Power had colluded with Noticee no. 1 in its fraudulent scheme of securing the loan taken by AHL at the cost of a listed company i.e. CG Power.
- 37.1.9 I note that Noticees no. 5, 6, 7 and 9 have played a significant role in the said transaction by signing the PDCs. The role and involvement of Noticees no. 1, 5, 6, 7 and 9 has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

## 37.2 Impugned Transaction No. 7: Outstanding Advances / Payments by CG Middle East:

37.2.1 Advances amounting to Euro 26.5 million (approximately Rs. 235 crore) were given by CG Middle East to following entities during the FY 2017-18 and FY 2018-19:

Sl. No.	Service Providers
1	Unnati General Trading LLC
2	Coleman Commodities Pte Ltd
3	Sheeba General Trading LLC
4	Mercancia Continental DMCC
5	Golden Seasons General Trading LLC
6	MAP Global Trading FZC
7	Exim Minerals DMCC
8	Excellence Pacific Pte Ltd

37.2.2 It is observed from the service agreements entered into with the above-mentioned entities that the services referred to in these agreements were similar in nature. The nature of services to be provided included assisting CG Group entities and rendering to them local project management and ancillary services. It is noted that CG Middle East is the subsidiary company of CG Power. The service agreements with these entities were executed by Noticee no. 5 as the sole director on the Board of CG Middle East at the relevant time. However, no approval from the Board of CG Power was obtained prior to entering into these agreements, which was required as per the Rules of Procedure of CG Power.

37.2.3 Further, an interest free loan of Euro 0.62 Million was given by CG Middle East to Ballarpur International Holdings BV ("BIHBV"), a wholly owned subsidiary of Ballarpur Industries Limited, an associate company of AHL/ Promoter Group company.

37.2.4 Vide letter dated August 18, 2020, CG Power has submitted that it does not have any record of the services provided by the abovementioned service-providers and has also stated that there are no records / supporting documents available with respect to advances to group associates and other advances / accounts receivable of CG Middle East. It was further submitted that Noticee No. 5 was the sole Director



of CG Middle East and the full accounting records of CG Middle East were not available with CG Power. The accounting firm entrusted with the account-keeping of CG Middle East is not traceable and CG Power has written to the Indian Embassy in UAE seeking help to locate the firm.

37.2.5 Thus, from the above, it is alleged that the abovementioned transactions of CG Middle East with aforesaid service providers and also with BIHBV were executed without approval of Board. It is also alleged that the aforesaid transactions, including the service agreements, were devised as a scheme/ unfair trade practice to facilitate the use of funds of CG Middle East for services which were never provided.

37.2.6 With regard to the aforesaid transaction of outstanding advances to vendors in CG Middle East, I note that the following Directors/employees were involved in the said transaction:

<b>Sr. No</b>	<b>Director/Employee</b>	<b>Involvement/Role</b>
1	Gautam Thapar (Noticee no. 1)	BIHBV is a wholly owned subsidiary of Ballarpur Industries Limited, an associate company of AHL/ Promoter Group company, wherein Noticee no. 1 was also a majority shareholder (87%) in AHL.
2	V. R. Venkatesh (Noticee no. 5)	CG Middle East is the subsidiary company of CG Power and the service agreements with these entities were executed by Noticee no. 5 as the sole director on the Board of CG Middle East at the relevant time.

37.2.7 With regard to the aforesaid allegations, I note that the FAR has observed as follows:

- (i) The customer contracts against which the services have been provided are high value contracts for turnkey projects. Different CG group entities have provided service and goods for these contracts over multiple years and

generally the execution of these contracts is highly technical and team intensive assignment. The FAR observed that it is extremely difficult to believe that CG Power doesn't even have a copy of these contracts. That the matter becomes even more serious and curious as the contract with M/s. Emirates Global Aluminum was entered with CG Power itself. The FAR observed that it is extremely difficult to believe that CG Power doesn't have a copy of the contract which it has entered into directly.

- (ii) The FAR observed that the analysis of the limited agreements and documents spell out a possibility of potential liability, but the extent to which the liabilities were real and probable, and also whether they were actually mitigated with the entering of the service contracts could not be determined due to the audit limitation posed owing to insufficient documents.
- (iii) The FAR observed that adequate information and documents were not made available to the forensic auditor by both CG Power and Noticee no. 5, to reach to a final conclusion that any services if at all was received by CG Middle East or other CG group entities against payments made to the eight Service Contractors.

37.2.8 From the above, I find that there is no record of the services provided by the abovementioned service-providers and there are no records / supporting documents available with respect to advances to group associates and other advances / accounts receivable of CG Middle East. I note that Noticee no. 5, as the sole director of CG Middle East had executed all the service agreements and from the documents available on record, I note that none of the board minutes contain any such approval for Noticee no. 5 to enter into such service agreements on behalf of CG Middle East. Further, I note that CG Power vide its letter dated August 18, 2020, have submitted that neither CG Power nor CG Middle East had given prior approval before entering of the service agreements with the aforesaid service providers. Hence, I find that funds to the tune of Euro 26.5 million (approximately Rs. 235 crore) were given to aforesaid 8 service providers by CG Middle East in the name of service agreements and that no such approval was taken from the Board of CG Power or CG Middle East for these service agreements.

37.2.9 Further, I note that an interest free loan of Euro 0.62 Million was given by CG Middle East to BIHBV and that none of the board minutes contain any such approval taken by the Board of CG Power for the loan. In this regard, I note that BIHBV is a wholly owned subsidiary of Ballarpur Industries Limited, an associate company of AHL/ Promoter Group company, wherein Noticee no. 1 was also a majority shareholder (87%) in AHL. I note that CG Power vide its letter dated August 18, 2020 have submitted that the Company does not have any record for the reasons for giving interest free loan amounting to Euro 0.62 million by CG Middle East to BIHBV and there are no approvals given by Board of CG Middle East for the said interest free loan. Hence, I find that Noticee no. 5 as the then sole director of CG Middle East has colluded with Noticee no. 1 by sanctioning an interest free loan of Euro 0.62 Million to a promoter group company that is either controlled/owned by Noticee no. 1, without taking approval of the Board of CG Middle East.

37.2.10 I note that aforesaid transactions have been executed and carried out by Noticee no. 5, and his role and involvement has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

### **37.3 Impugned Transaction No. 8: Transaction of Rs. 229 crore Deposit Taken from AHL:**

37.3.1 AHL and CG Power had entered into a Brand License and Brand Support Agreement dated January 25, 2010 and various amendment agreements for the use of 'Avantha' Brand (owned by AHL) by CG Power against payment of royalty under which CG Power had to pay 1% of its annual consolidated revenue to AHL as royalty. CG Power and CGPSOL had, over the period of time, given loans and advances to AHL. AHL, vide letter dated September 28, 2018, proposed to provide a deposit of Rs. 229 crore to CG Power which could be utilized to reduce its outstanding loans to AHL. However, AHL provided this deposit on various terms and conditions, one of which was, that if royalty was not paid on or before March

20, 2019, the deposit amount would be refunded by CG Power to AHL. Noticee no. 5 accepted this proposal of AHL as the CFO of CG Power on the same day, i.e., on September 28, 2018.

- 37.3.2 CG Power received a sum of Rs. 294 crore on September 29, 2018 from AHL through CGPSOL. It was observed that out of this sum of Rs. 294 crores, Rs.229 crore was treated as recovery of advances to AHL in the books of CG Power (even before fulfilling all the conditions of payment of brand royalty on March 20, 2019). As per the conditions to the proposal, CG Power also created Fixed Deposits (hereinafter referred to as “**FDs**”) with IndusInd Bank amounting to Rs.229 crore. These FDs had a lien marked on them against loan of Solaris which is a Promoter Group company.
- 37.3.3 It is alleged that Solaris approached IndusInd Bank to obtain a credit facility for an amount not exceeding Rs. 335 crore and the same was granted by IndusInd Bank by way of a sanction letter dated September 27, 2018. Solaris was required to secure the credit facility by creating an exclusive charge in favour of IndusInd Bank over AHL’s receivables in the form of Brand Royalty and License Fees from CG Power. An Assignment-cum-Put Agreement dated September 28, 2018 was entered into among AHL, CG Power, Solaris and IndusInd Bank in this regard through which CG Power approved assignment of royalty payable by CG Power to AHL for using the ‘Avantha’ brand in favour of Solaris so that Solaris could get a credit facility of up to Rs. 335 crore secured by these royalty receivables in favour of IndusInd Bank. A resolution, purported to be passed by the Board of Directors of CG Power in its meeting held on September 28, 2018 for approving this arrangement, was found in this regard. However, it was observed that there was no meeting held by the Board of Directors of CG Power on September 28, 2018. Therefore, it is alleged that the agreement dated September 28, 2018 co-signed by Noticee no. 5 on behalf of CG Power was without receiving approval from the Board of Directors of CG Power.

- 37.3.4 Later AHL, vide its Board resolution dated November 13, 2018, approved another proposal for repayment of its advances taken from CG Power and CGPSOL, *inter alia*, by adjusting 50% of future royalty payments by CG Power to AHL towards repayment by AHL from the total outstanding advance given to it in the books of CG Power. Noticee no. 5 again accepted this proposal of AHL as the Chairman of the Board of CGPSOL on the same day, i.e., on November 13, 2018.
- 37.3.5 The valuation of 50% of future royalty payments by CG Power to AHL was arrived at Rs. 411.20 crore by BDO India LLP on January 16, 2019. The Board of Directors of CG Power, in its meeting dated February 12, 2019, agreed to reduce this amount from the total outstanding advance given to AHL in the books of CG Power. Thereafter, AHL and CG Power entered into Avantha Brand Usage Agreement dated February 13, 2019 which superseded and replaced the old royalty agreement. However, due to non-payment of brand royalty before March 20, 2019 as stipulated in AHL's first proposal letter dated September 28, 2018, CG Power liquidated the FDs and returned Rs. 229 crore along with interest accrued in FDs to AHL through CGPSOL.
- 37.3.6 It was observed that on November 13, 2018, the Board of CG Power had also agreed to the second proposal of AHL. It was found that AHL had proposed to repay Rs. 225 crore by December 31, 2018 and to further secure the remaining amount by way of creation of pledge of its shareholding in APIL and JPIL and to give up 50 basis points of annual brand royalty payment over a period of 15 years. Nowhere in the Board minutes of Board meeting dated November 13, 2018, it was mentioned that Rs. 225 crore would be a conditional deposit. Rather, it was clarified in the resolution that Rs. 225 crore would be considered as cash repayment out of the receivables for CG Power /its subsidiaries.
- 37.3.7 Thus, from the above, it is alleged that the Board of Directors of CG Power was not informed about the contents of AHL's first proposal letter dated September 28, 2018, that the repayment of loans by AHL was subject to certain terms and conditions. It is also alleged that no approval from the Board of Directors of CG

Power was obtained for the Assignment-cum-Put Agreement dated September 28, 2018, which was required as per the Rules of Procedure of CG Power.

37.3.8 With regard to the aforesaid transaction of Rs. 229 crore deposit taken from AHL, I note that the following Directors/employees were involved in the said transaction:

<b>Sr. No</b>	<b>Director/Employee</b>	<b>Involvement/Role</b>
1	Gautam Thapar (Noticee no. 1)	Noticee no. 1 was a majority shareholder (87%) in AHL.
2	V. R. Venkatesh (Noticee no. 5)	The agreement dated September 28, 2018 entered into among AHL, CG Power, SICL and IndusInd Bank in this regard through which CG Power approved assignment of royalty payable by CG Power to AHL for using the 'Avantha' brand in favour of Solaris so that Solaris could get a credit facility of up to Rs. 335 crore secured by these royalty receivables in favour of IndusInd Bank was co-signed by Noticee no. 5 on behalf of CG Power.

37.3.9 With regard to the aforesaid allegations, I note that the FAR has observed as follows:

- (i) The 1<sup>st</sup> Proposal of deposit had a condition that if CG Power is unable to pay Brand Royalty before March 20, 2019, then the entire deposit of Rs. 229 Crore would be refunded by CG Power to AHL.
- (ii) The FAR observed that the said proposal was approved by Noticee no. 5 (CFO) on behalf of CG Power, however, as per the explanation given by Noticee no. 5, the board had an understanding of the transaction, as he had mentioned verbally and placed the same in the draft resolution which was shared to Noticee no. 8 (MD and CEO). The FAR observed that there was no conclusive evidence to prove for and against the said claim.
- (iii) However, in his reply, Noticee no. 5 also mentioned that the approval for liquidating the FD's of Rs. 229 Cr. and refunding the same to AHL was done by

Noticee no. 8. FAR also observed from the email dated March 29, 2019 that Noticee no. 8 had also approved the refund interest on FD's liquidated to AHL.

- (iv) FAR observed that the above reply of Noticee no. 5 and the analysis of the mails suggest that, Noticee no. 8 had the knowledge of the transaction of Rs. 229 Cr. of deposit from AHL at some point of time. Since already the Brand Royalty was monetized and approved in the board to be reduced from the outstanding advance of AHL, it should have been construed that the terms of letter dated 28th September 2018 was complied. Further, the FAR observed that if Noticee no. 8 knew about the transaction, he should have adjusted this amount against the outstanding dues of AHL to CG Power instead of refunding the same. Thus, the refund made of Rs. 235 Cr (Principal + Interest) seems to be improper. However, the FAR also observed that the extent of knowledge of the transaction and the time of obtaining the information by Noticee no. 8 was unascertainable by them based on documents available with them.

37.3.10 In this regard, I note that what is relevant is that a resolution was found, purported to be passed by the Board of Directors of CG Power in its meeting held on September 28, 2018 for approving the assignment of royalty payable by CG Power to AHL for using the 'Avantha' brand in favour of Solaris so that Solaris could get a credit facility of up to Rs. 335 crore secured by these royalty receivables in favour of IndusInd Bank. However, I note that there was no meeting held by the Board of Directors of CG Power on September 28, 2018. Therefore, I note that none of the board minutes contain any such approval by the Board of CG Power for the agreement dated September 28, 2018 co-signed by Noticee no. 5 on behalf of CG Power, for securing the credit facility of Rs. 335 given to Solaris by IndusInd Bank. Hence, I find that Noticee no. 5 has fraudulently approved the Assignment-cum-Put Agreement dated September 28, 2018 for securing the credit facility of Solaris, a promoter group company, at the cost of creating encumbrances on the assets of a listed company i.e. CG Power.

37.3.11 Further, I note that AHL, vide letter dated September 28, 2018, proposed to provide a deposit of Rs. 229 crore to CG Power which could be utilized to reduce its

outstanding loans to AHL. However, AHL provided this deposit on various terms and conditions, one of which was, that if royalty was not paid on or before March 20, 2019, the deposit amount would be refunded by CG Power to AHL. I note that Noticee no. 5 accepted this proposal of AHL as the CFO of CG Power on the same day, i.e., on September 28, 2018 and I note that none of the board minutes contain any such approval of the Board of CG Power on such proposal or informing them of the same. Hence, I find that Noticee no. 5, on behalf of CG Power, accepted the conditions proposed by AHL vide its letter dated September 28, 2018, which was in the interest of AHL (a promoter group company), without taking approval of the Board of CG Power. I note that the said acceptance of conditions proposed by AHL, which was not known to the Board of CG Power, had resulted in the liquidation of the FDs and return of Rs. 229 crore along with interest accrued in FDs to AHL through CGPSOL.

37.3.12 I note that aforesaid transactions have been executed and carried out by Noticee no. 5, and his role and involvement has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

**37.4 Impugned Transaction No. 9: Following transactions were executed without the Approval of Board of CG Power:**

37.4.1 The SCN alleges that on April 03, 2017, AHL made an application for an overdraft facility up to Rs.132 crore to ICICI Bank which was secured by the 3 fixed deposits of CG Power of an aggregate amount of Rs. 139.61 crore opened in September 2016 and maturing in May 2017. The application was co-signed by Ms. Sonia Niranjana Das (Company Secretary of AHL) on behalf of AHL, the borrower and Noticee no. 6 (Executive Director & CFO of CG Power) on behalf of CG Power, the depositor. A certified true copy of a resolution dated August 30, 2016, purportedly passed by the Board of Directors of CG Power was found in this regard which purportedly authorized creation of charge over the fixed deposits of CG Power as security for the facilities extended to AHL. However, a perusal of the Board minutes of meeting dated August 30, 2016, showed that there was no such resolution passed by the Board of Directors of CG Power in that meeting. Accordingly, the



copy of the resolution dated August 30, 2016, which was certified to be true by Noticee no. 7, is a falsely certifying document. Thus, it is alleged that the use of the 3 fixed deposits of CG Power to secure the overdraft facility given to AHL was without approval from the Board of Directors of CG Power, which was required as per the Rules of Procedure of CG Power. It is also alleged that the aforesaid transaction was devised as a scheme/ unfair trade practice to misuse the assets of CG Power for the benefit of the Promoter Group company, as if it was approved by the Board of CG Power.

37.4.2 A Loan Agreement dated May 02, 2016 was entered into between CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CGPSOL. The said Loan Agreement was executed by Noticee no. 6 on behalf of CG Power and Noticee no. 7 on behalf of CGPSOL (hereinafter referred to as “**CGPSOL Loan Agreement**”). Loans to CG Group companies beyond a certain limit (Rs. 50 crore) required approval of CG Board as per the Rules of Procedure of the Company. However, it is alleged that no approval from the Board of CG Power was obtained by Noticee no. 6 and Noticee no. 7 for this CGPSOL Loan Agreement. Thus, it is alleged that CGPSOL Loan Agreement dated May 02, 2016 was executed without approval of Board of CG Power.

37.4.3 Further, the SCN alleges that, during the investigation, a certified true copy of the resolution dated May 26, 2016, purportedly passed by the Board of Directors of CG Power, was found which purportedly authorized the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard. However, it was observed that there was no meeting held by the Board of Directors of CG Power held on May 26, 2016. Thus, it is alleged that no approval from the Board of Directors of CG Power was taken in that regard, which was required as per the Rules of Procedure of CG Power.

37.4.4 During the investigation, a certified true copy of the resolution dated May 27, 2016, purportedly passed by the Board of Directors of CG Power, was found which purportedly authorized the creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Noticee no. 6 or Noticee no. 7 to execute transaction documents in this regard. However, on a perusal of the Board minutes of the meeting dated May 27, 2016, showed that there was no such resolution passed by the Board of Directors of CG Power in that meeting. Thus, it is alleged that no approval from the Board of Directors of CG Power was taken in that regard, which was required as per the Rules of Procedure of CG Power.

37.4.5 During the investigation, a certified true copy of the resolution dated August 30, 2016, purportedly passed by the Board of Directors of CG Power, was found which purportedly authorized the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard. However, it was observed that there was no such resolution passed by the Board of Directors of CG Power in its meeting held on August 30, 2016. Thus, it is alleged that no approval from the Board of Directors of CG Power was taken in that regard, which was required as per the Rules of Procedure of CG Power.

37.4.6 With regard to the aforesaid transaction of Rs. 229 crore deposit taken from AHL, I note that as per the allegations made in the SCN, the following Directors/employees were involved in the said transaction:

<b>Sr. No</b>	<b>Director/Employee</b>	<b>Involvement/Role</b>
1	Gautam Thapar (Noticee no. 1)	<ul style="list-style-type: none"><li>• Noticee no. 1 was the Chairman of CG Power at the relevant time and was also a majority shareholder (87%) in AHL, a Promoter Company of CG Power.</li></ul>

		<ul style="list-style-type: none"> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
2	B. Hariharan (Noticee no. 7)	<ul style="list-style-type: none"> <li>• The copy of the resolution dated August 30, 2016, which was certified to be true by Noticee no. 7, is a falsely certified document.</li> <li>• A Loan Agreement dated May 2, 2016 was entered into between CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CG PSOL, which was signed by Noticee no. 7 on behalf of CGPSOL.</li> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated May 27, 2016 purportedly</li> </ul>

		<p>passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Noticee no. 7 or Noticee no. 6 to execute transaction documents in this regard, was a falsely certified document.</p> <ul style="list-style-type: none"> <li>• The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
3	Madhav Acharya (Noticee no. 6)	<ul style="list-style-type: none"> <li>• On April 3, 2017, AHL made an application for an overdraft facility up to Rs.132 crore to ICICI Bank which was secured by the 3 fixed deposits of CG Power of an aggregate amount of Rs. 139.61 crore opened in September 2016 and maturing in May 2017, which was signed by Noticee no. 6 on behalf of CG Power.</li> <li>• A Loan Agreement dated May 2, 2016 was entered into between CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CG PSOL, which was signed by Noticee no. 6 on behalf of CG Power.</li> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>

		<ul style="list-style-type: none"> <li>• The copy of the resolution dated May 27, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Noticee no. 7 or Noticee no. 6 to execute transaction documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
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37.4.7 From the above, the SCN alleges that the following transactions were executed by Noticees no. 1, 6 and 7 on behalf of CG Power:

- (i) On April 03, 2017, AHL made an application for an overdraft facility up to Rs.132 crore to ICICI Bank which was secured by the 3 fixed deposits of CG Power of an aggregate amount of Rs. 139.61 crore opened in September 2016 and maturing in May 2017. The application was co-signed by Ms. Sonia Niranjana Das (Company Secretary of AHL) on behalf of AHL, the borrower and Mr. Madhav Acharya (Executive Director & CFO of CG Power) on behalf of CG Power, the depositor.
- (ii) A Loan Agreement dated May 02, 2016 was entered into between CG Power and CGPSOL, whereby CG Power agreed to lend Rs. 1000 crore to CGPSOL. The said Loan Agreement was executed by Madhav on behalf of CG Power and Hariharan on behalf of CG PSOL.
- (iii) Issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CGPSOL and authorized

Mr. Gautam Thapar, Mr. B. Hariharan or Mr. Madhav Acharya to take actions and sign all documents in this regard.

(iv) Creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Mr. B. Hariharan or Mr. Madhav Acharya to execute transaction documents in this regard.

(v) Issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CG PSOL and authorized Mr. Gautam Thapar, Mr. B. Hariharan or Mr. Madhav Acharya to take actions and sign all documents in this regard.

37.4.8 With regard to the aforesaid transactions no. (i), (iii), (iv) and (v), I note that certified true copies of resolutions for the said transactions were found authorising each of the aforesaid transactions. However, I note that there was either no such board meeting or such resolution taken for the aforesaid transactions no. (i), (iii), (iv) and (v) entered into by Noticees no. 1, 6 and 7 on behalf of CG Power. I note that these certified true copies of resolutions, which were not genuine, were certified to be true by Noticee no. 6. Further, I note that in transaction no. (ii) above, the loan agreement dated May 02, 2016 for Rs. 1000 crore was entered into between CG Power and CGPSOL. I note that the Loan Agreement was executed by Noticee no. 6 on behalf of CG Power and Noticee no. 7 on behalf of CGPSOL, however, I note that none of the board minutes contain any such approval obtained by Noticee no. 6 and 7 from the Board of CG Power for executing the aforesaid agreements. Hence, I find that the aforesaid transactions no. (i) to (v) have all taken place without taking the approval of the Board of CG Power.

38. From the aforesaid impugned transactions no. 6, 7, 8 and 9, I find that they have all been carried out without taking approval of the Board of CG Power. I find that in some transactions, Board resolutions, which purportedly show that approval of the Board of CG Power was taken, are on record; however, as discussed in the aforesaid para, I find that no such resolutions were actually passed in the Board meetings held on the dates of these purported resolutions. In view of the above, I find that the aforesaid

transactions no. 6, 7, 8 and 9 were executed without the approval of the Board of CG Power and also by using falsely certified documents.

### **Part C – Allegation of Misrepresentation of Financial Statements of CG Power**

39. With regard to some of the aforesaid transactions, the SCN has also alleged that the said transactions were misrepresented in the financial statements of CG Power. In this regard, the impugned transactions, wherein, there has been misrepresentation of the financial statements, as alleged in the SCN, are discussed as under:

#### **39.1 Impugned Transaction No. 1: Assignment of Nashik Property to Blue Garden:**

- 39.1.1 The transactions relating to Nashik Property involved receipts of Rs. 200 crore by CG Power from Blue Garden and lending of Rs. 145 crore and Rs. 53 crore by CG Power to AHL and Acton respectively during the FY 2016-17. Further, the advances against the assignment of property received by CG Power from Blue Garden to the extent of Rs. 198 crore were adjusted against the amount transferred as loans to AHL and Acton by passing journal entries on March 30, 2017 and March 31, 2017.
- 39.1.2 The advances against the assignment of property received by CG power from Blue Garden and loans to AHL and Acton were not reflected in the financial statements of CG Power for the FY 2016-17 at all. Noticee no. 6 was involved in executing the Assignment Agreement dated May 09, 2016 with Blue Garden and despite knowing that these transactions were not recorded in the books of accounts, he certified the financial statements of CG Power for the FY 2016-17 to be true and fair.
- 39.1.3 In respect of netting off the advances against the loans, SEBI sought supporting document for the same from CG Power. However, no document including any agreement for supporting netting-off was provided by CG Power.

39.1.4 It is also observed from the asset registers of Nashik property that there has been no change in the book value either in FY 2016-17 (the year in which there were transactions with Blue Garden) or thereafter, excepting accounting for depreciation. It is also observed the PoA given to ABFL i.e., encumbrance on the property was outstanding as on March 31, 2017.

39.1.5 In view of the above and in the absence of any agreement between CG Power, Blue Garden and AHL/ Acton supporting netting-off and in view of the fact that the encumbrance on the property was outstanding as on March 31, 2017, it is alleged in the SCN that there was misrepresentation of the financial statements for the FY 2016-17 of CG power to the extent of money received from Blue Garden and on-lent to AHL and Acton.

39.1.6 In this regard, I note that the FAR has observed as follows:

- (i) The FAR observed that the following was the net inflow and net outflow of funds during F.Y 2016-17, with respect to CG Power, from the funds given as loan by ABFL to Blue Garden:

**Inflow of funds:**

Rs. 390 crores from Blue Garden (Nashik and Kanjurmarg property)

**Outflow of funds:**

Rs. 145 crores to AHL

Rs. 245 crores to Acton

Thus, the above-mentioned inflow, which was technically an advance for sale of property, should have been reflected as Advances Received (liabilities) in the financial statement of CG Power for F.Y. 2016-17. Similarly, the net outflow which had happened as loans should have been reflected under Loans Given (Assets) in the financial statement of CG Power for F.Y. 2016-17. However, the advances against the sale of property received from Blue Garden was adjusted against the amount paid as loans to AHL and Acton Global.



- (ii) The FAR observed that the accounting treatment done by the Company was not in conformity with the provisions of Ind AS 32. That it can be observed from the provision, only a financial asset and a financial liability can be squared off against each other. However, in the transaction under consideration, an advance received for sale of land by CG Power has been squared against loans given to AHL and to Acton Global. The FAR observed that advance received for sale of property is not a financial asset. It requires the company to transfer land as per the agreed terms and conditions. Further, that an advance received against sale of land can be termed as a financial liability, only when the terms and conditions requiring it to refund the advance have been satisfied, which is not the case.
- (iii) Further, even if advance received for sale of property was to be treated as a financial liability, the offset can't be done until and unless there is a "legally enforceable right to set off the recognized amount." The FAR observed that they had requested CG Power, the auditors of CG Power, namely M/s Chaturvedi and Shah (auditors for F.Y. 2016-17), M/s K.K. Mankeshwar & Co. (auditors for F.Y. 2017-18) and also the employees of CG Power, who were directors of Blue Garden and Acton Global to provide them with an agreement entered between CG Power, Blue Garden and Acton Global to that effect, but they did not receive any such agreement from any of the above mentioned parties.
- (iv) Thus, the FAR observed that in the absence of such an agreement, even if the advance is treated as a financial liability (which will be inappropriate as per their understanding of provisions of IND AS-32) the offset of advance for sale of property against loans given to Acton Global and Blue Garden is not in accordance with the provisions of IND AS-32.
- (v) The FAR observed that through the above entries, the loan given to AHL and Acton Global of Rs 143 crore and Rs. 245 crore, respectively was under reported in the financial statement of CG Power in F.Y. 2016-17 and also the

subsequent financial years. Also, the advance received from Blue Garden to the tune of Rs 388 crore was not reported in the financial statements for financial year F.Y 2016-17 and all subsequent financial years.

39.1.7 From the above, I note that the advances against the assignment of property received by CG power from Blue Garden and loans to AHL and Acton were not reflected in the financial statements of CG Power for the FY 2016-17 at all. As also observed in the FAR, I note that in respect of netting off the advances against the loans, SEBI sought supporting document for the same from CG Power. However, no document including any agreement for supporting netting-off was provided by CG Power. In view of the above and in the absence of any agreement between CG Power, Blue Garden and AHL/ Acton supporting netting-off and in view of the fact that the encumbrance on the property was outstanding as on March 31, 2017, I agree with the observations of the FAR that the loan given to AHL and Acton Global of Rs 143 crore and Rs. 245 crore, respectively was under reported in the financial statement of CG Power in F.Y. 2016-17 and the advance received from Blue Garden to the tune of Rs 388 crore was not reported in the financial statements for financial year F.Y 2016-17 and all subsequent financial years. Hence, I find that there was misrepresentation of the financial statements for the FY 2016-17 of CG Power to the extent of money received from Blue Garden and loans given to AHL and Acton. I find that the above misrepresentation in the financials by under reporting the loan given to AHL and Acton Global of Rs 143 crore and Rs. 245 crore and not reporting the advance received from Blue Garden to the tune of Rs. 388 crore, reaffirms the findings in the aforesaid paras that the assignment agreements entered into between Blue Garden and CG Power with respect to the Nashik property were part of the fraudulent scheme of Noticee no. 1 with Noticees no. 5, 6, 7 and 9 to divert the funds of CG Power to promoter group companies. From the above, it is evident that the Noticees have not only diverted funds in a fraudulent manner but have also misrepresented the financials and misled the investors in the Securities market in making their investment decision in the securities of the Company and thereby, causing prejudice to them.

39.1.8 In this regard, I note that Noticee no. 6 was involved in executing the Assignment Agreement dated May 09, 2016 with Blue Garden and despite knowing that these transactions were not recorded in the books of accounts, he certified the financial statements of CG Power for the FY 2016-17 to be true and fair. His role and involvement in the entire scheme has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

### **39.2 Impugned Transaction no. 2: Sale of Kanjurmarg Property to Blue Garden:**

39.2.1 The transactions relating to Kanjurmarg Property involved receipts of Rs. 190 crore by CG Power from Blue Garden and lending of Rs. 192 crore by CG Power to Acton during the FY 2016-17. The advances against the sale of property received by CG Power from Blue Garden to the extent of Rs. 190 crore were adjusted against the amount transferred as loans to Acton by passing journal entries on March 30, 2017.

39.2.2 The advances against the sale of property received by CG power from Blue Garden and loans to Acton were not reflected in the financial statements of CG Power for the FY 2016-17 at all. Noticee no. 6 was involved in entering into MoU dated February 01, 2017 with Blue Garden and despite knowing that these transactions were not recorded in the books of accounts, he certified the financial statements of CG Power for the FY 2016-17 to be true and fair.

39.2.3 In respect of netting off, SEBI sought supporting documents for the same from CG Power. However, no document including any agreement supporting netting-off was provided by CG Power. It is also observed from the asset register of Kanjurmarg property that there has been no change in the book value either in FY 2016-17 (the year in which there were transactions with Blue Garden) or thereafter, excepting accounting for depreciation. It is also observed the PoA given to ABFL i.e., encumbrance on the property was outstanding as on March 31, 2017.

39.2.4 In view of the above and in the absence of any agreement between CG Power, Blue Garden and Acton supporting netting-off and in view of the fact that the

encumbrance on the property was outstanding as on March 31, 2017, it is alleged that there was misrepresentation of the financial statements for the FY 2016-17 of CG power to the extent of money received from Blue Garden and loans given to Acton.

39.2.5 In this regard, I note that the FAR has made certain common observations with respect to the Nashik and Kanjurmarg property transactions, which has been reproduced in para 39.1.6 above and not reproduced here to avoid repetition.

39.2.6 From the above, I note that the advances against the assignment of property received by CG power from Blue Garden and loans to Acton were not reflected in the financial statements of CG Power for the FY 2016-17 at all. As also observed in the FAR, I note that in respect of netting off the advances against the loans, SEBI sought supporting document for the same from CG Power. However, no document including any agreement for supporting netting-off was provided by CG Power. In view of the above and in the absence of any agreement between CG Power, Blue Garden and Acton supporting netting-off and in view of the fact that the encumbrance on the property was outstanding as on March 31, 2017, I agree with the observations of the FAR that the loan given to Acton Global of Rs 192 crore was under reported in the financial statement of CG Power in F.Y. 2016-17 and the advance received from Blue Garden to the tune of Rs 190 crore was not reported in the financial statements for financial year F.Y 2016-17 and all subsequent financial years. Hence, I find that there was misrepresentation of the financial statements for the FY 2016-17 of CG Power to the extent of money received from Blue Garden and loans given to Acton. I find that the above misrepresentation in the financials by under reporting the loan given to Acton Global of Rs 192 crore and not reporting the advance received from Blue Garden to the tune of Rs. 190 crore, reaffirms the findings in the aforesaid paras that the MOU entered into between Blue Garden and CG Power with respect to the Kanjurmarg property were part of the fraudulent scheme of Noticee no. 1 with Noticees no. 5, 6, 7 and 9 to divert the funds of CG Power to promoter group companies. From the above, it is evident that the Noticees have not only diverted funds in a fraudulent manner but have also misrepresented

the financials and misled the investors in the Securities market in making their investment decision in the securities of the Company and thereby, causing prejudice to them.

39.2.7 In this regard, I note that Noticee no. 6 was involved in executing the MOU dated February 01, 2017 with Blue Garden and despite knowing that these transactions were not recorded in the books of accounts, he certified the financial statements of CG Power for the FY 2016-17 to be true and fair. His role and involvement in the entire scheme has been dealt with in the subsequent paras while dealing with the individual role of each Noticee.

**39.3 Impugned Transaction No. 4: USD 40 Million Foreign Currency Term Loan to CG Middle East from IndusInd Bank India and Guaranteed by a Corporate Guarantee from CG IBV:**

39.3.1 The SCN alleged that on October 25, 2017, IndusInd Bank had sanctioned a loan of USD 40 Million (approximately Rs. 260 crore) to CG Middle East, an overseas subsidiary of CG Power. On the same day i.e. October 25, 2017, at the request CG Middle East (signed by Venkatesh) the amount of loan (USD 40 Million) was disbursed by IndusInd Bank to CGIBV, 100% holding company of CG Middle East. On October 26-27, 2017, CGIBV advanced approximately USD 39 million to CG Power i.e., to its ultimate holding Company.

39.3.2 The SCN alleged that the said loan of USD 40 Million (approximately Rs. 260 crore) was never reflected either in the financial statements of CG Middle East or in the financial statements of CGIBV, thereby, it has also never been reflected in the consolidated financial statement of CG Power. In view of the above, it is alleged that there was misrepresentation of the financial statements for the FY 2017-18 of CG Power.

39.3.3 In this regard, I note that the FAR has observed that:

(vi) The FAR observed that upon analysing the financial statements of CG Middle East for FY 2017-18, they did not find any outstanding facility of IndusInd Bank as on March 31, 2018 and the audit report did not mention any comments on this transaction.

(vii) Further, in the financial statement of CGIBV they did not find any mention of the corporate guarantee provided by the company to CG Middle East Loan and the audit report did not mention any comments on this transaction.

39.3.4 From the above, I find that loan of USD 40 Million (approximately Rs. 260 crore) sanctioned by IndusInd Bank to CG Middle East was never reflected either in the financial statements of CG Middle East or in the financial statements of CGIBV (to whom the said USD 40 million was disbursed to by IndusInd). Hence, it has also never been reflected in the consolidated financial statement of CG Power. In view of the above, I find that there was misrepresentation of the financial statements for the FY 2017-18 of CG Power. I find that the above misrepresentation in the consolidated financial statement of CG Power, including the the financial statements of CG Middle East or CGIBV, reaffirms the findings in the aforesaid paras that loan of USD 40 million taken by CG Middle East on behalf of CGIBV and ultimately transferred to Solaris, a promoter group company, was part of the fraudulent scheme of Noticee no. 1 with Noticees no. 5, 7 and 9 to divert the funds of CG Power group companies to promoter group companies. From the above, it is evident that the Noticees have not only diverted funds in a fraudulent manner but have also misrepresented the financials and misled the investors in the Securities market in making their investment decision in the securities of the Company and thereby, causing prejudice to them.

#### **39.4 Impugned Transaction No. 7: Outstanding Advances / Payments by CG Middle East:**

39.4.1 The SCN alleges that, advances amounting to Euro 26.5 Million (approximately Rs. 235 crore) were given by CG Middle East (subsidiary of CG Power) to certain entities during the FY 2017-18 and FY 2018-19. Noticee no. 5, who was the sole director on Board of CG Middle East, executed the service agreements with these

entities, without approval from the Board of CG Power, which was required as per the Rules of Procedure of CG Power.

39.4.2 CG Power has submitted that it does not have any record of the services provided by the abovementioned service-providers. It is alleged that reflection of this transaction in the consolidated financial statements of CG Power amounts to misrepresentation of the financial statements for the FY 2017-18 and FY 2018-19 of CG Power(consolidated), as advances have been made, while no services against the advances have been received by CG Middle East.

