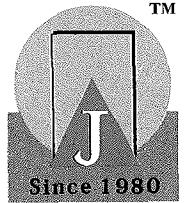


# J. Kumar Infraprojects Ltd.

We dream ... So we achieve...

Regd. Off.: 16-A, Andheri Industrial Estate, Veera Desai Road, Andheri (W), Mumbai - 400053. INDIA  
Ph.: +91-22-6774 3555. Fax+91-22-2673 0814. E-mail : info@jkumar.com Website : www.jkumar.com  
CIN No. : L74210MH1999PLC122886



**J. Kumar**

ISO 9001:2015  
ISO 14001:2015  
OHSAS 18001:2007

To,

29<sup>th</sup> September, 2018

The General Manager  
Department of Corporate Services,  
Bombay Stock Exchange Limited  
P J Towers  
Dalal Street  
Mumbai - 400 001

The Manager  
Listing Department  
The National Stock  
Exchange of India Limited  
Bandra Kurla Complex  
Mumbai - 400051

**Scrip Code: JKIL/532940**

**SUB: Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ('Listing Regulations')**

Pursuant to the provisions of Regulation 30 of the Listing Regulations, please find enclosed a copy of Interim Order No WTM/MPB/ISD/45/2018 dated 28<sup>th</sup> September 2018 passed by Securities and Exchange Board of India ("SEBI"), however the intimation of the order is still to be received by the Company but it is displayed on the website of the SEBI, it is self-explanatory.

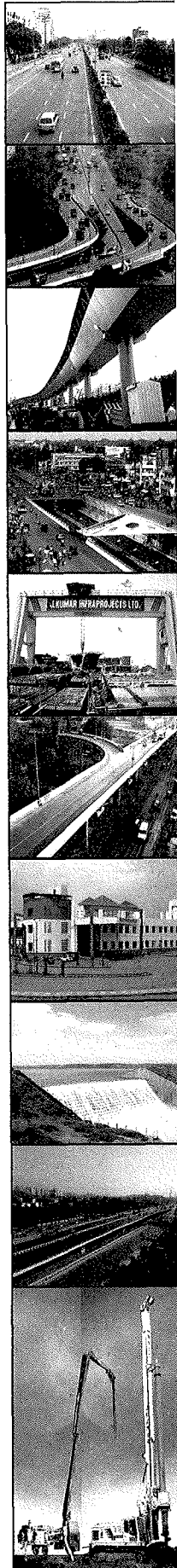
The Company shall file its reply/objections to the aforesaid Interim Order and shall also seek an opportunity of personal hearing with the SEBI in this matter the stipulated time as mentioned in the said Order.

We request you to kindly take note of the same.

Thanking You.

Yours faithfully,  
For J. Kumar Infraprojects Limited

*Poornima*  
Poornima Reddy  
Company Secretary



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

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**INTERIM ORDER**

**UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE  
BOARD OF INDIA ACT, 1992**

**IN THE MATTER OF**

<b>Sl. No.</b>	<b>NAME</b>	<b>PAN</b>
<b>1.</b>	<b>M/s J. Kumar Infraprojects Limited</b>	<b>AAACJ9161C</b>

**In Re: SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015**

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**Background of case:**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) vide which MCA has annexed a list of 331 companies identified as “shell companies” for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “**SFIO**”) dated May 23, 2017 which contained the data base of companies categorized as shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) of protecting the interests of the investors in securities

and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.

3. SEBI was of the view that companies whose names are included as shell companies by SFIO and MCA, could potentially be involved in
  - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) and/or
  - (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore renegeing on the fiduciary responsibility cast on the board, controlling shareholders and key management person (hereinafter referred to as “**KMP**”)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of listed shell companies including M/s J. Kumar Infraprojects Limited (hereinafter referred to as “**JKIL**” / “**Company**” / “**Noticee**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but allowed under strict monitoring so that

investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.

6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “BSE”) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as “NSE”) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as “MSE”) vide notice dated August 07, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. JKIL vide its letter dated August 08, 2017 had made a representation to SEBI submitting *inter alia* as under:
  - (a) That the company is on Sr. no. 273 as per the list provide by SEBI to Exchanges, whose trading has been suspended with immediate effect and has been placed in GSM framework, without affording opportunity of hearing.
  - (b) JKIL is promoted by Mr. Jagdishkumar M. Gupta and was incorporated in 1999 with an object to carry on the business as a builder, contractor or sub-contractor. The company was listed on BSE and NSE in year 2008. Company is in operation from last 18 years undertaking complex Infraprojects. Presently, Company’s projects are running in the states of Maharashtra, Delhi, Gujarat, Rajasthan and Uttar Pradesh which includes construction of various metro lines, irrigational project and road transport projects. As on date order book value is Rs. 9334.81 crore. In the year 2012 company was awarded projects by DMRC for Rs. 1,407 crores & UPRNNL Projects of Rs. 519 crores. In the year 2015 company was

awarded with Ahmadabad Metro Project worth Rs. 278 crores and in the year 2016 company was awarded with Mumbai Metro Projects worth of Rs. 6,717 crores.

- (c) The company is rated “IND A+” for Fund based limit, “IND A1+” for non fund based limit and “IND A1+” for CP by India Ratings. JKIL is ISO certified company.
- (d) JKIL has been awarded by ICI-Birla Super Award for being the contractor of construction of flyover from College of Engineering Pune to Patil Estate.
- (e) Standalone financial performance for last three financial years is:

(Rs. in Crores)

<b>Balance Sheet Extracts</b>	<b>Fiscal 2017</b>	<b>Fiscal 2016</b>	<b>Fiscal 2015</b>
Equity Share Capital	37.83	37.83	32.23
Reserves and Surplus	1,351.17	1,245.48	756.86
Net Fixed Assets	582.57	497.41	493.33
Non-Current Assets	201.31	364.15	186.71
Current Assets	1,864.19	1,103.04	1,012.19
Non-Current Liabilities	52.05	46.68	67.85
Current Liabilities	1,207.02	634.61	835.3

(Rs. in Crores)

<b>Profit &amp; Loss</b>	<b>Fiscal 2017</b>	<b>Fiscal 2016</b>	<b>Fiscal 2015</b>
Income from Opertations	1,437.50	1,408.63	1,343.19
Other Income	28.72	17.66	13.05
Total Income	1,466.22	1,426.28	1,356.23
Operatinf Expenses	1,189.87	1,160.24	1,092.63
EBIDTA	276.35	266.04	263.61
Depriciation	55.63	51.21	47.35
EBIT	220.72	214.83	216.25
Financial Charges	65.94	61.06	76.76
PBT	154.78	153.77	139.49
PAT	105.51	103.16	94.39

- (f) The market capitalization of company is around Rs. 2,000 crore having 25,345 shareholders. Out of the same 43.94% of the total shareholding belongs to the promoter and promoter group, rest 56.06% to public shareholder which *inter alia* include SEBI

registered Mutual Funds, FPIs, AIFs holding 11.31%, 27.13%, 0.27% respectively and financial institution/banks, insurance companies holding 0.13%, 0.01% respectively.

(g) JKIL is a law abiding company and on regular basis have filed the relevant compliance required under listing agreement, SEBI Act 1992, Income Tax Act 1961, Companies Act 2013, etc. JKIL is regular in paying Income Tax, VAT, Service Tax, etc. to various Government authorities and has paid Income Tax to the tune of Rs. 120 crore approx in the last three years.

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and Stock Exchanges, JKIL filed an appeal No. 174 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 10, 2017 directed the following:-

".....

*16. In the facts of these two appeals, we are prima facie of the opinion, that the impugned communication issued by SEBI on the basis that the appellants are 'suspected shell companies' deserves to be stayed. Accordingly while staying the communication of SEBI dated 07.08.2017, qua the two appellants, we direct BSE and NSE to forthwith reverse their decisions both dated 07.08.2017 in case of these two appellants.*

*17. Stand over to September 04, 2017.*

....."

10. The Hon'ble SAT vide order dated August 11, 2017 disposed the appeal No. 174 of 2017 directing the following

".....

*2. Counsel for the parties state that in view of the fact that SEBI/Stock Exchanges are considering the representation of the appellants against the ex-parte communication of SEBI dated 7/8/2017, both the appeals may be disposed of in terms of the order passed on 10/8/2017.*

3. Accordingly, both the appeals are disposed of in terms of the order dated 10/8/2017 with no order as to costs.
4. It is made clear that in our order dated 10/8/2017 we have stayed only the direction contained in para 1(a) & (b) of the impugned communication dated 7/8/2017.  
.....”

11. The Hon’ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

**Hearing and Reply:**

12. Pursuant to the decision of Hon’ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication dated August 09, 2017 granted an opportunity of hearing to JKIL on August 10, 2017. On August 10, 2017, Mr. Ankit Lohia, Advocate, Ms. Rishika Harish, Advocate, Mr. Amit Bikram Dey, Advocate, Ms. Nirali Mehta, Company Secretary, Ms. Poornima Reddy, Company Secretary, Mr. Jitesh Maheshwari and Ms. Manisha Nayak, Authorized Representatives appeared for JKIL and made oral submissions and submitted the written submissions. During the hearing JKIL was advised to submit the following information:

- (a) *Details of the project-wise Turnover of the Company, since 2007. Details of sub-contracts if any in the projects involved. Details of the Turnover contribution by the Company and the contribution of the sub-contracting parties, if any. If there are multiple layers of sub-contracting, then details of all the layers. Sub-contracts of the nature of turn-key or near*

*turn-key are to be considered for this purpose. Role of the Company in those projects which have been sub-contracted, vis-à-vis the sub-contracted parties.*

*(b) Details of employees on the rolls of the Company, their respective roles, remuneration received, qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, junior management, Middle management, senior management, may be given with names and corresponding details.*

*(c) Nature of association as per the contract with M/s PACL Limited (hereinafter referred to as 'PACL'). Workings of the Company in estimating the value of the contract, supported by documentary evidence. If there was any sub-contracting of the said contract with PACL then details of the role of the Company vis-à-vis the sub-contracted parties. The workings of the Company in accepting the sub-contract and supporting documentary evidence. The profit earned out of the said project with PACL.*

13. SEBI vide letter dated August 16, 2017 has advised JKIL to furnish the aforesaid information by August 24, 2017.

14. JKIL vide its letter dated August 24, 2017 submitted a reply to SEBI's letter dated August 16, 2017, as under:

(a) Reply to query 1: The year wise details about the turnover along with the information of major clients are as under:

<b>Financial Year</b>	<b>Turnover (Rs. In Lacs)</b>	<b>Major Clients</b>
2014-15	13,43,318.56	Pune Municipal Corporation, Delhi Metro Rail Corporation, Uttar Pradesh Rajkiya Nirman Nigam Limited, Mumbai Metropolitan Regional Development Authority and City and Industrial Development Corporation Limited



<b>Financial Year</b>	<b>Turnover (Rs. In Lacs)</b>	<b>Major Clients</b>
2015-16	1,40,862.85	Delhi Metro Rail Corporation, Uttar Pradesh Rajkiya Nirman Nigam Limited, Mumbai Metropolitan Regional Development Authority, Metro Link Express for Gandhinagar and Ahmedabad (Mega) Co. Ltd. and City and Industrial Development Corporation Limited
2016-17	1,43,749.52	Delhi Metro Rail Corporation, Uttar Pradesh Rajkiya Nirman Nigam Limited, Mumbai Metropolitan Regional Development Authority, Metro Link Express for Gandhinagar and Ahmedabad (Mega) Co. Ltd. Mumbai Metro Rail Corporation Ltd., Thane Municipal Corporation and City and Industrial Development Corporation Limited

JKIL had entered into more than 250 sub-contracts in the FY 2014-15, more than 300 sub-contracts during the FY 2015-16 and more than 350 sub-contracts in the FY 2016-17.