39.4.3 In this regard, as noted in the aforesaid para no. 37.2.8, no approval of the Board of CG Power was obtained by Noticee no. 5 for entering into such service agreements on behalf of CG Middle East. Further, it was found that there is no record of the services provided by the abovementioned service-providers and there are no records / supporting documents available with respect to advances to group associates and other advances / accounts receivable of CG Middle East. In view of the above, I find that reflection of this transaction in the consolidated financial statements of CG Power amounts to misrepresentation of the financial statements for the FY 2017-18 and FY 2018-19 of CG Power (consolidated), as advances have been made to various service providers, while no services against the advances have been received by CG Middle East. I note that Noticee no. 5, as the sole director of CG Middle East had executed all the service agreements and from the documents available on record, I note that none of the board minutes contain any such approval from the Board of CG Power for Noticee no. 5 to enter into such service agreements on behalf of CG Middle East. Further, I note that CG Power vide its letter dated August 18, 2020, have submitted that it does not have any record of the services provided by the abovementioned service-providers. Hence, I find that funds to the tune of Euro 26.5 million (approximately Rs. 235 crore) were given to aforesaid 8 service providers by CG Middle East in the name of service agreements without taking approval of the Board of the Company. From the above, I find that Noticee no. 5 has entered into service agreements to the tune of Euro 26.5 million without taking the approval of the Board and the reflection of these

transactions (for which no services were provided) in the consolidated financial statements of CG Power amounts to misrepresentation of the financial statements, which have misled the investors in the Securities market in making their investment decision in the securities of the Company and thereby, causing prejudice to them.

### **39.5 Impugned Transaction No. 10: Fraudulent Misrepresentation of Purchases, Inventory, Sales & Debtors**

39.5.1 The SCN alleges that various Tripartite Agreements dated January 01, 2017, were entered into by CG Power with its suppliers and CGPSOL for purchase of commodities. These agreements were signed by Noticee no. 6 on behalf of CG Power and Noticee no. 7 on behalf of CGPSOL. As per the agreements, the liability of CG Power towards the Identified Suppliers (jointly by Mahalaxmi Traders, Swastik Trading Company, Star International, Kaushal Trading Company, Shri Bala Ji Projects and Shri Sai Sales Projects) owing to purchase of commodities had to be discharged by CGPSOL. This was done since CGPSOL owed certain monies to CG Power pursuant to the Loan Agreement executed between CG Power and CGPSOL on May 02, 2016, for borrowing up to Rs. 1000 crore by CGPSOL from CG Power (including the advance of Rs. 297.50 crore given to AHL which was reassigned to CGPSOL). This Loan Agreement was also executed by Noticee no. 6 on behalf of CG Power and Noticee no. 7 on behalf of CGPSOL.

39.5.2 Loans to CG Group companies beyond a certain limit (Rs. 50 crore) required approval of Board of CG power as per the Rules of Procedure of CG Power. However, it is alleged that no such Board approval was taken for this Loan Agreement executed with CGPSOL. Further, it is alleged that even the Tripartite Agreements dated January 01, 2017, executed on behalf of CG Power with Identified Suppliers and CGPSOL did not have the approval of the Board of CG Power, which was required as per the Rules of Procedure of CG Power.

39.5.3 Examination of Tripartite Agreements and Invoices showed the following:



- (i) The Tripartite Agreements dated January 01, 2017, were printed on the letterheads of each of the suppliers and the format and style of the letterhead of all the suppliers were identical. Further, the amounts mentioned in these Tripartite Agreements (at point no. 2 under the head 'payment against purchase of goods') matched exactly with the invoices, which were issued much later for procurement of goods. Therefore, it is alleged that the amount of transaction with each supplier was fixed irrespective of the quantity and rate agreed to by the Company.
- (ii) The invoices issued by all the suppliers were in exactly the same format. The format was also used by CG Power in reselling commodities so procured. Further, in none of the invoices, the suppliers have mentioned transporter's name, lorry receipt no. or mode of transport. As per the email confirmation received by the Forensic Auditor from CG Power, the relevant transport invoices or lorry receipt copies were not available with CG Power.
- (iii) The goods supplied by the suppliers were not kept at the warehouse of CG Power but were deposited with 3 third-party custodians, namely Sri Infra Projects, S. K. Traders and R. K. Trading. It was informed by CG Power to the Forensic Auditor that CG Power had not entered into any formal agreements with the custodians in this regard. Further, no fees were paid to the custodians to keep such a huge inventory of CG Power with them.
- (iv) The confirmation letters dated March 31, 2017 issued by each of the custodians had identical formats. The Forensic Auditor sent emails to the custodians seeking details including inward and outward registers for the period. While the email to Sri Infra Projects bounced, no response was received with respect to S. K. Traders and R. K. Trading.

39.5.4 Out of total inventory purchased from these suppliers of Rs. 257.69 crore in January 2017, inventory costing around Rs. 102.02 crore was sold to 3 customers, namely Miriam International, Sidhivinayak Traders and Jain Enterprises, for Rs. 120 crore in April-May 2017. The remaining Rs. 155.67 crore inventory was written off as slow and non-moving stock as on March 31, 2018, by passing a journal voucher. The journal voucher for making a provision of Rs. 155.67 crore in the books of CG

Power was approved only by Noticee no. 5. As per the policy document of CG Power on the provisioning of slow and non-moving inventories, goods which are slow-moving and non-moving have to be valued at 50% and 5% respectively. However, in the current case, there was 100% provisioning and also there was no categorization of inventory into slow-moving or non-moving.

39.5.5 The formats of the Purchase Orders of the 3 above-mentioned customers (Miriam International, Sidhivinayak Traders and Jain Enterprises) were exactly identical. These customers confirmed the receipt of materials on various dates in the month of May and June 2017. The formats of said confirmation for all the 3 customers were also identical. As per the purchase orders received from these 3 customers and the invoices raised by CG Power to them, the payments were to be received within 365 days from the date of invoice. Each of these 3 customers had confirmed vide audit confirmation letter(s) dated March 06, 2018, that the amount invoiced by CG Power was payable by them. However, none of them paid the amount of total Rs. 120 crore due from them as on the applicable due dates.

39.5.6 CG Power created a provision of Rs. 120 crore for doubtful debts against these invoices (on supply of goods to customers) and disclosed the said provision under exceptional items in the unaudited financial statements for the quarter ended December 31, 2018. The 3 journal vouchers dated March 31, 2018 for making this provision had been approved only by Noticee no. 5. In view of the above, it is alleged that the purchase transactions amounting to Rs. 257.69 crore during January 2017 (FY 2016-17) and the sales transactions amounting to Rs. 120 crore during April-May 2017 (FY 2017-18) of the Company were fictitious in nature. Thus, it is alleged that there was misrepresentation of the financial statements of CG power for the FY 2016-17 and FY 2017-18.

39.5.7 In this regard, I note that the FAR has observed that:

(viii) From all the above points collectively, it can be presumed that the auditors had the knowledge of the transaction of Rs. 257.69 crore as mentioned above

and the corresponding writing off of goods worth Rs. 155.67 crore and also the sales of Rs.120 crore, which had eventually turned bad. Hence, the auditors ought to have observed that the entire trail of transactions was designed in a manner to reduce the outstanding advance given to AHL by CG Group. Yet it was not disclosed in its presentations or the final auditor's report.

39.5.8 From the above, I note that there were various issues in the tripartite agreement and invoices, as listed in para 39.5.3 above, which indicated that they were not genuine, even though I note in the first place that none of the board minutes contain any such approval by the Board of CG Power for the Tripartite Agreements dated January 01, 2017, executed on behalf of CG Power with Identified Suppliers and CGPSOL and the loan agreement dated May 02, 2016 between CG Power and CGPSOL for borrowing upto Rs. 1000 crore by CGPSOL. Further, I note that as per the policy document of CG Power on the provisioning of slow and non-moving inventories, goods which are slow-moving and non-moving have to be valued at 50% and 5% respectively. However, in the current case, there was 100% provisioning and also there was no categorization of inventory into slow-moving or non-moving. Further, I note that out of total inventory purchased from these suppliers of Rs. 257.69 crore in January 2017, inventory costing around Rs. 102.02 crore was sold to 3 customers, namely Miriam International, Sidhivinayak Traders and Jain Enterprises, for Rs. 120 crore in April-May 2017. I note that as per the purchase orders received from the aforesaid 3 customers and the invoices raised by CG Power to them, the payments were to be received within 365 days from the date of invoice. I note that even though the 3 customers had confirmed vide audit confirmation letter(s) dated March 06, 2018, that the amount invoiced by CG Power was payable by them, none of them paid the amount of total Rs. 120 crore due from them as on the applicable due dates.

39.5.9 In view of all the aforesaid factors, I find that the purchase transactions amounting to Rs. 257.69 crore during January 2017 (FY 2016-17) and the sales transactions amounting to Rs. 120 crore during April-May 2017 (FY 2017-18) of the Company

were non-genuine and fictitious in nature and thus there was misrepresentation of the financial statements of CG power for the FY 2016-17 and FY 2017-18.

40. From the aforesaid transactions, as discussed in para 39 above, I find that there was misrepresentation of the financial statements of CG Power for the FY 2016-17 and FY 2017-18. The role of Noticee no. 5 and Noticee no. 6 in the aforesaid misrepresentation of the financial statements of CG Power has been dealt with in the subsequent paras while dealing with the individual role of each Noticees.

**Role of the Noticees in the aforesaid impugned transactions:**

41. In the various transactions discussed in the aforesaid paras, Noticees no. 1 to 11 are involved in the allegation of diversion of funds from CG Power Group to Promoter Group Companies controlled/owned by Noticee no. 1, violation of LODR Regulations and misrepresentation of financial statements of the Company. The role of each of the Noticees in the transactions as dealt in detail in the aforesaid paras, the allegations in the SCN and submissions made by each the Noticees against the allegations in the SCN, are dealt with in the following paras.

**42. Gautam Thapar (Noticee no. 1):**

- 42.1 Noticee no. 1 was the Non-Executive Chairman of CG Power from August 07, 2005 to August 29, 2019 and a Non-Executive Director up to October 09, 2019. He was the Majority shareholder i.e. 87% in AHL, Promoter of CG Power. The following is noted from the aforesaid paras:

- (a) AIABV is a private firm owned 100% by Noticee no. 1. BGPPL, Solaris, Acton, Avantha Reality, Jhabua Power and Mirabelle are Promoter Group Companies, controlled by Noticee no. 1.
- (b) Noticee no. 1 issued two Letters of Awareness to ABFL regarding Rs. 200 crore of loan availed by Blue Garden for assignment of lease by CG

Power, without the approval of/ intimation to Board of CG Power or MIDC.

- (c) Noticee no. 1 was involved in the transaction relating to the Nashik property between CG Power and Blue Garden, which resulted into diversion of funds of Rs. 198 crore from CG Power to AHL and Acton. The said funds were utilized for the repayment of liabilities of BGPPL, Promoter Group company controlled by Noticee no. 1.
- (d) Noticee no. 1 was involved in the transaction relating to the Kanjurmarg property between CG Power and Blue Garden, which resulted into diversion of funds of Rs. 192 crore from CG Power to Acton. The said funds were utilized for the repayment of liabilities of BGPPL, Promoter Group Company controlled by Noticee no. 1.
- (e) Noticee no. 1 was involved in the transaction of transfer of Euro 44 million (approximately Rs. 350 crore) from CG Singapore (subsidiary of CG Power) to AIABV. The said funds were used for the repayment of liabilities of AIABV, Promoter Group Company controlled by Noticee no. 1.
- (f) Noticee no. 1 was involved in the transaction of a series of transfers aggregating of USD 40 million (approximately Rs. 260 crore) from CG Middle East (overseas subsidiary of CG Power) to Solaris to AHL. The said funds were utilized for the repayment of liabilities of Avantha Realty and Jhabua Power, both Promoter Group Companies controlled by Noticee no. 1.
- (g) Noticee no. 1 was involved in the transaction pertaining to advances of USD 13.5 Million (approximately Rs. 93 crore) made by CG Singapore (Subsidiary of CG Power) during March–July 2018 to Mirabelle, an Associate Company of AHL, controlled / owned by Noticee no. 1
- (h) Through the aforesaid impugned transactions no. 1 to 5, Noticee no. 1 has been the indirect beneficiary of the same. Noticee no. 1 had diverted the assets / funds/ income of CG Power and CG Power Group in an unfair manner and neither informed nor obtained the approval from the Board of CG Power i.e. Noticee no. 1 allowed/ facilitated the impugned transactions to be executed by CG Power in an unfair manner and without informing the same to its Board.

- (i) Noticee no. 1 had also not disclosed his interest in the said impugned transactions to the Board of CG Power.
- (j) Noticee no. 1 was authorized to take actions and sign all documents, under purported Board resolutions of CG power dated May 26, 2016 and August 30, 2016 for execution of transaction mentioned in the purported board resolutions. However, no approval from the board of directors of CG Power was taken in that regard as stated earlier and it is alleged that these purported Board resolutions were created for his benefit. By not informing/ taking approval of the Board of CG Power, Noticee no. 1 has engaged in deceptive behaviour and these acts and their concealment constitute grossly manipulative and fraudulent and unfair trade practices.

42.2 In view of the above and the role/involvement of Noticee no. 1 as stated in the aforesaid tables bringing out the role/involvement of Noticees of each impugned transaction, it has been alleged in the SCN that:

- i. Noticee no. 1 was aware that assets/ funds/ income of CG Power were being used for the benefit of Promoter Group Companies.
- ii. Since the ultimate beneficiaries of the diverted funds were entities owned/ controlled by Noticee no. 1 and the funds were diverted through intermediate companies, which are were also controlled by Noticee no. 1, directly or indirectly, it stands to reason that these transactions could not have happened without Noticee no. 1's knowledge and approvals.
- iii. Noticee no. 1, Chairman of CG Power and majority shareholder (87%) of the Promoter company of CG Power, has used CG Power, a public listed company, to divert funds to the extent of Rs. 1093 Crore to Promoter Group companies in which he had, directly or indirectly, a significant influence/control/ shareholding.
- iv. Further, by not informing/ taking approval of the Board of CG Power of these transactions, as was required by the Rules of Procedure of CG Power, Noticee no. 1 has engaged in deceptive behaviour by active concealment of his interest in the nature of these transactions from the Board of CG Power and the investors.

- v. Noticee no. 1 had repeatedly engaged in such acts of benefitting Promoter group companies at the cost of the interest of minority shareholders of CG Power. These acts and their concealment constitute grossly manipulative, fraudulent and unfair trade practices against the minority shareholders of CG Power and the market at large.

42.3 Further, it is alleged that Noticee no. 1, being chairman of CG Power and 87% shareholder of Promoter company of CG Power, at the relevant time, has engaged in a deceptive scheme / unfair trade practice by active involvement in the transaction no 1, 2 & 4 and concealment of his interest in the impugned transactions No. 1, 2 and 4 mentioned above from the Board of Directors of CG Power. Further, it is alleged that he was aware of the diversion of assets/ funds of CG Power through transaction no 1, 2 & 4 and by not reflecting the said transaction in the financial statements of CG Power for FY 2016-17 and 2017-18, he was involved in misrepresentation of financial statements of CG Power. Despite being aware of the misrepresentation, he has signed on the approval granted by the Board of CG Power to the financial statements for FY 2016-17 and FY 2017-18.

42.4 Hence, it is alleged that Noticee no. 1 has violated the provision of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of the PFUTP Regulations, 2003. Further, Noticee no. 1, in the capacity of Chairman of the Company and by being majority shareholder in promoter of CG Power, by his involvement in the above mentioned impugned transactions, had failed to perform his duties and obligations as a Director and thereby alleged to have violated the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6) and 26(3) of the LODR Regulations.

42.5 The role/involvement of the Noticee no. 1 in the aforesaid impugned transactions is as under:

<b>Sr. No</b>	<b>Transaction</b>	<b>Involvement/Role</b>

1	Transaction no. 1 (Nashik Property)	Had issued two “Letters of Awareness”, one undated letter regarding Rs. 150 crore and another letter dated January 23, 2017, regarding Rs. 50 crore, to ABFL towards the loan of Rs. 200 crore to Blue Garden for the purpose of assignment of lease rights of CG Power in the Nashik Property. The final recipient of the loan from CG Power i.e. BGPPL is a Promoter Group Company controlled by Noticee no. 1
2	Transaction no. 2 (Kanjurmarg property)	The final recipient of the loan from CG Power i.e. BGPPL is a Promoter Group Company controlled by Noticee no. 1
3	Transaction no. 3 (Euro 44 million borrowing by CG Singapore from SCB)	Noticee no. 1 is the Chairman of CG Power and AIABV, which was the ultimate beneficiary of the loan from CG Singapore, is a Promoter Group private investment entity that is 100% owned by Noticee no. 1.
4	Transaction no. 4 (USD 40 million loan to CG Middle East from IndusInd Bank)	Noticee no. 1 is the Chairman of CG Power and the loans were advanced to SICL, which is a Avantha Group Company of Noticee no. 1. JPIL and ARL, which were the ultimate beneficiaries of the loan, were entities belonging to promoter group.
5	Transaction no. 5 (Advances made to Mirabelle from CG Singapore)	Mirabelle, who was the recipient of loan from CG Singapore, is an associate company of AHL, where Noticee no. 1 has 87% shareholding.
6	Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL)	Noticee no. 1 was the Chairman of CG Power at the relevant time and was also a majority shareholder (87%) in AHL, a Promoter Company of CG Power, which received the credit facility of Rs. 500 crore from Yes Bank.
7	Transaction no. 7 (Outstanding advances/payments by CG Middle East)	Ballarpur International Holdings BV is a wholly owned subsidiary of Ballarpur Industries Limited, an associate company of AHL/ Promoter Group company, wherein Noticee no. 1 was also a majority shareholder (87%) in AHL.
8	Transaction no. 8 (Rs. 229 crore deposit taken from AHL)	Noticee no. 1 was a majority shareholder (87%) in AHL.



9	Transaction no. 9 (Multiple transactions without approval of the Board)	<ul style="list-style-type: none"> <li>• Noticee no. 1 was the Chairman of CG Power at the relevant time and was also a majority shareholder (87%) in AHL, a Promoter Company of CG Power.</li> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
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42.6 With regard to the aforesaid allegations in the SCN, the Noticee no. 1 has *inter alia* made the following submissions:

- (a) *Noticee no. 1 was not involved in the day to day affairs of the Company. In so far as concerns the letters of awareness, it was not unusual for a Chairman to sign comfort letters of such a nature and this was done in good faith reliance on the bona fides of the management.*
- (b) *The ABFL transactions were also disclosed to the Board on 30 August 2016.*
- (c) *It is relevant to note that the Forensic Audit Report clearly observes that:*
  - (i) *The drafts of the letters of awareness were shared by ABFL.*
  - (ii) *The drafts were thereafter reviewed and vetted by Mr. Rajagopal. Further Noticee no. 1 signed the letter of comfort only after Mr. Rajagopal give his approval.*

- (iii) It was a normal practise for NBFCs such as ABFL to seek comfort letters from promoters.*
- (iv) The two letters of awareness signed by Noticee no. 1 were not issued in his personal capacity since the letters clearly mention that “it is not a personal guarantee by me and shall not be construed as such”.*
- (d) The allegations of Noticee no. 1’s direct involvement in these transactions are wholly unsubstantial and there is nothing on record to demonstrate Noticee no. 1’s direct involvement. The SCN completely ignores the fact that these transactions were structured by ABFL to preserve CG’s economic value and because CG insisted on additional funding. The SCN also ignores the fact that CG’s officials who reported to Noticee no. 8 implemented and executed the transactions and held shares and directorships in both Acton and Blue Garden. For this reason, SEBI’s allegation that the Noticee no. 1 had devised the structure of this transaction i.e. the incorporation of the BGEPL and Acton, as an unfair trade practise devised to circumvent the provisions of the LODR Regulations in relation to related parties since the ultimate beneficiary of these transactions are promoter group entities is equally specious. The SCN also assumes that letters of comfort are tantamount to a guarantee which is contrary to the settled provision of law that not every letter of comfort is ipso facto a guarantee.*
- (e) The allegation that Noticee no. 1 was involved in the misrepresentation of the financial statement of CG in FY 2016-17 and FY 2017-18 since he was aware of the non-existence of any agreement between CG, Blue Garden and Acton supporting the netting off of amounts received from Blue Garden against loans given to Acton is false and misleading.*
  - (i) Firstly, the funds to Noticee no. 2 were disclosed to the Board and approved by it.*
  - (ii) Secondly despite such approval if Noticee no. 1 is held responsible then each member of the Board must also equally be held responsible.*
  - (iii) Thirdly, SEBI has completely disregarded these Noticees submission that”*
    - i. There amounts were netted off as per the request received from Blue Garden which had to recover certain monies from Acton. The letter in this regard received from Blue Garden was forwarded to Mr. Susheel Todi (Global Head-Accounts and tax) and Mr. Anil*

*Gupta (Head of Accounts) for “their review and necessary action”. Offsetting is permitted as per the Annual Report of the Company as well as per the Indian Accounting Standard 32.*

- ii. The other Noticees have specifically asked for a “copy of tri-partite agreement/letter between BGEPL, the Company and Acton for settling closing balances”. The Company has not denied the existence of this document. It has refused to furnish it on the ground that “these records are not presently available with the Company.”*
- iii. The amounts were reflected in the account of the Company as per the Company policy.*
- iv. The contemporaneous records of the Company including the Earnings Conference call on 14 November 2018 and the Statutory Auditors Presentation recognised these transactions.*

*(f) In any event, the transfer of funds to Noticee no. 2 were approved by the Board of CG. In this context, the Forensic Audit Report observes:*

- (i) The amount of Rs. 145 crores transferred to AHL (against the Nashik transaction) was part of the Rs. 530 crores disclosed to the Board and the RAC of CG on 30 August 2016.*
- (ii) The amount of Rs. 53 crores transferred to Acton (against the Nashik transaction) was part of the Rs. 680 crores disclosed to the Board and RAC of CG on 7 December 2016.*
- (iii) The amount of Rs. 192 crores transferred to Acton (against the Kajurmarg property) was part of the Rs. 829 crores disclosed to the Board and RAC on 25 May and 26 May 2017.*

*(g) The allegations contained in the SCN are in teeth of the observations of the Forensic Audit Report and therefore cannot stand unless until SEBI demonstrates that the Forensic Audit Report must be disregarded.*

*(h) .....*

*(i) Further, these Noticees in its submissions before SEBI had submitted that out the Rs. 390 crores which was provided by ABFL, Rs. 240 crores were routed back by ABFL towards clearance of its dues and the remainder was utilised*

*towards clearing the group liabilities/debts. Further, ABFL also funded Rs. 200 crores to the Company which was otherwise not available to the Company.*

*(j) In fact, the Forensic Audit Report also confirms the above submissions made by these Noticees and further observed that:*

*(i) ABFL was at all times in complete knowledge of the fact that the part of the funds being extended as a loan to CG was to be utilized for the repayment of previous loans extended by ABFL to Avantha Group entities i.e. BGPPL.*

*(ii) CG was desirous of taking an additional loan of Rs. 400 crores from ABFL. However, ABFL was hesitant in increasing its exposure to the Avantha group since at that time ABFL already had an pre-existing exposure of Rs. 387 crores against the Avantha Group. Therefore, “the way out” which was discussed and accepted between CG and ABFL was that an additional facility of Rs. 200 crores will only be granted to CG, if the Avantha Group was to repay ABFL to the tune of Rs. 200 crores, in other exposures with the Avantha Group.*

*(iii) Therefore, as a result of the arrangement between ABFL and CG, “ABFL reduced its exposure to BGPPL, which was an Avantha group entity...by giving loans of Rs. 390 crores to CG Power, out of which Rs. 240 crores were used for the repayment of loans given to BGPPL”. By doing so ABFL reduced its exposure from BGPPL and moved its exposure to CG which had a higher credit rating, and in return CG was granted an additional facility of Rs. 200 crores.*

42.7 With regard to the submissions made by the Noticee no. 1, my observations on the same are as follows:

(a) Firstly, I note that Noticee no. 1 was the Non-Executive Chairman of CG Power from August 07, 2005 to August 29, 2019 and a Non-Executive Director up to October 09, 2019. He was the Majority shareholder i.e. 87% in AHL, Promoter of CG Power. Noticee no. 1 has submitted that he was not involved in the day to day affairs of the Company. From the findings in the aforesaid paras, I find that the funds of the Company were diverted to promoter group companies, as detailed in para 30 above, which were either owned or controlled by him. Given his ownership and control of the promoter group

companies, I find that Noticee no. 1 was well aware and was involved in the aforesaid impugned transactions no. 1 to 5 where funds were diverted from CG Power to the promoter group companies.

- (b) Noticee no. 1 has submitted that the ABFL transactions were disclosed to the Board on August 30, 2016. In this regard, from the findings in the FAR, and as discussed in the aforesaid paras, I note that the transfer of funds as loans from CG Power to AHL was only disclosed post facto to the Board on August 30, 2016, whereas the assignment agreement for the Nashik property and transfer of funds from Blue Garden to CG Power was never informed or placed before the Board of CG Power. I note that none of the board minutes contain any such approval taken by the Board of CG Power for the transaction between Blue Garden and CG Power, wherein loans provided by ABFL to Blue Garden were thereafter transferred to CG Power as part of the transactions pertaining to the Nashik property. Hence, the submission of the Noticee that ABFL transactions were disclosed to the Board on August 30, 2016 is untenable.
- (c) Noticee no. 1 has submitted that the draft of the letters of awareness were shared by ABFL and reviewed and vetted by Mr. Rajagopal, the Legal Head of CG Power. At best, the said contention only shows that Mr. Rajagopal may have been in collusion with Noticee no. 1 or was simply aware of the letter of awareness and either way, this does not absolve the Noticee no. 1 of his involvement and neither does it prove that the letter of awareness for the said transactions were made known to the Board of CG Power. Further, I note that Noticee no. 1 was responsible for the diversion of funds of CG Power Group Companies to the promoter group companies of Noticee no. 1 by structuring a financial plan and creating SPVs for transacting in properties that were not free to be transacted upon and knowing fully well that the loans given to the SPVs would be transferred to CG Power for advancing the same to promoter group companies for clearing their debts with ABFL. Since Noticee no. 1 either controlled or owned all the promoter group companies, he was clearly a beneficiary to the funds being diverted to the promoter group companies and

hence, his interest in such transactions where he was issuing letter of awareness should have been brought to the notice of the Board of CG Power. Further, Noticee no. 1 has submitted that the two letters of awareness signed by Noticee no. 1 were not issued in his personal capacity since the letters clearly mention that *“it is not a persona guarantee by me and shall not be construed as such”*. In this regard, I note that if Noticee no. 1 is submitting that the letter of awareness was not issued in his personal capacity, then it would mean that they were issued in his capacity as Chairman of CG Power. Given that the Board of CG Power was not aware of such transactions and letter of awareness being issued by the Noticee no. 1, this would further corroborate that Noticee no. 1 was fraudulently using his position as Chairman of CG Power to facilitate loans from ABFL for repaying the liabilities of the promoter group companies without the knowledge of the Board of CG Power.

- (d) The Noticee no. 1 has submitted that there is nothing on record to demonstrate Noticees direct involvement. I find that the same is wholly erroneous and untenable given that the ultimate beneficiary of all the funds that were diverted from CG Power to the promoter group companies was Noticee no. 1, who either controlled or owned them. Hence, the funds of CG Power which were diverted to the promoter group companies to pay off their debts/loans with the banks has been most beneficial for Noticee no. 1. Further, given that he either controlled or owned the promoter group companies, it is reasonable to draw inference about his involvement when the funds were being diverted to the promoter group companies either controlled or owned by him. Even though certain directors of the promoter group companies may have executed the agreement for loans etc., the ultimate beneficiary is the person who controls/owns the companies, which in this case was Noticee no. 1. Further, I note that the Noticee no. 1 has conveniently used the words “direct” involvement, which would further corroborate the fact that the Noticee no. 1 was well aware of all the impugned transactions at such time when they were executed, but is attempting to wash his hands by taking the plea that he was not directly involved in them. Be that as it may, as noted in the table above at

para 42.5 above, in addition to being the beneficiary of these transactions, I note that Noticee no. 1 has also been directly involved in impugned transactions no. 1 and 2, which were created as part of his “*Thapar Group Strategy*” and where the Noticee no. 1 had issued two “letter of awareness” on behalf of CG Power.

- (e) The Noticee has also submitted that the transactions were structured by ABFL to preserve CG Power’s economic value and because CG Power insisted on additional funding. In this regard, I note that even if the said transactions were structured by ABFL, there is no denying that they were structured along with Noticee no. 1 or at the behest of Noticee no. 1, as it is evident that these transactions have resulted in the liabilities of the promoter group companies, that are owned/controlled by Noticee no. 1, being paid off at the cost of CG Power and the same is undoubtedly in the interest of Noticee no. 1. From the email sent by Mr. Devang Rawal from ABFL to Noticee no. 7 to resolve the issue of loan repayment by BGPPL urgently, I note that reference was made to the meeting between Noticee no. 1 (Chairman of CG Power) and Mr. Ajay Srinivasan (Group CEO-ABFL) in presence of Noticee no. 7 (held in March 2016), wherein, ‘*Thapar Group Strategy*’ was discussed, which shows that the same was structured and planned by or at the behest of Noticee no. 1.
- (f) The Noticee no. 1 has also referred to the observations in the FAR, which observes that:
  - i) *The amount of Rs. 145 crores transferred to AHL (against the Nashik transaction) was part of the Rs. 530 crores disclosed to the Board and the RAC of CG on 30 August 2016.*
  - ii) *The amount of Rs. 53 crores transferred to Acton (against the Nashik transaction) was part of the Rs. 680 crores disclosed to the Board and RAC of CG on 7 December 2016.*
  - iii) *The amount of Rs. 192 crores transferred to Acton (against the Kajurmarg property) was part of the Rs. 829 crores disclosed to the Board and RAC on 25 May and 26 May 2017.*

- (g) I find the aforesaid observations shows that only the loan transactions from CG Power to AHL were disclosed post facto to the Board on August 30, 2016 and, as observed in the FAR, the transaction between Blue Garden and CG Power was never disclosed to the Board of CG Power. Further, when the funds were transferred from ABFL to Blue Garden and then to CG Power which were then advanced as loans to AHL and Acton Global between 12<sup>th</sup> to 30<sup>th</sup> May, 2016 and 10<sup>th</sup> to 17<sup>th</sup> August, 2016 for the Nashik property, there was no approval of the Board taken at that time. Hence, as observed in the FAR, the transfer of funds as loans from CG Power to AHL and Atcon were disclosed to the Board of CG Power only on August 30, 2016 and December 07, 2016, which is after the transactions took place. Only post facto disclosure/approval of the Board of CG Power was taken. However, as discussed in the aforesaid paras, the assignment agreement for the Nashik property and the memorandum of association for the Kanjurmarg property and transfer of funds from Blue Garden to CG Power in this regard, was never informed or placed before the Board of CG Power. Hence, the submissions of the Noticee with reference to the aforesaid observations of the FAR that disclosures were made with respect to the impugned transactions, is untenable. The Noticee no. 1 has also contended that the allegations contained in the SCN are in teeth of the observations of the FAR and therefore cannot stand unless until SEBI demonstrates that the FAR must be disregarded. In this regard, as discussed above, I agree with the findings of the FAR, which has correctly observed that the disclosures were made to the Board of CG Power only with respect to the loans advanced by CG Power to AHL and Acton, whereas the transaction between Blue Garden and CG Power with respect to the Nashik and Kanjurmarg property was never disclosed to the Board of CG Power. Hence, the said contention of the Noticee is untenable.
- (h) The Noticee no. 1, while referring to observations of the FAR, has also submitted that ABFL was at all times in complete knowledge of the fact that



the part of the funds being extended as a loan to CG Power was to be utilized for the repayment of previous loans extended by ABFL to Avantha Group entities i.e. BGPPL. That CG Power was desirous of taking an additional loan of Rs. 400 crores from ABFL. However, ABFL was hesitant in increasing its exposure to the Avantha group since at that time ABFL already had a pre-existing exposure of Rs. 387 crores against the Avantha Group. Therefore, “the way out” which was discussed and accepted between CG Power and ABFL was that an additional facility of Rs. 200 crores will only be granted to CG, if the Avantha Group was to repay ABFL to the tune of Rs. 200 crores, in other exposures with the Avantha Group. The Noticee has submitted that therefore, as a result of the arrangement between ABFL and CG, *“ABFL reduced its exposure to BGPPL, which was an Avantha group entity...by giving loans of Rs. 390 crores to CG Power, out of which Rs. 240 crores were used for the repayment of loans given to BGPPL”*. By doing so ABFL reduced its exposure from BGPPL and moved its exposure to CG which had a higher credit rating, and in return CG was granted an additional facility of Rs. 200 crores.

- (i) With regard to the aforesaid submissions, I find that there are no documents on record to officially show that CG Power was in need of funds. Be that as it may, even if such funds were required by the Company, I find that the same should have been done by taking the approval of the Board. I note that none of the Board minutes contain any such approval taken by the Board of CG Power for the transactions pertaining to the Nashik and Kanjurmarg property. If the Company was actually in requirement of funds, due process should have been followed by taking the approval of the Board for the aforesaid impugned transactions. Further, I note that the financial structure were only beneficial for the promoter group companies, who through the impugned transactions, were able to repay their loans to the banks. Therefore, I fail to understand how the same was beneficial or in the interest of CG Power, as in the process of the impugned transactions, CG Power has incurred more liabilities by lending to its promoter group companies. It is evident that the SPVs i.e. Blue Garden and

Acton Global were incorporated by CG Power and had its employees running the companies, and they were incorporated just before the agreements to the Nashik property were executed. Clearly, the SPVs i.e. Blue Garden and Acton Global did not have the financial resources to repay those loans taken from ABFL, which is more evident now that ABFL has filed a case against CG Power for repayment of the loans taken by Blue Garden and Acton Global, who obviously could not repay their loans taken from ABFL. Hence, I find the contention that the loans advanced to promoter group companies was for the benefit/interest of CG Power to avail more loans from the bank is untenable, as it is evident that the ultimate beneficiary in this fraudulent scheme of events has been Noticee no. 1 who controls or owns the promoter group companies that received loans from CG Power to repay their loans with the banks.

42.8 In view of the above, I find that Noticee no. 1, as chairman of CG Power having 87% shareholding of Promoter company of CG Power, at the relevant time, has engaged in a fraudulent, manipulative and unfair trade practice in the impugned transactions and concealment of his interest in the impugned transactions, discussed in detail in the foregoing paras, from the Board of Directors of CG Power. From the email correspondences with ABFL discussing “*Thapar Group Strategy*” and the fact that all the funds were ultimately transferred to promoter group companies which were either controlled or owned by Noticee no. 1, it is evident that the entire fraudulent scheme was for the interest and benefit of Noticee no. 1, who used his position as Chairman of CG Power to secure these loans from the banks through indirect and deceptive means. Therefore, I find that he was not just aware of the diversion of assets/ funds of CG Power through transactions no 1 to 5 to the promoter group companies controlled/owned by him, but has been instrumental in ensuring its execution given his position in CG Power and also the promoter group companies. The Noticee no. 1 was, under provisions of Regulation 4(2)(f) of the LODR Regulations, 2015, required to disclose to the Board of directors his material interest in the aforesaid impugned transactions, wherein, Noticee no. 1 was a beneficiary to the funds received by the promoter group companies from CG Power and its group companies. Further, the Noticee was required to act in a transparent manner and to monitor and manage

potential conflict of interest, including misuse of corporate assets and abuse in related party transactions, however, I note that Noticee no. 1 has acted in a fraudulent manner by having these transactions executed without taking the approval of the Board, for his benefit. Given that Noticee no. 1 either controlled or owned all the promoter group companies, he was well aware of every impugned transaction with the promoter group companies, and yet, did not disclose his interest or prevent the misuse of the assets of CG Power and act in the interest of the Company. Further, by not reflecting the said transactions in the financial statements of CG Power for FY 2016-17 and 2017-18, I find that he was involved in the misrepresentation of financial statements of CG Power. Despite being aware of the misrepresentations, I find that Noticee no. 1 has signed on the approval granted by the Board of CG Power to the financial statements for FY 2016-17 and FY 2017-18.

42.9 Hence, I find that Noticee no. 1 has violated the provision of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of the PFUTP Regulations, 2003. Further, Noticee no. 1, in the capacity of Chairman of the Company and by being majority shareholder in the promoter of CG Power, by his involvement in the above-mentioned impugned transactions, has failed to perform his duties and obligations as a Director and thereby violated the provisions of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6) and 26(3) of the LODR Regulations, 2015.

#### **43. Avantha Holdings Limited (Noticee No. 2):**

43.1 Noticee no. 2 was promoter Group Company of CG Power at the relevant time holding 34.37% in CG Power. I note that 87% shareholding in AHL is held by Noticee no. 1. Further, BGPPL, Solaris, Avantha Reality, Jhabua Power and Mirabelle are Promoter Group Companies. With regard to AHL, the following is noted from the aforesaid paras:

- (i) In impugned transaction no. 1 to 5, AHL/ its affiliate/ group company was the recipient of funds diverted from CG Power. The said funds were further

transferred to the Promoter Group Companies for their benefit. In impugned transaction no. 5, Mirabelle itself is a related party to BILT, a Promoter Group company.

- (ii) The impugned transactions No. 1 to 5 could not have been carried out without the involvement of AHL, since the intermediate and ultimate beneficiaries were the Promoter Group Companies.
- (iii) The funds in impugned transactions No. 1 to 5 were diverted to AHL / Promoter Group companies in a manipulative, fraudulent and unfair manner, by concealing the same from the Board of CG Power by not taking its approval, as was required under the Rules of Procedure of CG Power.

43.2 Thus, from the above, it is alleged that AHL was involved in the scheme / unfair trade practice of diverting the funds (approximately Rs. 1000 crore) from CG Group companies for the benefit of Promoter Group companies. Hence, it is alleged that AHL has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations.

43.3 With regard to the aforesaid allegations in the SCN, I note that Noticee no. 2 has filed joint replies with Noticee no. 1 and Noticee no. 4, and the submissions therein have been reproduced in the foregoing paras at para 42.6 above and the same have been dealt with in para 42.7 above. Accordingly, to avoid repetition, the same are not being reproduced here. However, certain submissions have been made in the reply specifically with respect to Noticee no. 2 and the same are as follows:

*(a) In respect of Noticee no. 2, the SCN alleges that the alleged diversion of funds from CG was for the benefit of Noticee no. 2 since the ultimate beneficiary of the transaction was BGPPL, i.e. a step down subsidiary of BILT which Noticee no. 2 is a promoter of. Therefore, the transaction could not have taken place without the knowledge of Noticee no. 2. However, the SCN does not appreciate the fact that:*

- (i) The annual report of BGPPL reflect these transactions. Significantly, Mr. Sudhir Mathur was an independent director on the Board of BGPPL till 15 May 2019 and was therefore, aware of the ABFL transactions.*

*(ii) Noticee no. 2 stood as guarantor for these transactions and these transactions were also minuted in its minutes books.*

*(iii) Since the Company stopped payment of interest on the ABFL loan from July 2018 and Noticee no. 2 started servicing interest from royalty payments up to December 2018. Noticee no. 2 agree to repay the Company through the Brand royalty Agreement entered into with the Company on 13 February 2019 on which the Company reneged.*

43.4 I note that Noticee no.1 had 87% shareholding in AHL at the relevant time and therefore, was in complete control of AHL. I note that AHL had 34.42% shareholding in CG Power at the relevant time. I note from the MCA website that Noticee no. 7 has been a director of AHL since July 09, 2010. From the foregoing paras, I note that in impugned transactions no. 1 to 5, AHL/ its affiliate/ group company were the recipients of funds diverted from CG Power. I note that the said funds received from CG Power were further transferred to the Promoter Group Companies for their benefit in paying off their debts/liabilities with banks. Given Noticee no. 1's control in AHL then, and the role and involvement of Noticee no.1 in orchestrating the entire fraudulent scheme of diverting funds from CG Power to its promoter group companies, I find that AHL has played its role in diverting money from CG Power to other promoter group companies to pay off their loans with banks at the cost of CG Power incurring further liabilities. Further, given that Noticee no. 7 was a director in both CG Power and AHL, and has played a significant role in executing the impugned transactions as discussed in detail in the foregoing paras, it is evident that AHL has been part of the entire fraudulent scheme of Noticee no. 1 by transferring funds received from CG Group Companies to other promoter group companies and also a beneficiary to the funds received from CG Group Companies. In view of the above, the contention of Noticee no. 2 is not tenable. Accordingly, I find that AHL has been involved in the fraudulent, manipulative and unfair trade practice of diverting the funds from CG Group companies for the benefit of Promoter Group companies. Hence, I find that AHL has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations.

**44. Acton Global Private Limited (Noticee no. 3):**

44.1 Acton Global is the holding company of Blue Garden and was incorporated on March 21, 2016 i.e. just prior to the execution of impugned transaction no. 1 and 2 with respect to the Nashik and Kanjurmarg properties. The shareholders of Noticee no. 3 were employees of CG Power. With regard to Acton Global, the following is noted from the aforesaid paras:

- (i) Mr. Abhishek Kabra (Senior Manager – Treasury in CG Power) and Mr. Nagendra Sayyaparju (Assistant General Manager – MIS in CG Power) were inducted as shareholders as well as Directors of Acton on the date of incorporation.
- (ii) In impugned transaction no. 1 & 2, Acton was the recipient of funds diverted from CG Power. The said funds were further transferred by Acton to BGPPL, a Promoter Group Company for its benefits.
- (iii) The impugned transactions no. 1 & 2 could not have been carried out without Acton's knowledge.
- (iv) The funds in impugned transactions no. 1 & 2 were diverted to Acton in a manipulative, fraudulent and unfair manner, by concealing the same from the Board of CG Power by not taking its approval, as was required under the Rules of Procedure of CG Power.

44.2 Thus, from the above, the SCN alleges that Acton was involved in the scheme / unfair trade practice of diverting the funds (approximately Rs. 245 crore) from CG Group companies for the benefit of Promoter Group companies. Hence, it is alleged that Acton has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations.

44.3 I note that the Noticee has not replied to the SCN or responded to any of the Notice of hearing sent to it on August 04, 2021 and September 06, 2021. As detailed in para 15 above, the SCN and the hearing notices were delivered to the Noticee. Since the Noticee has not filed any reply or made any submissions, I shall proceed on the basis of the documents and records available before me.

44.4 As noted in the aforesaid paras, I note that Mr. Abhishek Kabra, who was a Senior Manager – Treasury in CG Power, and Mr. Nagendra Sayyaparju, who was an Assistant General Manager – MIS in CG Power, were inducted as shareholders as well as Directors of Acton on the date of incorporation i.e. March 21, 2016. As discussed in the foregoing paras pertaining to transactions no. 1 and 2, I note that Blue Garden and Acton Global were created under the mutually decided transaction structure with ABFL and their sole purpose as SPVs was to facilitate the indirect transfer of funds from ABFL to CG Power. Further, as discussed in the foregoing paras, the Nashik and Kanjurmarg properties were both not available for mortgage purpose against loan from ABFL, and this was one of the reasons why the elaborate structure of routing the loan through SPVs was proposed by ABFL. I note that Blue Garden and Atcon were created as SPV's and Atcon was the holding company of Blue Garden and their role in transactions no. 1 and 2 have been discussed in detail in paras 34.1 and 34.2 above. Hence, I find that Acton Global was specifically created by CG Power for indirectly routing funds to promoter group companies and the fact that its directors and shareholders were all employees of CG Power, makes it evident that it was created by CG Power and has been used by Noticees no. 1, 5, 6, 7 and 9 for diverting funds from CG Power to promoter group companies of Noticee no. 1. Further, I note that Acton was the recipient of funds diverted from CG Power in impugned transactions no. 1 and 2 pertaining to the Nashik and Kanjurmarg property. I note that upon receiving the funds from CG Power, Acton transferred the funds to BGPPL, a promoter group company, for it to repay its loans with ABFL. Therefore, given its incorporation, its directors and shareholders and its role in transferring funds to BGPPL, a promoter group company, I find that Acton was very much aware and a part of the fraudulent scheme to divert funds from CG Power to the promoter group companies of Noticee no. 1.

44.5 In view of the above, I find that Acton was involved in the fraudulent, manipulative and unfair trade practice of diverting the funds (approximately Rs. 245 crore) from CG Group companies for the benefit of Promoter Group companies. Hence, I find

that Acton has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations, 2003.

**45. Solaris Industrial Chemicals Limited (Noticee No. 4):**

45.1 I note that Noticee no. 4 is 100% owned by AHL. Further, AHL and Noticee no. 4 have the same registered address at “Thapar House, 124, Janpath, New Delhi”. With regard to Noticee no. 4, the following is noted from the aforesaid paras:

- (i) In impugned transaction no. 4, Noticee no. 4 was the recipient of funds diverted from CG Power. The said funds were further transferred by Noticee no. 4 to the Promoter Group Companies (Avantha Realty and Jhabua Power) for their benefits.
- (ii) The impugned transactions no. 4 could not have been carried out without Noticee no. 4's knowledge.
- (iii) The funds in impugned transactions no. 4 were transferred diverted to Noticee no. 4 in a manipulative, fraudulent and unfair manner, by concealing the same from the Board of CG Power by not taking its approval, as was required under the Rules of Procedure of CG Power.

45.2 Thus, from the above, it is alleged that Noticee no. 4 was involved in the scheme / unfair trade practice of diverting the funds (approximately Rs. 260 crore) from CG Group companies for the benefit of Promoter Group companies. Hence, it is alleged that Noticee no. 4 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations.

45.3 With regard to the aforesaid allegations in the SCN, I note that Noticee no. 4 has filed joint replies with Noticees no. 1 and 2, and the submissions therein have been brought out in the foregoing paras at para 42.6 above and the same have been dealt with in para 42.7 above. Accordingly, to avoid repetition, the same are not being reproduced here.



45.4 As noted above, Noticee no. 4 is 100% owned by AHL, which means Noticee no. 4 was under the complete control of Noticee no. 1, who then had 87% shareholding in AHL. I note that in impugned transaction no. 4, Noticee no. 4 was the recipient of funds diverted from CG Power. I note that CG Power had transferred Rs. 260 crores on October 27, 2017 and October 30, 2017 to Noticee no. 4, who then transferred the same to AHL, who then transferred it to other promoter group companies i.e. ARL and JPIL for their repayment of loans to IndusInd Bank. Given that Noticee no. 4 is 100% owned by AHL, it is evident that its actions were controlled by Noticee no. 1 and hence, Noticee no. 4 was aware of the fraudulent scheme of diverting funds from CG Power to promoter group companies and Noticee no. 4 had participated in the same.

45.5 In view of the above, I find that Noticee no. 4 was involved in the fraudulent, manipulative and unfair trade practice of diverting the funds (approximately Rs. 260 crore) from CG Group companies for the benefit of Promoter Group companies. Hence, I find that Noticee no. 4 has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations, 2003.

**46. Mr. V.R. Venkatesh (Noticee no. 5):**

46.1 I note that Noticee no. 5 was the CFO of CG Power from August 12, 2017 till August 30, 2019. Further, Noticee no. 5 was also the director of CG Middle East since 2010. Prior to becoming CFO of CG Power, he was employed by Belgian division of CG Group which was later sold off due to recurring losses. With regard to Noticee no. 5, the following is observed from the aforesaid paras:

- (i) Noticee no. 5 had executed certain documents by concealing the same from the Board of CG Power, by not taking its approval, as required by the Rule of Procedures of CG Power, which facilitated the above-mentioned fraudulent transactions. The following documents were executed by him:

- (a) Executed mortgage undertaking in respect of Nashik Property transaction.

- (b) Signed remittance instruction for transfer of funds from CG Singapore to AIABV, contrary to board resolution authorizing the loan.
- (c) Signed various documents relating to the USD 40 million term loan from IndusInd Bank as mentioned in Impugned Transaction No. 4.
- (d) Executed Deed of Guarantee on behalf of CG IBV (without the approval of the board of CG IBV) in favour of IndusInd Bank.
- (e) Approved payments on behalf of CG Singapore to Mirabelle, a related party to BILT, which is a Promoter Group Company.
- (f) Noticee no. 5 signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power.
- (g) Noticee no. 5, as the sole director on the Board of CG Middle East, executed service agreements with the service providers mentioned in Impugned Transaction No. 7 without approval of Board of CG Power, which was required as per the Rules of Procedure of CG Power. Further, it is observed that in Impugned Transaction No. 7, Noticee no. 5 has executed the service agreements without approval of the Board of CG Power and advanced funds from CG Middle East to entities, in lieu of which no services have been received.
- (h) Noticee no. 5 did not inform Board of Directors of CG Power about the about the contents of AHL's first proposal letter dated September 28, 2018.
- (i) Noticee no. 5 executed Assignment-cum-Put Agreement dated September 28, 2018 on behalf of CG Power with AHL, Noticee no. 4 and IndusInd Bank without approval of Board of CG Power, which was required as per the Rules of Procedure of CG Power.
- (j) Noticee no. 9, vide email dated January 15, 2018, informed Noticee no. 5 that they needed the approval of CEO along with CFO for funding to any CG Group company as per the new Rules of Procedure of the Company. Venkatesh replied that as per the new Rules of Procedure, they should take approval of CEO, but the reporting of the Finance function also needed to be amended. Noticee no. 5 advised Noticee no. 9 to proceed with his approval. Thus, it is alleged that Noticee no. 5 had violated the Rules of

Procedure of the CG Power by not taking approval of the CEO of CG Power.

- (k) In Impugned Transaction No. 10, it was found that the inventory and debtors' balances of Rs. 156 crore and Rs. 120 crore respectively, as mentioned by Noticee no. 5 in the note dated January 16, 2018, were fake which were subsequently written off by way of various journal vouchers dated March 31, 2018 passed by him. Accordingly, it is alleged that Noticee no. 5 has devised and participated in a scheme for reducing the balances of inventory and debtors in the books of CG Power by various means which was proposed by him, vide hand-written note dated January 16, 2018, to Noticee no. 7 for approval. Hence, it is alleged that Noticee no. 5 was involved in publishing untrue financial statements of the Company for the FY 2017-18 and FY 2018-19.

46.2 In view of the above, the SCN alleges that Noticee no. 5 was involved in the scheme / unfair trade practice of diverting funds from CG Group companies for the benefit of Promoter Group companies. Further, it is also alleged that Noticee no. 5 was involved in publishing untrue financial statements of the Company for the FY 2017-18 and FY 2018-19. Hence, it is alleged that Noticee no. 5 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations, 2003. It is also alleged that Noticee no. 5, by his involvement in the above-mentioned impugned transactions, had failed to perform his duties as the CFO of CG Power, thereby he is alleged to have violated the provisions of Regulations 4(2)(f)(i)(2), 26(3) and 33(2)(a) of the LODR Regulations.

46.3 The role/involvement of the Noticee no. 5 in the aforesaid impugned transactions are as under:

Sr. No	Transaction	Involvement/Role
1	Transaction no. 1 (Nashik Property)	Noticee no. 5 had executed a Mortgage Undertaking (in the event of default) in respect of Nashik Property.

2	Transaction no. 3 (Euro 44 million borrowing by CG Singapore from SCB)	Remittance instruction (i.e. transfer of second loan from CG Singapore to AIABV) dated February 14, 2018 was signed by Noticee no. 5 and Noticee no. 7.
3	Transaction no. 4 (USD 40 million loan to CG Middle East from IndusInd Bank)	<ul style="list-style-type: none"> <li>• The sanction letter from IndusInd Bank as well as the CG Middle East Board resolution has been acknowledged by signature, respectively, by Noticee no. 5, who was the sole director on the Board of CG Middle East at that time.</li> <li>• A letter dated October 25, 2017 signed by Noticee no. 5 and Noticee no. 7 addressed to IndusInd Bank, states that Board of CG IBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities.</li> <li>• A letter dated October 25, 2017 signed by Noticee no. 5 on behalf of CG Power was issued to IndusInd bank, undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East.</li> <li>• Vide drawdown letter dated October 25, 2017 signed by Noticee no. 5 the loan sanctioned to CG Middle East was disbursed to CG IBV's account at request of CG Middle East.</li> </ul>
4	Transaction no. 5 (Advances made to Mirabelle from CG Singapore)	The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement / Board approval of CG Singapore.
5	Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL)	From April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No. 5 and Noticee no. 7.
6	Transaction no. 7 (Outstanding advances/payments)	CG Middle East is the subsidiary company of CG Power and the service agreements with these entities were executed by Noticee no. 5 as the sole director on the Board of CG Middle

	by CG Middle East)	East at the relevant time.
7	Transaction no. 8 (Rs. 229 crore deposit taken from AHL)	The agreement dated September 28, 2018 entered into among AHL, CG Power, SICL and IndusInd Bank in this regard through which CG Power approved assignment of royalty payable by CG Power to AHL for using the 'Avantha' brand in favour of Solaris so that Solaris could get a credit facility of up to Rs. 335 crore secured by these royalty receivables in favour of IndusInd Bank was co-signed by Noticee no. 5 on behalf of CG Power.
8	Transaction no. 10	The inventory and debtors' balances of Rs. 156 crore and Rs. 120 crore respectively, as mentioned by Noticee no. 5 in the note dated January 16, 2018, were fake which were subsequently written off by way of various journal vouchers dated March 31, 2018 passed by him. Hence, Noticee no. 5 was involved in publishing untrue financial statements of the Company for the FY 2016-17 and FY 2017-18.

46.4 The Noticee vide his replies and written submissions to the SCN, has made *inter alia* made the following submissions:

- (i) *The Noticee was made an authorised signatory of the Company merely for the purposes of administrative ease and even while discharging his responsibilities, he acted under the instructions and supervision of the MD & CEO and other members of the Board such as Noticee no. 6 and 7. In this regard, a copy of the announcement of the Noticee being appointed as the next CFO dated August 11, 2017 is enclosed as Exhibit 1 which indicates that the Noticee was expected to report to the MD and CEO of the Company and could not act without his sanction. Further, another circular dated June 16, 2017, enclosed as Exhibit 2 also indicates that all the powers of the CFO were exercised pursuant to and in accordance with the directions of Noticee no. 6 who was a group director in the Company.*
- (ii) *It is submitted that the alleged transaction of sale of Nashik property to BGEPL, a related party to CG Power was authorised and initiated in 2016, prior to the Noticee's appointment as the CFO of CG Power.*

- (iii) *Further, the Board of CG Power had authorised Mr. B. Hariharan, Non-Executive Director of CG Power and Group Director Finance of Avantha Group, to act on behalf of CG Power for negotiations with banks/financial institutions for new loans, T&Cs etc. (Agenda Item 522.16 (e)). Hence, it is very clear that Mr. B. Hariharan was authorised to act on behalf of CG Power for any loan transactions and therefore, when the Noticee was directed by Mr. Hariharan to execute the deed to undertake to create mortgage on Nashik Property, the same was done under direction of Mr. Hariharan. Any non-compliance would have led to insubordination. Hereto annexed and marked as Exhibit 6 is a copy of email dated February 07, 2018 from Mr. B. Hariharan to the Noticee directing the Noticee to execute the Mortgage deed.*
- (iv) *In summary, it is most humbly submitted that the Noticee acted in compliance with the conditions prescribed in the loan documents executed in April/May 2016 and under the instructions of B. Hariharan. The Noticee was not a part of executing and formulating this transfer of funds, which anyway was approved by the Board of CG Power. The RAC was well informed of this transaction. No red flags have been raised by the statutory auditors Ms/ SRBC & Co. LLP and KK Mankeshwar in their presentation on financials ended March 31, 2018.*
- (v) *The disbursement of the first loan of Euro 44 million by SCB to CGIBV took place on May 19, 2017 and the advance given to AIABV of Euro 44m (from loan received by SCB) took place on May 23, 2017. Hereto annexed and marked as Exhibit 8 is the bank statement CGIBV which substantiates that the receipt of the loan amount by CGIBV and the advance of the loan amount to AIABV. The Noticee was appointed as the CFO of CG Power on 12<sup>th</sup> August, 2017, much after this initial transfer of Euro 44 million took place. The inception of the transaction took place much before the Noticee came on Board as the CFO which shows that the Noticee was not aware of the structuring of the loan transaction.*
- (vi) *On February 18, 2018, the second loan of Euro 44 m was disbursed at CG Singapore which was advanced to AIABV and AIABV returned the advance of Euro 44 m due to CGIBV. It is pertinent to note that in this loan arrangement, the outstanding loan of SCB and the outstanding advances from AIA at CGIBV became nil. The avilment of the loan facility was approved by the CG Singapore Board which amongst others consisted of Mr. Neelkanth and an independent director. The resolution of CG Singapore so approving the borrowing was also placed before the Board and hence it cannot be said that the CG Power was not aware of the end use of the funds so received.*
- (vii) *The Noticee had duly informed the MD & CEO, Mr. K.N. Neelkant of the utilisation of funds. Moreover, the purported unauthorised remittance document was signed by the Noticee and Mr. B. Hariharan, who was negotiating with SCB on this transaction.*

- (viii) *The loan was disclosed in the treasury report under the head of “Summary of Board Resolutions and Utilisation” specifically under Note 2. Hence, it cannot be said that the Noticee has acted without the approval of the Board or that the Board was unaware of the transfer of funds from CG Singapore.*
- (ix) *It may be noted that the Board of CG Power in resolution dated 30<sup>th</sup> August 2016 had authorised Mr. B. Hariharan to negotiate terms and conditions with Banks/Financial institutions in the best interest for CG Power. The appointment of B. Hariharan as Director CGIBV was effective 24<sup>th</sup> October 2017. B. Hariharan was given PoA for executing documents on behalf of CGME as well by CGIBV was with the full knowledge of the Board of CGIBV. The documents were proposed by IndusInd Bank themselves as part of the loan structuring – the documents executed were with the explicit approval of B. Hariharan. The documents were dated executed post 24<sup>th</sup> October 2017 i.e. after appointment of Mr. B. Hariharan as director of CG IBV.*
- (x) *In light of the above, upon receipt of explicit instructions from B. Hariharan, the Noticee did not hesitate to sign the documents since not following instructions of Mr. B. Hariharan would have been tantamount to insubordination to Board Guidelines on the part of the Noticee.*
- (xi) *After the appointment of SRBC as auditors at for the review of the financial 30<sup>th</sup> September 2018, the said transactions were specifically highlighted. The said transactions was discussed by MD&CEO KN Neelkant. The aforesaid facts make it evident that the entire transaction was carried out by the Noticee with the express approval of Board of Director of CG Power which was headed by Mr. KN Neelkant. The end use of the loan was also well known to Mr. KN Neelkant, MD&CEO and to all concerned as amply clear from the documents placed before the Board of cg Power.*
- (xii) *It is pertinent to note that the Board of CG Singapore approved a resolution approving a non-fund facility and also authorising B. Hariharan and the Noticee as authorised signatories.*
- (xiii) *The SCN clearly states in para 21.4 that the payment of Rs. 13.5 million dollars to Mirabelle on 28<sup>th</sup> March 2018 were made on behalf of CG Singapore by the Noticee and B Hariharan, who was a director of CG Power. Hence, by no stretch of imagination can it be assumed that these advances were made at the sole discretion of the Noticee rather were made under the instructions of Mr. B. Hariharan who was a director of CG Power. In fact the Noticee was asked to work under the guidance of Mr B. Hariharan.*
- (xiv) *The signing of PDCs started from November, 2015 itself, when the Noticee was not a part of CG Power. In this transaction, reissuing PDCs to Yes Bank was normal practice, even before the Noticee was appointed by CG Power as CFO.*

- (xv) *It is submitted that the Noticee became first aware of the post-dated cheque only in January 2018 and that is when the Noticee discovered that the cheques were being issued to Yes Bank since Nov 2015 and that a letter of comfort was also issued to Yes Bank signed by a Director of CG Power.*
- (xvi) *The Noticee relied on the email instruction of Mr. B. Hariharan, who was a joint signatory in the past. He continued the practice specially upon receiving explicit instructions from Mr. B. Hariharan who was authorised by the Board at the 523<sup>rd</sup> meeting of the Board on 7<sup>th</sup> December, 2016 to take the final decision with respect to financial facilities availed by CG Power. Therefore, not following instructions of Mr. B. Hariharan would have been tantamount to insubordination to the guidelines of the Board of CG Power on the part of the Noticee. On January 22, 2018 the Noticee had forwarded the request of Yes Bank to B Hariharan and it was only after his instructions that the Noticee signed the PDCs. Hereto annexed and marked as Exhibit 17 is a copy of the email instructions received from B. Hariharan.*
- (xvii) *We further submit that the Noticee was acting in the best interest of the company with regards to the transactions which were repetitive in nature were necessary and incidental business and the best interest of the Company.*
- (xviii) *We submit that Mr. KN Neelkant, MD & CEO of CGPISL was fully briefed and aware of the said impugned transactions. It is only with the approval of the MD and CEO that this impugned transactions was culminated. As a matter of practice, no financial transaction which was above Rs. 5 crores could take place without his involvement and in fact all borrowings and advances/loans by the Company were made with his approval only. Additionally, as a matter of normal practice, this was also brought to the notice of Mr. Hariharan who did not raise any objections to the same considering that the MD and CEO of CG Power had approved it. Hereto annexed and marked as Exhibit 18 is a copy of the email dated January 27, 2019 to the then MD & CEO of the Company. Hence the allegation that our clients had without Board authorisation executed contracts with service agents is factually incorrect.*
- (xix) *Considering the above situation and in continuance of CG Powers Board resolution dated 9<sup>th</sup> November 2017, CGIBV, the holding company of all overseas subsidiaries, passed a resolution dated 07.02.2018 authorising and granting special powers to Mr. Neelkant (CEO&MD), Mr. Ravi Rajagopal (Head – Legal, Compliance, Governance and Risk) and me to act individually to perform amongst others.)*  
*“all actions necessary or useful within the framework of the execution of share sale and purchase agreement, including but not limited to drafting, modifying, amending, signing and executing all related documents, deeds, agreements, powers of attorney, notices, acknowledgements, letters, memoranda, statements and certificates as may be ancillary,*



*necessary, required or useful in connection with the transaction and/or the share sale purchase agreement”.*

- (xx) In pursuance of the above resolution, the Noticee along with Mr. Ravi Rajagopal under the guidance of CEO and MD, executed contracts with various parties to settle issued with the customers in Middle East and Africa and paid advances to complete the work. There has been no illegality of any kind on the part of our client in executing the above said service contracts and for these transactions the lead for all parts of the transactions was taken by the business head of CG Hungary. Without access to complete information and records of CG Power (as per previous request made by him), our client cannot be expected to maintain record of service contracts entered into with vendors over four years ago.*
- (xxi) It is also relevant to note that CG Power Board, vide its resolution dated 09.11.2017, enhanced the limit of loans to subsidiaries from Euro 300 million to Euro 400 million. Out of the above, the CFO and the management was given full powers upto Euro 350 million to execute transactions without referring it back to the CG Power Board for deployment of such short term loans to any of its overseas subsidiaries for Capex, working capital, repayment of debt and other business and commercial related obligations/liabilities. Accordingly, the loans advanced by CG Middle East cannot be said to be without the approval of the Board of CG Power as it had specifically authorised our client to execute transactions without referring it back to the Board of CG Power.*
- (xxii) We submit that our client had informed the then MD&CEO regarding the pending issued which also included the write off of 10 mn of the Middle East by email dated November 11, 2018. Hereto annexed and marked as Exhibit 19 is a copy of the email dated November 11, 2018.*
- (xxiii) Based on the email instruction of B Hariharan, an advance was given by CGME to M/s BIH for approx. 0.6 million euros so that the outstanding dues from BIH with IDBI Bank could be settled. Based on the email instructions of B Hariharan, it was decided that CGME would extend an advance to BIH to enable BIH settle their overdue amounts with IDBI Bank. On the one hand, not following the instructions of an empowered Director of CG Power would have tantamount to insubordination and on the other hand giving these advances ensured that the sanctioned limits for CG Power was restored. The mails between IDBI Bank and the Treasury Department are available with CG Power that will reiterate the challenges that CG Power will have faced had IDBI Bank not sanctioned/revalidated existing working capital limits of CG Power.*
- (xxiv) In light of the above we submit that it is abundantly clear that the advances given to BIH was as per the approval of the Board of CG Power and that the Board of CG Power were completely aware and apprised of the impugned transaction.*

- (xxv) *AHL additionally proposed a waiver of royalty payments (0.5% of consolidated revenues of CGPISL) to perpetuity – this was discussed and approved by the Board. In light of these discussions the MD & CEO issued instruction to stop making royalty payment to AHL therefore to prevent default of the terms and conditions with IndusInd Bank in respect of the fixed Deposit the FDs foreclosed and the amounts returned back to SICL. This was done under the specific instruction of MD and CEO Mr. KN Neelkant.*
- (xxvi) *Therefore, it is incorrect to allege that the said transaction was not within the knowledge of the Board while it was the MD & CEO of CG Power directly involved in the said transaction.*
- (xxvii) *This purchase of inventory was done in January to March 2017, prior to becoming CFO i.e. 12<sup>th</sup> Aug 2017. It is reiterated that the Noticee cannot be held responsible for any acts or omissions of company officials which took place before the Noticee was employed as the CFO of the Company. The agreements were executed by Mr. Madhav Acharya and Mr. B. Hariharan who were both directors of CG Power.*
- (xxviii) *The Noticee too had, through a handwritten note dated January 16, 2018 had confirmed the meeting with the managing director of the statutory auditors, M/s Chaturvedi and Shah, Mr. Gagan Chaturvedi and had discussed various observations including slow moving inventory with him. It may be noted that the participants in the meeting also included Mr. B. Hariharan and Mr. Jitender Balakrishnan – Directors of CG Power, Susheel Todi, Head of Corporate Accounts as well as the Audit team from M/s Chaturvedi and Shah. This note was addressed to Mr. B. Hariharan who was an independent director of the CG Power. Hereto annexed and marked as Exhibit 30 is a copy of the handwritten note.*
- (xxix) *It is submitted that during the Board meeting of CG Power in February 2019, the Auditors of CG Power recommended that a provision be made for Rs. 120 crores as an exceptional item to be reflected in the financial statements ended 31<sup>st</sup> December 2018. This was deliberated and also approved by the Board of CG Power and the provision for receivables were shown in the books of accounts in December 2018. Therefore, the provisions made for the receivables was with full knowledge and approval of the Board of CG Power. The Auditors highlighted the provisions made in their presentation to the Board of CG Power in February 2019.*
- (xxx) *Therefore, it is humble submitted that the journal vouchers referred to and relied upon by the investigating authority is beyond comprehension as the said journal vouchers of March 2018 were never entered or reflected in the books of accounts for the period ended March 31, 2018. In view of the above, it is therefore clear that the Noticee does not have any role in the misrepresentation of debtors since the provisions made were fully approved by the Board of CG Power.*

- (xxxix) *It is most respectfully submitted that the Noticee had ensured that he performed his duties with all diligence and responsibility by ensuring all the key shareholders of CG Power including the Board of CG Power as well as the statutory auditors and has not failed in performing his duties as a CFO and has not failed to ensure that the company's financial statements show present a true and fair picture.*
- (xxxixii) *It is reiterated that the Noticee had no prior relationship with the group companies of Avantha or any of the promoters of the Company, nor was he aware of any alleged fraud being perpetrated in respect of the impugned transactions at the time of authorising the same. Moreover, the Noticee, at all times, had acted as per the instructions of, and under the supervision of, the MD and CEO of the Company. Further, as demonstrated above, the board of the Company was aware of the impugned transactions at all times.*
- (xxxixiii) *It is also pertinent to state here that the allegation that the Noticee had violated Regulation 33(2)(a) of the SEBI LODR Regulations, is misconceived and baseless, as there was no misrepresentation in the financial statements and the Noticee did not certify misleading financial statements. Even if the financial statements are considered to be misleading, the Noticee could not have, at the relevant time, known them to be so, considering the limited scope of his responsibilities in the Company. Therefore, the Noticee had not violated the provisions of the LODR Regulations and the allegations that suggest that the Noticee had failed to perform his duties as the CFO are liable to be set aside.*

46.5 I note that Noticee no. 5 was the CFO of CG Power from August 12, 2017 till August 30, 2019. Further, Noticee no. 5 was also the director of CG Middle East since 2010. I note that the Noticee no. 5 has attempted to narrate various facts to submit that most of the impugned transactions were initiated prior to his appointment as CFO in the Company and that his role was limited to that of performing ministerial actions under the supervisions of the MD & CEO of the Company and all the impugned transactions were executed by the Noticee under the instructions of the members of the Board of CG Power and with their approval. In this regard, I note that the impugned transactions have already been discussed in detail in the foregoing paras and based on the documents available on record, it has been found that the impugned transactions have been executed for diverting funds from CG Power to the Promoter group companies in the interest and benefit of Noticee no. 1. Further, I note that none of the Board minutes contain any such approval taken by the Board of CG Power for the impugned transactions and that there has been misrepresentation of

the financial statements of the Company. Hence, without going into the details of the impugned transactions, which have already been discussed above, I will proceed to deal with the specific role and involvement of Noticee no. 5 in these impugned transactions, as alleged in the SCN, and the submissions of Noticee no. 5 made with respect to the same.

46.6 My observations on the role and involvement of Noticee no. 5 in the impugned transactions are as under:

**(i) Transaction no. 1 (Nashik Property):**

- (a) With regard to the first transaction pertaining to the Nashik property, it has been alleged in the SCN that the Noticee no. 5 had executed mortgage undertaking in respect of Nashik property. I note that the Noticee has signed the Power of Attorney for Mortgage dated February 18, 2018 on behalf of CG Power to ABFL with respect to the Nashik property. Noticee has contended that Noticee no. 7 was authorised to act on behalf of CG Power for any loan transactions and therefore, as directed by Noticee no. 7, he executed the deed to undertake to create mortgage on Nashik property. I note that Noticee no. 5's primary contention is that he has acted under the instruction of Noticee no. 7. In this regard, as discussed in para 34.1 above, the FAR had observed that no approval of the Board was taken for the executing the assignment agreement with respect to the Nashik property and the same was not disclosed to the RAC or the Board in its meeting on August 30, 2016. As observed in the FAR, I note that only the funds advanced as loans by CG Power to AHL and Acton, were disclosed on a post-facto basis to the Board as related party transactions. Hence, the power of attorney for mortgage signed by Noticee no. 5 in respect of the Nashik property was part of the Nashik property transaction which was not approved by the Board. As CFO of the Company, the Noticee played a significant role in the Company and is given significant responsibility in terms of the financial decisions of the Company. Hence, for the Noticee to scurry behind the contention that he was merely acting under the direction of

Noticee no. 7 in fear of insubordination is nothing but a desperate attempt to absolve himself of his responsibility as the CFO of the Company.

**(ii) Transaction no. 3 (Euro 44 Million Borrowing by CG Singapore from SCB):**

- (a) With regard to the 3<sup>rd</sup> transaction, it has been alleged in the SCN that Noticee no. 5 had signed remittance instruction dated February 14, 2018 for transfer of funds from CG Singapore to AIABV, contrary to Board resolution authorising the loan. The Noticee no. 5 has submitted that the inception of the transaction took place much before the Noticee came on board as the CFO which shows that the Noticee was not aware of the structuring of the loan transaction. I note that Noticee no. 5's submissions are clinging on the premise that there were other key management persons such as Noticee no. 8 and Noticee no. 7 who were involved in this transaction before he was appointed as CFO in the Company. In this regard, as discussed in para 34.3 above, I note that CG Singapore had availed a loan of Euro 44 million from SCB in the month of December 2017 for the purpose of financing the general corporate purposes, including working capital, of the Borrower Group and any other member of the CG Group (including by way of inter-company loans). The funds were transferred to CG Singapore on February 14, 2018 and on the same day it was further transferred to AIABV, which utilized these funds for repayment of its own earlier loan with SCB. Since AIABV is neither a subsidiary of CG Singapore or CG Power, the above transfer of funds to AIABV was contrary to the provisions of the facility agreement, which required the term loan to be used only to finance the general corporate purposes, including working capital, of the Borrower Group or any other member of CG Group. Hence, I find that the remittance to AIABV, signed by the Noticee no. 5 with Noticee no. 7, was contrary to the provisions of the facility agreement and in breach of the resolution of the Board of CG Singapore.
- (b) I find that Noticee no. 5 as the CFO of the Company cannot simply and blindly rely upon Noticee no. 8, MD & CEO and Noticee no. 7, director of the Company, as submitted by him, but has to make his own independent decision

on signing a document on behalf of the Company. Since the transaction was initiated prior to his appointment in the Company, it was the Noticee's responsibility to exercise due diligence by verifying the same before signing any financial document, especially given the amount in question. Not being present at the inception of the transaction cannot be an excuse to blindly sign the remittance to AIABV. In fact, this would corroborate the fact that the Noticee has colluded with Noticee no. 1 by signing documents for diverting money from CG Power to promoter group companies without verifying the same.

**(iii) Transaction no. 4 (USD 40 Million Term Loan to CG Middle East from IndusInd Bank):**

- (a) With regard to the 4<sup>th</sup> transaction, it is alleged in the SCN that the Noticee no. 5 had signed various documents relating to the USD 40 million term loan from IndusInd Bank. In this regard, the following are alleged in the SCN:
- i. The sanction letter from IndusInd Bank with respect to the loan of USD 40 Million to CG Middle East and other documents such as CG Middle East Board resolution has been acknowledged by signature, respectively, by Noticee no. 5, who was the sole director on the Board of CG Middle East at that time.
  - ii. Vide drawdown letter dated October 25, 2017 signed by Noticee no. 5 the loan sanctioned to CG Middle East was disbursed to CGIBV's account at request of CG Middle East.
  - iii. The Board of CG Power, vide resolution dated May 26, 2017, increased the limit of banking facilities to be availed by overseas subsidiaries to USD 175 Million. It was mentioned that each such facility shall be notified to the board at the meeting held immediately after availing such facility. However, there was no mention of sanction of USD 40 million loans to CG Middle East on October 25, 2017 in CG Power board meeting dated February 12, 2018. Thus, the sanction of this loan to CG Middle East was never reported to the Board of CG Power.

- iv. A letter dated October 25, 2017 signed by Noticee no. 5 and Noticee no. 7 addressed to IndusInd Bank, states that Board of CGIBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities. There is no record of such a board resolution being passed by the Board of CG IBV for giving guarantee for the loan availed by CG Middle East.
  - v. A letter dated October 25, 2017 signed by Noticee no. 5 on behalf of CG Power was issued to IndusInd bank, undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East. The said letter was issued without the approval of the Board of CG Power.
- (b) I note that Noticee no. 5 was the only director of CG Middle East at the relevant time and any decision on behalf of CG Middle East would have been taken by him. Further, I note that vide the drawdown letter dated October 25, 2017 signed by Noticee no. 5, the loan sanctioned to CG Middle East was disbursed to CGIBV's account at request of CG Middle East. I note that there are no documents/records to show that sanction of USD 40 million loan to CG Middle East on October 25, 2017 was notified to the Board of CG Power at the meeting held immediately after availing such loan facility, as required vide resolution dated May 26, 2017 of the Board of CG Power. Thus, the sanction of this loan to CG Middle East was never reported to the Board of CG Power. As the sole director of CG Middle East and also the CFO of CG Power, it was the responsibility of Noticee no. 5 to inform the Board of CG Power of the said loan facility pursuant to the resolution dated May 26, 2017 taken by the Board of CG Power.
- (c) I note that a letter dated October 25, 2017 signed by Noticee no. 5 and Noticee no. 7 addressed to IndusInd Bank, states that Board of CGIBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities. However, I note that there is no record of such a board resolution being passed by the Board of CGIBV for giving guarantee

for the loan availed by CG Middle East. Further, I note that the Noticee no. 5 who has submitted that Noticee no. 8, MD & CEO and Noticee no. 7, director of CG Power were also directors of CGIBV, has failed to show/provide any board resolution passed by the Board of CGIBV for giving guarantee to the loan availed by CG Middle East. I note that the Noticee no. 5 has yet again, tried to cover his actions under the garb that he has acted upon the instructions of Noticee no 7.