- (b) Reply to query 2: JKIL had more than 3000 employees and more than 3,500 labours. The details of employees classifying them as Technical employees and Non-technical employees are as under:

<b>Financial Year</b>	<b>No. of Technical Employees</b>	<b>No. of Non-Technical Employees (including Administrative)</b>	<b>Total Employees</b>
2014-15	1,013	1,393	2,406
2015-16	1,107	1,447	2,554
2016-17	1,974	2,362	4,336

(c) Reply to query 3: JKIL submitted that M/s PACL Limited (hereinafter referred to as '**PACL**') was its client for the development of agricultural land in Rajasthan and Tamil Nadu. There was no association of PACL as such with the Company except that of the contractual association. JKIL submitted the work order cum agreements entered into by JKIL with PACL and also the work order cum agreements entered into by JKIL with the sub-contractors along with copy of invoices furnished with the reply. The details of agreements entered by JKIL are as under:

<b>Agreements between PACL and JKIL</b>				
<b>Sl. No.</b>	<b>Dated</b>	<b>Area to be developed</b>	<b>Rate per unit (in INR)</b>	<b>Total consideration# (in INR)</b>
1.	10.08.2008	1571 acres	70000/-	10,99,70,000/-
2.	05.04.2009	808.15 acres	70000/-	5,65,70,500/-
3.	11.05.2009	8000 acres	70000/-	56,00,00,000/-
4.	01.08.2010	4324324.33 cum	185/-	80,00,00,000/-
Note: # Area to be developed * Rate per unit				

**Agreement by JKIL with sub-contractors for the contracts accepted from PACL**

<b>Sl. No.</b>	<b>Agreement with</b>	<b>Date of agreement</b>	<b>Area to be developed</b>	<b>Rate per unit (in INR)</b>	<b>Total consideration# (in INR)</b>
1.	Indu Projects Limited	16.08.2008	1400 acres	69300/-	9,70,20,000/-
2.	Proto Developers and Technologies	18.08.2008	100 acres	69450/-	69,45,000/-
3.	Parsvnath Developers Limited	11.05.2009	808.15 acres	67000/-	5,41,46,050/-
4.	Rajesh Projects (I) Pvt. Limited	11.05.2009	5613 acres	68500/-	38,44,90,500/-

5.	Trinethra Infra Ventures Ltd	01.10.2009	1487 acres	68500/-	10,18,59,500/-
6.	Trinethra Infra Ventures Ltd	01.10.2009	531 acres	68500/-	3,91,13,500/-
7.	Coastal Projects Limited	18.08.2010	2272956 cum	175.75/-	39,94,72,017/-
8.	Rithwik Projects Private Limited	18.08.2010	1313888.89 cum	180/-	23,65,00,000/-
9.	Rithwik Projects Private Limited	18.08.2010	14,00,000 cum	180/-	25,20,00,000/-
10.	Sahara Real Estate Corporation Limited	18.08.2010	388813.89 cum	180/-	6,99,86,500/-
Note: # Area to be developed * Rate per unit					

With regard to the information regarding working of the company in estimating the value of the contract, JKIL submitted that the same was done by the internal management of the Company and the documents prepared in furtherance of the same were preserved by the Company for three years i.e. till 2012. Once a contract is awarded, the details are of no use to the Company and hence Company generally did not preserve the same. Therefore, because of the unavailability, the Company cannot provide any information regarding the same.

With regard to the information regarding the role of the company vis-a-vis the sub-contracted parties in the said contract with PACL, Company submitted that its role was the development of agricultural land including clearance, excavation, levelling, dressing and filling of agricultural land at the earmarked sites. There was a stipulation in the contract by which Company was permitted to enter into agreement/arrangements to complete the development. The locations of the site which were to be developed as per the

agreements were in Rajasthan and Tamil Nadu. As Company's areas of operation of contract at the relevant time were not located in these states and there were some infrastructural shortage in these states, various sub-contract were entered into by us with other contractors to complete the entire development.

- (d) The details regarding profit earned by the Company out of the project with PACL are as under:

	<b>Contract (In Rs.)</b>	<b>Sub Contract (In Rs.)</b>	<b>Profit (In Rs.)</b>
Contract FY 08-09	10,32,00,000	10,21,77,356	10,22,644
Contract FY 09 -10	55,35,91,500	54,10,37,456	1,25,54,044
Contract FY 10-11	76,50,00,000	73,39,86,496	3,10,13,504
<b>Total</b>	<b>1,42,17,91,500</b>	<b>1,37,72,01,308</b>	<b>4,45,90,192</b>

15. Further, SEBI vide letter dated August 29, 2017 had advised JKIL to provide clarification on their submissions alongwith relevant supporting documents:

- (a) *With respect to para 6(e) of your reply dated August 24, 2017, regarding information pertaining to working of company in estimating the value of the contract, as per Sec 209 (4A) of the Companies Act, 1956 and now as per Sec 128(5)(a) of the Companies Act, 2013: 'The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order.' Hence, the company is requested to provide the working of the Company in estimating the value of the contracts with PACL Ltd. and Parsvnath Developers Ltd.*
- (b) *With respect to the above contracts, you are also requested to provide the details of completion of contracts along with the work completion certificate for the same.*
- (c) *With respect to agreements and invoices of the contracts attached in your reply dated August 24, 2017, you are requested to provide the reconciliation of location and khasra no. resulting in these invoices.*

16. JKIL vide letter dated August 31, 2017 submitted that with regard to the further clarification sought for the contracts with Parsvnath Developers Limited and PACL Limited, the transaction in question is more than eight years old and document pertaining to the same are not readily available and Company require time to prepare appropriate response on the same. JKIL requested 15 working days from the date of this letter to submit appropriate reply in the matter.

17. JKIL vide its letter dated September 15, 2017 submitted its reply to SEBI's letter dated August 29, 2017, which is as under:

(a) *With regard to the details of the working of the company in estimating the value of the contracts, we would like to bring to your notice that the details sought hereinabove pertain to the financial year 2008-2011 and to working of the Company in estimating the value of the contract which are done by the internal management of the company. It is further submitted that the internal working of the company does not form part of the 'books and papers' or 'books of accounts' and as per our limited knowledge there is no requirement on the part of the Company to maintain the workings of a contract which are purely rough and technical calculations and made for internal purpose only, it is further submitted that the above referred contract were executed by us by giving sub-contracts to various parties and the quotation to the contracting company in such a scenario is generally based upon the rate agreed with the perspective sub-contractor. Since this was a case of development of agriculture land not many technical calculations were involved. Therefore, after passage of almost 7-8 years, it is really difficult for the management to recollect the exact working. In any event the details sought by your goodself are no longer available with the Company.*

(b) *With regard to the details of the completion of contracts provided to the company and the work completion certificate for the same it is submitted that since PACL was a Non-government organization, no strict procedures as those followed in government organizations were there. We had obtained the contract from PACL and had sub-contracts the same to various other entities. There was no requirement of providing a work completion certificate on the part of either of the parties. However, at the end of*

*completion of each of the work contract, PACL had issued letters to us stating the quantity of work found to be satisfactorily completed by us. Here to marked and attached are the copies of letters issued to the company by PACL.*

- (c) With respect to the details sought by your goodself for reconciliation of the location and the khasra no. of the various invoices of the contract as attached to our reply dated August 24, 2017, it is submitted that as pointed out by us in the instant letter that the details provided by us were too old and had been provided on best effort basis and we had also stated that we shall produce any further information/details if we come across something in due course. Accordingly, upon verification of our records during the process of making the reconciliation as required by your goodself, we have come across few bills / contracts / details which were not provided to you in the earlier letter dated August 24, 2017. Therefore, for the sake of convenience we are once again annexing the copies of contract wise details of the work contracts executed with PACL, the sub-contracts given by us to various sub-contractors, the bills raised by sub-contractors to us and bills raised by us in turn to PACL.*
- (d) It is further brought to the notice of your goodself's that , the captioned order was passed ex-parte and no documents / statement / details were provided to us based on which the captioned order was passed. Hence, we would humbly request your goodself to provide us to legible copies of all the material/ documents / statements / evidence relied upon by SEBI while passing the captioned order.*
- (e) We reserve our rights to seek / submit more documents / material as and when required during the course of proceedings.*
- (f) In any event we request your goodself to afford us an opportunity of being heard before issuing any further directions in the matter.*

18. JKIL vide letter dated September 15, 2017 requested SEBI to provide the legible copies of all the material / documents / statement / evidence relied upon by SEBI while passing letter/order dated August 07, 2017. In reply to it, SEBI vide letter dated November 08, 2017 had informed JKIL as under:

“ .....

- (a) *In this regard, it may be noted that SEBI had received a database of listed shell companies from the Ministry of Corporate Affairs (MCA) vide letter dated June 09, 2017 (letter alongwith the Annexure is placed alongside) based on which certain pre-emptive surveillance measures were taken by SEBI vide letter dated August 07, 2017.*
- (b) *In addition to the above, SEBI had received additional inputs from MCA/SFIO, on which the MCA/SFIO has relied upon while preparing the list submitted to SEBI. The same is attached alongside for your reference.*

.....”

19. In the interest of natural justice and in order to continue an inquiry under section 11(4) and 11B of SEBI Act, 1992, SEBI vide communication dated November 09, 2017 granted another opportunity of hearing to JKIL on November 28, 2017. On November 28, 2017, Mr. J J Bhatt, Advocate, Mr. Aditya Bhansali, Consultant, Ms. Akshya Bhansali, Advocate, Mr. Amit Dey, Advocate, Mr. Jitesh Maheswari, Advocate, Ms. Poornima Reddy, Company Secretary and Mr. Arvind Gupta, Chartered Accountant, Authorized Representatives (ARs) appeared on behalf of JKIL and made oral submissions as under:

“.....

- (a) *ARs made the oral submission in line of replies available on record. ARs submitted the copies of communication between SEBI & JKIL and also submitted the copies of replies which are already available on record.*
- (b) *ARs stated that JKIL had not been served any show cause notice, however, SEBI letter dated August 07, 2017 is being considered by them as show cause notice.*
- (c) *ARs raised the question on validity of the queries raised by SEBI. SEBI reaffirmed its power to call for information.*
- (d) *ARs requested WTM to grant time for submission of additional written reply in the matter. ARs also requested for fresh date of hearing.*

.....”