(d) I note that a letter dated October 25, 2017 signed by Noticee no. 5 on behalf of CG Power was issued to IndusInd bank, undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East. I note that the said letter was issued without the approval of the Board of CG Power. Given that the loan facility of USD 40 million by IndusInd to CG Middle East was never informed to the Board of CG Power, it is further evident that the aforesaid letter dated October 25, 2017 was signed by Noticee no. 5 without the approval of the Board of CG Power. Yet again I note that Noticee no. 5 has not specifically dealt with this issue and is taking refuge under the surmise that he has acted upon the instruction of Noticee no. 7 and knowledge of Noticee no. 8, and therefore, that the entire transaction was carried out with the approval of the Board of Directors of CG Power which was headed by Noticee no. 8. I find the same is untenable, as the knowledge of the transaction by Noticee no. 8 and Noticee no. 7 does not necessarily mean that the Board has approved it or was aware of it.

(e) Further, I note that the said loan of USD 40 Million (approximately Rs. 260 crore) was never reflected either in the financial statements of CG Middle East or in the financial statements of CGIBV, thereby, it has also never been reflected in the consolidated financial statement of CG Power. Hence, I find that there was misrepresentation of the financial statements for the FY 2017-18 of CG power and as the sole director of CG Middle East and the CFO of



CG Power, I find that Noticee no. 5 is responsible for the said misrepresentation.

**(iv) Transaction no. 5 (Outstanding Advances to Mirabelle from CG Singapore):**

- (a) With regard to the 5<sup>th</sup> transaction, it is alleged in the SCN that the payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement / Board approval of CG Singapore. In this regard, as discussed in the foregoing para 34.5 above, I note that CG Singapore had made payments of USD 9 Million and USD 4.5 Million to Mirabelle pursuant to a service agreement dated January 15, 2013. I note that CG Power, vide letter dated August 18, 2020 had submitted that it has no record of the services being actually performed by Mirabelle either before or after the payment of the advances. I note that Mirabelle was a 'related party' of CG Singapore and also a related party to BILT, a Promoter Group company, and had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. I also note that the advances made to Mirabelle did not carry any interest. Further, I note that the Mirabelle agreement was not genuine as there were various inconsistencies, such as, in the name of the Company, the signatures and stamps on the agreement. In this regard, I note that Noticee no. 5 has submitted that the payment of USD 13.5 Million made to Mirabelle was made by him and Noticee no. 7, who was a director of CG Power and hence, by no stretch of imagination can it be assumed that these advances were made at the sole discretion of the Noticee but rather they were made under the instructions of Noticee no. 7. I find the contention is untenable as the said payment was made by Noticee no. 5 as the CFO of CG Power. The Noticee is not a mere employee taking instructions from the management but as the CFO, the Noticee is a key management person and his position and responsibility requires him to take decisions on behalf of the Company. Hence, the Noticee cannot simply absolve himself by submitting that he only acted under the instructions of Noticee no. 7. I note

that the Noticee has been unable to provide any supporting documents to show that the approval of the Board of CG Singapore was taken prior to the aforesaid payment to Mirabelle. Further, from the fact that there has been no record of the services being actually performed by Mirabelle, before or after the payment, for a service agreement dated January 15, 2013, shows that the Noticee has simply made the payment in 2018 without checking if any services were even provided. This shows that the Noticee has colluded with Noticee no. 1 in diverting the funds of CG Power to promoter group companies.

**(v) Transaction no. 6 (Post-dated Cheques issued by CG Power to Yes Bank against loan given to AHL):**

- (a) With regard to transaction no. 6, the SCN has alleged that the Noticee no. 5 has signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power. In this regard, as discussed in the foregoing para 37.1 above, I note that PDCs were being issued by CG Power to Yes bank as per the sanction letter dated October 20, 2015 for the long term loan facility of Rs. 500 crore provided to AHL by Yes Bank. I note that CG Power vide its letter dated August 18, 2020 have submitted that the Board has not passed any resolution to issue post-dated cheques on behalf of the Company to Yes Bank against a loan sanctioned by Yes Bank to AHL on October 20, 2015 or any time thereafter and neither was such proposal ever placed before the Board. I note that the issue of letter of Comfort and PDCs was brought to the notice of Board of CG Power only after a legal notice under Section 138 of the Negotiable Instruments Act, 1881 was received for return of cheque no 903547 dated January 15, 2019 drawn on IndusInd Bank. In this regard, I note that the Noticee no. 5 has submitted that he relied on the email instruction of Noticee no. 7, who was a joint signatory in the past and it was only after the instructions of Noticee no. 7 that the Noticee signed the PDCs. The trend of the Noticee submitting that he was merely acting upon the instructions of Noticee no. 7 not only shows that the Noticee has failed his responsibility as a CFO of the Company but it also shows that the Noticee is in collusion with

Noticee no. 7 and Noticee no. 1. Hence, the contention of Noticee no. 5 that he was merely acting upon the instructions of Noticee no. 7 is untenable.

**(vi) Transaction no. 7 (Outstanding Advances / Payments by CG Middle East):**

- (a) With regard to transaction no. 7, the SCN has alleged that as the sole director on the Board of CG Middle East, Noticee no. 5 executed service agreements with the service providers without approval of Board of CG Power. Further, it is alleged that Noticee no. 5 has executed the service agreements without approval of the Board of CG Power and advanced funds from CG Middle East to entities, in lieu of which no services have been received. In this regard, as discussed in the foregoing para 37.2 above, I note that CG Middle East had entered into service agreements with multiple entities and gave advances amounting to Euro 26.5 million during the FY 2017-18 and 2018-19. I note that Noticee no. 5, as the sole director of CG Middle East had executed all the service agreements and had not obtained any prior approval of the Board of CG Power. Further, I note that no services have been received by CG Middle East for the aforesaid advances. I note that an interest free loan of Euro 0.62 Million was given by CG Middle East to Ballarpur International Holdings BV (wholly owned subsidiary of Ballarpur Industries Limited, an associate company of AHL/ Promoter Group company).
- (b) In this regard, the Noticee has submitted that Noticee no. 8, MD & CEO of CG Power was fully briefed and aware of the said impugned transactions. That it is only with the approval of the MD and CEO that this impugned transaction was culminated. Further, that this was also brought to the notice of Noticee no. 7 who did not raise any objections to the same considering that the MD and CEO of CG Power had approved it. Further, the Noticee has submitted that CG Power, vide its Board resolution dated November 09, 2017, enhanced the limit of loans to subsidiaries from Euro 300 million to Euro 400 million. Out of the above, the CFO and the management was given full powers upto Euro 350 million to execute transactions without referring it back to CG Power Board for deployment of such short-term loans to any of the overseas subsidiaries for

Capex, working Capital, repayment of debt and other business and commercial related obligations/liabilities. That accordingly, the loans advanced by CG Middle East cannot be said to be without the approval of Board of CG Power as it had specifically authorised Noticee no. 5 to execute transactions without referring it back to the Board of CG Power.

- (c) With regard to the aforesaid submissions of Noticee no. 5, I note CG Power vide its letter dated August 18, 2020 has submitted that neither CG Power Board nor CG Middle East had given prior approval before entering of the service agreements with the said service providers. Further, from the documents available on record, I do not find any such resolution by the Board granting the CFO such authorisation. Be that as it may, as submitted by the Noticee, by the said resolution, the CFO and the management was given such powers for “*deployment of such short loans*”. In this regard, I note that the CG Middle East had entered into service agreements with multiple entities and gave advances amounting to Euro 26.5 million. Hence, the advances made to the various entities were for services to be provided and were not given as loans to the them. Further, I note that no services have been received by CG Middle East for the aforesaid advances. I note that Noticee no. 5 has again taken the plea that he has acted with the knowledge of Noticee no. 8 and Noticee no. 7. As noted in the aforesaid paras, the Noticee no. 5, as CFO of the Company, plays a significant role as a key management person and is required to perform his duties with due diligence and take necessary approval of the Board of the Company. However, I find that there is no record of any such approval having been taken by the Board of CG Power or any such resolution by the Board granting the CFO such authorisation. Hence, the aforesaid contention of the Noticee is untenable.

**(vii) Transaction no. 8 (Transaction of Rs.229 crore Deposit Taken from AHL):**

- (a) With regard to transaction no. 8, the SCN has alleged that Noticee no. 5 did not inform the Board of Directors of CG Power about the contents of AHL’s first proposal letter dated September 28, 2018. It is alleged that Noticee no.

5 executed Assignment-cum-Put Agreement dated September 28, 2018 on behalf of CG Power with AHL, Solaris and IndusInd Bank without approval of Board of CG Power. In this regard, as discussed in the aforesaid para 37.3 above, I note that AHL and CG Power had entered into a Brand License and Brand Support Agreement dated January 25, 2010 and various amendment agreements for the use of 'Avantha' Brand (owned by AHL) by CG Power against payment of royalty. I note that an Assignment-cum-Put Agreement dated September 28, 2018 was entered into among AHL, CG Power, Solaris and IndusInd Bank in this regard through which CG Power approved assignment of royalty payable by CG Power to AHL for using the 'Avantha' brand in favour of Solaris so that Solaris could get a credit facility of up to Rs. 335 crore secured by these royalty receivables in favour of IndusInd Bank. It is alleged that a resolution, purported to be passed by the Board of Directors of CG Power in its meeting held on September 28, 2018 for approving this arrangement, was found in this regard. However, I note that there was no meeting held by the Board of Directors of CG Power on September 28, 2018. Therefore, I note that none of the board minutes contain any such approval by the Board of CG Power for the agreement dated September 28, 2018 co-signed by Noticee no. 5 on behalf of CG Power. In this regard, I note that the Noticee no. 5 has not made any submissions with regard to the purported Board meeting held on September 28, 2018 and the agreement dated September 28, 2018, which I note was signed by Noticee no. 5 without the approval of the Board of Directors. From the documents available on record, I note that no approval of the Board of CG Power was obtained by Noticee no. 5 for entering into the Assignment-cum-Put Agreement dated September 28, 2018 on behalf of CG Power. Hence, I find that Noticee no. 5 has fraudulently approved the Assignment-cum-Put Agreement dated September 28, 2018 for securing the credit facility of Solaris, a promoter group company, at the cost of creating encumbrances on the assets of a listed company i.e. CG Power.

- (b) Further, as discussed in para 37.3 above, I note that AHL, vide letter dated September 28, 2018, proposed to provide a deposit of Rs. 229 crore to CG Power which could be utilized to reduce its outstanding loans to AHL. However, AHL provided this deposit on various terms and conditions, one of which was, that if royalty was not paid on or before March 20, 2019, the deposit amount would be refunded by CG Power to AHL. I note that Noticee no. 5 accepted this proposal of AHL as the CFO of CG Power on the same day, i.e., on September 28, 2018, and I note that none of the Board minutes contain any such approval having been taken from the Board of CG Power or informing them of the same. Hence, I find that Noticee no. 5, on behalf of CG Power, accepted the conditions proposed by AHL vide its letter dated September 28, 2018, which was in the interest of AHL (a promoter group company), without taking approval of the Board of CG Power. I note that the said acceptance of conditions proposed by AHL, which was not known to the Board of CG Power, had resulted in the liquidation of the FDs and return of Rs. 229 crore along with interest accrued in FDs to AHL through CGPSOL. Hence, I find that Noticee no. 5 has acted in a fraudulent manner by accepting the conditions proposed by AHL vide letter dated September 28, 2018, on behalf of CG Power, without taking the approval or informing the Board of CG Power.

**(viii) Transaction no. 10 (Transaction of Rs.229 crore Deposit Taken from AHL):**

- (a) With regard to the 10<sup>th</sup> transaction, the SCN has alleged that the inventory and debtors' balances of Rs. 156 crore and Rs. 120 crore respectively, as mentioned by Noticee no. 5 in the note dated January 16, 2018, were fake which were subsequently written off by way of various journal vouchers dated March 31, 2018 passed by him. Accordingly, the SCN alleges that Noticee no. 5 has devised and participated in a scheme for reducing the balances of inventory and debtors in the books of CG Power by various means which was proposed by him, vide hand-written note dated January 16, 2018, to Noticee no. 7 for approval. Hence, the SCN alleges that

Noticee no. 5 was involved in publishing untrue financial statements of the Company for the FY 2017-18 and FY 2018-19. In this regard, the Noticee has submitted that this purchase of inventory was done in January to March 2017, prior to him becoming CFO i.e. 12<sup>th</sup> Aug 2017. The Noticee has submitted that he cannot be held responsible for any acts or omissions of company officials which took place before the Noticee was employed as the CFO of the Company. Further, that the agreements were executed by Noticee no. 6 and Noticee no. 7 who were both directors of CG Power.

- (b) I note that Noticee no. 5 has not made any submissions in explaining the handwritten note dated January 16, 2018 by him, wherein certain balances were written off. In this regard, I note that out of total inventory purchased from the suppliers of Rs. 257.69 crore in January 2017, inventory costing around Rs. 102.02 crore was sold to 3 customers, namely Miriam International, Sidhivinayak Traders and Jain Enterprises, for Rs. 120 crore in April-May 2017. The remaining Rs. 155.67 crore inventory was written off as slow and non-moving stock as on March 31, 2018, by passing a journal voucher. I note that the journal voucher for making a provision of Rs. 155.67 crore in the books of CG Power was approved only by Noticee no. 5. As per the policy document of CG Power on the provisioning of slow and non-moving inventories, goods which are slow-moving and non-moving have to be valued at 50% and 5% respectively. However, in the current case, I note that there was 100% provisioning and also there was no categorization of inventory into slow-moving or non-moving. Further, I note that even though the 3 customers had confirmed vide audit confirmation letter(s) dated March 06, 2018, that the amount invoiced by CG Power was payable by them, none of them paid the amount of total Rs. 120 crore due from them as on the applicable due dates. In view of the above, I find that the inventory and debtors' balances of Rs. 155.67 crore and Rs. 120 crore respectively, as mentioned by Noticee no. 5 in the note dated January 16, 2018, were fictitious and were subsequently written off by way of various journal vouchers dated March 31, 2018 passed by him. Hence, I find that

Noticee no. 5 had devised and participated in a scheme for reducing the balances of inventory and debtors in the books of CG Power by various means which was proposed by him, vide hand-written note dated January 16, 2018, to Noticee no. 7 for approval. I find that it was the responsibility of Noticee no. 5, as the CFO, to ensure that the financial statements of the company present true and fair picture of the state of the company's financial affairs.

46.7 I note that with regard to the aforesaid impugned transactions wherein Noticee no. 5 was involved, the primary contention of Noticee no. 5 is that out of the eight transactions wherein the Noticee's involvement is alleged, seven were initiated much prior to the Noticee's appointment in the company in August 2017. Further, that the Noticee was not part of the Board of Directors and during his tenure as the CFO, his role was limited to that of performing ministerial actions under the supervision of the MD&CEO of the Company. The Noticee has submitted that the SCN/Investigation report erroneously precedes on the basis that he was supposed to be reporting to the Board. However, that the terms of his appointment clearly stated that he was appointed as CFO as was supposed to report to Noticee no. 8, who was on the Board of Directors of CG Power. The Noticee has submitted that all the impugned transactions were executed by the Noticee under the instructions of the members of the board of CG Power. However, as dealt with in the aforesaid paras, I find that the approval of the Board of CG Power was required for the said transactions. Executing the transactions upon the instructions of Noticee no. 7 or Noticee no. 8 or that they were aware of the same, does not take away the requirement of taking approval of the Board and that Noticee no. 5, as the CFO, is expected to exercise due care and diligence in ensuring that the transactions authorized by him have requisite approvals and that they are in the best interests of the company.

46.8 In view of the above, I find that by his involvement in transactions no. 1, 3, 4 and 5, Noticee no. 5 was involved in the fraudulent, manipulative and unfair trade practice of diverting funds from CG Group companies for the benefit of Promoter Group companies. By his involvement in transactions no. 6, 7 and 8, I find that the Noticee



has acted in a fraudulent manner in executing agreements without taking the approval of the Board of CG Power. Further, by his involvement in transaction no. 1, 4, 7 and 10, I find that the Noticee was involved in publishing untrue financial statements of the Company for the FY 2017-18 and FY 2018-19.

46.9 A CFO is expected to exercise due care and diligence in ensuring that the transactions authorized by him have requisite approvals and that they are in the best interests of the company. I find that Noticee no. 5 by virtue of his involvement in the above-mentioned impugned transactions, had failed in his duties as a CFO of CG Power and his actions have been detrimental to CG Power and against the interest of CG Power. I find that without his involvement, these transactions could not have been executed.

46.10 Thus, from the above, I find that Noticee no. 5 was involved in the fraudulent, manipulative and unfair trade practice of diverting funds from CG Group companies for the benefit of Promoter Group companies. Further, I find that Noticee no. 5 was involved in publishing untrue financial statements of the Company for the FY 2017-18 and FY 2018-19. Hence, I find that that Noticee no. 5 has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations, 2003. I find that Noticee no. 5, by his involvement in the above-mentioned impugned transactions, had failed to perform his duties as the CFO of CG Power and ensure that the financial statements of the company present a true and fair picture of the state of the company's financial affairs and thereby, is in violation of the provisions of Regulations 4(2)(f)(i)(2), 26(3) and 33(2)(a) of the LODR Regulations, 2015.

**47. Mr. Madhav Acharya (Noticee no. 6):**

47.1 Noticee no. 6 was the CFO of CG Power from November 01, 2009 to August 11, 2017 and Executive Director of CG Power from April 01, 2016 to August 11, 2017.

Further, he was also a Non-Executive Director from August 12, 2017 to September 30, 2017. With regard to Noticee no. 6, the following is alleged in the SCN:

- (i) Noticee no. 6 had executed certain documents by concealing the same from the Board of CG Power, by not taking its approval, as required by the Rule of Procedures of CG Power, which facilitated the above-mentioned fraudulent transactions:
  - (a) Executed Assignment Agreement and Power of Attorney on behalf of CG Power in favour of Blue Garden for assignment of lease of Nashik property, that too without MIDC approval.
  - (b) In Impugned Transaction No. 1, a part of the funds (Rs. 53 crore) received by CG Power from Blue Garden were transferred to Acton. In accordance with the Rules of Procedure of CG Power, in view of the quantum of amount and entity to which it was being advanced, Board's approval was required for advancing money to Acton, which was not taken by Noticee no. 6.
  - (c) Entered into MoU on Behalf of CG Power with Blue Garden for assigning, sale and transfer of rights of Kanjurmarg Property.
  - (d) Executed Power of Attorney in favour of Blue Garden and Vendor Undertaking in relation to the Kanjurmarg transaction.
  - (e) In Impugned Transaction No. 2, the funds (Rs. 192 crore) received by CG Power from Blue Garden were transferred to Acton. In accordance with the Rules of Procedure of CG Power, Board's approval was required for advancing money to Acton, which was not taken by Noticee no. 6.
- (ii) Noticee no. 6 received approval from Noticee No. 7, vide hand-written notes dated January 1, 2017 and February 8, 2017, for sanction of non-refundable advances of Rs. 1.50 crore from Blue Garden and of Rs. 1.50 crore from Acton. The amounts were released to Noticee no. 6 from Blue Garden and Acton in February 2017. Noticee no. 6 also received approval from the HR Head of Avantha Group, i.e., the Promoter Group entity, vide email dated August 11, 2017 (on the last day of his service as Executive Director & CFO of CG Power), to draw a sum of Rs. 2.85 crore which would be non-refundable to the

Company or the Group. The amount was paid to him in August 2017 by Blue Garden.

(iii) Thus, from the above, the SCN alleged that:

- (a) Noticee no. 6 had misused the powers granted to CFO under various Board resolutions for entering into the aforesaid transactions for the benefit of the Promoter Group companies.
- (b) Noticee no. 6 was involved in the scheme / unfair trade practice of diverting the funds from CG Group companies for the benefit of Promoter Group companies.

(iv) Further, it is observed from the aforesaid transactions that:

- (a) Noticee no. 6 signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power.
- (b) Noticee no. 6 signed the application dated April 3, 2017 made by AHL to ICICI Bank for an overdraft facility on behalf of CG Power, without approval of Board of CG Power.
- (c) Noticee no. 6 executed CG PSOL Loan Agreement on behalf of CG Power, without approval of Board of CG Power.
- (d) Noticee no. 6 was authorized to take actions and sign all documents, under purported board resolutions of CG power dated May 26, 2016, May 27, 2016 and August 30, 2016 for execution of transaction mentioned in that purported board resolutions.

(v) Further, it was also alleged that:

- (a) Noticee no. 6 was involved in impugned transaction no. 1 & 2 as mentioned in detail earlier. The transactions entered into by CG Power with Blue Garden and Acton have not been reflected in the financial statement of CG power for the FY 2016-17. Thus, it is alleged that Noticee no. 6 had given a false CFO certification that the financial statements of CG Power for the FY 2016-17 were true and fair.

- (b) It is also alleged that in impugned transaction no. 10 as mentioned in detail above, Noticee no. 6, as CFO, was involved in inflating the purchases of CG Power by Rs. 257.69 crore during January 2017 (FY 2016-17) and inflating the sales of the Company by Rs. 120 crore during April-May 2017 (FY 2017-18).
- (c) It is the responsibility of the CFO to ensure that the financial statements of the company present true and fair picture of the state of the Company's financial affairs. A CFO is expected to exercise due care and diligence in ensuring that the transactions authorized by him have requisite approvals and that they are in the best interests of the Company. Thus, it is alleged that Noticee no. 6 by involving in the above-mentioned impugned transactions, had failed in his duties as a CFO of the Company as well as Executive Director of CG Power and his actions have been detrimental to CG Power. Hence, it is alleged that Noticee no. 6 was involved in publishing untrue financial statements of the Company for the FY 2016-17 and FY 2017-18.

47.2 Hence, the SCN has alleged that Noticee no. 6 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations. It is also alleged that Noticee no. 6, in the capacity of Executive Director and CFO of the Company and by his involvement in the above-mentioned impugned transactions, had failed to perform his duties and obligations towards CG Power, and is thereby alleged to have violated the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6), 26(3) and 33(2)(a) of the LODR Regulations.

47.3 The role/involvement of the Noticee no. 6 in the aforesaid impugned transactions are as under:

Sr. No	Transaction	Involvement/Role
1	Transaction no. 1	<ul style="list-style-type: none"> <li>The Assignment Agreement was executed by Noticee No.</li> </ul>

	(Nashik Property)	<p>6 on behalf of CG Power with Blue Garden.</p> <ul style="list-style-type: none"> <li>• Noticee no. 6 also executed a Power of Attorney (PoA) dated May 09, 2016, on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Nashik Property and to mortgage or charge all rights, title and interest of the said property.</li> </ul>
2	Transaction no. 2 (Kanjurmarg Property)	<ul style="list-style-type: none"> <li>• MOU dated February 1, 2017 was executed by Noticee no. 6 on behalf of CG Power with Blue Garden to assign, sell and transfer the rights of Kanjurmarg property to Blue Garden in case the sale under Evie Sale Agreement did not go through within 42 months from the date of the agreement.</li> <li>• Power of Attorney was executed by Noticee no. 6 on behalf of CG Power in favour of Blue Garden through which Blue Garden was authorized and empowered, inter alia, to avail loan from any financial institution against the security of the Kanjurmarg Property and to mortgage or charge all rights, title and interest of the said property</li> </ul>
3	Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL)	<p>Prior to April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No.6 and Noticee No. 9.</p>
4	Transaction no. 9 (Multiple transactions were executed without the Approval of Board of CG Power)	<ul style="list-style-type: none"> <li>• On April 3, 2017, AHL made an application for an overdraft facility up to Rs.132 crore to ICICI Bank which was secured by the 3 fixed deposits of CG Power of an aggregate amount of Rs. 139.61 crore opened in September 2016 and maturing in May 2017, which was signed by Noticee no. 6 on behalf of CG Power.</li> <li>• A Loan Agreement dated May 2, 2016 was entered into between CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CG PSOL, which was signed by Noticee no. 6 on behalf of CG Power.</li> </ul>

		<ul style="list-style-type: none"> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated May 27, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Noticee no. 7 or Noticee no. 6 to execute transaction documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
5	Transactions no. 1, 2 and 10 (Misrepresentation of financial statements)	<ul style="list-style-type: none"> <li>• The transactions entered into by CG Power with Blue Garden and Acton have not been reflected in the financial statement of CG power for the FY 2016-17. Thus, it is alleged that Noticee no. 6 had given a false CFO certification that the financial statements of CG Power for the FY 2016-17 were true and fair.</li> <li>• Noticee no. 6, as CFO, was involved in inflating the purchases of CG Power by Rs. 257.69 crore during</li> </ul>

		January 2017 (FY 2016-17) and inflating the sales of the Company by Rs. 120 crore during April-May 2017 (FY 2017-18). Hence, Noticee no. 6 was involved in publishing untrue financial statements of the Company for the FY 2016-17 and FY 2017-18.
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47.4 The Noticee vide his replies and written submissions to the SCN, has *inter alia* made the following submissions:

- (i) *The Noticee states that approximately 36 resolutions were passed authorising the present Noticee to inter alia borrow funds and create security, as may be necessary. The FAR has already concluded that there were loan transactions. Moreover, the assets in the present case were reflected in the books of the Company. Further, the Blue Garden financials do not reflect these assets i.e. Nashik and Kanjurmarg property. It is an admitted fact as evidenced at para 34 of the SCN that CG Power itself created the related parties, Blue Garden and Acton and the question that the investigation was to examine is whether the Noticee had the authority to execute any documents relating to this borrowing from ABFL. As submitted above, the Noticee was duly empowered by various resolutions to make the borrowings from ABFL. In any case the transactions with the related parties, viz the borrowing from Blue Garden and lending to Acton were continuously reported to the RAC and the Board and the Minutes specifically stated that the list of related party transactions were placed before the Board.*
- (ii) *The Noticee states that he had the authority to execute the said documents as referred to in the SCN. The Noticee was given an omnibus authority to execute any documents as may be required. The power of attorney dated 19<sup>th</sup> November 2009 is enclosed as Annexure 1.*
- (iii) *With regard to allegations in Para 1(c) and para 2(b) and the procedure mentioned in the Rules of Procedure for disposal of fixed assets by CFO, the Noticee submits that there was no fixed asset disposal in the present case. It has clearly been established in the FAR that the transactions were in fact "loan transactions" cloaked in the form of a 'sale'. The assignment agreement referred to a consideration of Rs. 264 crores whereas, only Rs. 200 crores were paid to the vendor. The assignment agreement was never acted upon and the entire consideration of Rs. 264 crores was also never paid. Further, this purported assignment was subject to MIDC approval. Therefore, the Nashik property was never sold and the amounts transferred were only in the nature of loans as rightly found in FAR.*

- (iv) The RAC and BM were attended by Ravi Rajagopal and the company secretary as well. The minutes were prepared by the RAC members themselves and for reasons best known to them they did not make reference to the Blue Garden and Acton names in the RAC resolution.*
- (v) Since it was a borrowing transaction in substance there was no disclosure as to the assignment and the auditor (who was on Blue Garden board) and the RAC members who are eminent thought it fit not to disclose the same in the financial statements. The Noticee had no role in deciding the disclosures and it was the auditor committee that decided the presentation and disclosures.*
- (vi) To the best of what the Noticee can recollect, the Noticee has not signed any post-dated cheques as a guarantee for credit facilities extended by Yes Bank to AHL. Copies of the alleged post-dated cheques have not been provided to the Noticee in order to enable the Noticee to appropriately respond to the same. Apart from copies of the PDCs not being produced, since the Noticee was appointed on the Board of Directors with effect from 1st April 2016, and the cheques were allegedly issued pursuant to the letter of comfort dated 4th November 2015, absent the dates on which alleged PDCs were issued or signed by the Noticee, the allegation of the violation of LODR Regulations which apply to obligations of the Board of Directors, does not survive at all qua the Noticee, since the Noticee was not a Director on 4th November, 2015.*
- (vii) The Noticee also states that he had requested SEBI and the company to provide the documents allegedly signed by the present Noticee authorizing the treasury department of the company to issue cheques to Yes Bank for loans of Noticee No. 2. SEBI, in its record of proceedings dated January 03, 2022 directed the company to provide the documents signed by the present Noticee for issuing the cheques. Pursuant to the above, the company sent an email dated January 17, 2022. However, instead of providing any 'documents signed by present Noticee authorizing issuance of the cheques', as security for the loans advanced to AHL, the company has provided copies of the cheques, as a security for the facilities availed by the company. It is submitted that, the company has deliberately not provided any documents evidencing authorization.*
- (viii) In para 44.3.4 of the SCN, it is alleged that the Noticee had executed CG PSOL loan agreement dated May 02, 2016 on behalf of CG Power, without approval of Board of CG Power. On the other hand, in para 44.3.5 of the SCN, it is alleged that the Noticee was authorized to take actions and sign all documents under the Board resolutions dated May 26, 2017, May 27, 2016 and August 30, 2017 including towards the impugned transaction no. 9. Therefore, the statements in para 44.3.4 and 44.3.5 are contradictory to each other. Therefore, the Noticee request SEBI to kindly clear the charge against the Noticee as the Noticee is unable to clearly understand the case he has to meet. Without prejudice to the*



*above, as regards execution of the loan agreement with CGPSOL, on 2nd May, 2016 is concerned, apart from denying the allegation that the same was executed by this Noticee without authority, such execution of the loan agreement also does not amount to violation of PFUTP and/or LODR Regulations. With prejudice to the above, the Noticee denies the allegation of any wrong doing in respect of impugned transaction no. 6 and 9. The Board by its resolution dated 5th/6th August 2013, authorized the Noticee to enter into CG PSOL loan agreement.*

- (ix) The Noticee submits that the mere signing of the application for overdraft facility given by ICICI Bank to AHL does not amount to breach of the LODR Regulations and/or PFUTP. The obligation, if any, assuming the same applies, was on the Company secretary or the compliance officer, and not the Noticee.*
- (x) With regard to the impugned transactions no. 1 and 2, the Noticee submits that these two transactions were netted off with the consent, knowledge and approval of Mr. Sushil Todi (Global Head Accounts and Tax) and Mr. Anil Gupta (Head of Accounts) or "their review and necessary action". The process of netting off was done as per the applicable accounting policies by the accounting department in consultation with the statutory auditors and was fully, truly and fairly disclosed in the Annual Report of the Company in the year FY 2016-17. Since the netting off was done with the knowledge of the statutory auditors who were experts in matters of accounting and auditing, the Noticee cannot be faulted in this regard. The Noticee had no role to play in this netting off and the statutory auditors would have complied with the applicable accounting standards and accounting principles in this regard.*
- (xi) With regards to the allegation that the Noticee was involved in inflating the purchases of CG Power by Rs. 257.69 crores during January 2017 and inflating sales of the Company by Rs. 120 crores during April-May 2017. The Noticee submits that, being CFO he had only signed the tripartite agreement as it involved an offset of the liability with the subsidiary, and was not in any way involved in the purchase and sales which departments were reporting to MD and CEO. The Company had a strong internal control system, and internal audit mechanism through which all transactions were routed. The Noticee was not involved in any manner in the inflation of sales and/or purchases of the Company.*
- (xii) It is submitted that CG PSOL is a wholly owned subsidiary of the Company. On August 05, 2013 in the meeting of board of directors of the Company, the Company had passed an omnibus resolution authorizing the Company to provide loans, intercorporate deposit, debentures and other funding to subsidiary and associates of the Company for limits specified therein. The said resolution was passed by the Board of the Company after ascertaining the need/rationale therefore, and hence, it is incorrect to allege that any transaction was executed at the behest of the Noticee. All transactions entered into by the*

*Company and to which the Noticee was a signatory/party in any manner were in the ordinary course of business of the Company. The SEBI has alleged that it was the responsibility of the Noticee to take Board's approval before the transfer of moneys to Blue Garden and Acton. In this regard, the Noticee states that the Board had already granted such an approval. Even otherwise, it was not the responsibility of the Noticee in particular to the obtain such an approval.*

*(xiii) The Noticee submits that the amount of Rs. 5.85 crores received by the Noticee was not in return for his supposed role in the alleged scheme of diverting the funds from CG Power to promoter group companies. The Noticee submits that during the year 2015-16, CG Power was actively pursuing selling of its international Transmission and Distribution (T&D) business. The Company had identified a private equity investor named First Reserve (FR) who gave a non-binding offer to buy the business. Subsequently, in March 2016, the company received a Binding Offer from FR to purchase the business, which was accepted by the Board and a disclosure to stock exchanges was made under the listing regulations. The process lasted almost one year and there were regular discussions in the Board. The entire process of overseas divestment was handled by the finance team from Mumbai without engaging any external international consultant thereby saving millions of dollars in the process. The Noticee, heading the said team for the entire disinvestment process was promised an incentive by the management. Post the receipt of Binding Offer from FR, the Noticee was sanctioned an incentive payment and an incentive payment of Rs. 3.00 Crore. Accordingly, the said payment was released to the Noticee in February 2017 from Blue Garden and Acton (Rs 1.50 Cr each). The amount has been reflected in the income tax returns of the Noticee for the relevant year. The Noticee had no say as to from which entity would the payment be sanctioned to him. Accordingly, he accepted the payment from Blue Garden and Acton i.e. the companies were chosen by the Chairman of the group for making the said payment. With regards to balance 2.85 crores, the Noticee submits that the chairman of the group had also decided that the differential salary [last draw salary in CG Power at Rs. 4.05 crores and maximum salary payable by Avantha Power of 1.20 crores i.e. net 2.85 crores would be paid from BGEL. The Noticee is placing reliance upon the email dated October 17, 2017 received from Group HR – Head.*

*(xiv) The Noticee also submits that he has always affirmed compliances with the code of conduct of the company, on an annual basis. Further, the Noticee submits that has not made any false or misleading statement in the financial statements. Further, he has not omitted any material fact which may make the statements or figures contained therein misleading. Thus, the Noticee submits that he has not violated, Regulation 26(3) and Regulation 33(2)(a) of the LODR Regulations, 2015.*

47.5 Firstly, I note that Noticee no. 6 was the CFO of CG Power from November 01, 2009 to August 11, 2017 and Executive Director of CG Power from April 01, 2016 to August 11, 2017. Further, he was also a Non-Executive Director from August 12, 2017 to September 30, 2017. I note that the Noticee has attempted to narrate various facts relating to the impugned transaction and why the impugned transactions were executed. In this regard, I note that the impugned transactions have already been discussed in detail in the foregoing paras and based on the documents available on record, it has been found that the impugned transactions have been executed for diverting funds from CG Power to the Promoter group companies in the interest and benefit of Noticee no. 1. Further, that some of the impugned transactions have been executed for which the Board minutes do not show of any such approval been taken for the transactions and that there has been misrepresentation of the financial statements of the Company. Hence, without going into the details of the impugned transactions, which have already been discussed above, I will proceed to deal with the specific role and involvement of Noticee no. 6 in these impugned transactions, as alleged in the SCN, and the submissions of the Noticee made with respect to the same.

47.6 My observations on the role and involvement of Noticee no. 6 in the impugned transactions are as under:

**(i) Transaction no. 1 and 2 (Nashik and Kanjurmarg Property):**

(a) With regard to the first transaction pertaining to the Nashik and Kanjurmarg property, it has been alleged in the SCN that the Noticee no. 6 executed Assignment Agreement and Power of Attorney on behalf of CG Power in favour of Blue Garden for assignment of lease of Nashik property, without taking approval of the Board and also without MIDC approval. Further, a part of the funds (Rs.53 crore) received by CG Power from Blue Garden for the Nashik property were transferred to Acton. In accordance with the Rules of Procedure of CG Power, in view of the quantum of amount and entity to which it was being advanced, Board's approval was required for advancing money to Acton, which was not taken by Noticee no. 6. Further, with regard

to the Kanjurmarg property, it is alleged that Noticee no. 6 entered into MoU on Behalf of CG Power with Blue Garden for assigning, sale and transfer of rights of Kanjurmarg Property without the approval of the Board. Further, he executed PoA in favour of Blue Garden and Vendor Undertaking in relation to the Kanjurmarg transaction. Furthermore, the funds (Rs. 192 crore) received by CG Power from Blue Garden for the Kanjurmarg property were transferred to Acton. In accordance with the Rules of Procedure of CG Power, Board's approval was required for advancing money to Acton, which was not taken by Noticee no. 6. In this regard, the Noticee has submitted that he had the authority to execute the said documents as referred to in the SCN and was given an omnibus authority to execute any documents as may be required by the power of attorney dated November 19, 2009. The Noticee in his reply dated August 21, 2021 has quoted the relevant portion of the PoA dated November 19, 2009, which reads as under:

*"9.1 Acquisition, Sale, Lease etc:*

*To purchase, bid at an auction taken on lease, and /or to acquire in any other manner, or to sell, lease, grant tenancy, grant business centre services or other wise transfer in any manner, any immovable properties, whether commercial or residential, or any interests therein, decide the terms and conditions thereof, as well as create charge or mortgage therein, and generally to sign all documentation relating thereto, for all Company and/or its employees, in accordance with the Rules of Procedure for Management and/or as approved by the Managing Director/Board of Directors."*

- (b) With regard to the aforesaid submission, I note from the relevant portion quoted by the Noticee that the power has been given to him to *inter alia* sign all documentation relating thereto for the Company "*in accordance with the Rules of Procedure for Management*". Hence, the Noticee is bound to act in accordance with the Rules of Procedure of the Company. In this regard, I note that any disposal of immoveable property above Rs. 50 Crore requires the Board approval of the Company, as per the Rules of Procedure of the Company. I note that Board approval was not taken for entering into agreement for sale of the Nashik or Kanjurmarg property and hence, the Noticee was not in a position to exercise his PoA to execute any document,

without first seeking approval of the Board for the sale of the Nashik or Kanjurmarg property.