20. In the interest of natural justice and in order to continue an inquiry under section 11(4) and 11B of SEBI Act, 1992 and pursuant to the request of JKIL during the course of hearing held on November 28, 2017, SEBI vide communication dated December 22, 2017 granted another opportunity of hearing to JKIL on January 09, 2018 and also advised JKIL to submit the additional written reply in the matter, if any, by December 28, 2017. JKIL vide letter dated December 26, 2017 had requested time till January 07, 2018 to submit additional written submission in the matter.
21. JKIL vide letter dated January 07, 2018 submitted additional written submission in the matter which is *inter alia* as under:
- (a) JKIL has submitted its background with regard to incorporation, listing, turnover, profile of independent directors on its Board, order book, market capitalization, etc.
  - (b) JKIL has submitted letters from Bank of India and Allahabad bank. The banks, *inter alia*, stated that JKIL is very prompt in repayment and interest serving in stipulated period and has never defaulted on any repayment of principal or interest till date. JKIL is enjoying sanction facilities of INR 1640 crores from Bank of India and INR 370 crores from Allahabad Bank.
  - (c) JKIL has submitted copy of Income Tax assessment order for the F.Y. 2009-10 dated December 28, 2017.
  - (d) The Ex parte order cum show cause notice (“SCN”) i.e. SEBI letter dated August 07, 2017 has been passed against JKIL, based on the alleged additional inputs / information which are purportedly received from Income Tax Department. The said inputs were provided to JKIL by SEBI vide its letter dated November 08, 2017. In this regard, JKIL submitted that the Income Tax Department vide order dated December 28, 2017 has clearly accepted the genuineness of all the contracts and transactions related to PACL. Thus, the very basis of being investigation – being the proceedings before Income Tax Department – now completely disappears. Thus, there is no cause to continue the proceedings against JKIL based upon the said allegations.



22. On January 09, 2018, Mr. J J Bhatt, Advocate, Mr. Aditya Bhansali, Consultant, Mr. Amit Dey, Advocate, Mr. Jitesh Maheswari, Advocate, Ms. Poornima Reddy, Company Secretary and Mr. Arvind Gupta, Chartered Accountant, Authorized Representatives (ARs) appeared on behalf of JKIL and made oral submissions as under:

“ .....

- (a) ARs made the oral submission in line of replies available on record.
- (b) ARs stated that all the information sought by SEBI vide letter dated August 16, 2017 was submitted to SEBI except “Nature of association as per the contract with PACL. Workings of the Company in estimating the value of the contract, supported by documentary evidence. If there was any sub-contracting of the said contract with PACL then details of the role of the Company vis-à-vis the sub-contracted parties. The workings of the Company in accepting the sub-contract and supporting documentary evidence. The profit earned out of the said project with PACL.”
- (c) ARs further stated that SEBI vide letter dated August 29, 2017 had advised them that as per section 209(4A) of the Companies Act 1956 and now as per Section 128(5) (a) of the Companies Act, 2013, JKIL was required to provide the working of the company in estimating the value of the contracts with PACL and Parsvnath Developers Limited. In reply to this ARs stated that as per section 209(1) of Companies Act, 1956 they are required to place the books of account and other documents at the registered office of the JKIL and as per section 209 (4A) of Companies Act, 1956 only books of accounts and vouchers relevant to any entry are required to be kept for 8 years and no other documents. ARs categorically stated that both these section has to be read in isolation and not together as the intent of both sections are different. Therefore, w.r.t the aforesaid information, section 209(4A) of the Companies Act 1956 and now as per Section 128(5)(a) of the Companies Act, 2013 is not applicable to them.
- (d) ARs submitted the Assessment Order dated December 28, 2017 issued by the Income Tax department.

*The undersigned explained to the ARs that in the spirit of law and to confirm the genuineness of contract/sub-contract and transactions relating to PACL, ARs are advised to submit*

*documentary evidence of actual work done like visit report of engineer, computation of cost, site photographs, travel expenses, actual working papers etc. or/and demonstrate that actual works had been done and executed by JKIL w.r.t. to contract/sub-contract and transactions relating to PACL.*

*ARs of JKIL requested 4 weeks' time to furnish the said information. Acceding to the request, ARs are advised to submit the aforesaid information by February 09, 2018. If ARs fail to submit the said information within the time limit, then the matter would be proceeded further on the basis of documents available on record.*

.....”

23. SEBI vide email dated January 25, 2018 advised to JKIL to submit its reply by February 09, 2018. JKIL vide letter dated February 08, 2018 had requested additional time of 7 days to submit additional reply in the matter. JKIL vide letter dated February 15, 2018 submitted additional reply in the matter stating as under:

“.....

- (a) At the outset it is submitted that allegations and averments contained in the SEBI's letter dated August 07, 2017 (hereinafter referred to as 'Ex-Parte Order') qua the Noticee are flawed, erroneous, and without any basis and hence are denied in toto. Noticee submits that there are no grounds on the basis of which any directions as contained in the Ex-Parte Order can be taken against JKIL.*
- (b) The Noticee, repeat, reiterate all the arguments, averments and submissions which are stated in its Memorandum of Appeal dated August 08, 2017 preferred before Hon'ble Securities Appellate Tribunal; replies/ submissions made before National Stock Exchange vide its letter dated August 21, 2017; replies/ submissions made before your goodself vide letter dated August 24, 2017 September 15, 2017 and January 07, 2018 filed therein (including all the oral submissions made during the course of hearing), as the same is set out herein verbatim. Noticee deny all that is contrary thereto and/or inconsistent therewith.*
- (c) In the course of the hearing held on November 28, 2017, it was for the first time intimated to the Noticee that your goodself is only looking into the following aspects:
  - (i) For possible misrepresentation of the financials and businesses, and possible violation of SEBI (Listing Obligations and Disclosure Requirements) Regulations,**

2015 (“LODR Regulation”) by the companies identified as Shell Company by MCA (including JKIL) and/or

- (ii) For possible misusing the books of accounts/funds including facilitation of accommodation entities to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility casted on the board, controlling, shareholders and key management person (KMP) by the companies identified as shell company by MCA (including JKIL).
- (d) It is pertinent to note that neither during the Ex-Parte Order stage nor during the appellate stage before Hon'ble Securities Appellate Tribunal, SEBI ever had indicated that, they are looking into the violations of LODR Regulation or were investigating about the misreporting/misstatements in the financial statements, due to which it appears that SEBI has subsequently taken this stand in order to justify its Ex-Parte Order dated August 07, 2017.
- (e) Further, during the course of hearing, on raising the query as to what the Noticee is expected to file its reply as no show cause notice has been issued, it was intimated to that Para no. 1(c) and 1 (d) of the SEBI letter dated August 07, 2017 must be treated as a Show Cause Notice (hereinafter referred to as “SCN”) and action (if any) will be initiated against the Noticee as per those paras of the Ex-parte Order. During the course of hearing on January 09, 2018, Noticee were asked to submit some physical evidences, so as to satisfy your goodself about the veracity of the transactions entered into with PACL. With regard to this, it is submitted that Noticee contends that order for forensic audit cannot be passed against the Noticee. This contention of the Noticee is based on the submissions made in this reply.

#### *Ex-parte Order cum SCN in Invalid*

- (f) It is submitted that, the present proceeding has been germinated from the Ex- Parte Order, which neither contain any charges against the Noticee nor does provide details of the violations committed by the Noticee and simply refers to a letter of Ministry of Corporate Affairs dated June 09, 2017 to allege unsubstantiated and unfounded allegation against the Noticee. Thus, the Ex-Parte Order is ex facie bald, based on unsubstantiated evidence and needs to be struck down qua the Noticee with immediate effect.
- (g) It is submitted that, on the date of the passing of the Ex-Parte Order, there was no sufficient material available with your goodself, to substantiate the charges which are contained in Para 1(c) and 1(d) of the Ex-Parte Order. Further, it is submitted that on the date of the passing of the Ex-parte order, there was neither any prima facie case against the Noticee nor there was any evidence available with SEBI, which could have

warranted the issuance of the Ex-Parte Order or a subsequent SCN in terms of the para 1(c) and 1(d) of the Ex-Parte Order. Therefore, the entire exercise undertaken against the Noticee i.e. issuance of Ex-Parte Order and subsequently converting the same into SCN, was without any basis and qualifies for abuse of legal process.

*SEBI cannot pass any further Orders in the matter*

- (h) *Without prejudice to the above contentions and assuming without admitting that the SCN is valid in the eyes of law, it is humbly submitted that the duty has been casted vide the purported SCN itself on the Exchanges to verify credentials of the companies, however, in the present case, it is SEBI which is verifying the credentials of the Company. Noticee fail to understand as to why SEBI is verifying the credentials of the company when it itself casted the duty on Exchanges to do the same. Noticee even fail to understand as to why your goodself during the course of hearing stated that the para no. 1(c) and 1 (d) of the SEBI letter dated August 07, 2017 has to be treated as SCN instead of issuing a fresh SCN in the present matter. Hence, it is humbly submitted that once your goodself has directed the Stock Exchanges to verify the credentials / fundamentals of the company, your goodself cannot verify the credentials/fundamentals of the company without the issuance of the fresh SCN.*
- (i) *Further, the fact that your goodself has become part of the investigation by becoming part of the collection of information, it is the humble submission of the Noticee that your goodself cannot pass the Order for conducting the forensic audit as the contrary would amount to gross violation of fundamental principles of natural justice. The rule of natural justice prohibits your goodself from being part of the adjudication and/or final determination of the issues in the present matter and /or the show cause notice.*
- (j) *It is submitted that Noticee vide reply dated August 21, 2017 submitted to the NSE and attended the hearing on August 28, 2017, explaining the background and credentials of the Noticee. It was informed to the Noticee by the officials of NSE that they have forwarded their report to SEBI. However, the Noticee has no knowledge whether the said report has been considered by SEBI neither the particulars of the said report has been shared with the Noticee.*

*SCN is Vague*

- (k) *It is reiterated that during the course of the hearing, query was raised by the authorized representative of the Noticee as to what they were expected to answer in the hearing when they have not been issued any notice. To this it was answered by your goodself that your goodself are determining, if there are prima facie evidence of misrepresentation of financials by the company to further verify the financials of the Company warranting an*

*audit. It was further stated by your goodself that Para no. 1(c) and 1(d) of the SEBI Letter dated August 07, 2017 has to be treated as the SCN in the present case and hence the Noticee has to answer as to why such action should not be initiated against the Noticee. Para no. 1(c) and 1(d) of the SEBI Letter dated August 07, 2017 states that.*

- 'c) Exchanges shall initiate a process of verifying the credentials/fundamentals of such company. Exchanges shall appoint an independent auditor to conduct audit of such listed companies and if necessary, even conduct forensic audit of such companies to verify its credentials/fundamentals.*
- d) on verification, if exchanges to do find appropriate credentials/fundamentals about existence of the company, exchanges shall initiate proceedings for compulsory delisting against the company, and the said company shall not be permitted to deal in securities exchange platform and its holding in any depository account shall be frozen till such delisting process is completed."*