- (c) Further, the Noticee with regard to compliance of the Rules of Procedure for disposal of fixed assets by CFO, has submitted that there was no fixed asset disposal in the present case as it has clearly been established in the FAR that the transactions were in fact “loan transactions” cloaked in the form of a ‘sale’. That the assignment agreement was never acted upon and the entire consideration of Rs. 264 crores was also never paid. Further, this purported assignment was subject to MIDC approval. Therefore, the Noticee has submitted that the Nashik property was never sold and the amounts transferred were only in the nature of loans as rightly found in FAR. In this regard, I note that the Noticee is attempting to turn the fraudulent scheme to his advantage by taking the argument that since the FAR has observed that it was actually not a sale transaction but a loan transaction, and given that Blue Garden was a related party, the transaction between Blue Garden and CG Power for the Nashik property was in fact a related party loan transaction, which was brought to the notice of the RAC and Board in its meeting on August 30, 2016. However, I find the submission to be completely untenable. I note that it has been found that the loan given to Blue Garden by ABFL which was then transferred to CG Power as part of the assignment agreement was actually a façade for ABFL to indirectly provide the loan to CG Power. However, the fact remains that Blue Garden had entered into a loan agreement with ABFL and into an assignment agreement with CG Power to give effect to this arrangement. Whether or not the land was finally sold to Blue Garden is immaterial. What is relevant is that these agreements had been executed and funds had been transferred and as discussed in the foregoing paras, any disposal of immoveable property required the Board approval of the Company and I note that none of the board minutes of the Company record any such approval being taken for entering into agreement with Blue Garden for the lease/sale of the Nashik or Kanjurmarg property.

(d) The Noticee has further submitted that since it was a borrowing transaction in substance there was no disclosure as to the assignment and the auditor, who was on Blue Garden Board and the RAC members thought it fit not to disclose the same in the financial statements. In this regard, as discussed in the aforesaid paras, even though the intent was to indirectly provide loan to CG Power, the fact remains that an assignment agreement was executed for the Nashik property and a MoU was executed for the Kanjurmarg property, for which Board approval was required but not taken.

(e) In view of the above, I find that Noticee no. 6 has executed the Assignment Agreement and Power of Attorney on behalf of CG Power in favour of Blue Garden for assignment of lease of Nashik property, the MoU on Behalf of CG Power with Blue Garden for assigning, sale and transfer of rights of Kanjurmarg Property and the PoA in favour of Blue Garden and Vendor Undertaking in relation to the Kanjurmarg transaction, without taking any approval of the Board.

**(ii) Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL):**

(a) With regard to transaction no. 6, the SCN has alleged that Noticee no. 6 had signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power. In this regard, as discussed in the aforesaid para 37.1 above, I note that PDCs were being issued by CG Power to Yes bank as per the sanction letter dated October 20, 2015 for the long term loan facility of Rs. 500 crore provided to AHL by Yes Bank. I note that CG Power vide its letter dated August 18, 2020, have submitted that the Board has not passed any resolution to issue PDCs on behalf of the Company to Yes Bank against a loan sanctioned by Yes Bank to AHL on October 20, 2015 or anytime thereafter and neither was such proposal ever placed before the Board. I note the Noticee vide his reply dated August 21, 2021, has submitted that he has not signed any PDCs as a

guarantee for credit facilities extended by Yes Bank to AHL and copies of the alleged PDCs have not been provided to the Noticee in order to enable the Noticee to appropriately respond to the same. However, when the Company vide its email dated January 17, 2022 had provided copies of the cheques, the Noticee vide its letter dated February 20, 2022 has submitted that only copies of cheques have been provided and not documents signed by the Noticee authorising issuance of the cheques.

- (b) With regard to the aforesaid submissions of Noticee no. 6, I note that the allegation in the SCN is that the Noticee had signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power. Hence, what is relevant is whether Noticee no. 6 had signed the PDCs and the same can be established through the copies of cheques provided by the Company. From a perusal of the copies of the cheques provided by the Company to the Noticee no. 6 vide its email dated January 17, 2022, I note that the same have been signed by Noticee no. 6. It is not the case of Noticee no. 6 that signature on the PDCs, copies of which have been provided to him by the Company, are not his signature. Hence, I find that Noticee no. 6 had signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank and I find that none of the board minutes of the Company records any such approval being taken of the Board of CG Power.

**(iii) Transaction no. 9 (Multiple transactions were executed without the Approval of Board of CG Power):**

- (a) With regard to the 9<sup>th</sup> transactions, the SCN has alleged that Noticee no. 6 (on behalf of CG Power) signed the application dated April 03, 2017 made by AHL to ICICI Bank for an overdraft facility up to Rs.132 crore, without approval of Board of CG Power. Further, Noticee no. 6 (on behalf of CG Power) signed a Loan Agreement dated May 02, 2016, entered into between

CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CG PSOL. Further, it is alleged that Noticee no. 6 was authorized to take actions and sign all documents, under purported board resolutions of CG power dated May 26, 2016, May 27, 2016 and August 30, 2016 for execution of transaction mentioned in that purported board resolutions. In this regard, as discussed in the aforesaid para 37.4 above, I note that certified true copies of resolutions for 4 of the aforesaid transactions were found during investigation, authorising each of the transactions. However, I note that there was either no such board meeting or such resolution taken for these 4 transactions entered into by Noticees no. 1, 6 and 7 on behalf of CG Power. I note that these certified true copies of resolutions, which were not genuine, were certified to be true by Noticee no. 6. Further, I note that the loan agreement dated May 02, 2016 for Rs. 1000 crore was entered into between CG Power and CGPSOL without the approval of the Board of CG Power. Hence, I find that the aforesaid 5 transactions have all taken place without taking the approval of the Board of CG Power. In this regard, the Noticee has submitted that with respect to execution of the loan agreement with CGPSOL, on May 02, 2016 is concerned, apart from denying the allegation that the same was executed by him without authority, he has submitted that such execution of the loan agreement also does not amount to violation of PFUTP Regulations, 2003 and/or LODR Regulations, 2015. Further, the Noticee submits that mere signing of the application for overdraft facility given by ICICI Bank to AHL does not amount to breach of the LODR Regulations, 2015 and/or PFUTP Regulations, 2003.

- (b) With regard to the aforesaid submissions of Noticee no. 6, I note that the Noticee has not denied that he has executed the said agreements and applications. His contention is that the same is not a violation of the LODR Regulations, 2015 and/or PFUTP Regulations, 2003. In this regard, I note that vide the inspection sought by Noticee no. 6 and granted on July 01, 2021, the Noticee was *inter alia* given a copy of letter dated December 09, 2019 by CG Power to SEBI. Along with the said letter, copies of Annexures



to the letter, including copies of the certified true copy of resolutions purportedly passed by the Board in its meetings held on May 26, 2016, May 27, 2016 and August 30, 2016, were provided to Noticee no. 6. I note that there was no meeting held by the Board of Directors on May 26, 2016. Further, I note that no such resolution was passed in the Board meetings on May 27, 2016 and August 30, 2016, as conveyed in the certified true copy of resolutions for the said meetings. I note that these aforesaid certified true copies were signed by Noticee no. 6, which clearly shows that Noticee no. 6 has acted in a deceptive manner and fraudulently authorised himself and other Noticees through these falsified certified true copies even though no approval was accorded by the Board for such authorisation. From the above, I note that Noticee no. 6, who was a CFO and also an Executive Director then had failed to act in a responsible and diligent manner for the interest of the Company and preventing misuse of corporate assets by falsifying certified true copy and fraudulently authorising himself and other Noticees, without the approval of the Board. Hence, I find that Noticee no. 6 has violated provisions of the LODR Regulations, 2015 by not complying with the responsibilities and functions as a director of the Board and has violated provisions of the PFUTP Regulations, 2003 by falsifying certified true copy of resolutions of the Board and thereby, fraudulently authorising himself and other Noticees to execute transactions without taking approval of the Board of the Company. Accordingly, the aforesaid contention of Noticee no. 6 that the transactions are not a violation of the LODR Regulations, 2015 and/or PFUTP Regulations, 2003, is untenable.

**(iv) Transactions no. 1, 2 and 10 (Misrepresentation of Financial Statements):**

- (a) With regard to transactions no. 1, 2 and 10 pertaining to misrepresentation of financial statements, the SCN has alleged that the transactions entered into by CG Power with Blue Garden and Acton, in impugned transaction no. 1 & 2, have not been reflected in the financial statement of CG power for the FY

2016-17. Thus, it is alleged that Noticee no. 6 had given a false CFO certification that the financial statements of CG Power for the FY 2016-17 were true and fair. It is also alleged that in impugned transaction no. 10, as dealt with in detail above, Noticee no. 6, as CFO, was involved in inflating the purchases of CG Power by Rs. 257.69 crore during January 2017 (FY 2016-17) and inflating the sales of the Company by Rs. 120 crore during April-May 2017 (FY 2017-18).

- (b) In this regard, the Noticee has submitted that with regard to the impugned transactions no. 1 and 2, the two transactions were netted off with the consent, knowledge and approval of Mr. Sushil Todi (Global Head Accounts and Tax) and Mr. Anil Gupta (Head of Accounts). Further, that the process of netting off was done as per the applicable accounting policies by the accounting department in consultation with the statutory auditors and was fully, truly and fairly disclosed in the Annual Report of the Company in the year FY 2016-17. Since the netting off was done with the knowledge of the statutory auditors who were experts in matters of accounting and auditing, the Noticee has submitted that he cannot be faulted in this regard as he had no role to play in this netting off and the statutory auditors would have complied with the applicable accounting standards and accounting principles in this regard. With regard to the aforesaid submissions, I note that Noticee no. 6 was CFO of CG Power from November 01, 2009 to August 11, 2017, and it is the responsibility of the CFO to ensure that the financial statements of the company present true and fair picture of the state of the company's financial affairs. Therefore, I find the Noticees submission that he cannot be faulted as the same was done with the knowledge and approval of the accounting department in consultation with the statutory auditors, is untenable. I note that as per Regulation 33(2)(a) of the LODR Regulations, 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. Hence, the responsibility lies upon Noticee no. 6, as the CFO, to ensure that the financial results are not misrepresented.

(c) With regard to the allegation that the Noticee was involved in inflating the purchases of CG Power by Rs. 257.69 crores during January 2017 and inflating sales of the Company by Rs. 120 crores during April-May 2017, the Noticee has submitted that being CFO he had only signed the tripartite agreement as it involved an offset of the liability with the subsidiary, and was not in any way involved in the purchase and sales which departments were reporting to the MD and CEO. The Noticee has submitted that he was not involved in any manner in the inflation of sales and/or purchases of the Company. In this regard, I note that the loan agreement dated May 02, 2016 between CG Power and CGPSOL for Rs. 1000 crore was also signed by Noticee no. 6 on behalf of CG Power. I note the following discrepancies in the tripartite agreement and invoices were alleged in the SCN:

- (i) The Tripartite Agreements dated January 01, 2017, were printed on the letterheads of each of the suppliers and the format and style of the letterhead of all the suppliers were identical. Further, the amounts mentioned in these Tripartite Agreements matched exactly with the invoices, which were issued much later for procurement of goods. Therefore, the amount of transaction with each supplier was fixed irrespective of the quantity and rate agreed to by the company.
- (ii) The invoices issued by all the suppliers were in exactly the same format. The format was also used by CG Power in reselling commodities so procured. Further, in none of the invoices, the suppliers have mentioned transporter's name, lorry receipt number or mode of transport. As per the email confirmation received by the Forensic Auditor from CG Power, the relevant transport invoices or lorry receipt copies were not available with CG Power.

- (iii) The goods supplied by the suppliers were not kept at the warehouse of CG Power but were deposited with 3 third-party custodians, namely Sri Infra Projects, S. K. Traders and R. K. Trading. It was informed by CG Power to the Forensic Auditor that CG Power had not entered into any formal agreements with the custodians in this regard. Further, no fees were paid to the custodians to keep such a huge inventory of CG Power with them.
  - (iv) The confirmation letters dated March 31, 2017 issued by each of the custodians had identical formats. The Forensic Auditor sent emails to the custodians seeking details including inward and outward registers for the period. While the email to Sri Infra Projects bounced, no response was received with respect to S. K. Traders and R. K. Trading
- (d) In addition to the aforesaid discrepancies in the tripartite agreement and invoices, I note that out of total inventory purchased from these suppliers of Rs. 257.69 crore in January 2017, inventory costing around Rs. 102.02 crore was sold to 3 customers, namely Miriam International, Sidhivinayak Traders and Jain Enterprises, for Rs. 120 crore in April-May 2017. The remaining Rs. 155.67 crore inventory was written off as slow and non-moving stock as on March 31, 2018, by passing a journal voucher. Further, I note that the formats of the Purchase Orders of the 3 above-mentioned customers were exactly identical. These customers confirmed the receipt of materials on various dates in the month of May and June 2017. The formats of said confirmation for all the 3 customers were also identical. Further, as per the purchase orders received from these 3 customers and the invoices raised by CG Power to them, the payments were to be received within 365 days from the date of invoice. I note that each of these 3 customers had confirmed vide audit confirmation letters dated March 6, 2018, that the amount invoiced by CG Power was payable by them. However, none of them paid the amount of total Rs. 120 crore due from them as on the applicable due dates. Therefore, there are multiple discrepancies and aspects of this tripartite agreement that show that it was fictitious in nature and not genuine. I note that none of the

board minutes record any such approval been taken for the aforesaid tripartite agreement and for the loan agreement, which were both signed by Noticee no. 6. In view of the above, I find the submission of the Noticee that he had only signed the tripartite agreement and was not in any way involved in the purchase and sales or in the inflation of sales and/or purchases of the Company, as untenable, as he is the one who had executed the agreements and he must be accountable for the same. Hence, I find that Noticee no. 6 was involved in inflating the purchases of CG Power by Rs. 257.69 crore during January 2017 (FY 2016-17) and inflating the sales of the Company by Rs. 120 crore during April-May 2017 (FY 2017-18), as found in para 39.5 above.

47.7 I also note that Noticee no. 6 received approval from Noticee No. 7, vide hand-written notes dated January 01, 2017 and February 08, 2017, for sanction of non-refundable advances of Rs. 1.50 crore from Blue Garden and of Rs. 1.50 crore from Acton. The amounts were released to Noticee no. 6 from Blue Garden and Acton in February 2017. Noticee no. 6 also received approval from the HR Head of Avantha Group, i.e., the Promoter Group entity, vide email dated August 11, 2017 (on the last day of his service as Executive Director & CFO of CG Power), to draw a sum of Rs. 2.85 crore which would be non-refundable to the Company or the Group. The amount was paid to him in August 2017 by Blue Garden. It is alleged that the total monetary benefit of Rs.5.85 crore received by Noticee no. 6 through transfers from Blue Garden and Acton was in return for his role in the scheme of diverting the funds from CG Power to the Promoter Group companies. With regard to the above, Noticee no. 6 has submitted that he was heading a team for the entire disinvestment process of the International Transmission and Distribution business of CG Power and was promised an incentive by the management. The Noticee has submitted a copy of the letter dated July 27, 2016 wherein an incentive payment of Rs. 3 crores was sanctioned to the Noticee. Further, with regard to the balance of Rs. 2.85 crores, the Noticee has submitted that the Chairman of the group had also decided that the differential salary i.e. last drawn salary in CG Power at Rs. 4.05 crores and maximum salary payable by Avantha Power and Infrastructure Limited (APIL) of Rs. 1.20 crores i.e. net 2.85

crores would be paid from Blue Garden. The Noticee has placed reliance upon an email dated October, 17, 2017 received from the Group HR Head. In this regard, I note that the aforesaid payments amounting to Rs. 5.85 crores have been made to the Noticee's bank accounts and that such payments have been made pursuant to or confirmed by letters and emails received from the HR Head of the Avantha Group with respect to his role in the disinvestment process of the International Transmission and Distribution business of CG Power and with respect to differential salary payment, which has been stated to be reflected in the income tax returns of the Noticee no. 6. In view of the above, and from the documents available on record, I find the allegation that the aforesaid payment of Rs.5.85 crore was in return for his role in the scheme of diverting the funds from CG Power to the Promoter Group companies, is not made out.

47.8 I note that a CFO is expected to exercise due care and diligence in ensuring that the transactions authorized by him have requisite approvals and that they are in the best interests of the company. Thus, I find that Noticee no. 6 by involving in the above-mentioned impugned transactions, had failed in his duties as a CFO of the Company as well as Executive Director of CG Power and his actions have been detrimental to CG Power and against the interest of CG Power.

47.9 In view of the above, I find that by his involvement in transactions no. 1 and 2, Noticee no. 6 was involved in the fraudulent, manipulative and unfair trade practice of diverting funds from CG Group companies for the benefit of Promoter Group companies. By his involvement in transactions no. 6 and 9, I find that Noticee no. 6 has acted in a fraudulent manner by falsifying documents to authorise himself, and I find that none of the board minutes of the Company records such approval being taken from the Board of CG Power. Further, by his involvement in transaction no. 1, 2 and 10, I find that Noticee no. 6 was involved in publishing untrue financial statements of the Company for the FY 2016-17 and FY 2017-18.

47.10 Therefore, I find that Noticee no. 6 has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations. It is also

alleged that Noticee no. 6, in the capacity of Executive Director and CFO of the Company and by his involvement in the above-mentioned impugned transactions, had failed to perform his duties and obligations towards CG Power, and is thereby alleged to have violated the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6), 26(3) and 33(2)(a) of the LODR Regulations.

**48. B. Hariharan (Noticee no. 7):**

48.1 Noticee no. 7 was a Non – Executive Director of CG Power from November 01, 2012 to March 8, 2019 and also Group Director – Finance of Avantha Group i.e., the Promoter Group entity. With regard to Hariharan, the following is alleged in the SCN:

- (a) Noticee no. 7 had executed certain documents by concealing the same from the Board of CG Power, by not taking its approval, as required by the Rule of Procedures of CG Power, which facilitated the above-mentioned fraudulent transactions:
  - i. Executed an Undertaking (Collateral Security) on behalf of CG Power, without Board approval, in relation to assignment of lease of Nashik Property., that too purportedly being a Non-Executive Director.
  - ii. Signed remittance instruction for transfer of funds from CG Singapore to AIABV, contrary to board resolution authorizing the loan.
  - iii. Executed Deed of Guarantee on behalf of CG IBV (without the approval of the board of CG IBV) in favour of IndusInd Bank.
  - iv. Approved payments on behalf of CG Singapore to Mirabelle, a Promoter Group Company.
  - v. Without his involvement, these transactions could not have been executed.
  
- (b) Noticee no. 7, vide hand-written notes dated January 1, 2017 and February 8, 2017, had approved sanction of non-refundable advances of Rs. 1.50 crore from Blue Garden and of Rs. 1.50 crore from Acton to Noticee no. 6. The

amounts were released to Noticee no. 6 from Blue Garden and Acton in February 2017. As discussed earlier, these payments have been made to Noticee no. 6 in lieu of his role in the scheme of diversion of funds from CG Power.

- (c) Noticee no. 7 was also a Director on the Board of some of the subsidiaries of CG Power and Promoter Group Companies. As a Non-Executive Director on the Board of CG Power, Noticee no. 7 was expected to bring in independent judgement on the decisions relating to the affairs of CG Power. He, as a Non-Executive Director, was expected to guide the management of CG Power in the best interests of the Company. However, he had, without authorization, signed certain documents relating to the aforesaid impugned transactions which have not been in the benefit of CG Power. Thus, it is alleged that Noticee no. 7 by involving in the above mentioned impugned transactions, had failed in the fiduciary duty entrusted upon him as a Director of CG Power and his actions have been detrimental to CG Power and against the interest of CG Power.
- (d) Thus, from the above, it is alleged that:
- i. Noticee no. 7 was involved in the scheme / unfair trade practice of diverting the funds from CG Group companies for the benefit of Promoter Group companies.
  - ii. The monetary benefit of Rs. 3 crore sanctioned by Noticee no. 7 to Noticee no. 6 through transfers from Blue Garden and Acton was in return for Noticee no. 6's role in the scheme of diverting the funds from CG Power.

48.2 Further, from the aforesaid transactions the SCN alleged that:

- (i) Noticee no. 7 signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power.
- (ii) Noticee no. 7 signed and issued a certified copy of the resolution dated August 30, 2016 in respect of creation of charge over the fixed deposits of CG Power as security for the facilities extended to AHL, which is alleged to be a falsified resolution.



- (iii) Noticee no. 7 was authorized to take actions and sign all documents, under purported board resolutions of CG power dated May 26, 2016, May 27, 2016 and August 30, 2016 for execution of transaction mentioned in that purported board resolutions.
- (iv) Noticee no. 7 executed CG PSOL Loan Agreement on behalf of CG PSOL, without approval of Board of CG Power.
- (v) In Impugned Transaction no. 10 above, Noticee no. 7 approved a scheme for reducing the balances of inventory, debtors, and supplier advances in the books of CG Power by various means, as proposed by Noticee no. 5, vide hand-written note dated January 16, 2018.

48.3 Hence, the SCN alleges that Noticee no. 7 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations. The SCN also alleged that Noticee no. 7, in the capacity of Director, and by involving in the above mentioned impugned transactions, had failed to perform his duties and obligations as Director of CG Power, thereby alleged to have violated the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6) and 26(3) of the LODR Regulations.

48.4 The role/involvement of the Noticee no. 7 in the aforesaid impugned transactions are as under:

<b>Sr. No</b>	<b>Transaction</b>	<b>Involvement/Role</b>
1	Transaction no. 1 (Nashik Property)	Noticee no. 7 was a Non-Executive Director of CG Power and executed an Undertaking (Collateral security) on behalf of CG Power for assignment of lease of Nashik Property.
2	Transaction no. 3 (Euro 44 million borrowing by CG Singapore from SCB)	Remittance instruction (i.e. transfer of second loan from CG Singapore to AIABV) dated February 14, 2018 was signed by Noticee no. 7 and Noticee no. 5
3	Transaction no. 4 (USD 40 million loan	A letter dated October 25, 2017 signed by Noticee no. 7 and Noticee no. 5 addressed to IndusInd Bank, states that Board

	to CG Middle East from IndusInd Bank)	of CG IBV had executed corporate guarantee in favour of IndusInd Bank for the aforementioned credit facilities.
4	Transaction no. 5 (Advances made to Mirabelle from CG Singapore)	The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement / Board approval of CG Singapore.
5	Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL)	<ul style="list-style-type: none"> <li>• The Letter of Comfort provided by CG Power was signed by Noticee No.7.</li> <li>• From April 2018, the postdated cheques in favour of Yes Bank for the aforementioned credit facility of AHL, were jointly signed by Noticee No. 5 and Noticee no. 7.</li> </ul>
6	Transaction no. 9 (Multiple transactions without approval of the Board)	<ul style="list-style-type: none"> <li>• The copy of the resolution dated August 30, 2016, which was certified to be true by Noticee no. 7, is a falsely certified document.</li> <li>• A Loan Agreement dated May 2, 2016 was entered into between CG Power and CG PSOL, whereby CG Power agreed to lend Rs. 1000 crore to CG PSOL, which was signed by Noticee no. 7 on behalf of CGPSOL.</li> <li>• The copy of the resolution dated May 26, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the issuance of corporate guarantees up to Rs. 500 crore in favour of banks/ financial institutions to secure the facilities availed by CG PSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> <li>• The copy of the resolution dated May 27, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority for the creation of lien and / or pledge on the fixed deposits maintained with banks and/ or mutual funds and authorized Noticee no. 7 or Noticee no. 6 to execute transaction documents in this regard, was a falsely certified document.</li> </ul>

		<ul style="list-style-type: none"> <li>The copy of the resolution dated August 30, 2016 purportedly passed by the Board of Directors of CG Power, which was certified to be true and gave authority the issuance of irrevocable and unconditional corporate guarantees of up to Rs. 200 crore in favour of DHFL Pramerica Asset Managers Private Limited to secure the obligations under the non-convertible debentures of CGPSOL and authorized Noticee no. 1, Noticee no. 7 or Noticee no. 6 to take actions and sign all documents in this regard, was a falsely certified document.</li> </ul>
7	Transaction no. 10 (Misrepresentation of financials)	Noticee no. 7 approved a scheme for reducing the balances of inventory, debtors, and supplier advances in the books of CG Power by various means, as proposed by Noticee no. 5, vide hand-written note dated January 16, 2018

48.5 The Noticee vide his replies and written submissions to the SCN, has *inter alia* made the following submissions:

- (i) *Our client submits that the alleged undertaking purportedly executed by him in mid-2018, at the request of the MD & CEO, and after requisite clearance from the legal department of CG Power headed by Mr. Ravi Rajgopal. The transaction as well as fund movement had already been completed in 2016 itself. As it transpires, the assignment agreement had been signed on 09 May 2016 by the executive functionaries of CG Power, and that the funds had been provided by ABFL immediately thereafter in May 2016 itself. Thus, the funds had moved in the year 2016 itself meaning thereby the transaction had been completed much before 2018 (being the year in which our clients signatures on the undated Undertaking were obtained. The alleged undertaking was not at all important/relevant document as such, and was not acted upon or tendered to ABFL.*
- (ii) *Our client was given to understand that the said undertaking will be used only after the consent is given by MIDC, for which the application had apparently been made by CG Power, and that it will not be shared with ABFL until then and will be kept by the Company with itself. For this reason, the undertaking remained undated, and to the best of the knowledge of our client and without prejudice to the above, it was never furnished to ABFL.*

- (iii) Our client submits that the entire transaction concerning Nashik property was with the knowledge and/or approval of the Board/RAC of CG Power and there arises no question of any document being executed without the Boards approval.*
- (iv) The amount disclosed to the Board comprised of the amount given as loans to Avantha Group Companies from the funds received from ABFL through Blue Garden. Furthermore, the loan given to Avantha entries through Acton was disclosed to RAC and Board of CG Power in the board meeting dated 7th December 2016.*
- (v) Our client submits that the Board/RAC of CG Power had given overall approval for the funds lent to AHL which included the Nashik property transaction and the facilities that were availed from ABFL for the purpose of extending loans to AHL.*
- (vi) Our client submits that once the transaction had already been duly noted and approved by the Board/RAC in their meetings held on 30.08.2016, there was no requirement/need for every document signed pursuant thereto to be placed before the Board of the Company for approval.*
- (vii) Our client submits that he signed the remittance instruction dated 14.02.2018 for transfer of Euro 44 million to AIABV as an authorized signatory of CG Singapore and with approval of the Board of CG Singapore and CG Power. The Board of CG Singapore vide its resolution dated 06.12.2017 had noted that CG Singapore will be using the facility to finance its general corporate purposes and of its subsidiaries and any other member of the CG Group. Mr. KN Neelkant, being the CEO and MD of CG Power, was a director of CG Singapore and he was fully aware that the expression with wide connotation namely 'general corporate purpose' was inserted in the loan agreement/board resolution, knowingly and deliberately (with full knowledge of the bank and board members) so that monies could be lent further to AIABV in order to prevent a freeze on CG Powers own credit facilities. Saving the freeze on CG's own facilities, and to obtain additional facilities for the group, was a valid corporate purpose. It may be noted that vide email dated 26.03.2019, Mr. KN Neelkant, being the CEO & MD of CG Power and a director of CG Singapore, had also confirmed that Euro 200 million from SCB be routed through AIABV. This also clearly shows that Mr. KN Neelkant and the Board were always aware of how the transactions with SCB were being carried out at the instance of SCB and in fact had approved the same.*
- (viii) Our client submits that he only acted as per the instruction received by him from the Board and MD & CEO, as per the requirements/terms and conditions of SCB. The remittance instructions for transfer of funds from CG Singapore to AIABV were as per the instructions of SCB itself as SCB wanted to "transfer" the loan from CG IBV to CG Singapore. The aforesaid mode of "transfer" of loan has in fact been justified by SCB through its email dated 14.02.2020 (part of MSA Report) from Mr. Ajay Gundgurthi to*

*Mr. Saket Sanganerla of MSA probe where in response to query no. 5, it has been explained by SCB in writing that the transfer of loan from CG IBV to CG Singapore was on account of certain regulatory reasons and that it was an "important condition for the facility". The said fact has also been noted by SEBI in para no. 19.1 of the Show cause notice.*

- (ix) In fact, far from acting contrary to the term of the Facility agreement and/or the Board resolution, the transfer from CG Singapore to AIABV was in furtherance of the purpose for which facility agreement was executed and that the same was in the interest of CG Power which not only received the monies from AIABV (in CG IBV) but also got additional financial facilities from SCB.*
- (x) Our client submits that he executed the deed of guarantee on behalf of CGIBV pursuant to the instructions of MD & CEO, Mr. KN Neelkant. Furthermore, the Board of Directors of CG Power inter alia in their meeting held on 26.05.2017 had authorized the overseas subsidiaries to avail loans as well as to give security/guarantee/collaterals from banks and financial institutions, and further authorized the persons named therein (including Mr. KN Neelkant, CEO&MD of CG Power), inter alia, to "decide, the subsidiaries to be leveraged, take actions for channelizing the funds through inter-corporate loans within the Group, and other initiatives to achieve the best possible arrangement with the respective banks/financial institutions". By the aforesaid resolution, inter alia, authority was granted for loans to be obtained by the overseas subsidiaries of CG Power as well as security and guarantee to be given by the overseas subsidiaries of CG Power.*
- (xi) Our client submits that he was made to understand by the MD & CEO of the Company that the structure of transaction was proposed by IndusInd Bank itself. In fact, the entire transaction or borrowing was from IndusInd Bank was at the behest of IndusInd Bank, and in consonance with the propose for which funds were given by IndusInd Bank to CG IBV (loan obtained by CG Middle East). It is also important to note that the transaction including signing of documents with IndusInd Bank and transfer of funds from IndusInd Bank to CGIBV to CG Power to CG PSOL to AHL to Solaris and Jhanhua Power P. Ltd. to ultimately with IndusInd Bank was as per the instructions of IndusInd Bank.*
- (xii) Our clients role was only limited to signing the guarantee of behalf of CG IBV, which he did as the authorized signatory of CG IBV. As stated above, the transaction was approved by the Board. The Board of CG Power did not grant approvals on each document or each lender basis but used to grant approval on an overall basis. Further, the duty to present the bank account statements or to examine the inflow or outflow as such was of RAC, treasury department, MD & CEO and other executive functionaries.*
- (xiii) Our client submits that he merely signed the payments/remittance instruction to Mirabelle for the services offered by it. The amounts remitted from CG Singapore to*

*Mirabelle had been approved by MD & CEO Mr. KN Neelkant, and the finance/treasury department.*

- (xiv) The fact that Mirabelle was involved and its services were utilized by CG is not in doubt. Mr. Sudhir Mathur, director of CG Power in his letter dated 22.05.2019 to the auditors (SRBC & Co. and KK Mankeshwar & Co.) has given details of the transactions with Mirabelle, and the work so carried out by Mirabelle. SEBI has not found anything amiss in the stand taken by Mr. Sudhir Mathur.*
- (xv) Our client submits that SEBI's observations and conclusion regarding the said impugned transaction are completely misplaced and unfounded in the facts of the present case. The payments made to Mirabelle were for a legitimate purpose and were duly approved and noted in the financial statements/books of CG Singapore. The said payments were with the knowledge and approval of Mr. KN Neelkant, the RAC, SRBC & Co. and KK Mankeshwar & Co. (auditors of both CG Power and CG Singapore) as well. There arises no question of our client having diverted any assets/income/funds from CG Power to any promoter group company as alleged.*
- (xvi) It has been alleged that our client, vide hand-written notes dated January 01, 2017 and February 08, 2017, approved sanction of non-refundable advances of Rs. 1.50 crore from Blue Garden and of Rs. 1.50 crore from Acton to Mr. Madhav Acharya. These purported handwritten notes themselves have not been supplied to our client on which the allegations are based. The amounts were allegedly released to Mr. Madhav from Blue Garden and Acton in February 2017, as per the SEBI SCN. Record pertaining to that has also not been supplied to our client. It is alleged that these payments have been made to Mr. Madhav in lieu of his role in the scheme of diversion of funds from CG Power. The allegation to state the least is extremely fanciful and entirely baseless, especially since it is not even the allegation that our client himself had benefitted in any manner from the transactions.*
- (xvii) Without prejudice to the above, and to the best of our client recollection there are occasions when the HR Department of the group (Mr. Sharad Sanjay Sen) would have approved the payment/compensation to employees in relation to the work/handling of international sale purchase transactions outside India. Such performance based incentives are made in the ordinary course of business to employees by the various corporate groups. Since the group would save substantially by not engaging any third party consultant/outside consultant/merchant banker etc. as such, such performance based incentives were given. The corporate groups giving incentives to employees for successful completion of the projects is a very well-recognised HR practice and strategy. At this point, I would like to clarify that I have not received any such payment at any point of time.*

- (xviii) *Our client submits that Yes Bank had granted loans to both AHL as well as CG Power. For all banking purposes, AHL and CG Power were considered as a part of the same group. Accordingly, our client signed the cheques in favour of Yes Bank as per the understanding that they formed part of overall security package for the Group's exposure (including AHL and CG Power) to Yes Bank. Our client submits that the cheque was renewed/revalidated from time to time as a long-standing requirement of Yes Bank for the credit facilities availed by the group (including CG Power and Avantha) from Yes Bank. In fact, Yes Bank used to make such periodical requests for renewal of the cheques officially to the treasury department headed by Mr. Atul Gulatee. In case our client failed to sign the cheque, the previous cheque issued by other functionaries of the Company would have been presented by Yes Bank and that would have led to choking of the financial facilities of CG Power. If our client had not signed the cheque, Yes bank would have frozen the limits extended by it to CG Power.*
- (xix) *Our client signed the cheque in the interest of CG Power and at the request of Mr. KN Neelkant, MD & CEO. Mr. Atul Gulatee (Head of the Treasury Department) and MD & CEO were directly authorized by the Board to undertake banking transactions and in fact also delegate/further appoint other authorized signatories. Our client was appointed as an authorized signatory by MD & CEO / Mr. Atul Gulatee under the powers conferred by the Board to them. Further, our client signed the cheques along with a finance/treasury department personnel as co-signatory. Thus, the cheques were signed with the authority of the Treasury Department and were within the knowledge of the MD & CEO, the internal auditors and the external auditors of CG Power. Thus, there was nothing unauthorized about the cheques as such.*
- (xx) *With respect to the letter of comfort to the best of our clients knowledge and recollection the letter of comfort does not amount to a guarantee. It was also not a document that was stamped or registered as such, and for any guarantee obligation as such payment of stamp duty would have been essential. Letter of comfort was not to be and was not any legally enforceable document. If the bank indeed wanted a guarantee it would have asked for the same. The letter of comfort was vetted by Mr. Ravi Rajagopal (CG Power – Head Legal, Governance and Risk) and was merely intended to be a letter only of comfort and not enforceable as such. This is now it was explained by Mr. Ravi Rajgopal to our Client. There has been no invocation of the letter of comfort or a demand based on the letter of comfort and the allegation is completely misconceived and farfetched. It appears that SEBI is conscious of the above position and hence it does not even form part of the ten documents relied upon by SEBI.*
- (xxi) *SEBI has alleged that our client had signed and issued a certified copy of the resolution dated August 30, 2016 in respect of creation of charge over the fixed deposits of CG*

*Power as security for the facilities extended to AHL, which is alleged to be falsified resolution. The original document be reference to which the allegation is made that our client purportedly issued a certified copy of the resolution, itself has not been made available to our client. In the absence of the document the allegation is denied, our client reserves the right to make further comments/submissions if and when required. Without prejudice to the above, there is no dispute whatsoever that the loan / overdraft transaction in question is directly covered by and within the limits prescribed by resolution dated 30.08.2016 passed by the board of CG Power. Hence to suggest that the loan/overdraft transaction with ICICI was without authority is incorrect.*

- (xxii) Our client submits that the loan agreement dated 02.05.2016 was signed by him under the instructions of MD & CEO, Mr. KN Neelkant. The Board of CG Power was fully aware of not only the loan agreement but also of the amounts given by CG Power to CG PSOL pursuant to the said agreement and that in various board meetings (subsequent to the date of the loan agreement dated 02.05.2016), for illustration 27.05.2016, 07.12.2016 and 10.02.2017 amounts loaned as inter corporate deposits to CG PSOL has been specifically recorded. Even the relevant terms of the loan agreement dated 02.05.2016 i.e. tenor being 11 months and rate of interest being 12% has been recorded in the Board minutes.*
- (xxiii) Further, CG Power through MD and CEO made disclosures to stock exchanges dated 13.11.2018 (Financial results of the Company for quarter and half near ended on 30.09.2018) wherein it was clearly disclosed that loans of Rs. 963.85 crores had been extended by CG Power to CGPSOL.*
- (xxiv) Further, in the auditors presentation dated 13.11.2018 to the Board/RAC of the Company for the quarter and half year ended on 30.09.2018, the statutory auditor expressly disclosed that loans extended by the Company to CGPSOL stood at 963.85 crores.*
- (xxv) Our client submits that it is abundantly clear that the Board/RAC members including the MD & CEO were throughout aware of the monies advances to CGPSOL and in fact all the other group companies. Our clients submits that a transaction/agreement which has been taken note of by the Board in its various meetings and has also been disclosed to the stock exchange transparently cannot be said to be unauthorized and/or fraudulent in any manner whatsoever.*
- (xxvi) SCN is vague in respect of the above said 3 purportedly false resolutions dated 26.05.2017, 27.05.2017 and 30.08.2016. These resolutions themselves have not been supplied to our client. There is no allegation of who prepared these resolutions or in what transactions the same were used or how any loss was caused to CG Power.*



*(xxvii) The allegation in this regard is totally vague and bereft of any details. Simply a photocopy of a handwritten note dated January 16, 2018 has been put and it has been stated that our client approved a scheme. The original document namely the purported note allegedly approved by our client is not even made available to our client. In the absence of the document being made available the allegation against our client in this regard are denied. Further, it is not even indicated in the SCN as to what exactly was wrong with the said purported note, or for that matter if the same was implemented.*

*(xxviii) In the tripartite agreement dated 01.01.2017, our client only signed towards payment of monies on behalf of CG Power to the suppliers, as CGPSOL had a debt outstanding towards CG Power, and such outstanding amounts had also been noted from time to time in the minutes of CG Power. Purchases were not made by CG PSOL or our client. The transaction of purchase as such was between CG Power and suppliers.*

*(xxix) If the purchases were not genuine, there was no question of Mr. Sudhir Mathur a director of CG Power justifying the purchases through his letter dated 22.05.2019 and also by providing the details of tax registration of sellers. Furthermore, there would have been no question of re-selling the inventory so purchased and also securitizing the receivables from the said sales. The onward leg of the transaction i.e. re-sale and securitization of the receivables would not have been possible if the first leg (purchase from suppliers) itself was not valid.*

48.6 Firstly, I note that Noticee no. 7 was a Non – Executive Director of CG Power from November 01, 2012 to March 8, 2019 and also Group Director – Finance of Avantha Group i.e., the Promoter Group entity. I note that Noticee no. 7 has attempted to narrate various facts relating to the impugned transaction and why the impugned transactions were executed. In this regard, I note that the impugned transactions have already been discussed in detail in the foregoing paras and based on the documents available on record, it has been found that the impugned transactions have been executed for diverting funds from CG Power to the Promoter group companies in the interest and benefit of Noticee no. 1. Further, that none of the board minutes record any such approval being taken for executing some of the impugned transactions and that there has been misrepresentation of the financial statements of the Company. Hence, without going into the details of the impugned transactions, which have already been discussed above, I will proceed to deal with the specific role and involvement of Noticee no. 5 in these impugned transactions, as alleged in the SCN, and the submissions of the Noticee made with respect to the same.

48.7 My observations on the role and involvement of Noticee no. 7 in the impugned transactions are as under:

**(i) Transaction no. 1 (Nashik Property):**

- (a) With regard to the first transaction pertaining to the Nashik property, it has been alleged in the SCN that the Noticee no. 7 had executed an Undertaking (Collateral Security) on behalf of CG Power, without taking the approval of the Board, in relation to assignment of lease of Nashik Property, that too purportedly being a Non-Executive Director. The Noticee no. 7 has submitted that the entire transaction concerning Nashik property was with the knowledge and/or approval of the Board/RAC of CG Power in its meeting held on August 30, 2016 and there arises no question of any document being executed without the Boards approval. In this regard, as discussed in para 34.1 above, I note that none of the board minutes of the Company record any such approval being taken for the sale of the Nashik property and the same was also not disclosed to the RAC or the Board in its meeting on August 30, 2016. I note that the funds advanced as loans by CG Power to AHL and Acton, were disclosed on a post-facto basis to the Board as related party transactions. However, the first part where CG Power entered into an assignment agreement with Blue Garden and received funds from Blue Garden for the Nashik property, was not disclosed to the Board. Hence, the undertaking (Collateral Security) on behalf of CG Power executed by Noticee no. 7 in respect of the Nashik property was part of the Nashik property transaction for which no approval is shown to have been taken from any of the board minutes of the Company. Hence, the submission of the Noticee that the same was approved by the RAC and Board of CG Power in its meeting dated August 30, 2016, is untenable. Further, I note that the Noticee has submitted that he was given to understand that the said undertaking will be used only after the consent is given by MIDC, for which the application had apparently been made by CG Power, and that it was not acted upon or tendered to ABFL. However, I note

that the Noticee has not provided any supporting document to prove that such was the understanding informed or made known to him when he executed the undertaking. Further, whether or not it was finally acted upon is irrelevant as the fact remains that the Noticee no 7 had executed such undertaking and none of the board minutes of the Company record any such approval being taken in this regard from the Board of CG Power. In view of the above, I find that Noticee no. 7 was involved in the execution of transactions pertaining to the Nashik property which was all part of the fraudulent scheme of Noticee no. 1 to divert the funds of CG Power to promoter group companies.

**(ii) Transaction no. 3 (Euro 44 million borrowing by CG Singapore from SCB):**

- (a) With regard to the 3<sup>rd</sup> transaction, it has been alleged in the SCN that Noticee no. 7 had signed the remittance instruction for transfer of funds from CG Singapore to AIABV, contrary to board resolution for authorizing the loan. The Noticee has submitted that CG Singapore vide its resolution dated December 06, 2017 had noted that CG Singapore will be using the facility to finance its general corporate purposes and of its subsidiaries and any other member of the CG Group. That Noticee no. 8, being the CEO & MD of CG Power, was a director of CG Singapore and he was fully aware that the expression with wide connotation namely 'general corporate purpose' was inserted in the loan agreement/board resolution, knowingly and deliberately so that monies could be lent further to AIABV in order to prevent a freeze on CG Powers own credit facilities. In this regard, I note that AIABV was a promoter group company and 100% owned by Noticee no. 1 and was not a subsidiary or part of the CG group companies. I note that as per the facility agreement, "Borrower Group" is defined as CG Singapore and its subsidiaries and "CG Group" is defined as Parent and its subsidiaries. Hence, the attempt of Noticee no. 7 to give a wide connotation to 'general corporate purpose' is untenable, as AIABV was not part of the borrower group or the CG Group. Further, Noticee no. 7 has contended that

Noticee no. 8 was aware of the use of wide expression in agreement, however, Noticee no. 7 has not produced any proof in support thereof. Assuming it was so, it does not absolve Noticee no. 7 of his liability for fraudulent acts alleged in the SCN. The Noticee has also submitted that the transfer from CG Singapore to AIABV was in furtherance of the purpose for which facility agreement was executed and that the same was in the interest of CG Power. In this regard, I find the aforesaid submission is untenable, as the transfer of funds to AIABV was an unauthorised transaction and a breach of the resolution of the Board of Singapore. The aforesaid submission in fact corroborates the finding that the entire transaction was a façade created for the purpose of diverting funds of CG Group companies to the promoter group companies as part of the fraudulent scheme of Noticee no. 1 and that Noticee no. 7 was involved in the said fraudulent scheme by signing the remittance instruction for transfer of funds from CG Singapore to AIABV, in the interest of Noticee no. 1.

- (b) As discussed in para 34.3 above, I note that CG Singapore had availed a loan of Euro 44 million loan from SCB in the month of December 2017 for the purpose of financing the general corporate purposes, including working capital, of the Borrower Group and any other member of the CG Group (including by way of inter-company loans). The funds were transferred to CG Singapore on February 14, 2018 and on the same day it was further transferred to AIABV, which utilized these funds for repayment of its own earlier loan with SCB. Since AIABV is neither a subsidiary of CG Singapore or CG Power, the above transfer of funds to AIABV was contrary to the provisions of the facility agreement, which required the term loan to be used only to finance the general corporate purposes, including working capital, of the Borrower Group or any other member of CG Group. Hence, I find that the remittance to AIABV, signed by Noticee no. 7, was a breach of the resolution of the Board of CG Singapore and that Noticee no. 7 was involved in the diversion of funds from CG Group companies to the

promoter group companies as part of the fraudulent scheme of Noticee no. 1.

**(iii) Transaction no. 4 (USD 40 million loan to CG Middle East from IndusInd Bank):**

- (a) With regard to the 4<sup>th</sup> transaction, it is alleged in the SCN that Noticee no. 7 had executed a Deed of Guarantee on behalf of CGIBV in favour of IndusInd Bank. It is alleged that there is no record of such a board resolution being passed by the Board of CG IBV for giving guarantee for the loan availed by CG Middle East. In this regard, the Noticee has submitted that he executed the deed of guarantee on behalf of CGIBV pursuant to the instructions of MD & CEO, Noticee no. 8. Further, the Noticee has submitted that he was made to understand by the MD & CEO of the Company that the structure of transaction was proposed by IndusInd Bank itself. That the entire transaction or borrowing was from IndusInd Bank was at the behest of IndusInd Bank, and in consonance with the purpose for which funds were given by IndusInd Bank to CG IBV (loan obtained by CG Middle East). Further, that the transaction including signing of documents with IndusInd Bank and transfer of funds from IndusInd Bank to CGIBV to CG Power to CG PSOL to AHL to Solaris and JPIL to ultimately with IndusInd Bank was as per the instructions of IndusInd Bank. From the aforesaid submission of the Noticee no. 7, I note that Noticee no. 7 was well aware of the entire fraudulent scheme when executing the deed of guarantee and therefore, hand in glove with Noticee no. 1 and the bank. It is appalling that the Noticee has submitted that he was acting as per the instructions of the Bank. The Noticee has also submitted that the Board of Directors of CG Power in their meeting held on May 26, 2017 had authorized the overseas subsidiaries to avail loans as well as to give security/guarantee/collaterals from banks and financial institutions. However, I note that Noticee no. 7 was not authorised to take action and sign all documents in this regard. Further, Noticee no. 7 has not been able to show that he was authorised or had acted on the instructions

of the MD & CEO i.e. Noticee no. 8 or as per board resolution of CGIBV. Hence, I find that the deed of guarantee was executed by Noticee no. 7, without any authorisation or board resolution being passed by the Board of CGIBV for giving guarantee for the loan availed by CG Middle East and that Noticee no. 7 was well aware of the entire fraudulent scheme and involved in the diversion of funds from CG Group companies to the promoter group companies as part of the fraudulent scheme of Noticee no. 1.

**(iv) Transaction no. 5 (Advances made to Mirabelle from CG Singapore):**

- (a) With regard to the 5<sup>th</sup> transaction, it is alleged in the SCN that Noticee no. 7 had approved payments on behalf of CG Singapore to Mirabelle, a Promoter Group Company. The payments amounting to USD 13.5 Million in 2018 (approximately Rs. 93 crore at the exchange rate at the relevant time) to Mirabelle were made by Noticees no. 5 and 7 on behalf of CG Singapore without any proper justifiable agreement of CG Singapore and the board minutes of CG Singapore did not contain any such approval or decision taken for the said agreement. In this regard, as discussed in the foregoing para 34.5 above, I note that CG Singapore had made payments of USD 9 Million and USD 4.5 Million to Mirabelle pursuant to a service agreement dated January 15, 2013. I note that CG Power, vide letter dated August 18, 2020 had submitted that it has no record of the services being actually performed by Mirabelle either before or after the payment of the advances. I note that Mirabelle was a 'related party' of CG Singapore and also a related party to BILT, a Promoter Group company, and had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. I also note that the advances made to Mirabelle did not carry any interest. Further, I note that the Mirabelle agreement was not genuine as there were various inconsistencies, such as, in the name of the Company, the signatures and stamps on the agreement. In this regard, I

note that the Noticee has submitted that he merely signed the payments/remittance instruction to Mirabelle for the services offered by it, which had been approved by MD & CEO i.e. Noticee no. 8, and the finance/treasury department. I note that the Noticee has relied upon the letter dated May 22, 2019 of Mr. Sudhir Mathur, director of CG Power to the internal auditors giving details of transactions with Mirabelle. However, I note that the aforesaid letter has been issued prior to the corporate announcement filed by CG Power with BSE and NSE on August 20, 2019 *inter alia* disclosing that the total liabilities of the Company and the CG Power Group may have been potentially understated. Hence, the genuineness of the contents of the said letter dated May 22, 2019 is questionable and therefore, untenable. Further, I note that CG Power in its letter dated August 18, 2020 to SEBI has submitted that the Company has no record of the services having been actually performed by Mirabelle either before or after the payment of advance. I also note that the Noticee has been unable to provide any supporting documents to prove that the approval of the Board of CG Singapore was taken prior to the aforesaid payment to Mirabelle. Further, from the fact that there has been no record of the services being actually performed by Mirabelle, before or after the payment (for a service agreement dated January 15, 2013) shows that the Noticee has simply made the payment in 2018 without checking if any services were even provided. This shows that the Noticee has colluded with Noticee no. 1 in diverting the funds of CG group to promoter group companies.

**(v) Transaction no. 6 (PDCs issued by CG Power to Yes Bank against loan to AHL):**

- (a) With regard to transaction no. 6, the SCN has alleged that Noticee no. 7 had signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank without approval of Board of CG Power. In this regard, as discussed in the aforesaid para 37.1 above, I note that

PDCs were being issued by CG Power to Yes bank as per the sanction letter dated October 20, 2015 for the long-term loan facility of Rs. 500 crore provided to AHL by Yes Bank. I note that none of the board minutes contain any such approval of the Board of CG Power for issuance of aforesaid Letter of Comfort and PDCs worth Rs. 210 crore to Yes Bank. In this regard, the Noticee has submitted that he had signed the cheque in the interest of CG Power and at the request of Noticee no. 8, MD & CEO. Further, that Noticee no. 9 (Head of the Treasury Department) and Noticee no. 8, MD & CEO were directly authorized by the Board to undertake banking transactions and also delegate/further appoint other authorized signatories. The Noticee has submitted that he was appointed as an authorized signatory by MD & CEO / Noticee no. 9 under the powers conferred by the Board to them. With regard to this submission, I note that the Noticee no. 7 has failed to provide any supporting documents to prove that MD & CEO / Noticee no. 9 were authorised by the Board in this regard and that they further appointed him as an authorised signatory. Hence, the same is untenable, as there are no documents available before me to prove that the PDCs were issued by Noticee no. 7 with the approval of the Board of CG Power. Further, I note that CG Power vide its letter dated August 18, 2020 to SEBI has stated that the Board has not passed any resolution to issue PDCs on behalf of the Company to Yes Bank against a loan sanctioned by Yes Bank to AHL on October 20, 2015 or any time thereafter and neither was such proposal ever placed before the Board. In view of the above, I find that Noticee no. 7 had signed post-dated cheques as a guarantee for the credit facilities extended to AHL by Yes Bank and I find that the same have been done without approval of Board of CG Power.

**(vi) Transaction no. 9 (Multiple transactions without approval of the Board):**

- (a) With regard to the 9<sup>th</sup> transaction, the SCN has alleged that Noticee no. 7 had signed and issued a certified copy of the resolution dated August 30, 2016 in respect of creation of charge over the fixed deposits of CG Power



as security for the facilities extended to AHL, which is alleged to be a falsified resolution. It is also alleged that Noticee no. 7 was authorized to take actions and sign all documents, under purported board resolutions of CG power dated May 26, 2016, May 27, 2016 and August 30, 2016 for execution of transaction mentioned in that purported board resolutions. Further, that Noticee no. 7 executed CG PSOL Loan Agreement for Rs. 1000 crore on behalf of CG PSOL, without approval of Board of CG Power. In this regard, as discussed in the aforesaid para 37.4 above, I note that certified true copies of resolutions for 4 of the aforesaid transactions were found authorising each of the transactions. However, I note that there was either no such board meeting or such resolution taken for these 4 transactions entered into by Noticees no. 1, 6 and 7 on behalf of CG Power. I note that these certified true copies of resolutions, which were not genuine, were certified to be true by Noticee no. 6. Further, I note that the loan agreement dated May 02, 2016 for Rs. 1000 crore was entered into between CG Power and CGPSOL and that none of the board minutes contain any such approval being taken by the Board of CG Power. Hence, I find that the aforesaid 5 transactions have all taken place without taking the approval of the Board of CG Power.

- (b) With regard to the aforesaid allegations, the Noticee has submitted that with regard to the certified copy of the resolution dated August 30, 2016 in respect of creation of charge over the fixed deposits of CG Power as security for the facilities extended to AHL, which is alleged to be falsified resolution, the original document has not been made available to the Noticee and in the absence of the same, the Noticee has denied his signature on the purported photocopy. In this regard, I note that SEBI is not in possession of the original document. However, I note that inspection of the copy has been given to Noticee no. 7 and the Noticee has not made any contention on whether the copy is illegible or whether he was authorised to certify the copy of the resolution. I also note that the Noticee has submitted that without prejudice to the above, there is no dispute

whatsoever that the loan / overdraft transaction in question is directly covered by and within the limits prescribed by resolution dated August 30, 2016 passed by the board of CG Power. In this regard, I note that the extract of resolution passed at the meeting of Board of Directors held on August 30, 2016 and certified to be true to Notice no. 7, *inter alia* states that the Company notes the borrowing of the financial assistance by AHL from ICICI Bank for an additional overdraft limit of Rs. 35 crores provided overall limit not exceeding Rs. 150 crores at any one time and that the Company creates additional security on the fixed deposit of upto an additional amount of Rs. 35 crores in favour of ICICI as security for the additional facilities. Further, that Noticee no. 7 and Noticee no. 6 are severally authorised to execute all agreements, deeds, documents etc. necessary or required for the aforesaid. From a perusal of the Board minutes dated August 30, 2016, I note that no such resolution was passed by the Board in its meeting on August 30, 2016. Hence, I find that the said extract of resolution passed at the meeting of Board of Directors held on August 30, 2016 and certified by Noticee no. 7 is a falsified document as no such resolution had been passed by the Board. Therefore, the contention of Noticee no. 7 that there is no dispute that the loan / overdraft transaction in question is directly covered by and within the limits prescribed by resolution dated August 30, 2016 passed by the board of CG Power, is irrelevant as the said extract of resolution clearly states that such resolution was passed and does not make an inference that loan/overdraft transaction is covered by the resolution dated August 30, 2016 of the Board. In view of the above, the aforesaid contention of Noticee no. 7, is untenable, and I find that Noticee no. 7 has certified a false document and acted in a fraudulent manner to secure the loan of a promoter group company i.e. AHL, at the cost of increasing the liabilities of CG Power, through the falsified document.

- (c) Further, Noticee no. 7 has submitted that the SCN is vague in respect of the above said 3 purportedly false resolutions dated May 26, 2017, May

27, 2017 and August 30, 2016. That these certified to be true resolutions themselves have not been supplied to him and there is no allegation of who prepared these resolutions or in what transactions the same were used or how any loss was caused to CG Power. In this regard, I note that copies of the purportedly false resolutions dated May 26, 2017, May 27, 2017 and August 30, 2016, are part of the December 09, 2019 letter of CG Power to SEBI, which have been provided to Noticee no. 7 during the inspection granted to Noticee no. 7 on July 02, 2021. Hence, the Noticees claim that the same have not been provided to him is untenable. However, I note that these certified true copies were signed by Noticee no. 6 and I note that there is no specific allegation against Noticee no. 7 in this regard. Hence, the allegation against Noticee no. 7 in this regard, is not made out.

- (d) With regard to the Loan Agreement for Rs. 1000 crore executed by Noticee no. 7 on behalf of CG PSOL, Noticee no. 7 has submitted that the loan agreement dated May 02, 2016 was signed by him under the instructions of MD & CEO, Noticee no. 8. That the Board of CG Power was fully aware of not only the loan agreement but also of the amounts given by CG Power to CG PSOL pursuant to the said agreement and that in various board meetings dated May 27, 2016, December 07, 2016 and February 10, 2017, amounts loaned as inter corporate deposits to CG PSOL has been specifically recorded. Further, Noticee no. 7 has submitted that CG Power through its MD & CEO made disclosures to stock exchanges dated November 13, 2018 (Financial results of the Company for quarter and half near ended on September 30, 2018) wherein, it was clearly disclosed that loans of Rs. 963.85 crores had been extended by CG Power to CGPSOL. In this regard, I note from the observations of the FAR that the various board meetings dated May 27, 2016, December 07, 2016 and February 10, 2017, have different loan amounts i.e. Rs. 297.50, Rs. 287.50 and Rs. 297.50 respectively, which amounts to approximately Rs. 882.50 crores. Further, this amount of Rs. 882.50 does not add up to the loans of Rs. 963.85 disclosed to the stock

exchange on November 13, 2018. Further, the loan agreement was dated May 02, 2016 but the disclosure to the stock exchanges was made more than 2 years later on November 13, 2018, which may not be correct. Hence, I find the aforesaid contention of the Noticee is untenable. I find that there appears to have been various loans given to CG PSOL, in addition to the Rs. 1000 crore loan executed by Noticee no. 7 vide loan agreement dated May 02, 2016. In view of the above, I find that the Loan Agreement dated May 02, 2016 for Rs. 1000 crore was executed by Noticee no. 7 on behalf of CG PSOL, and none of the board minutes of the Company records any such approval been taken of the Board of CG Power.

**(vii) Transaction no. 10 (Misrepresentation of Financial Statements):**

- (a) With regard to the 10<sup>th</sup> transaction, the SCN has alleged that Noticee no. 7 approved a scheme for reducing the balances of inventory, debtors, and supplier advances in the books of CG Power by various means, as proposed by Noticee no. 5, vide hand-written note dated January 16, 2018. In this regard, the Noticee has submitted that the allegation is totally vague and bereft of any details. That simply a photocopy of a handwritten note dated January 16, 2018 has been put and it has been stated the Noticee approved a scheme. Noticee no. 7 has further submitted that the original document namely the purported note allegedly approved by him is not even made available and in the absence of the document being made available the allegation in this regard is denied. Further, that it is not even indicated in the SCN as to what exactly was wrong with the said purported note, or for that matter if the same was implemented. In this regard, I am inclined to agree with the submissions of the Noticee, as I note that no details have been provided in the SCN with regard to the said allegation against Noticee no. 7 in approving the hand written note dated January 16, 2018. In view of the above, I find that the aforesaid allegation against Noticee no. 7 is not made out.

**(viii) Payments made to Noticee no. 6 (Mr. Madhav Acharya):**

- (a) It is also alleged in the SCN that Noticee no. 7, vide hand-written notes dated January 01, 2017 and February 08, 2017, had approved sanction of non-refundable advances of Rs. 1.50 crore from Blue Garden and of Rs. 1.50 crore from Acton to Noticee no. 6. The amounts were released to Noticee no. 6 from Blue Garden and Acton in February 2017. In this regard, as discussed in the aforesaid paras, the allegation that payments have been made to Noticee no. 6 in lieu of his role in the scheme of diversion of funds from CG Power, is not made out. In view of the same, I find that the allegation against Noticee no. 7 in this regard, is also not made out.

48.8 From the above, I find that Noticee no. 7, as a Non-Executive Director on the Board of CG Power was expected to bring in independent judgement on the decisions relating to the affairs of CG Power. However, as discussed in the aforesaid paras, I find that Noticee no. 7 had, without being authorised, signed certain documents which have been to the detriment of CG Power in significant terms. I find that Noticee no. 7 by involving in the above-mentioned impugned transactions, had failed in the fiduciary duty entrusted upon him as a Director of CG Power and his actions have been detrimental to CG Power and against the interest of CG Power.

48.9 In view of the above, I find that by his involvement in transactions no. 1, 3, 4 and 5, Noticee no. 7 has colluded with Noticee no. 1 and was involved in the fraudulent, manipulative and unfair trade practice of diverting funds from CG Group companies for the benefit of Promoter Group companies. By his involvement in transactions no. 6 and 9, I find that Noticee no. 7 has signed PDCs and agreements on behalf of CG Power and its group companies, without taking the approval of the Board of CG Power and has thus, failed to perform his duties and obligations as Director of CG Power.

48.10 Hence, I find that Noticee no. 7 has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations, 2003. Further, I find that Noticee no. 7, in the capacity of Director, and by involving in the above-mentioned impugned transactions, had failed to perform his duties and obligations as Director of CG Power, thereby violating the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) and (6) and 26(3) of the LODR Regulations, 2015.

**49. K. N. Neelkant (Noticee No. 8 / Neelkant):**

49.1 SCN alleges that Noticee no. 8 was the MD & CEO of CG Power from February 03, 2016 to September 30, 2019. From the CG Power email dated January 27, 2021, on organization structure prevalent at the relevant point of time, it was observed that the Internal Audit function was under Noticee no. 8's direct supervision. SCN alleged that Noticee no. 8 had failed to put effective checks and balances in the systems prevalent at CG Power to prevent aforesaid impugned transactions no. 1 to 9 from happening or even detect such impugned transaction by way of internal audit. SCN alleges that Noticee no. 8 as the MD & CEO of CG Power, was expected to exercise due and diligence in ensuring that the impugned transactions No. 1, 2, 4, 7 & 10 had requisite approvals, which Noticee no. 8 had failed to do.

49.2 Further, the transactions entered into by CG Power with Blue Garden and Acton have not been reflected in the financial statement of CG power for FY 2016-17. It is the responsibility of the CEO as well as CFO to ensure that the financial statements of the company present a true and fair picture of the state of the company's financial affairs. Hence, it is alleged that Neelkant was involved in publishing untrue financial statements of the Company for the FY 2016-17, FY 2017-18 and FY 2018-19.

49.3 SCN alleges that Noticee no. 8 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations, 2003. SCN also alleged that Noticee no. 8, in the capacity of Managing Director and CEO of CG Power, failed to perform his duties and obligations as MD &

CEO of CG Power, thereby alleged to have violated the provision of Regulations 4(2)(f)(i), 4(2)(f)(ii)(6)-(7), 4(2)(f)(iii)(3) & (6) and 26(3) and 33(2)(a) of the LODR Regulations, 2015.

49.4 The Noticee no. 8 vide his replies and written submissions to the SCN, has *inter alia* made the following submissions:

- (i) *It is pertinent to demonstrate the organizational and reporting structure prevalent in CG Power before and during the tenure of the Noticee as MD & CEO of the said company. The office of the CFO and the Finance Department had been vested with extremely wide powers and in a manner functioned independently without the supervision of the MD & CEO. This is in view of the fact that the CFO directly reported to the Board and not to the MD & CEO (i.e. the Noticee). The said organization structure was given to the Noticee at the time of his appointment.*
- (ii) *Mr. Madhav Acharya held the position as CFO from 2009 to April 2016. Before the Noticee was appointed as MD & CEO of CG Power, the CFO was reporting to the then MD & CEO Mr. SM Trehan and later to the subsequent MD & CEO Mr. Laurent Demortier. During this period, only the MD & CEO was reporting directly to the Board.*
- (iii) *At the time of the appointment of the Noticee as MD & CEO, the CFO Mr. Madhav Acharya was elevated as Executive Director – Finance. It is pertinent to note that Mr. Madhav Acharya no longer reported to the MD & CEO i.e the Noticee but instead both the Noticee (the CEO) and Mr Madhav Acharya (the CFO) were reporting directly and independently to the Board of Directors of CG Power. (refer Annexure B.1 – Deposition of Mr Madhav Acharya to Ministry of Corporate Affairs on September 11<sup>th</sup>, 2019 and September 18<sup>th</sup>, 2019 wherein he has clarified his reporting relationship).*
- (iv) *The persons reporting to the Noticee included the Operational Business Heads (in India, Sweden, Belgium, Hungary, Ireland and Indonesia). As mentioned above, the Executive Director – Finance, Mr Madhav Acharya, did not report to the Noticee but directly reported to the Board. The Global Head - Internal Audit Mr. Sunil Panjwani reported functionally to the Risk & Audit Committee and only administratively to the Noticee.*
- (v) *It is thus abundantly clear that the office of the Executive Director – Finance /CFO functioned independently without the supervision of the MD & CEO as the CFO*

*directly reported to the Board. The said organization structure was given to the Noticee at the time of his appointment. Further being given a specific operational mandate, certain heads such as Non-Operating Income (NOI), Interest Costs, Corporate Costs, Investment & Holding Cos like CG-Singapore, CG- Middle East, CG PSol-India were specifically kept outside the purview of the Noticee and the said structure was duly approved by the Board.*

- (vi) As has been stated, when the Noticee was designated as MD & CEO in February 2016, Mr. Madhav Acharya who was the CFO was elevated as Executive Director – Finance and his reporting was changed and he started reporting to the Board instead of the MD & CEO. During his tenure, Mr. Madhav Acharya repeatedly asserted that he was the Global Head for Corporate Finance and in fact ran a parallel organization of the Finance Department in CG Power without involving the Noticee or the Business Heads.*
- (vii) In August 2017, Mr. Madhav Acharya resigned as Executive Director – Finance from CG Power and Mr. V.R. Venkatesh was nominated as the CFO. It is pertinent to mention that no inputs were sought from the Noticee on the said appointment of Mr. V.R. Venkatesh to the office of the CFO and in fact the Noticee was initially not even made aware of the background of this appointment.*
- (viii) It is pertinent to state here that the Noticee signed all the financial statements in his tenure, believing the same to be true and he, like other members of the Board found no reason to doubt the authenticity/genuineness of the same. However, after March, 2019 when the Noticee began to make enquiries and grew suspicious of the conduct of the CFO and the Finance Department, not only did the Noticee bring such facts to the knowledge of other Board and RAC members but also did not sign any financial statement, owing to significant doubt on the authenticity of financial data.*
- (ix) It is also relevant to note here that all the impugned transactions referred to in the Show Cause Notice have been transacted either in the Investment & Holding Cos or under the head of Corporate Costs, which were clearly outside the purview of the Noticee and that these were under the exclusive domain of the Finance Department (Executive Director Finance/ CFO).*
- (x) In the Show Cause Notice dated May 25<sup>th</sup>, 2021 issued to the Noticee, it has been erroneously mentioned that the Internal Audit function reported to the MD & CEO (Clause No 32.3) which has also been used as a basis for allegedly bringing charge against the Noticee for various violations of the Act and regulations. However, this is factually incorrect and the same is not explicitly brought out in the Organization*



*Structure annexed to the Show Cause Notice. The correct factual position is that the Internal Audit Department had a dual reporting structure wherein for all functional matters, the Internal Audit Head reported to the Chairman of the Risk and Audit Committee (RAC). All the functional matters like Audit Schedule for the year, outcome of Audit, Agenda for RAC etc used to be finalized by the Internal Auditor after discussions with the RAC Chairman. It was only for administrative matters such as Budget for Internal Audit team, Leave approvals, Travel approvals etc, that the Internal Audit Head reported to the MD & CEO.*

- (xi) *It is pertinent to state here that the Noticee signed all the financial statements in his tenure, believing the same to be true and he, like other members of the Board found no reason to doubt the authenticity/ genuineness of the same. However, after March, 2019 when the Noticee began to make enquiries and grew suspicious of the conduct of the CFO and the Finance Department, not only did the Noticee bring such facts to the knowledge of other Board and RAC members but also did not sign any financial statement, owing to significant doubt on the authenticity of financial data.*

49.5 Firstly, I note that Noticee no. 8 was the MD & CEO of CG Power from February 03, 2016 to September 30, 2019. With regard to the submissions made by Noticee no. 8, I note that the primary contention of the Noticee is that the office of the CFO and the Finance Department had been vested with extremely wide powers and functioned independently without the supervision of the MD & CEO and the CFO directly reported to the Board and not to the MD & CEO. The Noticee has contended that the impugned transactions have been committed without his knowledge or involvement and he was not privy or aware of these transactions as the CFO and the Finance Department did not report to him. In this regard, I note that the Noticee has submitted various documents and emails to show that the Finance Department reported to the CFO and that the CFO did not report to him. The following instances have *inter alia* been submitted by the Noticee no. 8:

- a) The Noticee has submitted a copy of the deposition of Noticee no. 6 to Ministry of Corporate Affairs on September 11, 2019 and September 18, 2019, wherein, upon being asked what his role in the company was and who he was reporting to, Noticee no. 6, answered that “As a CFO, my role

*was primarily to look after corporate finance, accounts, treasury, taxation and investor relations. Till March, 2016, I was reporting to the CEO & MD of the Company. After April, 2016, on appointment as Executive Director, I was reporting to the Board of Directors”.*

- b) The Noticee has submitted a copy of the Organisation chart as presented during the Board meeting held on May 27, 2016, which shows that Corporate Finance and Accounts, Information Tech and Administration was under ED Finance and not under MD & CEO.
- c) The Noticee has submitted a copy of the email exchanged on April 06, 2017 with subject “Critical Situation” between the Noticee and Noticee no. 6, wherein, Noticee no. 6 has *inter alia* replied to the Noticee that “*Thirdly the finance organisation globally works under me. Any decision pertaining to provisions comes under my purview. Provisions have a serious ramification from the company and the group perspective and one needs extra caution while deciding on those*”.
- d) The Noticee no. 8 has submitted a copy of the email dated May 28, 2018, from the Noticee to Noticee no. 7 and Mr. Sanjay Sen, wherein Noticee no. 8 has stated that during the appraisal discussions of Noticee no. 5 in May, 2018 for the period FY 2017-18, he (Noticee no. 5) categorically informed the Noticee as well as the Company HR Head- Mr. Sanjay Singh that he has been instructed not to share information with Noticee no. 8 and thus, neither the Noticee, being MD & CEO of the Company, was consulted while making the said appointment, nor involved in the appraisal process of the CFO.
- e) The Noticee no. 8 submitted a copy of the email dated October 08, 2017 from Noticee no. 9 to Noticee no. 7 and CC to Noticee no. 5 and Noticee no. 6, wherein, Mr. Noticee no. 9 has *inter alia* stated that:

*“Further, would like to bring to your kind attention that the cash situation at CG is increasingly becoming difficult due to interest servicing, loan repayments, business/other operational exps needs in India / overseas.*

*Urgent attention and financial support is required else there will be severe results shortly as situation is becoming unmanageable despite our best efforts,; have also conveyed this to Venkatesh and updated him on the matter earlier.*

*There are also many unresolved issues with Yes Bank, EXIM, ICICI India, ICICI London, DHFL, Indus Ind causing operational/ loan repayment issues.*

*As it is my job to bring the issues to your notice on time am highlighting the same; All these can lead to things slipping out of control is measures not taken on time”*

The Noticee has submitted that from the aforesaid email it is evident that Noticee no. 6 continued to be actively involved in CG Power affairs even after his separation from the Company in August 2017.

- f) The Noticee no. 8 has submitted a copy of email exchanges dated January 15, 2018, with subject matter *“Transfer of EUR 3.5 Mio to CG Middle East EUR Account – 15012018”* between Noticee no. 9 and Noticee no. 5 on the issue that CEO approval as per Rules of Procedure has not been sought for the transaction. The email exchanges *inter alia* read as under:

Noticee no. 9: *“Hi Venkatesh, we now need CFO & CEO approval for funding to any CG Group company (as per new ROP), pls advise as we have not taken CEO approval for this one”*

Noticee no. 5: *“As per RoP you should.. However the fundamental assumption is that the reporting of the finance function need to be amended which is not the case. So please proceed with my approval.”*

Noticee no. 9: *“Funds have already reached ME. Govindraj’s involvement will not suffice as joint approval with CEO only is required (if from CG to Sub etc); would suggest atleast Mr. Hariharan’s blanket approval be taken. This problem will be with CGPSOL transfers as well now.”*

- g) The Noticee no. 8 has submitted that the financials of the Investment and Holding Companies, wherein there were no business activity and the HO & Corporate – Costs and Sales were directly handled by the Executive Director – Finance / CFO throughout the tenure of the Noticee. These were then consolidated by the Corporate Finance team. That the Balance Sheet was never discussed with the Noticee prior to its finalization and used to be presented by the CFO directly in the RAC Meeting and Board Meeting along with the consolidated financials. Even the details of the debt in CG Power were not shared with the Noticee despite repeated requests for the same by the Noticee from the Executive Director - Finance / CFO, which matter was further escalated to the Avantha Group Director – Finance, Noticee no. 7. In this regard, Noticee no. 8 has submitted a copy of the emails dated April 01, 2017 and April 02, 2017 with subject “Debt Details” sent by the Noticee to Noticee no. 6 and subsequently forwarded to Noticee no. 7. The email from Noticee no. 8 to Noticee no. 7, *inter alia*, read as under:

*“However, the issues raised by him need to have a response:*

- 1. Proceeds of ZIV deal – details of spend*
- 2. Details of debt in India and outside India and reasons thereof*
- 3. Plans to unwind interco outstanding*

*Since I do not have any of the above details, it would be embarrassing for me to meet him.*

*While I have requested Madhav for the info, would appreciate your help in getting the same since I am unaware about it.”*

49.6 From the aforesaid submissions and documents/emails submitted, I find that there appears to be a convincing argument that the Noticee no. 8 was not informed of the activities taken up by persons in the Finance Department, in particular, Noticees no. 5, 6, 7 and 9. From the above, it appears that Noticees no. 5, 6, 7 and 9 were not reporting to Noticee no. 8 and have made attempts to conceal information and did not take necessary approval of Noticee no. 8, as required under the Rules of Procedure of the Company.

49.7 Further, I note that the SCN does not make any allegations or bring out the specific role or involvement of Noticee no. 8 in any of the impugned transactions. I note that the allegations in the SCN do not specify any particular act or involvement or approval of Noticee no. 8 in any of the impugned transactions, except for the fact that he was the MD & CEO of CG Power. In this regard, considering the aforesaid submissions made by Noticee no. 8 in para 49.5 above, regarding how Noticee no. 8 was not informed or aware of the actions of the Finance Department of the Company which was under the Executive Director Finance and the CFO who were reporting directly to the Board, I find that on the basis of documents available before me, the allegations against the Noticee no. 8 for his role in all the aforesaid impugned transactions and collusion with Noticee no. 1 in diverting funds of CG Power to promoter group companies, is not made out.

49.8 However, I note that as the CEO of CG Power, it is the responsibility of the CEO and CFO to ensure that the financial statements of the Company present true and fair picture of the state of the company's financial affairs. I note that under Regulation 33(2) of the LODR Regulations, 2015, 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. I note that the Noticee no. 8 has submitted in this regard that the Noticee signed all the financial statements in his tenure, believing the same to be true and he, like other members of the Board found no reason to doubt the authenticity/ genuineness of the same. However, that after March, 2019 when the Noticee no. 8 began to make enquiries and grew suspicious of the conduct of the CFO and the Finance Department, not only did the Noticee no. 8 bring such facts to the knowledge of other Board and RAC members but also did not sign any financial statement, owing to significant doubt on the authenticity of financial data. Be that as it may, as the then CEO of the Company, Noticee no. 8 was responsible 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. Though it has been found that Noticee no. 8

despite being the MD & CEO of CG Power is not liable for violation of PFUTP Regulations, 2003 as alleged in the SCN for the reasons that the Noticees who were involved in the fraudulent transactions were reporting directly to the Board and not to Noticee no. 8. However, I find that Noticee no. 8 is liable for violation of the LODR Regulations, 2015, as alleged in the SCN. In this regard, it would be appropriate to refer to the Order dated September 21, 2022 passed by the Hon'ble SAT in the matter of **Neha Nilesh Patil vs. SEBI**, wherein, it has been held as under:

*"10. A perusal of the aforesaid provision indicates, that the financial results has to be approved and authenticated by the Board of Directors but before it is approved by the Board of Directors the financial results are required to be certified by the chief executive officer and chief financial officer to the effect that the financial results does not contain any false or misleading statement or figures and does not omit any material fact which may make the statements or figures contained therein misleading.*

*11. Thus, the chief executive officer and chief financial officer are required to certify that the financial results does not contain any misleading statements or figures and only thereafter such financial results are placed for approval before the Board of Directors. Consequently, the violation of Regulation 33(2)(a) of the LODR Regulations has been caused by the chief executive officer and chief financial officer of the listed company."*

49.9 Therefore, the responsibility of the CEO and the CFO under Regulation 33(2) of the LODR Regulations, 2015, is not merely to sign all the financial statements, but explicitly places a requirement on the CEO and CFO to certify and ensure that the financial results are not false or misleading. Any deviation or discrepancy in the financial results would be the responsibility of the CEO and CFO. Hence, I find that Noticee no. 8 has failed to perform his duties as MD & CEO of CG Power and has violated Regulations 4(2)(f)(ii)(6) & (7), 4(2)(f)(iii)(3) & (6) and 26(3) and 33(2)(a) of the LODR Regulations, 2015.