- (l) However it is humble submission that if Para no. 1(c) and 1(d) of the SEBI Letter dated August 07, 2017 has to be treated as SCN then the SCN is not valid in the eyes of law. This is because there is no specific charge which has been alleged against the Noticee to which Noticee can submit their defence. It is a trite law that the SCN cannot be vague as otherwise Noticee will not be able to know as to what he is expected to answer.*
- (m) It is humbly submitted that it is a well settled principle that the charges levied in a SCN must be specific and must show how the charge levied has been committed in view of the statutory provisions; in other words, the charges levied in a SCN must not be vague; this is to provide the affected party a proper opportunity to defend itself and make a successful case.*
- (n) It is imperative that an authority must state in the SCN about the act of the Noticee and how the act of the Noticee has resulted in the violations of law stated in the SCN as per the principle of natural justice. The same is required so that Noticee can give his proper and efficient defense.*
- (o) Hence the SCN in the present case is invalid in the eyes of law and must be struck down / quashed due to the following reasons:*
  - (i) The law as regards the requirement of issuance of SCN and the contents that are mandatorily required to be included in such show cause notice was recently considered and elaborated by the Hon'ble Supreme Court in Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105. It was held as follows:  
*'The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him**

*which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if he defaults/breaches complained of are not satisfactorily explained...'*

- (ii) *It is therefore submitted that the SCN does not meet the mandatory requirements of a valid show cause notice as laid down by the Hon'ble Supreme Court in the aforesaid decision.*

#### *Fresh Look by SEBI*

- (p) *Without prejudice and only in the alternative it is submitted that in order to decide the matter your goodself will have to give a fresh look to the matter and has to conduct an independent enquiry instead of merely relying upon the information received from Serious Fraud Investigation Office (hereinafter referred to as "SFIO") and Ministry of Corporate Affairs (hereinafter referred to as "MCA"). It is imperative that your goodself shall apply independent judgment on the facts and law presented before your goodself. In the matter of Satyam Computer Services Ltd. (Order bearing number WTM/ RKA/ EFD-SRO/108-117/2015 dated September 10,2015), Rajeev Kumar Agarwal, Whole Time Member, SEBI has observed that:*

*'It is noted that the SCN has further alleged that the noticees including Mr. Chintalapati Srinivasa Raju was fully aware that the books of account of the company were being manipulated over the years. Mr. Chintalapati Srinivasa Raju has contended that SFIO, CBI and ED have given finding that Mr. Ramalinga Raju and his core group, which were involved in the manipulation of accounts of Satyam Computers, had hidden the same from and deceived the rest of the Board of Directors. I note that these investigating agencies have not investigated involvement of the noticee with respect to the violation of the provisions of insider trading laws. I am of the view that SEBI's investigation is independent and separate from that of other investigating agencies.'*

*Hence it is imperative that your goodself must have a fresh look in the matter and does not proceed against the Noticee on the basis of the information received by SFIO as the investigation to be conducted by SEBI has to be an: independent investigation.*

- (q) *It is submitted that as it is a mandate on your goodself to apply an independent mind and cannot take into account the information received from SFIO as it is only an opinion and by no stretch of imagination can be treated as evidence. Hence your goodself can determine if there are prima facie evidence / suspicion of misrepresentation by the Noticee, misuse of the books of accounts / funds of the Noticee or violation of LODR Regulations only on the basis of the materials collected by your goodself from the Noticee. After considering all the materials, your goodself will reach to a legitimate conclusion there is no reasonable ground to further verify the financials of the Company warranting an audit in the present matter.*

*Opinion of SFIO is Ex-parte*

- (r) *Strictly without prejudice and independent to everything stated aforesaid, with regard to the documents provided to the Noticee vide SEBI letter dated November 08, 2017 it is submitted as under:*
- (i) *The only document which has been provided in relation to SFIO's observation pertaining to the Noticee, is in relation to Income Tax Appraisal Report in the case of PACL and PGF. The allegation contained against the Noticee is that Noticee has provided accommodation entries to PACL and the only material on the basis of which such a wild allegation has been made is only the purported statement made by the Director of the Company. SFIO in his letter has also indicated the implications of the same, and stated that the higher turnover allegedly shown by Noticee was to improve the top-line and also to make the company eligible for higher exposure from bank / FI's.*
- (ii) *The Noticee already made an attempt to convince your goodself that in the present matter your goodself cannot proceed on the basis of the letter received from MCA and has to apply independent mind to the matter. However it is humbly submitted that this opinion is only a preliminary observation / finding of the SFIO as the matter has not reached finality and so no negative inferences can be drawn on the basis of the same. The act of SFIO in forming an opinion without giving any opportunity of personal hearing and sending the same to your goodself for investigation is wrong, whimsical, capricious and arbitrary.*
- (iii) *The serious implications made by SFIO in the letter cannot be formed without giving an opportunity of hearing to the affected party as the same would amount to the breach of the most fundamental principles of natural justice.*
- (iv) *The loan is not given by bank / FI's on the basis of the turnover of the company. Thus, no negative inference can be drawn against the Noticee due to the said high*

*turnover and its implication on the eligibility of the Company for the higher exposure from banks / FI's.*

- (v) *It has been observed by SFIO in the information received by your goodself vide letter dated June 09, 2017 that Noticee is engaged in the business of construction and has no past experience of land development related works. However this observation is totally unwarranted as the construction work includes land development work. The activities included in the land development work are excavation of the land, rock cutting, clearance, dressing, filling and leveling of the land, casting yard, batching plant, etc. All these activities are required to undertake the construction also. For e.g. for construction of bridge area levelling and construction of temporary road/building has to be done. For the construction of the roads also area levelling has to be done. It must be appreciated here that the land development work is an enabling work which has to be done in order to become able to undertake complex construction work.*
- (vi) *As vide letter dated November 08, 2017 the Noticee has only been provided with the letter dated June 09, 2016 from SEBI and has not been provided with the copy of the statement of the Director of the Noticee, it can be reasonably presumed that your goodself has not been provided with the copy of the purported statement of the director of the Noticee and has only been provided with the short analysis of the statement done by SFIO. The information received by your goodself vide letter dated June 09, 2017 regarding the statement made by the director cannot be treated more than a mere opinion or interpretation of the statement made by SFIO and in absence of complete documents the Noticee is not in a position to comment on the same.*
- (vii) *Hence the summary analysis of the statement cannot be treated as evidence by your goodself while determining the issue whether there is prima facie evidence in order to decide on the issue of whether any audit shall be initiated? Your goodself, being a whole time member cannot pass an order involving severe civil consequences against a person on the basis of the primary analysis of a different department. Hence it is humbly submitted that in determining if it is necessary to further verify the financials of the company, your goodself has look into the matter with an open and fair mind without being prejudiced with the opinion of SFIO and by only taking into account the documents asked by your goodself and duly provided by the Noticee. Your goodself cannot take into account anything contained in the letter sent to your goodself by the MCA as the same can only be treated as the half-baked analysis of SFIO due to the reason that neither any hearing has been provided to the Noticee in the present matter nor any order has been passed against the notice till date.*
- (viii) *It is not the case that the SFIO has concluded the matter and the Noticee has been held as a Shell Company by them. The proceedings are still pending before SFIO*



*and if an auditor is appointed against the Noticee just on the basis of the preliminary observations of SFIO and MCA, which cannot be considered more than a mere opinion of a third party, then the said act by your goodself will be considered as capricious, whimsical and arbitrary.*

- (ix) The opinion formed by SFIO that Noticee has given accommodation entry to PACL and so has shown high turnover in the books is only a preliminary opinion as the same has been made without giving the Noticee any opportunity of hearing. Assuming that the opinion made by SFIO is a final opinion then the same is not a valid opinion in the eyes of law as the opinion has been formed without granting any opportunity of hearing which amounts to breach of the most fundamental principle of the Natural justice.*
- (x) The Noticee is a listed company and has appointed auditors of repute. All the records and documents relevant for the present proceedings have already been audited by the statutory auditors of the Noticee, who are appointed by the shareholders of the company, and so no illegality can be pertained to the same.*
- (xi) The policy of the company in sub-contracting the work is that firstly there is negotiation of rate and then actual work is awarded. Sub-letting of work is an industry-wise practice and so there is nothing wrong in the same. Noticee do sub-contract in many of its project.*
- (xii) It is submitted that it is only recently SEBI has made adverse findings against PACL, however it is to be noted that the Noticee had done land development work in 2010-11. At that point of time there were no adverse findings against PACL. The Noticee just executed land development work for PACL and were not aware of the other activities of the company.*
  
- (s) Even during the course of the proceeding the Noticee was intimated by your goodself that as the term 'suspected shell companies' is used by SEBI, and the MCA in their letter has used the term 'shell companies' which signifies that MCA has already formed/reached to the conclusion that the Noticee is a shell company. This interpretation of the letter of MCA dated June 09, 2017 by your goodself is a wrong interpretation of the letter. There is a far distance between forming an opinion and reaching a conclusion and as there is no order which has been passed or no circular which has been issued against the Noticee by MCA in which the Noticee have been alleged as a shell company, it cannot be said that the Noticee is a shell company. One can form an opinion on any basis whatsoever, but a responsible authority can only reach to a definite conclusion on the basis of substantial evidences which are not present in the present case.*
- (t) Further, the observations made by SFIO that high turnover was shown by the Noticee in order to become eligible for higher exposure from banks / FI's is based on mere*

*surmises and conjectures and the same cannot be made as a basis against the Noticee for initiation of any action against the Noticee. It is humbly submitted that the Noticee have been very regular in the payment of the installments of the loans taken from banks. Letters received from Banks indicating the same, sent by the banks to the Company upon its request, is hereby attached.*

#### *Order of Income Tax Department*

- (u) The Income Tax Department has made an observation in its report that the scope of work has been vaguely defined in the work order cum agreement and no specific viz., khasra no. etc. as been provided in the agreement. However, it is humbly submitted by Noticee that in the work order cum agreement submitted to SEBI, your goodself has been provided with the copies of the work order cum agreement in which the work has been properly defined and the details of khasra no. is also mentioned.*
- (v) Although the Income Tax Department has sent the information to SFIO noting adverse findings against the Noticee, however, in the order dated December 29, 2017 passed by the Income Tax Department itself, the Noticee has been exonerated from all the charges. It is strenuously submitted that the present proceedings by your goodself has been initiated on the basis of the letter received from SFIO, MCA and the proceedings before SFIO, MCA was on the basis of the information received from Income Tax Department. Hence it can be said that the entire proceedings before your goodself has emanated from the Income Tax Department and as the Income Tax Department has given clean chit to the Noticee, the proceeding before your goodself must be dropped. This is because the presumption of law is that the transactions entered into between Noticee and PACL were genuine. Hence, it is the humble submission of the Noticee that the preponderance of probability is in favor of the Noticee and in the eyes of law it has to assumed that the Noticee is innocent.*

#### *Cross Examination*

- (w) It is humbly submitted that in any case, if your goodself is considering the opinion of SFIO, then it is imperative that your goodself must provide the cross examination to the Noticee of the Officer in-charge, SFIO and Officer in-charge of the investigation wing of the Income Tax Department who prepared the report, provided to Noticee in the SEBI letter dated November 08, 2018 in the present matter.*
- (x) In this regard Noticee wish to bring to the notice of your goodself the judgment of Hon'ble Supreme Court in the matter of Securities and Exchange Board of India v. Price Waterhouse (Civil Appeal No. 6003-6004/12), where the Hon'ble Apex Court observed*