50. **Atul Gulatee (Noticee no. 9):**

50.1 SCN alleges that in 2015, Noticee no. 9 was the Head of Treasury in CG Power from 2015 to November, 2018. He reported to Noticee No. 6, who was CFO till August 2017 and later to Noticee No. 5, who became CFO thereafter. He quit CG Power in September 2018, effective from November 2018. Further, Noticee no. 9 had been a Director of Blue Garden since its incorporation on March 21, 2016. He resigned from Blue Garden on June 27, 2017. Atul was involved in the impugned transactions on following basis:

- (a) Executed the Assignment Agreement dated May 9, 2016 on behalf of Blue Garden for assignment of the lease rights of CG Power in the Nashik Property.
- (b) Entered into an MoU dated February 1, 2017 on behalf of Blue Garden with CG Power for assigning, sale and transfer of rights of Kanjurmarg Property.
- (c) Signed various documents as a Director of Blue Garden.
- (d) Transferred Rs. 260 crore to Solaris upon receiving approval/ instruction from Noticee no. 5, vide emails dated October 27, 2017 and October 30, 2017.
- (e) Without his involvement, these transactions could not have been executed.
- (f) It is observed that Noticee no. 9 had been a Director of Blue Garden since its incorporation on March 21, 2016 and resigned on June 27, 2017 i.e. subsequent to diversion of Rs. 390 crore from CG Power (Impugned Transaction No. 1 & 2 above).

50.2 From the above, it is alleged that Noticee no. 9 was involved in / facilitated the scheme / unfair trade practice of diverting the funds from CG Group companies for the benefit of Promoter Group companies. Hence, it is alleged that Noticee no. 9 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(b), (c) and (d) and 4(1) of PFUTP Regulations, 2003.

50.3 The role/involvement of the Noticee no. 9 in the aforesaid impugned transactions are as under:

Sr. No	Transaction	Involvement/Role

1	Transaction no. 1 (Nashik Property)	Noticee no. 9 was the Head of Treasury in CG Power and also a director of Blue Garden and signed the Assignment Agreement on behalf of Blue Garden.
3	Transaction no. 2 (Kanjurmarg Property)	Noticee no. 9 was the Head of Treasury in CG Power and also a director of Blue Garden and signed various documents on behalf of Blue Garden including the MOU dated February 01, 2017.
4	Transaction no. 4 (USD 40 million loan to CG Middle East from IndusInd Bank)	Transferred Rs. 260 crore to Solaris upon receiving approval/instruction from Noticee no. 5, vide emails dated October 27, 2017 and October 30, 2017

50.4 The Noticee no. 9 vide his replies and written submissions to the SCN, has *inter alia* made the following submissions:

- (i) *The Noticee would like to submit that he was an employee at CG Power from November 2011 to November 2018. During the Noticee's tenure as an employee of CG Power he also held the position of director of Blue Garden from March 21, 2016 to June 27, 2017. The Noticee and Mr. Raman Rajagopal Raman were allotted 5000 shares of Blue Garden and were also inducted as Directors of Blue Garden on its date of incorporation. It is also brought to your goodself's notice that by March 31, 2016 the shares of Blue Garden, initially held in the name of the Noticee and Mr. Rajagopal Raman, which were later transferred to in the name of entity named Acton Global Private Limited. It is pertinent to note that the Noticee paid no money for allotment of the shares in his name as shareholder of Blue Garden and conversely did not receive any money or consideration when the said shares were transferred to above entities. It is submitted that both Blue Garden and Acton Global were incorporated by the legal and secretarial department of CG Power. The said department had not only approved the Memorandum of Association and Articles of Association of Blue Garden, but also set up the offices of these companies, approved names and were involved in finalizing formats of resolutions for borrowings, agreement for share pledge by Acton etc. according to the agreed structure with ABFL.*
- (ii) *The Noticee submits that his acts and activities were benign, bonafide and based on good faith. The said submission is further substantiated by the fact that the Noticee*



*made no gain or taken any advantage, which clearly establishes that the actions taken by the Noticee were undertaken under a supervision of the senior management of CG Power and that the Noticee did not have any interest professional or otherwise, in any of the alleged manipulative/fraudulent activities of CG Power.*

- (iii) It is further to be noted that the Noticee worked on the said impugned transaction as per his normal duties and expressly on the instructions of the Management of CG Power. It is further submitted that the structure of the said impugned transactions were organized and affirmed by the Senior Management of CG Power and the Board of CG Power (as conveyed to Noticee by the senior management of CG Power) and were audited regularly by the auditors both internal and statutory of CG Power for three years without any qualifications or issues.*
- (iv) The Noticee submits that many of these communications were not even known to the Noticee. However, whenever any execution was to be done in accordance to the said strategic decision/communication for which if any task was given to the Treasury Department, the Noticee as well as his subordinates at CG Power and fellow director at Blue Garden and Acton, on each stage, were always assured by the Management of CG Power that they have taken all the requisite approvals for the said transactions being entered into.*
- (v) It is pertinent and very important to note that the above Letter of Awareness of Mr. Gautam Thapar has a clear mention of the agreement related to property between CG Power and Blue Garden the structure of the impugned transaction and hence, in such a case where notably so many Key Management Personnel were involved with the structure related to the property there was no thought of any illegality of the proposed transaction in the Noticees mind.*
- (vi) Considering the above elements of the impugned transactions no. 1 qua Blue Garden and CG Power, it can be seen that it was only till the level of transferring the money from Blue Garden to CG Power, that the Appellant was aware of any discussions with the senior officials and management of CG Power and whatever fund transfers happened post the same were based on instructions and approvals of the senior key managerial personnel of CG Power and on their representations that all requisite approvals were taken. In fact the Noticee was unaware of the fund transfer to Avantha Holdings when the transaction between Blue Garden and CG Power took place. This is evidenced from the mail sent by the Noticee to the then CFO where the Noticee conveyed the fact that as the funds are being directed to Avantha Holdings, CG Power will not be able to pre-pay its loans as was being planned, based n CG Powers fund situation. However, the management, with all their authority, conveyed to the Noticee*

*that they have taken requisite approvals and the funds need to sent to group accordingly.*

- (vii) In respect of the payments made by CG Power, the Noticee submits that it is the Accounts department from which the payments to any of the Group companies originates in the system unless it is a transfer through bank transfer letter. As the said payments to the Group Companies as alleged originated and processed through batch procession method in SAT, it was the Accounts Department of CG Power which acted on the instructions of the management to process the payment and approve the same at the first instance. The Noticee most humbly submits that if the Accounts Department approved the payment as the Noticee recalls happened in this case then the pertinent question is why the Noticee has been issued the SCN on the first place unduly presuming that the said transfer was done by him alone without anybody's knowledge (at CG Power) or without requisite approvals so as to assist the promoter group companies as alleged.*
- (viii) The Noticee submits that he, at the relevant time was merely an employee of CG Power and was acting on the instructions of the senior officials of CG Power. It is further submitted that no decision making power, in respect of the impugned transactions were ever delegated to the Noticee or present with the Noticee by virtue of his employment at CG Power that, he was made the director of the Blue Garden.*
- (ix) It is important to note that considering the fact that the operations, management and the necessary business transactions of Blue Garden were always done under specific instructions and supervision of the senior management personnel of CG Power and the directors including the Noticee were not involved in the decision making of Blue Garden as has been mentioned and clarified for Impugned Transaction No. 1 as well.*
- (x) As mentioned earlier as well, it is reiterated that the Noticee did not directly report to the Board of Directors of CG Power and hence had no participation in the processes of the Board or their acts. It is hereby submitted that it had been specifically conveyed to the Noticee by the Senior Management of CG Power that they had taken all the necessary approvals.*
- (xi) Taking into consideration the allegations levied against the Noticee in the present case, it is submitted that the allegation itself indicates to a fact that the Noticee had done some act only on the basis of the approval and instructions he had from the top bosses of the management of CG Power and hence no adverse inference regarding the same in the present case can be taken against the Noticee.*
- (xii) Further, for the fund transfer from CG Power Solution to Solaris, the Noticee submits that the fund transfer request apparently, as a rule, cannot be singly signed for any transaction. The alleged fund transfer request from CG Power Solutions to Solaris was*

*also signed by the current CFO of CG Power, who was the accounts head of CG Power at that time. The Noticee most humbly states that if employees of CG Power acted solely on the instruction of the management regarding the transaction in question, then there is no question of them having knowledge of the alleged irregular/illegal activity of the management of CG Power and hence cannot be held liable for the same.*

- (xiii) The Noticee in conclusion of the submissions would like to submit that it was never the Noticee who had the decision making power either as the Head of Treasury at CG Power or as the Director of Blue Garden and it was always the top key Managerial Personnel of CG Power who decided, directed and instructed the Noticees, the other directors of Blue Garden, Acton Global and the other officials who were peers. All employees like the Noticee took instructions from the management and relied on their word to perform certain acts and duties which are now being alleged to be fraudulent and unlawful. Hence, the Noticee, like other such officials who acted in good faith and worked or were involved in these impugned transactions 1, 2 and 4 cannot be held liable for any act which are alleged has been done by him on the basis of such reliance on representations of the management of CG Power, with bonafide belief.*
- (xiv) The Noticee hereby reiterates that Impugned Transactions 01, 02 & 04 were structured and designed by the management of CG Power and were executed under their specific directions and approvals. It is further highlighted that all the concerned departments of CG Power like the legal and secretarial department and accounts department as well as the senior managerial personnel had complete knowledge and involvement in the alleged transactions [As highlighted in the Reply and evident from the attached annexures thereto]. It is further to be noted that the internal and the statutory auditors of CG Power also had the knowledge of the Impugned Transactions and hence the Noticee at the relevant time, had no doubt regarding the alleged irregularities/illegality of the Impugned Transactions based on the belief that if these Impugned Transactions would have been illegal or detrimental to the interests of CG Power, these departments or personnel would have raised the necessary red flags and alerted the employees like the Noticee, but no concerns regarding these transactions or any red flags were ever brought to the knowledge of the Noticee and hence the SCN should be quashed qua the Noticee.*
- (xv) Similarly in relation to Impugned Transaction 04 the other signatory of the document for executing a transfer of the monies, Mr. Susheel Todi, who is currently an employee of CG Power in the capacity of Chief Financial Officer, has not been made a party to the present proceedings. The fact that no proceedings have been initiated against the other directors of Blue Garden Estates Private Limited and the involved/concerned employees of CG Power, indicates towards the bias of SEBI in the present matter against the*

*Noticee and violation of Article 14 of Constitution of India, 1950 for which the SCN should be disregarded and set aside.*

50.5 I note that Noticee no. 9 was the Head of Treasury in CG Power from 2015 to November, 2018. I note that Noticee no. 9 has attempted to narrate various facts relating to the impugned transaction and why the impugned transactions were executed. In this regard, I note that the impugned transactions have already been discussed in detail in the foregoing paras and based on the documents available on record, it has been found that the impugned transactions have been executed for diverting funds from CG Power to the Promoter group companies in the interest and benefit of Noticee no. 1. Further, that some of the impugned transactions have been executed without the approval of the Board as per the Rules of Procedure and that there has been misrepresentation of the financial statements of the Company. Hence, without going into the details of the impugned transactions, which have already been discussed above, I will proceed to deal with the specific role and involvement of Noticee no. 9 in these impugned transactions, as alleged in the SCN, and the submissions of Noticee no. 9 made with respect to the same.

50.6 My observations on the role and involvement of Noticee no. 9 in the impugned transactions are as under:

**(i) Transactions no. 1 and 2 (Nashik and Kanjurmarg Property):**

- (a) With regard to the first and second transactions, the SCN has alleged that Noticee no. 9 had executed the Assignment Agreement dated May 09, 2016 on behalf of Blue Garden for assignment of the lease rights of CG Power in the Nashik Property and had also entered into an MoU dated February 01, 2017 on behalf of Blue Garden with CG Power for assigning, sale and transfer of rights of Kanjurmarg Property. Further, it is alleged that he signed various documents as a Director of Blue Garden with respect to the Nashik and Kanjurmarg property transactions. In this regard, the Noticee no. 9 has submitted that he was merely an employee who worked on the said impugned transaction as per his normal duties and expressly on

the instructions of the Management of CG Power. Noticee no. 9 has submitted that Blue Garden was incorporated by the legal and secretarial department of CG Power and he was inducted as a director of Blue Garden by the Company and was paid no money for allotment of the shares in his name as shareholder of Blue Garden and conversely did not receive any money or consideration when the said shares were transferred to above entities. Further, that his acts and activities were benign, bonafide and based on good faith. In this regard, I note that Noticee no. 9 was the Head of Treasury but was not a Key Managerial Personnel (KMP) and was appointed as director of Blue Garden by CG Power, as submitted by the Noticee. However, I note that his role in the aforesaid transactions was not limited to merely signing documents as the director of Blue Garden, as claimed by the Noticee. As discussed in the aforesaid paras, I note that Blue Garden was incorporated by CG Power as a SPV. I note that there were various email correspondences between CG Power and ABFL in February 2016 i.e. even prior to the incorporation of Blue Garden and Atcon Global. I note from the email dated February 05, 2016 from Noticee no. 9 to Mr. Rakesh Pingulkar, Relationship Manager of ABFL, that the term sheet was signed and accepted and sent to ABFL final copy. The signed term sheet attached with the email dated February 05, 2016, has already been reproduced in para 34.1.3 above.

- (b) With respect to the aforesaid term sheet, the FAR had observed as follows:

*“As per the mentioned transaction structure, it was decided that the borrower of the funds from Aditya Birla Finance Ltd., SPV-B (Special purpose Vehicle) will have SPV-A as its shareholder and SPV-A will pledge its complete shareholding of SPV-B against the loans given by ABFL.*

*From the chronology of events and the movements of funds, it is clearly established that the new entities Blue Garden and Acton were created as SPV-B and SPV-A, respectively, under the agreed “transaction structure”.*

*Thus, it is pretty clear that Blue Garden and Acton Global were created under the mutually decided transaction structure with ABFL and their sole purpose as SPVs was to give effect to the proposed loan transaction.”*

- (c) As also observed in FAR, I note that the creation of Blue Garden and Atcon Global as SPV's were part of the structured plan of ABFL and CG Power and were created and incorporated for the sole purpose of giving effect to the proposed loan transaction between CG Power and ABFL. Further, an email dated February 10, 2016 was sent by Mr. Rakesh Pingulkar to Noticee no. 9, CC to Mr. Devang Rawal, Head Corporate Finance, Group, ABFL and Mr. Navin Saini, Zonal Head –West –Corporate Finance, Group, ABFL, wherein, it was *inter alia* conveyed by Mr. Rakesh Pingul “*This is with connection with our current proposal at hand for which we have already shared the proposed structure with you. We would like to clarify on some points before we proceed with our full due diligence*”. Further, from the same email, I note that Mr. Rakesh Pingulkar had also communicated to Noticee no. 9 that “*So I request, if we can go ahead on the initial deal status and security involving the Kanjurmarg Land. This helps us in justifying the basis of the proposed structured deal and the purpose of this loan to CG*”.
- (d) From the above emails, I find that Noticee no. 9 was well aware and involved in the entire fraudulent scheme and was the person responsible for communicating with ABFL in formulating and finalising the transaction structure of creating Blue Garden and Atcon for the purpose of indirectly providing funds to CG Power as part of the fraudulent scheme to divert funds of CG Power to the promoter group companies of Noticee no. 1. Hence, I find the submission of Noticee no. 9 that he was merely been acting on the instructions of the senior officials of CG Power is untenable, as it is not a case where he was merely made to sign documents but I find that the Noticee was the one communicating with the banks on behalf of Noticee no. 1 and the others, and hence, was very much aware and had full

knowledge of the transactions structure and fraudulent scheme, which is evident from the aforesaid emails.

**(ii) Transactions no. 4 (USD 40 million loan to CG Middle East from IndusInd Bank):**

- (a) With regard to transaction no. 4, the SCN has alleged that Noticee no. 9 transferred Rs. 260 crore to Solaris upon receiving approval/ instruction from Noticee no. 5, vide emails dated October 27, 2017 and October 30, 2017. In this regard, Noticee no. 9 has submitted that the allegation itself indicates to a fact that the Noticee had done some act only on the basis of the approval and instructions he had from the top bosses of the management of CG Power and hence no adverse inference regarding the same in the present case can be taken against the Noticee. The Noticee no. 9 has also submitted that the fund transfer request from CG PSOL to Solaris was also signed by the current CFO of CG Power, who was the accounts head of CG Power at that time, however, that only he has been held liable. The Noticee has also submitted that he is only an employee who has acted upon the instructions of key managerial persons and like all employees, the Noticee took instructions from the management and relied on their word to perform certain acts and duties in good faith, which are now being alleged to be fraudulent and unlawful. Noticee no. 9 has reiterated that the impugned transactions no. 1, 2 and 4 were structured and designed by the management of CG Power and were executed under their specific directions and approvals. In this regard, as also discussed above, Noticee no. 9 was not merely an employee but was involved in the fraudulent scheme with respect to transactions pertaining to the Nashik and Kanjurmarg property. Further, I note that not only had he executed the transfer of Rs. 260 crore to Solaris in the present transaction, but had also signed the PDC's with Noticee no. 6 in transaction no. 6, discussed in para 37.1 above, wherein PDC's were issued by CG Power to Yes Bank without

the approval of the Board of CG Power. Hence, I note that it is not a one-off instance, but the Noticee's participation has been on multiple occasions and from the aforesaid transactions, it can be seen that it is the usual group of Noticees no. 5, 6, 7 and 9 who have been involved in all the aforesaid transactions. Therefore, it is not a coincidence but from his involvement in multiple impugned transactions, the preponderance of probability is established that Noticee no. 9 was involved with the other Noticees in the fraudulent scheme to divert the funds of CG Power to promoter group companies of Noticee. No. 1.

50.7 In view of the above, I find that Noticee no. 9 has not acted in a bonafide manner, and from the documents available before me, I find that Noticee no. 9 was involved in fraudulent, manipulative and unfair trade practice of diverting the funds from CG Group companies for the benefit of Promoter Group companies. Hence, I find that Noticee no. 9 has violated the provisions of Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of PFUTP Regulations.

#### **51. Aditya Birla Finance Limited (Noticee no. 10):**

51.1 Noticee no. 10 was involved in the fraudulent scheme of diverting the assets / funds of CG Power as follows:

##### **(a) Impugned Transaction No.1:**

- (i) With regard to the repayment of earlier loan of BGPPL to Noticee no. 10, on June 30, 2016, Mr. Devang Rawal from ABFL sent an email to Noticee no. 7 to resolve the issue of loan repayment by BGPPL. Vide said email, he also referred to the meeting (held in March 2016) between Noticee no. 1 and Mr. Ajay Srinivasan (Group CEO-ABFL) in presence of Noticee no. 7 wherein '*Thapar Group Strategy*' was discussed according to which the facility of Rs. 50 Crore sanctioned to BGPPL was to be closed before extending further loans by Noticee no. 10.



- (ii) CG Power entered into an Assignment Agreement dated May 9, 2016 with Blue Garden for assignment of its lease rights in the Nashik Property, for a consideration amount of Rs. 264 crore, without obtaining approval from MIDC. For payment of the consideration amount for this lease, Noticee no. 10 sanctioned a loan of Rs. 200 crore to Blue Garden and disbursed the same in two tranches of Rs. 150 crore (on May 12, 2016) and Rs. 50 crore (on August 17, 2016) and the same was immediately paid to CG Power on May 12, 2016 and August 17, 2016, respectively. On August 10, 2016 CG power transferred Rs. 53 crore to Acton without any interest. On August 12, 2016 the mutual funds of Rs. 51.57 crore purchased by Acton were marked as lien in favour of ABFL against loan of BGPPL. Later on, the same were adjusted against loan of Rs. 50 crore taken by BGPPL from Noticee no. 10. In summary, CG power transferred Rs. 53 crore to Acton and in turn, Acton effectively transferred Rs. 50 crore to Noticee no. 10 on behalf of BGPPL to repay its loan liability.

**(b) Impugned Transaction No. 2:**

- (i) CG Power entered into a MOU dated February 1, 2017 with Blue Garden for transfer of the Kanjurmarg property for a consideration amount of Rs. 498 crore with a condition that the MOU would take effect only upon the failure of the Evie Sale Agreement. For payment of a part of the consideration amount, Noticee no. 10 sanctioned a loan of Rs. 190 crore to Blue Garden, even before the event of “failure of the Evie Sale Agreement”. When the loan amount of Rs.190 crore was received by Blue Garden from Noticee no. 10 on February 16-17, 2017, it was paid by Blue Garden to CG Power on the same dates in terms of the MOU. CG Power thereafter advanced the money to Acton who utilized this amount towards payment against the liability owed by BGPPL to Noticee no. 10. Thus, Noticee no. 10 intended to ensure the repayment of its old loan by way of disbursing the fresh loan of Rs.190 crore.

51.2 Thus, from the above, it is noted in Impugned Transaction No. 1 & 2, Noticee no. 10 had granted a total loan of Rs. 390 crore to Blue Garden, which was subsequently transferred to CG Power and then to Acton and then in turn, Acton, on behalf of BGPPL, transferred a total of approximately Rs. 240 crore to Noticee no. 10 to repay BGPPL loan liability.

51.3 In view of the above, the SCN alleged, that in order to benefit its loans getting repaid, the commission and omission on the part of Noticee no. 10, amounts to participation in the diversion of assets of CG Power for the benefit of BILT, which is ultimately controlled by the Promoters of CG Power. Therefore, from the above, it is alleged that Noticee no. 10 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d) and 4(1) of the PFUTP Regulations.

51.4 The Noticee no. 10 vide his replies and written submissions to the SCN, has *inter alia* made the following submissions:

- (i) *The relationship between ABFL and Blue Garden Estates Private Ltd/CG Power was merely that of a lender and borrower and was purely contractual in nature. There cannot be any imputation or knowledge or motive to the Noticee no. 10 in its role as a lender. There is not a whisper in the SCN about any such knowledge or conspiracy or involvement and linkage between the Noticee no. 10 and the Avantha group. In such circumstances, it is respectfully submitted that SEBI has no jurisdiction to issue the SCN to ABFL in the absence of any jurisdictional fact to rope this into a securities fraud allegation. In the instant case, it is submitted that the role of ABFL was merely that of a lender, and it has played no role in the alleged fraud perpetrated by the erstwhile management of CG group.*
- (ii) *The "Transaction Structure" received by ABFL from CG Power via an email dated February 05, 2016, proposing that the borrower be a new SPV as a shareholder of an orphan SPV. It is on the basis of the said transaction structure that CG Power in the said email requested ABFL to proceed to take internal approvals.*
- (iii) *Upon execution of the aforesaid, ABFL on May 12, 2016 disbursed a sum of INR 150 crore to Blue Garden and the CG Power received the said amount from Blue Garden as the stipulated end use under the loan documents. Subsequently, Gautam Thapar had*

*also issued a letter of awareness recognizing the transaction between Blue Garden and CG Power, the loan to be given by ABFL to Blue Garden and to assist CG to comply with its obligations under the Assignment Agreement. At this stage it is important to point out that ABFL was neither required nor could it have known of CG Powers application of the proceeds received from Blue Garden.*

- (iv) In February 2018, an undertaking was executed by CG Power, pursuant to a Board resolution dated August 11, 2017, in favour of ABFL, in terms of which CG Power agreed to extend all rights provided to ABFL under a vendor undertaking dated February 1, 2017, to this Term Loan 1 and Term Loan 2, i.e. CG Power would automatically become a co-borrower to ABFL on occurrence of an event of default pertaining to payment.*
- (v) Subsequently, when Blue Garden failed to service the interest payment for the loan facilities, starting from December 2018, CG Power automatically became a co-borrower to ABFL along with Blue Garden on occurrence of event of default. Further, ABFL called upon CG Power and Blue garden to create a mortgage on Nashik and Kanjurmarg properties in exercise the rights conferred on ABFL vide the respective PoAs and transaction documents.*
- (vi) CG Power, under its new board of directors after the removal of Mr. Gautam Thapar, has admitted to its liability to ABFL. Vide letters dated June 11, 2020, and August 11, 2020, CG Power has admitted the liability of CG Power to ABFL in respect of the Nashik and Kanjurmarg loans.*
- (vii) As per the approved resolution plan, although ABFL had to take a haircut of about 56% on its exposure to the Avantha Group, having to bear a loss of about INR 274,00,00,000 (Indian National Rupees Two Hundred and seventy four crores only), it received about INR 140,39,00,000 (Indian National Rupees One Hundred and forty crore and thirty nine lacs only) as upfront consideration on December 24, 2020.*
- (viii) ABFL has had a long-standing commercial relationship with Avantha group and all the transactions were premised on the commercial comfort that ABFL had with Avantha Group. Further ABFL had, as a part of risk mitigation as well as RBI Guidelines, managed the exposure in the Avantha Group within the threshold laid down by RBI.*
- (ix) ABFL was never aware of the payments/transactions that have been set out in the SCN to which it was not a party. There is not a whisper of any evidence to suggest otherwise. The description of events set out by SEBI incorrectly insinuates that ABFL was aware of all aspects to the impugned transactions. ABFL was merely aware of segments of the chain of transactions to which is was a party or that were informed of as a part of the execution of the agreements to which it was a party.*
- (x) With the above background, it is submitted that structured finance transactions involving ABFL, that have been impugned in the SCN were in compliance with the applicable rules,*

*regulations, circulars, norms issued by RBI. Taken at its highest, the allegation is not sustainable since SEBI has failed to appreciate that structured financing is a common product in the domestic and international banking and finance market. In India, several large banks and NBFCs offer structured finance. Structure finance transactions are different from regular term loans due to the different requirements of the clients regarding borrower, entity, repayment timelines, source of repayment and/or security to be created. In its capacity as a proposed lender, ABFL examined the structure proposed by CG Power from the perspective of its service of interest and repayment of principal, as well as RBI's applicable regulations and its own internal policies in this regard.*

- (xi) The impugned Transaction no. 1 and 2 were not transactions related to the securities market but merely lending transaction with various entities of the Avantha Group as it existed then. ABFL has not traded or dealt in the any securities in the course of its dealings with the Avantha Group. Admittedly, vide the Impugned transactions, ABFL was not in any manner dealing in securities of CG Power Limited, or any other listed security either directly or indirectly. The loan by an NBFC such as ABFL where the lender may actually be a victim cannot be turned on its head to treat the lender as a conspirator or a violater.*
- (xii) It is submitted that with the email dated June 30, 2016, ABFL was only following up with BGPPL/Avantha Group for scheduled repayment of the facility granted by ABFL as a responsible lender dealing with public money; and cannot in any manner be construed to mean that ABFL facilitated transactions which benefitted BGPPL at the expense of a listed Company.*

51.5 With regard to the aforesaid submissions of Noticee no. 10, I note that there were various email correspondences between CG Power and Noticee no. 10 in February 2016 i.e. even prior to the incorporation of Blue Garden and Atcon Global. I note from the email dated February 05, 2016 from Mr. Atul Gulatee (Noticee no. 9) to Mr. Rakesh Pingulkar, Relationship Manager of Noticee no. 10, that the term sheet was signed and accepted and sent to Noticee no. 10 as final copy. The signed term sheet attached with the said email, has been already reproduced in the aforesaid para 34.1.4. I note that with respect to the aforesaid term sheet, the FAR had observed as follows:

*“As per the mentioned transaction structure, it was decided that the borrower of the funds from Aditya Birla Finance Ltd., SPV-B (Special purpose Vehicle) will have SPV-A as its*

*shareholder and SPV-A will pledge its complete shareholding of SPV-B against the loans given by ABFL.*

*From the chronology of events and the movements of funds, it is clearly established that the new entities Blue Garden and Acton were created as SPV-B and SPV-A, respectively, under the agreed "transaction structure".*

*Thus, it is pretty clear that Blue Garden and Acton Global were created under the mutually decided transaction structure with ABFL and their sole purpose as SPVs was to give effect to the proposed loan transaction."*

- 51.6 As also observed in FAR, I note that the creation of Blue Garden and Atcon Global as SPV's were part of the structured plan of Noticee no. 10 and CG Power and were created and incorporated for the sole purpose of giving effect to the proposed loan transaction between CG Power and Noticee no. 10. Further, an email dated February 10, 2016 was sent by Mr. Rakesh Pingulkar to Noticee no. 9, with a copy to Mr. Devang Rawal, Head Corporate Finance, Group, Noticee no. 10 and Mr. Navin Saini, Zonal Head –West –Corporate Finance, Group, ABFL, wherein, it was *inter alia* conveyed by Mr. Rakesh Pingul "This is with connection with our current proposal at hand for which we have already shared the proposed structure with you. We would like to clarify on some points before we proceed with our full due diligence". With regard to the said email dated February 10, 2016, the FAR made the following observations:

*"In the first line itself Mr. Rakesh Pingulkar has explicitly mentioned that "we have already shared the proposed structure with you."*

*This goes to clearly demonstrate that the transaction structure that was followed between ABFL, CG Power and AHL, involving the two SPVs, Acton Global and Blue Garden was proposed by Aditya Birla Finance Ltd. executives".*

- 51.7 As also observed by the FAR, I note that the financial structure of the transactions was proposed by Noticee no. 10 to CG Power. Further, from the same email dated February 10, 2016, I note that Mr. Rakesh Pingulkar had also stated that "So I request, if we can go ahead on the initial deal status and security involving the Kanjurmarg Land. This helps us in justifying the basis of the proposed structured deal and the purpose of this loan to CG". Hence, it is evident that the financial

structure, which included the creation of SPVs i.e. Blue Garden and Acton, was proposed by Noticee no. 10 for the purpose of Noticee no. 10 giving loan to CG Power. Further, I note that vide email dated June 30, 2016, Mr. Devang Rawal from Noticee no. 10 sent an email to Noticee no. 7 referring to the meeting (held in March 2016) between Noticee no. 1 and Mr. Ajay Srinivasan (Group CEO-ABFL) in presence of Noticee no. 7 wherein '*Thapar Group Strategy*' was discussed according to which the facility of Rs. 50 Crore sanctioned to BGPPL was to be closed before extending further loans by Noticee no. 10.

51.8 I note that Noticee no. 10 has submitted that it was neither required nor could it have known of CG Powers application of the proceeds received from Blue Garden. Further, that it was never aware of the payments/transactions that have been set out in the SCN to which it was not a party. Therefore, I note that Noticee no. 10 is contending that it was never aware that the funds transferred to CG Power through Blue Garden would be utilised for repayment to it of the loans given by it to Avantha Group companies. In this regard, I note that the FAR has also made the following observations:

***“ABFL was in complete knowledge that part of the funds it was giving as loan to CG Power was to be utilised for repayments of the loans it had given to Avantha Group entities earlier***

*At that time when the discussions of additional loan of Rs. 400 Crore between CG Power and ABFL were taking place, the overall Avantha Group exposure of ABFL was around Rs. 387 crore. ABFL was not willing to increase its existing exposure of Rs 387 crore to the Avantha Group as a whole by additional Rs. 400 crore as sought by CG Power. If this was to happen, the ABFL's cumulative exposure for the Avantha Group would be a staggering Rs 990 crore. ABFL didn't want to take such a risk.*

*Alternatively, it was decided by ABFL that it would be prudent for ABFL to extend the said facility of Rs 400 crore to CG through Blue Garden and CGPSOL, without showing increase of ABFL's exposure to Avantha Group by more than Rs 200 crore. The way out for this scheme involved discussion between officials of CG Power and ABFL, whereby CG Power's requirement to borrow Rs 200 crore was accepted by ABFL only if Avantha Group would repay ABFL to the tune of Rs. 200 crore, in other exposures with Avantha Group.*

*Therefore, as seen from the fund flow already established earlier, ABFL reduced its exposure to BGPPL, which was an Avantha Group entity. It did so by giving loans of Rs. 390 Crores to CG Power, out of which Rs. 240 Crores were used for repayment of loans given to BGPPL.”*

51.9 Further, in the representation made by Noticee no. 10 to the Forensic Auditor, as observed in the FAR, Noticee no. 10 had stated as under:

*“as a condition for considering giving incremental funding, decided to seek reduction by Rs. 192 crores of exposure that it had in BGPPL, which was rated ‘IND A-’ as against CG which had a credit rating of ‘IND AA’ . With the same, ABFL was able to commercially negotiate an exit from BGPPL for its exposure of Rs. 192 crore, along with a stronger security package involving exclusive security on important CG assets”*

51.10 Further, I note that Noticee no. 10 vide its letter dated April 13, 2021 to SEBI, had *inter alia* submitted as follows:

*It was envisaged by CG Power that against the strength of cash flows from the sale of Kanjurmarg Property to Evie, it would raise ₹400 Crore as interim finance, of which initially ₹200 Crore was provided by ABFL in two separate tranches of ₹150 Crore and ₹50 Crore to Blue Garden for the benefit of CG Power (by way of advances to CG Power in relation to the transaction for the Nashik Property). Around September-October 2016, CG Power again approached ABFL seeking to borrow ₹200 Crore by way of a structured finance facility by designating Blue Garden as the borrower and another ₹200 Crore in its subsidiary CG PSOL. As per ABFL’s internal assessment, ABFL agreed to consider incremental exposure of up to ₹200 Crore on Avantha Group (i.e. offer fresh facilities of up to ₹200 Crore and not ₹400 Crore). However, CG Power proposed that if ABFL was unwilling to increase the group exposure by more than an incremental ₹200 Crore, it would try and reduce part of the existing Avantha Group exposure for facilitating the fresh transaction of ₹400 Crore. Accordingly; to achieve the reduction of exposure by ₹190 Crore, Avantha Group identified Acton for the purchase of ABFL’s exposure of ₹190 Crore in BGPPL. In order to be able to extend ₹400 Crore to CG Power (₹200 Crore as a structured finance facility to Blue Garden and ₹200 Crores to CG PSOL) out of the existing facilities extended to Avantha Group, ABFL agreed for the reduction of its exposure in BILT.*

51.11 From the above emails, observations of FAR and submissions made by Noticee no. 10, it is clear that Noticee no. 10 wanted to reduce its exposure from BGPPL, which was a promoter group company, and move it to CG Power as it had a better and higher credit rating and CG Power had important assets, which can be taken as security. As also observed in the FAR, I note that Noticee no. 10 had negotiated the reduction of Rs. 192 crores from its exposure to BGPPL and that was the condition put in by Noticee no. 10 to grant additional funds to CG Power. Hence, I note that the strategy discussed by Noticee no. 10 with Noticee no. 1 and his associates, which Noticee no. 10 had termed as “*Thapar Group Strategy*”, was for Noticee no. 10 to move its exposure of Rs. 192 crores from BGPPL to a stronger security package involving exclusive security on assets of CG Power, while the Noticee no. 1 also reaped the benefits of having the funds of CG Power being used for paying off the loans of the promoter group companies which he either controlled or owned. Therefore, it is evident that Noticee no. 10 was not just aware of the fraudulent scheme of Noticee no. 1 to divert funds from CG Power to promoter group companies in order to repay their loans with Noticee no. 10, but Noticee no. 10 was also involved and instrumental in planning the same with Noticee no. 1 and his accomplices, as is evident from the aforesaid emails and submissions made by Noticee no. 10. In view of the above, I find the contention of Noticee no. 10 that it was neither required nor could have known of CG Power’s application of the proceeds received from Blue Gardent is untenable.

51.12 Further, Noticee no. 10 has contended that the relationship between Noticee no. 10 and Blue Garden Estates Private Ltd/CG Power was merely that of a lender and borrower and was purely contractual in nature and there cannot be any imputation or knowledge or motive to the Noticee in its role as a lender. Further, that SEBI has failed to appreciate that structured financing is a common product in the domestic and international banking and finance market. Noticee no. 10 has submitted that SEBI has no jurisdiction to issue the SCN to Noticee no. 10 in the absence of any jurisdictional fact to rope this into a securities fraud allegation. In this regard, I note that the SCN has not been issued to the Noticee merely for its lending activities. As has been demonstrated in the previous paras, Noticee no. 10



has facilitated diversion of funds of a listed entity which is a fraudulent, manipulative and unfair trade practice prohibited under Regulation 4(1) of PFUTP Regulations, 2003. Structured financing, as pleaded by Noticee no. 10, can not be designed in a manner so as to result in violation of law which is Regulation 4(1) of PFUTP Regulations, 2003, in the present case. Once there is violation of securities laws then in terms of provisions of SEBI Act, 1992 and other Acts administered by it, SEBI has jurisdiction to deal with the violator. Therefore, contention of Noticee no. 10 that SEBI does not have any jurisdiction as activities of Noticee no. 10 were lending activities involving structured finance, is not tenable.