*that, SEBI being a statutory authority is not the liberty to withhold information, on the basis of what it has relied upon while preparing the SCN or otherwise and should allow a Noticee to inspect and take copies of all the information which it has collected during the course of investigation. The relevant part of the said judgment is reproduced as under for the ready reference of your goodself:*

*'We direct, that all statements recorded during the course of investigation shall be provided to the respondents. We further direct, that all documents collected during investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon (against the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same'*

- (y) *Hence, it is humbly submitted that no order for forensic audit can be passed without affording an opportunity of cross examination of Officer in-charge, SFIO and Officer in-charge of the investigation wing of the Income Tax Department who prepared the report, provided to Noticee in the SEBI letter dated November 08, 2018 in the present matter.*

#### *Forensic Audit can be Ordered only if Necessary*

- (z) *Without prejudice to all the contentions raised above and assuming without admitting that your goodself can verify the credentials/ fundamentals of the company it is humbly submitted that it is pertinent to note here that in Para no. 1(c) of the SEBI Letter dated August 07, 2017, which is the SCN in the present case, it has been stated that "Exchanges shall initiate a process of verifying the credentials/ fundamentals of such company, Exchanges shall appoint an independent auditor to conduct audit of such listed companies and if necessary, even conduct forensic audit of such companies to verify its credentials/ fundamentals", and therefore, passing an order to conduct an independent audit or forensic audit of the company is not a general requirement but an exception which can be passed only if the same is necessary.*
- (aa) *Hence it is humbly submitted that your goodself cannot pass an order for the independent audit or forensic audit unless it is necessary to do so. In the present case, Noticee have already vide letters dated August 24, 2017 and September 15, 2017 has already submitted all the documents asked by your goodself during the course of the hearing, letter dated August 16, 2017 and letter dated August 29, 2017. Therefore it is not necessary to pass an order for conducting the forensic audit of the company.*
- (bb) *Hence, the decision of independent audit/forensic audit can only be made when your goodself thinks that the matter cannot proceed on the basis of the documents provided by the company and there are additional documents required to proceed with the matter.*

*However in the present case there are no other documents to proceed with, and therefore there is no need to appoint an auditor to conduct audit of the company.*

#### *Irreparable damage to Reputation*

*(cc) It must be considered and must also be appreciated by your goodself that although your goodself has stated during the course of the hearing that SEBI does not have jurisdiction to find out if a particular company is a shell company and the role of the SEBI is just to find out if there has been violation of LODR Regulation and other regulations of SEBI, the hype and publicity which has been continuously given by Media to these matter is that of a matter of shell company. Considering this scenario, it is to be noted that if audit of the company is ordered by your goodself then the same is going to cause irreparable damage to the reputation of the Noticee. Many investors will lose their faith in securities market and stock market, and the price of the shares of Noticee will shoot down causing loss to the investors. This is because if the directions of the audit are initiated then the impression which may be taken by the investors of the company will be that the Noticee is a shell company which will be not be a correct picture before the investors.*

*(dd) The Noticee is executing projects of national repute and large FPIs are investor in company. Going back in history and conducting forensic audit for a transaction done 8-9 years back would seriously damage the reputation of the Noticee. Any reputation loss would go against the interest of investors. The Noticee states that it had to take due legal remedial measures to protect interest of its shareholders. Noticee has enjoyed an impeccable reputation in the society and till date there has not been a single averment against the Noticee for any regulatory infractions leaving aside any adverse action against the Noticee.*

*(ee) In this regard it is submitted that in Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries Ltd., AIR 1999 SC 1975 it has been observed by the Supreme Court of India that*

*‘It must be remembered that an ex parte order can also affect the reputation of the person against whom it is issued and sometimes it may be difficult to undo the damage caused by an interim order. A Tribunal while granting ex parte order of stay or injunction must record reasons, may be brief one, and cannot pass a stereo-typed order in terms of the prayer made. Then an ex-parte order cannot be allowed to continue indefinitely and the continuance of interim order has to be decided without undue delay when the defendant puts in his appearance. It is not necessary to hear long drawn arguments. Principles on which an interim order can be granted are well settled, Sub-section (8) of Section 19 requires that application for recovery of debt itself*

*is to be disposed of finally within a period of six months from the date of receipt of the application. That also shows the urgency to decide is an interim order of injunction or stay granted ex parte is to be continued or not. In our view, the High Court was not correct in holding that a Tribunal under the Act has no power to grant an ex parte order of injunction or stay'*

*(ff) The Hon'ble Securities Appellate Tribunal also held in Sterlite Industries vs. SEBI (Appeal No. 20/ 2001 dated 22nd October 2001) that:*

*'Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having large number of investors. The stigma sticks and it also hurts not the company alone, but its shareholder as well. "Not all the King's horses and all the King's men can ever salvage the situation.'*

#### *No Prima Facie Observation*

*(gg) It is humbly submitted that in the present case there are no prima facie observation of misrepresentation of books of accounts by the Noticee and the suspicion regarding the misuse of books of accounts/funds by the Noticee. Noticee has already submitted all the documents vide its letters dated August 24, 2017, September 15, 2017 and January 07, 2017.*

*(hh) All the relevant document with respect to the land development work like copy of agreement, bill raised by the Noticee, details of Khasra land development in respect of which completion certificate issued by PACL to the Noticee and relevant bank statement wherein money received from PACL and money paid by the Noticee to its sub-contractor is duly reflected.*

*(ii) During the course of the hearing on January 09, 2018, it was submitted by the Counsel representing the Noticee, in response to Point No. 1 of SEBI Letter dated August 29, 2017, that the working of the company in estimating value of books of account does not form part of the Book of Account as per the definition under Section 209 (4A) of the Companies Act, 1956 or under Section 128 (5) (a) of the Companies Act, 2013. To this it was replied by Learned WTM that the intention of SEBI is just to find out if any actual work has been done or not. In light of the same, Noticee was asked to submit some*

*physical evidences so as to substantiate if any actual work has taken place in relation to Agreements entered into with PACL.*

- (jj) *In light of the same Noticee searched the warehouses to check if come across any more documents relating to the agreements entered into with PACL. In course of its search, Noticee came across various such documents which will show to the satisfaction of your goodself that the transaction entered into between Noticee and PACL was genuine.*
- (kk) *It is submitted that Noticee has entered into Work Order cum Agreement for various projects of land development, the copies of which has already submitted to your goodself vide previous replies. However, before entering into agreement with PACL, Noticee carried out the exercise of getting Pre-Tender Evaluation of its projects. It is submitted that the Agreements were entered into and work was undertaken on the basis of the Pre Tender Evaluation Report.*

#### *Projects in Rajasthan in 2008*

- (ll) *When PACL offered Noticee to undertake certain land development projects for the site located in certain prone areas in Rajasthan, an official of the Noticee Mr. Mohammed Falinullah, who has an expertise in land development work, visited the sites to identify the work to be done. Noticee hired Lele S S Consulting Engineer to undertake location study of the site and give a report as to if the projects is executable and the possible difficulties which may arise in execution of the projects. This was done in order to quote the price for the agreement with PACL and in order to find out if the execution of the work is possible. Lele S S Consulting Engineer prepared Pre-Tender Observations Report dated August 04, 2008 and submitted the same to Noticee. The copy of the Pre-Tender Observations Report dated August 04, 2008 for the project undertaken in Rajasthan is hereby attached. Officials of Lele S S Consulting Engineer visited the office of PACL to get details of the land parcels and prepared a Pre-start report of dated August 14, 2008 for land development work in Rajasthan. The copy of the Pre-start Report dated August 14, 2008 for the project undertaken in Rajasthan is hereby attached. The bill for consulting charges was made by Lele S S Consulting Engineer and the payment was duly paid by Noticee. The copy of the Bill raised by Lele S S Consulting Engineer is hereby attached. The similar procedure was followed for other agreements too.*

#### *Project in Madhya Pradesh in 2009*

- (mm) *When PACL offered Noticee to undertake certain land development projects for the site located in certain prone areas in Madhya Pradesh, an official of the Noticee Mr. Mohammed Falinullah, who has an a expertise in land development work, visited the*

sites to identify the work to be done. Noticee hired Lele S S Consulting Engineer to undertake location study of the site and give a report as to if the projects are executable and the possible difficulties which may arise in execution of the projects. This was done in order to quote the price for the agreement with PACL and in order to find out execution of the work is possible. Lele S S Consulting Engineer prepared Pre-Tender Observations Report dated April 02, 2009 and submitted the same to Noticee. The copy of the Pre-Tender Observations Report dated April 02, 2009 for the project undertaken in Madhya Pradesh is hereby attached. Officials of Lele S S Consulting Engineer visited the office of PACL to get details of the land parcels and prepared a Pre-start report dated April 04, 2009 for land development work in Madhya Pradesh. Along with its Pre-start report, it also attached the photographs of the Project on which the land leveling work has to be undertaken. The copy of the Pre-start Report dated April 04, 2009 for the project undertaken in Madhya Pradesh hereby attached. The bill for preparation the report was made by Lele S S Consulting Engineer and the payment made by Noticee from the proper banking channels. The copy of Bill raised by Lele S S Consulting Engineer is hereby attached. The copy of the Bank Statement indicating the transfer of the funds to Lele S S Consulting Engineer is hereby attached.

#### *Projects in Rajasthan in 2009*

(nn) When PACL offered Noticee to undertake certain land development projects for the site located in certain areas in Rajasthan, an official of the Noticee Mr. Mohammed Falinullah, who has an expertise in land development work, visited the sites to identify the work to be done. Noticee entered into contract with Lele S S Consulting Engineer to undertake location study of the site and give a report as to if the projects is executable and the possible difficulties which may arise in execution of the projects. This was done in order to quote the price for the agreement with PACL and in order to find out if the execution of the work is possible. Lele S S Consulting Engineer prepared Pre-Tender Observations Report dated May 06, 2009 and submitted the same to Noticee. The copy of the Pre-Tender Observations Report dated May 09, 2009 for the project undertaken in Rajasthan is hereby attached. Officials of Lele S S Consulting Engineer visited the office of PACL to get details of the land parcels and prepared a Pre-start report of dated May 09, 2009 for land development work in Rajasthan. Along with its Pre-start report, it also attached the photographs of the Project on which the land leveling work has to be undertaken. The copy of the Pre-start Report dated May 09, 2009 for the project undertaken in Rajasthan hereby attached. The bill for preparation the report was made by Lele S S Consulting Engineer and the payment made by Noticee from the proper banking channels. The copy of Bill raised by Lele S S Consulting Engineer is hereby

*attached. The copy of the Bank Statement indicating the transfer of the funds to Lele S S Consulting Engineer is hereby attached.*