51.13 Further, in addition to the aforesaid paras that establish that Noticee no. 10 had knowledge of the fraudulent scheme of the Noticee no. 1, I also note that there were various factors that should have alerted Noticee no. 10 to avoid entering into the aforesaid transactions. The same are given below:

- a) I note that Noticee no. 10 was part of the discussion and proposal for creation of SPVs i.e. Blue Garden. However, even if assuming that Noticee no. 10 was not aware of the SPVs, a casual examination of the borrowing entity i.e. Blue Garden, would have revealed that it was, at that time, a recently incorporated entity (March 2016), with two employees of CG Power as Directors and Shareholders. This should have immediately raised a red flag that possibly Blue Garden is nothing but a company that has been set up to route transactions in an opaque manner.
- b) If Noticee no. 10 believed that the MOU with respect to the Kanjurmarg property was executed to avail interest bearing advance from Blue Garden against the expected future receivables from Evie, then the most natural thing to do would be for Noticee no. 10 to directly lend to CG Power since CG Power had a much stronger balance sheet than Blue Garden which had no financial strength at all. The desire to do the transaction in a layered manner through a small, privately held company should have immediately raised a red flag that the reason for doing so was to avoid the governance and scrutiny in a listed entity.

- c) The power of attorney was issued in favor of Blue Garden, without Board authorization. The absence of Board authorization should have immediately raised a red flag as to whether the transaction was being done to avoid scrutiny by the CG Power Board.
- d) As per Noticee no. 10's own account, in Sept-Oct 2016, CG Power again approached Noticee no. 10 seeking to borrow Rs 200 Cr by way of a structured finance facility by designating Blue Garden as the borrower and another Rs 200 Cr in its subsidiary. Once again, this should have raised yet another red flag as to why, when the Kanjurmarg Property is in the name of CG Power, the company is seeking a "structured" finance facility, again through the new company Blue Garden.
- e) As per Noticee no. 10's own account, they discussed with the Promoter Group on reducing the overall exposure to the Group and reducing Noticee no. 10's exposure of Rs 190 Cr in BGPPL was identified for doing so. If that was the case, it would have been a simple matter of BGPPL repaying its loan to Noticee no. 10. Instead, yet another "structure" was designed: that Acton would purchase ABFL's exposure of Rs 190 Cr in BGPPL. Acton was, yet again, at that time, a newly incorporated entity (at the same time as Blue Garden i.e., in March 2016, and was the holding company of Blue Garden), with two employees of CG Power as Directors and shareholders. This should have yet again raised a red flag as to whether this entire structure was being designed to evade scrutiny and governance, particularly since the assets belonged to CG Power, a listed company.
- f) Further, the Kanjurmarg property already had a lien on it in favor of Yes Bank. This red flag has also been missed by Noticee no. 10.

51.14 Therefore, from the above, it is evident that even though such apparent concerns should have alerted Noticee no. 10, it has chosen to ignore them, thereby reaffirming the aforesaid findings that Noticee no. 10 had knowledge of the fraudulent scheme of Noticee no. 1 and has facilitated the same. The assertion by Noticee no. 10 that the structuring of these transactions was proposed by CG Power, is untenable, but even assuming that is true, it does not absolve Noticee

no. 10 from participating in the transactions that were so clearly designed to be deceptive and to avoid the scrutiny and governance of a listed entity. Instead of Noticee no. 10 avoiding entering into such transactions, it chose to be involved in and assist the other Noticees in the impugned transactions.

51.15 Thus, from the above, I find that in order to get its loans repaid, the commission and omission on the part of Noticee no. 10, amounts to participation in the fraud to divert the assets of CG Power for the benefit of promoter group companies, which are either controlled or owned by Noticee no. 1. Therefore, I find that Noticee no. 10 has violated the provisions of Sections 12A(c) of the SEBI Act and Regulations 3(d) and 4(1) of the PFUTP Regulations, 2003.

## **52. IndusInd Bank (Noticee no. 11):**

52.1 Noticee no. 11 was involved in the scheme of diverting the assets / funds of CG Power as follows:

- (i) **Impugned Transaction No. 4:** On October 25, 2017, Noticee no. 11 (situated at GIFT City, Gujarat) sanctioned a loan of USD 40 Million (Rs. 260 crore) to CG Middle East and the same was disbursed by IndusInd Bank India on the same day. The loan was sanctioned to CG Middle East (borrower), but was disbursed by Noticee no. 11 to CG IBV (guarantor). CG IBV transferred the loan amount to CG Power. The total amount received from CG IBV (Rs. 260 crore) was transferred to CG PSOL by CG Power, which further transferred the same to Solaris, which is a Promoter Group Entity. The funds were transferred by Solaris to Avantha Realty Limited and Jhabua Power Infrastructure Limited for repayment of their earlier loans availed from IndusInd Bank. Therefore, the loan of USD 40 Million disbursed by Noticee no. 11 was, in part, utilized for the repayment of old outstanding loans of Jhabua Power and Avantha Realty with Noticee no. 11.

52.2 The SCN notes that vide email dated April 8, 2021, clarifications were sought in this regard from Noticee no. 11. Noticee no. 11, vide email dated April 12, 2021, *inter alia* submitted the following:

- (i) The sanction of the loan of USD 40 Million to CG Middle East was approved by the bank's Board on October 14, 2017 post detailed credit assessment process as laid down by the bank. Subsequently, the sanction terms including commercials were under discussion with the borrower which required certain modifications in the sanction which were approved by the bank's approval authority on October 24, 2017. The final sanction letter was, therefore, issued to the borrower on October 25, 2017 post these modifications in sanction terms and finalization of commercials.
- (ii) The loan was disbursed to the Borrower CG Middle East in Gift City, Gujarat. Subsequently, based on the request letter from the borrower, funds were remitted to CG IBV's account as per terms of sanction. Because of overseas jurisdiction, an overseas legal counsel was appointed to draft the security and facility documents. There were multiple rounds of discussions between bank, borrower and overseas legal counsel to finalize the draft of the documents and security was subsequently duly created and registered as per UAE's laws.
- (iii) With reference to associate entities mentioned, i.e., Avantha Realty and Jhabua Power, the bank has not received any funds for repayment of loans from CG Power or its subsidiaries.

52.3 With regard to the aforesaid submissions, the SCN observed that there are numerous red flags related to their impugned transactions that suggest that IndusInd Bank had, through acts of omission and/or commission, been involved in and assisted the other Noticees in carrying out the impugned transactions in violation of securities laws:

- (i) It is averred that the loan to CG Middle East had been guaranteed by CG IBV. However, there is no resolution passed by the Board of CG IBV to this effect on record. This should have been an immediate red flag that the Board of CG IBV may not be aware of the transaction.

- (ii) A bank is required to do end use monitoring of its loans. The facts are that on the request of CG Middle East, the loan was disbursed to CG IBV by Noticee no. 11 and these funds then, through layers of companies, found their way to Jhabua power and Avantha Realty which were promoter group entities, within a matter of a few days. In response to the aforesaid clarifications sought by SEBI, Noticee no. 11 has merely submitted that the bank has not received any funds for repayment of loans of Avantha Realty and Jhabua Power from CG Power or its subsidiaries, which suggests that no such end use monitoring was done and a superficial response to the SEBI query was given.
- (iii) The circumstantial evidence shows a rapid sequence of flow of funds from Noticee no. 11 to CG IBV, through layers of companies, to Jhabua Power and Avantha Realty within a few days, and subsequent repayment of Noticee no. 11 loans by Jhabua Power and Avantha Realty.

52.4 These acts of omission/commission by Noticee no. 11 show that Noticee no. 11 was involved in and assisted the other Noticees in the impugned transactions. In view of the above, it is alleged, that in order to get its loans repaid, the commission and omission on the part of Noticee no. 11, amounts to participation in the fraudulent scheme for diversion of assets of CG Power for the benefit of the companies, which are ultimately controlled by the Promoters of CG Power. Therefore, from the above, it is alleged that Noticee no. 11 has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d) and 4(1) of the PFUTP Regulations.

52.5 The Noticee vide his replies and written submissions to the SCN, has inter alia made the following submissions:

- (i) *It is submitted that SEBI lacks the inherent jurisdiction to initiate the present proceedings particularly qua IBL for the following reasons:*
  - a) *The Show Cause Notice has been issued under Section 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with 15HA and 15HB of the SEBI Act, none of which have any application to the lending transaction by IBL and SEBI has failed to demonstrate otherwise;*

- b) Further, one of the alleged violations is of certain provisions of Section 12A of the SEBI Act and Regulation 3 and 4 of the PFUTP Regulations which relate to “dealing” and “issue” of securities and the same have no connection with the Bank’s role in the Impugned Transaction; The other alleged violation is of Regulation 4(1) of the PFUTP Regulations which also pertains to transactions in the “securities market” and cannot include IBL’s lending transaction.*
  - c) There is no cogent reason or finding in the Show Cause Notice to suggest that the Bank has made any profits or averted a loss by indulging in any transaction which is in contravention of the said provisions, or for that matter of the SEBI Act and any regulations framed thereunder.*
  - d) IBL has not lent to CG Power, i.e. the listed entity. Moreover, CG Power has not given any security or guarantee for the CG ME Loan, which is the lending transaction entered into by IBL and alleged to be a part of the Impugned Transaction;*
  - e) IBL is a bank regulated by the Reserve Bank of India (“RBI”) and is therefore required to follow the norms prescribed by RBI especially in respect of its transactions undertaken in its usual banking business. It is pertinent to note that if there was gross negligence, carelessness and recklessness in adhering to banking related norms in the course of the transactions, such an issue could be only taken up by RBI (similar to Institute of Chartered Accountants of India (ICAI) in case of auditors);*
  - f) Further, there is nothing to show that the funds disbursed by IBL to CG IBV were transferred from CG IBV to CG Power and so on (as alleged in para 20.1 of SCN at Pg. 21) with knowledge of IBL, therefore, even indirectly no case is made out against IBL;*
  - g) Any lending transaction initiated by a bank would therefore necessarily fall within the domain of the RBI which is the sectoral regulator and not within the jurisdiction of SEBI which is a securities market regulator and does not have any elements as contemplated in the aforesaid provisions.*
- (ii) IBL is in the business of lending money and has taken a commercial decision of lending which is not subject to scrutiny by SEBI, particularly, in the absence of any evidence to suggest any wrongdoing on part of IBL in respect of such transaction.*
- (iii) IBL had sanctioned the Loan to CG ME (a routine banking transaction) and had disbursed funds thereunder as per the sanction terms, which set out the purpose of the Loan to include “loans and advances to group entities/ associates”. The disbursement/ utilization of the Loan had been found to be in accordance with sanction documents even by the Forensic Auditor MSA Probe Consulting [See extract of Forensic Audit*

*Report at page 268-269 of the Compilation]. After disbursement of funds to CG IBV (at the request of CG ME), IBL did not have any visibility or control over the flow of funds between CG IBV to CG Power or through them to any of the promoter companies.*

- (iv) It is reiterated that IBL is not responsible for any dealings of flow of funds between CG Power and promoter group entities because (i) the Bank has no control and is not required to have control over such transactions, (ii) repayment of loans availed by other entities after the Loan was advanced to CG ME does not by itself lead to the conclusion that IBL funds were being used to repay the IBL loans availed by the Promoter Group.*
- (v) It is submitted that IBL has not lent monies to or taken security / guarantee from the listed entity i.e. CG Power. In fact, IBL has lent money to CG ME, securities of which are not listed and are not proposed to be listed; therefore, there can be no application of the aforesaid provisions to the present case. Further, IBL has not and is not alleged to have been involved in “dealing or issue of securities.*

52.6 In this regard, I note that it is alleged in the SCN that the loan provided to CG Middle East was guaranteed by CGIBV, however, that there was no resolution passed by the Board of CGIBV to this effect. In this regard, Noticee no. 11 has submitted that the guarantee executed by CGIBV in respect of the CG Middle East Loan was executed by CGIBV which is a Dutch entity and therefore, Noticee no. 11 obtained a legal opinion from a Dutch law firm in relation to the authority of CGIBV to execute the said guarantee and the due execution of such guarantee. Further, that the said law firm has categorically opined “that (a) CG IBV has the corporate power and authority to enter into the said guarantee and to perform the obligations thereunder and (b) based on the Articles and the Extracts, the guarantee has been duly executed on behalf of CG IBV”. Noticee no. 11 submitted that with the authorization in relation to the guarantees being monitored by the qualified legal professionals of the relevant jurisdiction engaged by them, there was no reason for them to separately insist for a board resolution once legal advisor had confirmed on the authority.

52.7 With regard to the aforesaid contention, I note that Noticee no. 11 had entered into a loan agreement of USD 40 million (Rs. 260.32 crore) with CG Middle East, which was sanctioned and disbursed on October 25, 2017. I note that the loan was sanctioned to CG Middle East, which was the borrower, but the amount of USD 40

million was disbursed by Noticee no. 11 to CGIBV, who was also the guarantor of the aforesaid loan. The amount of Rs. 252.23 crore was transferred from CGIBV to CG Power who then transferred Rs. 260 crores to CG PSOL, who further transferred the funds to Solaris, which is a Promoter Group Entity. The funds were then transferred by Solaris to Avantha Realty Limited and Jhabua Power Infrastructure Limited and on November 08, 2017, Avantha Realty Limited transferred Rs. 2.5 crores to IndusInd Bank and Jhabua Power Infrastructure Limited transferred Rs. 160 crores to IndusInd Bank, thereby, repaying their earlier loan. Therefore, the loan of USD 40 Million disbursed by Noticee no. 11 to CGIBV was, in part, utilized for the repayment of old outstanding loans of Jhabua Power and Avantha Realty with Noticee no. 11. This clearly shows that the loan was provided by Noticee no. 11 to CGIBV in order to get its loan repaid which were given to Avantha Realty Limited and Jhabua Power Infrastructure Limited. It is astonishing that the very entity i.e. CGIBV, to whom the funds were disbursed to, was the guarantor and Noticee no. 11 did not bother to do its due diligence in verifying whether the Board of CGIBV had passed a resolution to act as the guarantor. I note that CGIBV was the holding company of CG Middle East and the ultimate holding company was CG Power, a listed company. It is evident that Noticee no. 11 was aware that the funds would be transferred to the listed company i.e. CG Power and then to promoter group companies for repayment of their loans to Noticee no. 11 and hence, did not bother to do its due diligence to insist for the board resolution of CGIBV as it was aware and part of the fraudulent scheme of Noticee no. 1 to divert funds from CG Power to promoter group companies. Noticee no. 11 has contended that they obtained a legal opinion from a Dutch law firm, Buren NV, in relation to the authority of CGIBV to execute the said guarantee and the due execution of such guarantee and therefore, there was no reason for them to separately insist for a board resolution once legal advisor had confirmed on the authority. Hence, I note that Noticee no. 11 had never sought for the board resolution and only relied upon a legal opinion. I also note from the legal opinion dated September 20, 2018, that the legal counsel, Buren NV, have stated that they have examined and relied solely on the documents referred to in Annexure A to the opinion letter, which did not include the Board



Resolution of CGIBV. Be that as it may, I find that reliance upon a legal opinion taken from a Dutch law firm does not absolve Noticee no. 11 from the fact that no resolution was passed by the Board of CGIBV to guarantee the loan provided to CG Middle East by Noticee no. 11. In view of the above, I find the contention of Noticee no. 11 that legal opinion was sought on the same there was no reason for them to separately insist for a board resolution, is untenable.

52.8 It has also been alleged that Noticee no. 11, as a bank, is required to do end use monitoring of its loans. In this regard, IndusInd has submitted that it has monitored the end-use of funds disbursed by it under the CG Middle East Loan by obtaining a certificate in accordance with applicable regulations, confirming that the funds were used in accordance with the sanction terms. Noticee no. 11 have submitted that it has obtained a certificate dated 20<sup>th</sup> March, 2018 from the borrower, i.e. CG Middle East and once it was satisfied that the Loan was drawn down in accordance with the purpose for which it was sanctioned, the Bank could not have and was not even required to monitor the flow of funds between layers of companies who were in no manner parties to the alleged Impugned Transaction, with the funds flowing through several accounts of several companies held with different banks. In this regard, I note that the loan was sanctioned for CG Middle East, however, the loan amount of USD 40 million was disbursed to CGIBV, the holding company of CG Middle East, who was also the guarantor. As noted above, it is astonishing that the very entity i.e. CGIBV, to whom the loan amount was disbursed to, was the guarantor itself. Such factors should have alarmed Noticee no. 11. However, Noticee no. 11 disbursed the loan amount to CGIBV as it was clearly aware that CG Power, a listed Company was the ultimate holding company of CGIBV and CG Middle East. I note that Noticee no. 11 had obtained a certificate from CG Middle East, confirming that the funds were used in accordance with the sanction terms. I note that the certificate dated March 20, 2018, as submitted by the Noticee along with its reply dated 22, 2021, simply states that *“The Company has used the proceeds of the said Foreign Currency Term loan of USD 40 Mio towards cash flow mismatches, long term working capital requirements, loans and advances to group entities/associates and*

*transaction cost and expenses*". I note that no further details have been given with respect to the proceeds in the letter dated March 20, 2018. The entire loan amount was disbursed to CGIBV by Noticee no. 11 and not to CG Middle East, and yet Noticee no. 11 did not find it least astonishing that the certificate, confirming that the funds were used in accordance with the sanction terms, was provided by CG Middle East, that too certifying use of money for multiple purposes such as cash flow mismatches, long term working capital requirements, loans and advances to group entities/associates and transaction cost and expenses. From the documents available on record, it is evident that the said certificate received by Noticee no. 11 from CG Middle East was incorrect as the loan amount was transferred to CG Power and diverted to promoter group companies from repaying their loans to Noticee no. 11. From the above, it is evident that Noticee no. 11 was aware of the fraudulent scheme of Noticee no. 1 to divert the funds from CG Power to promoter group companies and hence, Noticee no. 11 did not make any attempt to verify such glaring inconsistencies. It is evident that Noticee no. 11, by facilitating and enabling the fraudulent scheme of Noticee no. 1, has benefited by getting its old loans repaid from the promoter group companies i.e. Avantha Realty Limited and Jhabua Power Infrastructure Limited, and thereby, reducing its exposure in the promoter group companies. In view of the above, I find the aforesaid contention of Noticee no. 11 that it obtained a certificate from CG Middle East is untenable.

- 52.9 Further, I note that Noticee no. 11 has submitted that the loan was not advanced by the bank to a listed company i.e. it was not advanced to CG Power. That both CG Middle East and CGIBV are not listed entities and are overseas subsidiaries of CG Power. The Noticee no. 11 has submitted that CG Power had neither advanced any security nor guarantee in respect of the loan. However, I note from the reply dated August 29, 2021 of Noticee no. 11 itself, wherein, it has stated that *"An undertaking was obtained by the Bank from CG Power dated 25<sup>th</sup> October, 2017 wherein CG Power has undertaken to comply with the terms and conditions of the sanction letter, including in respect of the financial covenants and management covenants;"*. From the sanction letter provided by Noticee no. 11, I note that the financial covenants pertain to CG Power, which has been referred to

as “CGL” in the sanction letter. Further, the Events of Default in the sanction letter also contains conditions that not only pertain to the borrower i.e. CG Middle East but also to CG Power. Furthermore, it is also stated that “*A default in any of the credit facilities to the Company, CG IBV, CGL and/or any of the CGL group companies to any of the lenders will be construed as an Event of Default for the facility*”. From the above it is evident that CG Power is an essential part of the sanction letter, with an undertaking having been obtained from CG Power to comply with the terms and conditions of the sanction letter. Hence, the aforesaid contention, of the Noticee is untenable.

52.10 Thus, from the above, I find that in order to get its loans repaid, the commission and omission on the part of Noticee no. 11, amounts to participation in the fraudulent scheme for diversion of assets of CG Power for the benefit of promoter group companies, which are either controlled or owned by Noticee no. 1. Therefore, I find that Noticee no. 11 has violated the provisions of Sections 12A(c) of the SEBI Act and Regulations 3(d) and 4(1) of the PFUTP Regulations, 2003.

53. I note that Noticees no. 10 and 11 have submitted that SEBI has no jurisdiction to issue the SCN to them in the absence of any jurisdictional fact to rope this into a securities fraud allegation. In this regard, I note that the SCN has not been issued to the Noticees no. 10 and 11 for its lending activities. The SCN has been issued to Noticee no. 10 and 11 for its alleged role in facilitating fraudulent scheme of diversion of funds of a listed entity, in contravention of the provisions of the PFUTP Regulations, 2003. It is evident from the discussions in the aforesaid paras, that the diversion of funds from CG Power to promoter group companies could not have taken place without the role and involvement of Noticees no. 10 and 11, whose interest in the fraudulent scheme was to have their loans repaid from the promoter group companies. Hence, by facilitating the funds for CG Power and its group companies, knowing fully well that the said funds were to be transferred to promoter group companies of CG Power to repay their loans to Noticee no. 10 and 11, it is evident that Noticees no. 10 and 11 have gone beyond its lending activities by facilitating and enabling the fraudulent scheme of Noticee no. 1 to get their loans repaid. I find that Noticees no. 10

and 11 were well aware of the encumbrances being created on the assets of a listed company through the aforesaid transactions. In view of the above, I find that the aforesaid contention of Noticees no. 10 and 11 that they are merely a lender and SEBI has no jurisdiction, as untenable, and given that Noticees no. 10 and 11 were aware of the fraudulent scheme and have facilitated the fraudulent activities of a listed entity, I find that Noticees no. 10 and 11 are in contravention of the provisions of the PFUTP Regulations, 2003.

54. I note that the Noticees have submitted that SEBI has levelled allegation of fraud based on pure surmise and conjectures and with no shred of evidence, let alone any appreciation of evidence allegedly collected during the investigation. I note that the Noticees have also *inter alia* relied upon the cases of *SEBI vs. Rakhi Trading Pvt. Ltd.* (CA No. 1969 of 2011 decided on February 08, 2018) and *SEBI vs. Kishore R. Ajmera* in CA No. 2818 of 2008 decided on February 23, 2016 to contend that there is no evidence that the Noticees committed any fraud or colluded with the other Noticees. In this regard, it would be appropriate to refer to the Order dated April 25, 2018 of the Hon'ble SAT in the matter of *Bhavesh Patel and Others vs. SEBI* in the matter of S J Corporation Limited in Appeal No. 456 of 2015 reaffirming the rationale cited in the matter of *SEBI vs. Rakhi Trading Private Ltd.* and *SEBI vs. Kishore R. Ajmera* and held that:

“..... 44. Learned Counsel Shri. Gaurav Joshi relied on the following judgments of the Supreme Court (a) *Securities and Exchange Board of India vs. Rakhi Trading Private Ltd.* (Civil Appeal No. 1969 of 2011 decided on February 08, 2018); (b) *Securities and Exchange Board of India vs Shri Kanaiyalal Baldevbhai Patel*, 2017 SCC On Line SC 1148 decided on September 20, 2017 and (c) *Securities and Exchange Board of India vs. Kishore R. Ajmera*, (2016) 6 Supreme Court Cases 368 decided on February 23, 2016 and submitted that in deciding on PFUTP violation, totality of facts and preponderance of probabilities have to be resorted to as full evidence may not be forthcoming and manipulative, fraudulent schemes also include deliberately making losses as held in *Rakhi Trading (supra)*. .....

50. Argument made by each of the appellant individually that each of them played only a small trade in isolation or as per normal course of their business or some of

*them did not trade at all or some small loan has been given etc. stand no merit when totality of the picture is looked at. All of them together enabled launching this major fraud by using a dormant, low capital base and low public float company. In this context, we also find that the argument that many of the appellants did not off-load either full or major chunk of their holding even in Phase-III or thereafter also has no merit since with the still limited liquidity of about 1100 shares per day there was an inbuilt absorptive limitation for the market and thereafter the ad-interim restraint order of the WTM of SEBI came on their way on February 5, 2010. As held by the Hon'ble Supreme Court in several orders such as SEBI vs Rakhi Trading (supra), SEBI vs. Shri Kanaiyalal Baldevbhai (supra) and SEBI vs. Kishore R. Ajmera (supra) complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In Rakhi Trading (supra) it is held that in some cases parties may even incur willful losses in the market to achieve some objectives.”*

55. The aforesaid Order of the Hon'ble SAT, while referring to judgments such as *SEBI vs Rakhi Trading (supra)*, *SEBI vs. Shri Kanaiyalal Baldevbhai (supra)* and *SEBI vs. Kishore R. Ajmera (supra)*, makes it clear that complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In the present case, as discussed in the aforesaid paras, Noticee no. 1 was the Chairman of CG Power and even though he was well aware of funds being transferred to promoter group companies (which he either controlled or owned) for the purpose of repaying their loans at the cost of creating encumbrances on the assets of CG Power, he did not disclose his interest to the Board of CG Power and has in fact even facilitated these fraudulent transactions by giving letters of comfort as the Chairman of CG Power. As discussed above, the “*Thapar Group Strategy*” clearly shows that Noticee no. 1 has masterminded the entire fraudulent scheme in the aforesaid impugned transactions, especially given that he was the main beneficiary in the diversion of funds from CG Power. Further, as discussed in the aforesaid paras, Noticees no. 5, 6, 7 and 9, have played their role in colluding with Noticee no. 1 in his fraudulent scheme by executing transactions for diverting funds from CG Power to promoter group companies without

taking approval of the Board and also falsifying documents. Further, their involvement has been evident in multiple transactions. Noticees no. 5 and 6 were CFO's of the Company and were responsible for ensuring that the financial statements of the company present true and fair picture of the state of the company's financial affairs. However, in addition to executing the aforesaid transactions in a fraudulent manner, the Noticees no. 5 and 6 also misrepresented the financial statements of the Company. Noticee no. 10 has played its role in the fraudulent scheme by colluding with Noticee no. 1 in planning the financial transactions to *inter alia* create SPVs so as to indirectly provide funds to CG Power which were then diverted to promoter group companies to repay their loans to Noticee no. 10. Further, Noticees no. 2, 3 and 4 have been involved in the fraudulent scheme by transferring funds received from CG Group Companies to other promoter group companies and also as beneficiaries to the funds received from CG Group Companies. The Hon'ble Supreme Court in the matter of *SEBI vs. Kishore R. Ajmera (supra)*, as also relied upon in the case of *SEBI vs Rakhi Trading (supra)*, held that "26. *It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*" Therefore, in view of the above factual matrix of circumstances which show each of the Noticee's participation and involvement in the fraudulent scheme of Noticee no. 1, as have been discussed in detail in the aforesaid paras, I find that there is sufficient evidence to draw a reasonable inference that the Noticees no. 1, 2, 3, 4, 5, 6, 7, 9 and 10 have been involved in the fraudulent scheme of diverting funds from CG Power and its group companies to promoter group companies, at the cost of

effectively decreasing the assets of/ increasing the liabilities of CG Power, for the ultimate benefit of promoter group companies controlled or owned by Noticee no. 1.

56. I also note that the Noticees have contended that all the allegations relate to transactions that have occurred prior to the amendment of Regulation 4(1) of PFUTP Regulations, 2003, wherein, an Explanation was inserted with effect from October 19, 2020. The Noticees have contended that diversion of assets was included in Regulation 4(1) for the first time with effect from October 19, 2020, by way of an Explanation. That the Explanation introduces a new and distinct category of offence not covered earlier by Regulation 3 or 4, which were restricted to dealing in securities or securities market. In this regard, I note that the relevant provision of the PFUTP Regulations, 2003, reads as 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 manipulative, fraudulent or an unfair trade practice in securities markets.*

*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.*

57. I note that the aforesaid Regulation 4(1) to the PFUTP Regulations, 2003 puts complete prohibition on all manipulative, fraudulent or unfair trade practice relating to securities market. What constitutes 'unfair trade practices' and 'manipulative' is not defined in the PFUTP Regulations, 2003. However, it is not difficult to ascertain true meaning of these terms and consequent scope and ambit of Regulation 4(1), by reading the various terms defined in and the objective of, PFUTP Regulations, 2003, as a whole. In this context, Section 11(2)(e) of SEBI Act, 1992 which enumerates prohibiting fraudulent and unfair trade practice relating to securities market, as one of the functions of SEBI, may also be referred to. In discharge of said function SEBI had earlier framed SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to

securities market) Regulations, 1995 (since repealed) which were later replaced by PFUTP Regulations, 2003. The Regulation 4(1) inter alia seeks to prohibit any act of diversion of assets of a listed company or its concealment or any scheme to manipulate the books of accounts or financial statements of such a company. What was earlier implicit has now been made explicit by adding 'Explanation' to Regulation 4(1) of PFUTP Regulations, 2003 w.e.f. October 19, 2020. I note that the aforesaid amendment, though introduced on October 19, 2020, does not make any substantive change in the ambit of Regulation 4(1) as it would be too naïve to contend that diversion/misutilisation/siphoning of the assets of listed company or did not fall in the ambit of manipulative, fraudulent and unfair trade practice. Act of large scale diversion of funds of the listed company are undoubtedly a 'fraudulent and/or manipulative and/or unfair trade practice relating to securities market', which are covered by the vigors of Regulation 4(1) since July 17, 2003 itself i.e. the date of coming into force of PFUTP Regulations, 2003. Thus, I note that the 'Explanation' added to Regulation 4(1) merely clarifies that certain acts such as diversion of funds / manipulation of books of accounts, shall always be deemed to have been considered as 'manipulative, fraudulent and unfair trade practice relating to securities market'. Further, I note that in the instant case, the fraud was never disclosed to the shareholders of CG Power, which misled them to remain invested in the shares of CG Power or deal in the securities of CG Power. Also misrepresentation of the books and accounts of CG Power, as discussed above, misled the investors in the securities market. Thus, the diversion of funds and the misrepresentation of financial statement, in terms of Regulation 4(1), was manipulative, fraudulent and an unfair trade practice relating to securities market. Therefore, I find that the Noticees have violated Regulation 4(1) of PFUTP Regulations, 2003.

58. Further, I note that Noticees no. 1, 2, 4 and 7 by referring to the petition before NCLT in Company Petition (IB) no. 27 of 2022, have submitted that allegations of SEBI that the agreements entered into with the borrower were without approval stands belied by the fact that the Company on the basis of the very same agreement have now initiated insolvency proceedings against borrowers which have also been entertained by NCLT, Mumbai. In this regard, I note that as discussed above, it has been brought to the fore that those agreements were entered into by Noticees without taking the



approval of Board of Company. Therefore, the fact that these Noticees entered into those agreements without proper approval of the Board of Directors stands substantiated. As far as initiation of insolvency proceedings against borrower by Company on the basis of those agreements is concerned, I find that a party to an agreement on whose behalf agreements have been signed by unauthorized person or without the consent of the person, may agree to pursue the terms of the agreement if the same are in its interest. Pursuing of such agreement by the party concerned does not wipe out the fact that these agreements were without proper approvals at the time when they were entered. In view of the above, the contention raised by the Noticees on the basis of insolvency proceedings is untenable.

59. Having discussed all the transactions and the roles played by each of the Noticees in execution of these transactions, I find that Noticees herein, acted in concert in order to execute a fraudulent scheme of diversion of funds or creating encumbrances of assets of a listed entity. In the said scheme each Noticee played its assigned role in order to give these transactions a colour different than the one which they actually hold. In this process, they exceeded their authority, they exercised authority which was not vested in them and misused the authority given to them. As a result of their acts, the funds/assets belonging to the listed company were either diverted or were created encumbrance upon, because of which total liabilities of the Company and the CG Power Group may have been potentially understated by approximately Rs. 1053.54 crore and Rs. 1,608.17 crore respectively, as on March 31, 2018 and by Rs. 601.83 crore and Rs. 401.83 crore, respectively as on April 1, 2017. Further, that advances to related and unrelated parties of the Company and the CG Power Group were potentially understated by Rs. 1,990.36 crore and Rs. 2,806.63 crore respectively, as on March 31, 2018 and by Rs. 1,479.34 crore and Rs. 1,331.47 crore respectively, as on April 1, 2017. I note that the Noticees herein who were Chairman/Promoter, promoter related entities, directors, CFO's and employees have tried to portray that these were the normal transactions for the benefit of the Company and the banks/NBFC have tried to portray that these were merely lending activities. Furthermore, the defense of the CFO's and employees is mostly that they were acting under the instruction of superiors or that others were also aware of these

transactions. As found in the previous paras, all these defenses ignores the bigger scheme of diversion of funds of the listed entity. I find that discussion in the previous paras in addition to showing larger fraudulent scheme of fund diversion also clearly brings out the role played by the Noticees in each of the transactions. Therefore, I find that it is a fit case to issue directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992.

60. SCN in the matter, also calls upon the Noticees no. 1, 5, 6, 7 and 8 to explain as to why appropriate penalty be not imposed upon them under Sections 15HA and 15HB of SEBI Act, 1992 and for Noticees no. 2, 3, 4, 9, 10 and 11 to explain as to why appropriate penalty be not imposed upon them under Section 15HA of SEBI Act, 1992, 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 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.”

61. From the analysis of the aforesaid penalty provisions, 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 been made out against the Noticees no. 1 to 7, 9, 10 and 11, therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against

the Noticees no. 1 to 7, 9, 10 and 11. For the violation of LODR Regulations, Noticees no. 1, 5, 6, 7 and 8 who are the directors and CFO of CG Power are 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, 2015, therefore, for violation of LODR Regulations, 2015 by Noticees no. 1, 5, 6, 7 and 8, as found in this order, penalty under Section 15HB is attracted against Noticees no. 1, 5, 6, 7 and 8.

62. 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.”

63. 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. However, I note that Noticees no. 1, 2 and 4 are the beneficiaries of the funds of Rs. 1093 crores, which were extended to them either directly or indirectly, as discussed above. Noticee no. 5 was the CFO of CG Power from August 12, 2017 to

August 30, 2019 and involved in impugned transactions no. 1, 3 to 8 and 9 mentioned above. Similarly, Noticee no. 6 was CFO of CG Power from November 01, 2009 to March 31, 2016, an Executive Director and CFO from April 01, 2016 to August 11, 2017 and a Non-Executive Director from August 12, 2017 to September 30, 2017 and was involved in the impugned transactions no. 1, 2, 6, 9 and 10, mentioned above. Noticee no. 7 was Group Director-Finance of Avantha Group and was Non-Executive Director of CG Power from November 01, 2012 to March 08, 2019, and involved in impugned transactions no. 1, 3, 4, 5, 6, 9 and 10, mentioned above. Noticee no. 8 was the MD & CEO of CG Power from February 03, 2016 to September 30, 2019 and, as thus, was responsible for ensuring that the financial statements of the company present true and fair picture of the state of the company's financial affairs. Noticee no. 9 was merely an employee of CG Power and involved in transactions no. 1, 2 and 4, as mentioned above. I note that Noticee no. 10 was the NBFC that was involved in structuring the loan and impugned transactions no. 1 and 2, and Noticee no. 11 was the Bank that was involved in structuring the loan and impugned transactions no. 4, which led to the diversion of funds of the listed Company, as discussed in the aforesaid paras. I note that by virtue of Interim Order dated September 17, 2019 and Confirmatory Order dated March 11, 2020, Noticees no. 1, 5, 6 and 7 were *inter alia* restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders and Noticees no. 2, 3 and 4 were *inter alia* restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders.

64. Further, I note that by virtue of Interim Order dated September 17, 2019, the Company i.e. CG Power, who is not a Noticee to the SCN, was *inter alia* directed to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Noticees/entities mentioned at paragraph 5.5 A. of the Interim Order along with due interest expeditiously and take necessary action, including legal actions. The same was confirmed vide Confirmatory Order dated March 11, 2020.

**Directions:**

65. 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 read with Section 19 of SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, direct as under:

- (i) The Noticees no. 1, 2, 3 and 4 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 five (5) years, from the date of coming into force of this order.
- (ii) The Noticees no. 5, 6 and 7 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 three (3) years and six (6) months, from the date of coming into force of this order.
- (iii) The Noticees no. 1 to 11, are hereby imposed with, the following penalties as specified:

Notice e No.	Name of Noticees	Provisions under which penalty imposed	Penalties (In Rs.)
1.	Mr. Gautam Thapar	Sections 15HA of the SEBI Act, 1992	Rs. 8,00,00,000/- (Rupees Eight crores only)
		Section 15HB of the SEBI Act, 1992	Rs. 2,00,00,000/- (Rupees two crores only)
2.	Avantha Holdings Limited	Section 15HA of the SEBI Act, 1992	Rs. 5,00,00,000/- (Rupees five crores only)
3.	Acton Global	Section 15HA of the	Rs. 5,00,00,000/- (Rupees five

	Private Limited	SEBI Act, 1992	crores only)
4.	Solaris Industrial Chemicals Limited	Section 15HA of the SEBI Act, 1992	Rs. 5,00,00,000/- (Rupees five crores only)
5.	Mr. V. R. Venkatesh	Sections 15HA of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
		Section 15HB of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
6.	Mr. Madhav Acharya	Sections 15HA of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
		Section 15HB of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
7.	Mr. B. Hariharan	Sections 15HA of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
		Section 15HB of the SEBI Act, 1992	Rs. 50,00,000/- (Rupees Fifty lakhs only)
8.	Mr. K. N. Neelkant	Section 15HB of the SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten lakhs only)
9.	Mr. Atul Gulatee	Section 15HA of the SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five lakhs only)
10.	Aditya Birla Finance Limited	Section 15HA of the SEBI Act, 1992	Rs. 1,00,00,000/- (Rupees One crore only)
11.	IndusInd Bank	Section 15HA of the SEBI Act, 1992	Rs. 1,00,00,000/- (Rupees One crore only)

- (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](http://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](mailto:portalhelp@sebi.gov.in). The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, CFID-1, 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) CG Power shall continue to take all necessary steps to recover the amounts due to the Company as directed in the Interim Order dated September 17, 2019 and Confirmatory Order dated March 11, 2020, as also mentioned in para 64 above.
- (vi) The period of debarment already undergone by the Noticees by virtue of Interim Order dated September 17, 2019, shall be set-off from the period of debarment as directed herein above in sub-paras (i) and (ii).
66. During the period of restraint, as directed in para 65 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze.
67. 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 recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

68. This Order comes into force with immediate effect.
69. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

**Place: Mumbai**

**Date: October 04, 2022**

**Sd/-**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**