#### *Projects in Tamil Nadu in 2010*

- (oo) When PACL offered Noticee to undertake certain land development projects for the site located in certain areas in Tamil Nadu, an official of the Noticee Mr. Mohammed Falinullah, who has an expertise in land development work, visited the sites to identify the work to be done. Noticee entered into contract with Lele S S Consulting Engineer to undertake location study of the site and give a report as to if the projects is executable and the possible difficulties which may arise in execution of the projects. This was done in order to quote the price for the agreement with PACL and in order to find out if the execution of the work is possible. Lele S S Consulting Engineer prepared Pre-Tender Observations Report dated July 27, 2010 and submitted the same to Noticee. The copy of the Pre-Tender Observations Report dated July 27, 2010 for the project undertaken in Tamil Nadu is hereby attached. Officials of Lele S S Consulting Engineer visited the office of PACL to get details of the land parcels and prepared a Pre-start report of dated August 10, 2010 for land development work in Tamil Nadu. The copy of the Pre-start Report dated August 10, 2010 for the project undertaken in Tamil Nadu hereby attached. The bill for preparation the report was made by Lele S S Consulting Engineer and the payment made by Noticee from the proper banking channels. The copy of Bill raised by Lele S S Consulting Engineer is hereby attached. The copy of the Bank Statement indicating the transfer of the funds to Lele S S Consulting Engineer is hereby attached.*
- (pp) It is the humble submission of the Noticee that these are the entire relevant document to decide the issue and therefore nothing extra can be achieved by invocation of forensic audit. In case of the Noticee, there is no evidence on record that Noticee has made misrepresentation in the financial statements and or has failed to discuss any material disclosure to stock exchange and public at large.*
- (qq) Further it is humbly submitted there is nothing on record which is reliable enough to reach to the conclusion that the Noticee have misused its books of account and so in any case has harmed the rights of the minority shareholders of the company. It is submitted that the Noticee has been regularly and every year, ever since the day of the listing, are paying the dividends to the minority shareholders of the company. The details of the dividend paid by the Noticee from the year 2007-08 to 2016-17, is hereby attached.*
- (rr) It is submitted that there was an arrangement between the Noticee and PACL that the after the project is completed by the sub-contractors, the examination of the land leveling will only be done by the officials of PACL and not by the Noticee. It was agreed that only if PACL is not satisfied with the work undertaken, officials of Noticee will make a visit*



*to the project site to conform the analysis of officials of PACL. Then, officials of Noticee would have contacted their sub-contractors and discussed about the deficiency in the work undertaken by the sub-contractors. However, if the officials of PACL were satisfied with the work undertaken by the sub-contractors, then the officials of Noticee will not visit the project site. It is humbly submitted that such arrangement was of commercial nature and was made in order to save the cost, time and resources of the company. These types of arrangements are very common in the industry and no illegality can be attributed to the same as it was a business decision. Similar observations has been made by the Hon'ble Supreme Court of India in I.P. Holding Asia Singapore P. Ltd. v. SEBI, AIR 2015 SC 274, in which it has been held that:*

*'We say this because it is imperative to give sufficient elbow room to commercial entities for entering into a business transaction. There are a host of considerations that go into business relations and transactions between different entities.'*

(ss) *Similarly in Hanuman Prasad Bagri vs. Bagrees Cereals (P.) Ltd., [2009] 148 CompCas 353 (Cal) it has been observed that*

*'A civil court would not sit in judgment over the commercial wisdom of corporators. The appellants do not show that the decision to issue further shares was ultra vires the powers of the directors under the articles of association of the company. In the absence of any apparent illegality, the propriety of the issue hinges on the collective wisdom of the Board against the assertion of the appellants. The learned Single Judge exercised his discretion to make a limited order and the appellants have not been able to demonstrate that the exercise of discretion was perverse or contrary to accepted judicial principles.'*

(tt) *In Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Ltd. [2005] 124 CompCas 797 (SC) it was observed that*

*'19. From the aforesaid, the legal principles that emerge are:*

(i) *The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial co oration and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.*

(ii) *In a matter between the corporation and its debtor, a writ court has no say except in two situations;*

*(a) there is a statutory violation on the part of the corporation or*

*(b) where the corporation acts unfairly i.e., unreasonably.*

- (iii) *In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.*
- (iv) *Unless the action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.'*
- (uu) *Even the Whole Time Member, SEBI in the matter of Taneja Aerospace and Aviation Ltd., (WTM/RKA/EFD-DRA-11/12/2016 dated January 11, 2016) has observed that SEBI cannot question the business decisions taken by the board of directors. Hence it is submitted that no illegality can be attributed to the arrangement entered into between Noticee and PACL.*
- (vv) *Considering the arguments stated above, it can be said that there are no prima facie evidence suggesting any misuse of the books of accounts / funds of the company or violation of LODR Regulations and so there is no reasonable ground to further verify the financials of the Company warranting an audit. This is because if there would have been any violation of the LODR Regulations, then NSE would have submitted its report indicating the same to your goodself which would thereafter have been provided to the Noticee by your goodself. But as the same has not been done it can be reasonably presumed that the Noticee has not committed any violation of LODR Regulation.*
- (ww) *The transaction was done in the year 2009-10 and today in the year 2017 conducting a forensic audit is only an afterthought and uncalled for. This is because being a listed company, the Noticee's accounts are audited every year by statutory auditors and all relevant disclosures are filed with stock exchanges from time to time. All the money received and paid in respect of development of land parcel of PACL has been through banking channels and duly accounted for in the books of accounts of the company.*
- (xx) *Therefore the mere apprehension that the actual work, whether carried by the Noticee or not, with respect to land parcel details given by the Noticee in the bills raised for the work done and the physical verification of same after a gap of almost 10 years may not be relevant at all because the land parcel would have changed hands and there could be structural changes carried out over a period of time. The documentary evidence of work carried out by Noticee such as detail of land parcels, work completed duly certificates and accepted by PACL in the form of work completion certificate with details of payment received are already submitted to SEBI.*
- (yy) *The Noticee humbly submits that gross injustice shall be done if such action of initiation of audit is taken by your goodself against the Noticee and before taking any action against the Noticee, following important points need to be considered:*

- (i) *The Noticee is not a shell company. The Company is one of the prime executor of projects of National Importance. The Company has more than 3500 employees and the management of the company including independent director are highly qualified professional for the last 10 years. Towards the turnover of the Company, majority of the turnover is contributed by government contracts from bodies like MMRDA, MSRDC, CIDCO, DMRC, UPRNL, MMRC, etc,*
  - (ii) *The Company has not at any point of time misrepresented financials and businesses and till date no action has been taken against the Noticee for any kind of violation of LODR Regulations.*
  - (iii) *It is important to note that no negative inference has been made against the Noticee by the Income Tax Department with regard to the financial transactions of the Noticee.*
  - (iv) *It is humbly submitted that SEBI is an independent investigation agency and it is requested to consider the information supplied / submissions independently and not with a biased approach in view of the SFIO's preliminary observations.*
  - (v) *The observations made by SFIO are merely the preliminary observations and the same cannot be made as a basis for your goodself to reach out at the conclusions against the Noticee.*
  - (vi) *The Noticee is at complete loss in responding to a SCN which is vague and devoid of any specific charges against the Noticee.*
  - (vii) *The Noticee humbly and respectfully submits that any direction issued by your goodself against the Noticee shall cause irreparable damage to the reputation of the Noticee.*
- .....”

24. Upon perusal of the JKIL reply dated February 15, 2018, it is noted that JKIL had not submitted the bank statement highlighting the money received from PACL by JKIL and money paid by JKIL to its sub-contractors. Therefore, SEBI vide email dated April 11, 2018 had informed JKIL that it had not submitted the said bank statement. JKIL vide letter dated April 12, 2018 submitted bank statements highlighting payments received from PACL and payments made to the sub-contractors against the sub-contracts of PACL.

25. Meanwhile, pursuant to SEBI's letter dated August 9, 2017, NSE vide letter dated August 29, 2017 had submitted its report stating that Company is compliant with five clauses of Standard Operating Procedures under LODR Regulations. The Auditor certified that Company is going

concern and is engaged in civil engineering and infrastructure development with primary focus development in metros, road, flyover, bridges, railway over bridges, railway buildings, sports complexes and airport contracts etc. also pilling of foundation work using hydraulic pilling rigs for major has also been undertaken. The Auditor also certified that the company has not defaulted in any repayment of interest/loan to bank's financial institutions. The Auditor certified that the Company has complied with all requirements of Companies Act, has filed annual return for last 3 years and Company has filed annual income tax return within due date for last 3 years

NSE recommended that as per the compliance record and other details submitted by the company as per SEBI prescribed format, J. Kumar Infraprojects Limited may be allowed to be traded on NSE. However, the same has been concluded on the basis of the requirement of filings to be made by the Company. It is also essential to analyse the contents and representations made in the filings to arrive at prima facie findings of any misrepresentation therein.

### **Consideration:**

26. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.

- (a) Whether there is prima facie suspicion / evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
- (b) Whether there is prima facie suspicion / evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*
- (c) In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

27. **Preliminary objections:** Before moving forward in the matter, I firstly discuss preliminary objection raised by JKIL:

(a) JKIL contended “.....*your goodself has become part of the investigation by becoming part of the collection of information, it is the humble submission of the Noticee that your goodself cannot pass the Order for conducting the forensic audit as the contrary would amount to gross violation of fundamental principles of natural justice. The rule of natural justice prohibits your goodself from being part of the adjudication and/or final determination of the issues in the present matter and /or the show cause notice....*”

I note that Hon’ble Supreme court in *Clariant International Ltd. and Ors. vs. Securities and Exchange Board of India* (25.08.2004 - SC): MANU/SC/0694/2004, states that the Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof.

In order to perform the functions of the Board as mentioned in section 11 of the SEBI Act, the board may take such measures as it thinks fit as mentioned in section 11(1) and 11(2) of the SEBI Act. The said measures include calling for information mentioned under various heads section 11(2) (i),(ia),(ib) and (la) of SEBI Act. The Board also has additional powers under section 11(3) of SEBI Act specific powers of Civil court as mentioned under the said section while exercising the powers under 23 clause (i) or clause (ia) of sub-section (2) or sub- section (2A).

Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any measures, either pending investigation or inquiry or on completion of such investigation or inquiry mentioned in sub section 11(4).

The calling for information under section 11(2) (ia) can be exercised by the Board if in the opinion of the Board, the information is relevant to any investigation or inquiry by the Board. It is noted that the Board can exercise the powers of calling for information either when conducting an investigation or while conducting enquiry under section 11(4) and 11B of the SEBI Act (hereinafter referred to as “enquiry”). The powers of the Board can be delegated by general or special order in writing to any member, officer of the Board or any other person under section 19 of the SEBI Act, 1992. On cumulative reading, it becomes clear, the enquiry powers can be exercised at various stages of the enquiry in consonance with powers delegated under Section 19 of the SEBI Act.

The quasi-judicial proceedings being part of one of the stages of enquiry, the powers available while conducting enquiry continue to be available for exercise at the stage of quasi-judicial proceedings. There is no rigid, hide-bound, pre-determined procedure envisaged under SEBI Act for conducting an enquiry. The procedure so designed has to suit the requirements of the case and has to be so designed which embodies the principles of natural justice, whenever action is taken affecting the rights of parties. If the procedure adopted is fair, it matters not who and when the information was gathered or at what stage evidence was collected. The following findings of Hon’ble Supreme Court of India in the matter of *Liberty Oil Mills Vs Union of India & Others (1984) SCC 465* are noteworthy:-

*“There can be no tape measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case.”*

Further, the perusal of aforesaid provisions of SEBI Act coupled with the unification of powers indicate the proceedings before the Board are predominantly inquisitorial in nature. The interpretation that once quasi-judicial proceedings have been initiated, the power to seek information while conducting enquiry ceases to exist is contrary to the scheme of SEBI Act and securities laws. The conferment of powers to pass ad-interim ex-parte orders under the SEBI Act, 1992 or other provisions of securities law, as an interim outcome of quasi-judicial proceedings, pending enquiry, lends credence further to the existence of powers on the Board to seek information as part of enquiry till the completion of enquiry.

Needless to say any information received pursuant to such exercise of power would be used against the person against whom the quasi-judicial proceedings have been initiated only after giving him reasonable opportunity of being heard, if the information gathered points to the *prima facie* violation of the provisions of securities laws other than the one for which the quasi-judicial proceedings were initiated at the beginning, unless circumstances exist for passing an ex-parte order with post decisional hearing.

In view of the above position of law, I am of the view that in quasi-judicial proceedings, while conducting enquiry, there is no legal bar on the Competent Authority to rely on the information given by the Noticee for passing a possible direction including forensic audit if warranted.

- (b) In respect of the contention on the Noticee that the duty has been imposed on the stock exchanges to verify the credentials of the companies vide SEBI letter dated August 7, 2017 then why SEBI is verifying the credentials of the company. I am of the view, SEBI has been vested with power of enquiry and SEBI cannot be deprived of exercising such power of enquiry merely on the ground that stock exchange has been directed to verify the credentials and other things as mentioned in para 1 (c) and 1 (d) of the letter dated August 07, 2018.
- (c) In respect of the contention of the Noticee that the letter dated August 07, 2017 stated by the Noticee as Show Cause Notice was vague because of absence of charges or provisions violated by the Noticee and no sufficient material was available to substantiate the charges, I note that SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 for protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit. As stated in paragraph 3 above, SEBI was of the view that companies whose names are included as shell companies by SFIO and MCA, could potentially be involved in misrepresentation of financials and misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority

shareholders and possible violation of LODR Regulations. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992. As the said measure was conceived as administrative measure, the question of charges and violation of any provision of law was not envisaged in the said letter. However, the Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Further, in the said matter, Hon'ble SAT vide order dated August 11, 2017 stayed the direction contained in para 1(a) & 1(b) of the impugned communication dated 7/8/2017, inter alia, among other grounds that the Noticee has already filed representation before SEBI. Therefore, the present proceedings was initiated to dispose of the said representation dated August 8, 2017 filed by the Noticee.

In the course of present proceedings, at the time of hearing held on November 28 2017, clarification was given to the Noticee that Para no. 1(c) and 1(d) of the SEBI letter dated August 07, 2017 must be treated as a Show Cause Notice for the possible misrepresentation of the financials and businesses and misusing the books of accounts/funds including facilitation of accommodation entities to the detriment of minority shareholders and possible violation of LODR Regulations.

Therefore, I am of the view that as stated earlier, in exercise of powers of enquiry, further information was sought from the Noticee during the course of the proceedings and the Noticee was subsequent to the clarification given at the time of hearing, was aware of the purpose for which the information was sought in the present proceedings in the context of the charges and the possible violations the LODR Regulations.

- (d) In respect of the contention of the Noticee that SEBI cannot rely upon the information/opinion received from SFIO/Income Tax Department (ITD) and SEBI has to conduct independent investigation before proceeding against the Noticee, it is observed that information of a Government Agency categorizing a company as a Shell Company was a trigger for SEBI that these companies may possibly have misrepresented their financials or misused their books of accounts and thereby may have violated the securities



laws. Therefore, in the present proceedings by virtue of power of enquiry, SEBI has independently sought information from the Noticee before any prima facie conclusions are derived from such information. It is noted that SEBI has been vested with the power of investigation or to conduct enquiry for meeting the objectives of the SEBI Act and securities laws. Needless, to say SEBI need not conduct investigation in all the cases if the objectives of SEBI Act can be met with by way of enquiry. In view of the independent enquiry, the question of cross examination of officer in charge of SFIO/ITD as contented by the Noticee does not arise.

28. I proceed to consider the issued framed above. On the basis of documents available on record, my observations on above issues are as under:

***Issue No. 1.*** *Whether there is prima facie suspicion / evidence of misrepresentation including of its financials and/or its business and possible of violation of LODR Regulations by the company.*

***Issue No. 2.*** *Whether there is prima facie suspicion / evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are renegeing on the fiduciary responsibility cast on them.*

29. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

A. I note that company through its various replies had submitted copy of its Annual Reports for the years for F.Y. 2013-14, 2014-15 and 2015-16, the background about the company overview, management, milestones, facts about the company, turnover of the company etc., information / details of ongoing construction / details of completion of various projects including civil, irrigation, transportation, road, metro, land development etc., profile of highly reputed independent directors. The same have been considered. However, the

present enquiry is restricted only to contracts/sub-contracts under taken by JKIL during the period 2008-09, 2009-10 and 2010-11.

B. It is to be noted that SEBI carried out investigation in the matter of M/s PACL Limited (PACL) and during the course of investigation, it was found that PACL had mobilized funds from its customers to the tune of Rs.49,100 crores till June 15, 2014. Further, recovery proceedings and adjudication proceedings have been initiated against PACL and its directors.

C. *Genuineness/Authenticity of Contracts and Sub-contracts*

(a) During the course of hearing dated August 10, 2017 and vide SEBI's letter dated August 16, 2017 JKIL was advised to submit the nature of association as per the contract with PACL and workings of the Company in estimating the value of the contracts, supported by documentary evidence. Details of the role of the Company vis-à-vis the sub-contracted parties, workings of the Company in accepting the sub-contract and supporting documentary evidence were also sought.

(b) It is noted that JKIL vide letter dated August 24, 2017 and September 15, 2017 has submitted the copy of work order cum agreements/contracts entered with PACL Limited and also the copy of work order cum agreements/contracts entered with the sub-contractors. The details of the same are mentioned at paragraphs 14(c) and 17 above. Upon perusal of said work order cum agreements/contracts the following are noted:

(i) With respect to contract of JKIL with PACL dated May 11, 2009, JKIL vide its reply dated August 24, 2017 has attached sub-contract of M/s Trinethra Infra Ventures Ltd ('**Trinethra**') dated October 01, 2009. From the said sub-contract it is noted that work to be completed is mentioned as **531 Acres**. Further, JKIL vide its reply dated September 15, 2017 had resubmitted the sub-contract of Trinethra dated October 01, 2009 in support of contract of JKIL with PACL dated May 11,

2009. From the said sub-contract it is noted that the work to be completed is mentioned as **1487 Acres**. Thus, sub-contract of Trinethra dated October 01, 2009 in support of JKIL contract with PACL dated May 11, 2009 submitted by JKIL vide its reply dated August 24, 2017 and September 15, 2017 specifies different area of work to be completed. This discrepancy has not been explained by JKIL.

- (ii) With respect to contract of JKIL with PACL dated August 1, 2010, JKIL in its reply dated August 31, 2017 has attached sub-contract with Rithwik Projects Private Ltd. dated August 18, 2010. From the said sub-contract it is noted that work to be completed is mentioned as **14,00,000 cum**. Further, JKIL vide its reply dated September 15, 2017 resubmitted the sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of contract with PACL dated August 1, 2010, from the said sub-contract it is noted that the work to be completed is mentioned as **13,13,888.89 cum**. Thus, sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of JKIL contract with PACL dated August 1, 2010 submitted by JKIL vide its reply dated August 24, 2017 and September 15, 2017 mention different area of work to be completed. This discrepancy has not been explained by JKIL.
  - (iii) None of the agreements between PACL and JKIL are on stamp paper nor have been notarized. None of the agreements between JKIL and sub-contractors are on stamp paper nor have been notarized. Thus the dates of the execution cannot be verified.
  - (iv) The agreements between JKIL and sub-contractors are signed only on the last page by the representative of JKIL and is not signed by any representative of sub-contractors on any page.
- (c) Thus, from the above there is a doubt on the authenticity/genuineness of the documents (contracts and sub-contracts) submitted by JKIL.

**D. Normal commercial business practice:**

- (a) It is noted from the annual report of JKIL for the financial year (FY) 2008-09 that the annual total income of JKIL during FY 08-09 is Rs. 41,361.40 lakhs and operating profit is Rs. 6,754.70 lakhs i.e. the operating profit ratio of approx. 16%. From the agreement between PACL and JKIL dated 10.08.2008, it is noted that the agreement entitles JKIL to charge Rs. 70,000/- per acre. While sub-contracting the same work, amounts are charged by Proto Developers and Technologies is Rs. 69,450/- per acre and Indu Projects Limited is Rs. 69,300/- per acre. Thus, in the said instances, the gross profit ratio for JKIL is approx. 1%. However, operating profit ratio will further reduce after considering operating expenses as may have been incurred by JKIL.
- (b) It is noted that for the FY 2009-10, from the annual report of JKIL, the annual total income of JKIL during FY 09-10 is Rs. 77,011.40 lakhs and operating profit is Rs. 13,437.15 lakhs i.e. the operating profit ratio of approx. 17%. From the agreement between PACL and JKIL dated 11.05.2009, it is noted that the agreement entitles JKIL to charge Rs. 70,000/- per acre. While sub-contracting the same work, amounts are charged by Rajesh Projects (I) Private Limited is Rs. 68,500/- per acre and Trinethra Infraventure Limited is Rs. 68,500/- per acre. Thus, in the said instances, the gross profit ratio for JKIL is approx. 2%. However, operating profit ratio will further reduce after considering operating expenses as may have been incurred by JKIL.
- (c) Thus, this shows that the margins availed by JKIL on contracts assigned by PACL are very thin and having such low gross profit and operating profit margins does not appear to be in line with their own normal commercial business practice.

**E. Invoices:**

- (a) Upon perusal of invoices submitted by JKIL in respect of contracts and sub-contracts, following are noted:
- (i) On a sample check, similar/same invoice numbers for different dates are noted. The examples are as under:

- Two invoices dated 27.01.2010 and 03.02.2010 generated by JKIL on PACL have same invoice no. PACL/024/2009-10.
- Two invoices dated 16.11.2009 and 31.12.2009 generated by Trinethra on JKIL have same invoice no. JKR/01/2009-10.
- Two invoices dated 09.11.2009 and 03.02.2010 generated by Rajesh Projects (I) Pvt. Ltd. on JKIL have invoice nos. JKR/Pacl/004/2009-10 and Pacl/JKIL/04/2009-10 respectively.

(ii) On sample check, it is noted that the invoices raised by JKIL on PACL was on the same date when the invoices were received by JKIL from the sub-contractors [i.e. Indu Projects Limited (Indu), Rajesh Projects (I) Pvt. Ltd (Rajesh), Trinethra Infraventure Ltd.(Trinethra) etc]. Some of the instances are as under:

Contracts received from PACL by JKIL		Contracts/sub-contracts given by JKIL			Difference	
Invoice Date	Amount of Invoice	Invoice Date	Name of Entity	Amount of Invoice	Amount	Profit %
19/09/2008	2,403,800	19/09/2008	Indu	2,376,990	26,810	1.13%
22/09/2008	5,161,800	22/09/2008	Indu	5,107,410	54,390	1.06%
29/09/2008	980,400	29/09/2008	Indu	9,70,754	9,646	0.99%
05/11/2009	15,400,000	05/11/2009	Rajesh	15,070,000	330,000	2.19%
06/11/2009	12,950,000	06/11/2009	Rajesh	12,672,500	277,500	2.19%
09/11/2009	15,750,000	09/11/2009	Rajesh	15,412,500	337,500	2.19%
11/11/2009	11,550,000	11/11/2009	Rajesh	11,302,500	247,500	2.19%
13/11/2009	15,400,000	13/11/2009	Rajesh	15,070,000	330,000	2.19%
16/11/2009	12,250,000	16/11/2009	Rajesh	11,987,500	262,500	2.19%
24/11/2009	15,750,000	24/11/2009	Rajesh	15,412,500	337,500	2.19%

F. **Internal Working Papers:**

- (a) During the course of hearing dated August 10, 2017 and SEBI's letter dated August 16, 2017 JKIL was advised to submit the workings of the Company in estimating the value of the contract supported by documentary evidence. Details were also sought of the role of the Company vis-à-vis the sub-contracted parties, workings of the Company in accepting the sub-contracts and supporting documentary evidence.
- (b) It is noted that the Company did not submit any documents substantiating the estimation of value of the contract/sub-contract. With respect to the working of the company, JKIL vide its reply dated August 24, 2017 stated that "*the same was done by the internal management of the company and the document prepared in furtherance of the same were preserved by the company for three years i.e. till 2012. In fact once a contract is awarded, the details are of no use to us and hence we generally do not preserve the same. Therefore, because of the unavailability, we cannot provide any information regarding the same.*" JKIL further stated that, these internal working do not form part of "book and paper" or "books of accounts".
- (c) Section 2(8) of Companies Act 1956, defines "book and paper" and "book or paper" as "*book and paper" and "book or paper" include accounts, deeds, vouchers, writings, and documents*"; and now, Section 2(12) and 2(13) of the Companies Act, 2013, defines the following:
- 2(12) "*book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;*
- 2(13) "*books of account" includes records maintained in respect of—*
- (i) *all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;*
  - (ii) *all sales and purchases of goods and services by the company;*
  - (iii) *the assets and liabilities of the company; and*

*(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;*

Further, as per Section 209 (4A) of the Companies Act, 1956: *“The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books, of account] shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account] shall be so preserved”* and now, as per Sec 128(5)(a) of the Companies Act, 2013: *“The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order.”*

(d) Hence, the submission of the company that internal notings and workings of the sub-contracts does not form part of ‘books and papers’ or ‘books of accounts’ did not appear to be in line with the aforesaid provisions of Companies Act, 1956 and Companies Act, 2013. Thus, JKIL by not preserving the information/documents (i.e. working of the company, vouchers etc.) for a period of 8 years are appear to be in non-compliance of aforesaid provisions of Companies Act, 1956 and Companies Act 2013.

G. **Work Completion Certificate:**

(a) SEBI vide letter dated August 29, 2017 had advised JKIL to submit the details of completion of contracts along with the work completion certificate for the same. JKIL vide reply dated September 15, 2017 submitted that *“..... since PACL was a Non-government organization, no strict procedures as those followed in government organizations were there. We had obtained the contract from PACL and had sub-*

*contracted the same to various other entities. There was no requirement of providing a work completion certificate on the part of either of the parties. However, at the end of completion of each of the work contract, PACL had issued letters to us stating the quantity of work found to be satisfactorily completed by us....”*

- (b) It is noted that JKIL has not submitted work completion certificate issued by JKIL to PACL or by the sub-contractors to JKIL. JKIL has provided acknowledgement from PACL for completion of work for work orders cum agreements dated August 10, 2008, April 05, 2009, May 11, 2009 and August 01, 2010 and stated that there was no requirement of providing a work completion certificate on the part of either of the parties. But, it is noted that, one of the clause of submitted copies of work orders cum agreements, state that *"The parties have mutually agreed that the Second Party shall raise bills on the basis of stage wise completion of the work containing complete details of work completed duly agreed upon between the parties"*. Thus the reply is inconsistent with agreements.

#### H. **Reconciliation of Agreements with Invoices**

- (a) With respect to agreements and invoices of the contracts attached vide JKIL reply dated August 24, 2017, SEBI vide letter dated August 29, 2017 had advised JKIL to provide the reconciliation of location and khasra no. of various agreements and invoices of the contracts. JKIL vide reply dated September 15, 2017 submitted that *"..... as pointed out by us in the instant letter that the details provided by us were too old and had been provided on best effort basis and we had also stated that we shall produce any further information/details if we come across something in due course. Accordingly, upon verification of our records during the process of making the reconciliation as required by your goodself, we have come across few bills / contracts / details which were not provided to you in the earlier letter dated August 24, 2017. Therefore, for the sake of convenience we are once again annexing the copies of contract wise details of the work contracts executed with PACL, the sub-contracts given by us to various sub-*



*contractors, the bills raised by sub-contractors to us and bills raised by us in turn to PACL....”*

- (b) From the contracts / sub-contracts / work-order-cum-agreement submitted by JKIL, it is noted that JKIL has provided the details of the land which was subject matter for development along with details of Village, Tehshil, Dist., Total Area and S.D. No., the said details of land development are attached as a list to the contracts / sub-contracts / work-order-cum-agreement. From the invoices submitted by JKIL in regard to the contracts / sub-contracts / work-order-cum-agreement, it is noted that in said invoices, the details of khasra no. or S. D. No. are not mentioned. Therefore, it is not possible to identify which invoices are for which particular land development project mentioned in the list attached with the contracts / sub-contracts / work-order-cum-agreement. Further, it is noted that JKIL has not submitted the reconciliation of details of work mentioned in the invoices with the list enclosed with the contracts / sub-contracts / work orders cum agreements.

**I. Lack of Evidence of Actual Work Being Carried:**

From the detailed discussion held in paragraphs 29 (E), (F), (G) and (H) above with respect to invoices, internal workings, work completion certificate and reconciliation of agreements and invoices, it is noted that invoices are not supported by any work completion certificates, the date of invoices from PACL by JKIL and the date of invoices given to sub-contractors by JKIL were on the same date. With respect to the invoices & agreements of land development contracts/sub-contracts, there are insufficient details to identify the land for which contracts/sub-contracts was taken/given i.e. khasra number/plot number, actual date of commencement of work and completion of work etc. The fact that JKIL was given a contract in respect of lands which could not be identified for performance of the contract shows that JKIL was aware at the time of receiving and granting sub contract, that the same cannot be executed. This is further corroborated by the fact that JKIL did not produce any work completion certificate, workings of the company in estimating/accepting the value of

the contract/sub-contracts, visit report of engineer, computation of cost, site photographs, travel expenses, actual working papers with respect to contracts/sub-contracts undertaken. The fact that such contracts whose subject matter cannot be identified for execution were knowingly entered into by the Company raises the prima facie suspicion that the Company has entered into such contracts for raising its revenue figures in order to misrepresent its financials and misuse of its books of accounts for the benefits of others.

- J. JKIL, vide its reply dated September 15, 2017 submitted that there was no requirement of providing a work completion certificate on part of either of the parties in contract/sub-contract.

Para 21 of Accounting Standard 9 – Construction contracts for Recognition of Contract Revenue and Expenses, states that *“When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to **the stage of completion of the contract activity** at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.”* Further as per para 2 of Guidance Note on Turnover in case of Contractors, the recognition of revenue is attributed to the proportion of work completed (referred to as percentage of completion method). The revenue from contracts are recognized as revenue in the statement of profit and loss in the accounting period in which the work is performed. The income and the expense of the contracts/sub-contracts are recognized on the basis of percentage of completion method. As stated in the previous paragraph the Company has entered into contracts/sub contracts the subject matter of which was not identifiable for execution of the contract. Also, the Company in its reply submitted that there was no requirement of providing a work completion certificate on part of either of the parties. From the annual report of JKIL for FY 2008-09, 2009-10 and 2010-11, it is noted that JKIL follows the percentage completion method as mentioned in Accounting Standard. In the absence of work completion certificates or percentage of completion of contracts / sub-contracts and non-identifiable nature of the subject matter of contract for execution, it

raises a *prima facie* suspicion on how such income can be recognized in the books of accounts of JKIL. However, it is observed that JKIL booked income on such contracts in the F.Y. 2008-09, 2009-10 and 2010-11.

K. Thus there arises a *prima facie* suspicion that its books of accounts were misused to show revenues from contracts with entities when no such contracts were *prima facie* intended for execution at all. Even if there is flow of funds, the *prima facie* fact that the contract was intended to be for non-execution, shows that the books of accounts have been misused to reflect the flow of funds in order to create an appearance of revenue creation, while no such revenue could have been created for a work not intended to be done. Therefore, it raises a strong suspicion that the company *prima facie*, has created entries of revenue in respect of the contracts, in the books of the Company thereby also misrepresenting its financials.

L. With respect to the Contracts for land development projects between JKIL and PACL, JKIL vide its reply dated February 15, 2018, has submitted pre-tender evaluation report prepared by a consultant namely Lele S S Consulting Engineer for projects in Rajasthan in 2008 and 2009, Madhya Pradesh in 2009 and Tamil Nadu in 2010, invoices generated by Lele S S Consulting Engineer for services provided by them and bank statements highlighting payment made to Lele S S Consulting Engineer towards invoices generated by them.

In regard to this, SEBI vide email dated April 12, 2018 advised Lele S S Consulting Engineer (Mr. Lele S S ) to provide the details of any pre-tender work/any other work was undertaken by them for JKIL during the FY 2008-09, 2009-10 and 2010-11, copies of invoices raised by them on JKIL during these three years, copy of the report submitted to JKIL and also names of the officer/people from JKIL staff who accompanied them for this pre-tender work/any other work undertaken for JKIL, total revenue vis-à-vis total fees received from JKIL and any relation/connection with JKIL in any manner whatsoever, etc. Mr. Lele S S vide email dated April 18, 2018 inter alia stated as under:

“ .....

- (a) *I am a consultant providing consultancy services of technical evaluation of any contract, advising on technical specific areas for tenders etc. In order to provide these services, I works as temporary consulting staff working on retainer basis for the company. It is to be noted that my work involves me working with the staff of the company and adding technical details by way of small descriptive notes so that the company is able to tender for the contract. I was also associated with other Clients as M/s Mahavir Infra Projects, M/s DORSCH consult, M/s Bramputra associates etc.*
- (b) *In relation to the details of the contracts, it is submitted that I have provided my services for various contracts during the financial year 2008-09, 2009-10 and 2010-11. Some of the major contracts during my services period where I have provided my services are (a) Sion Panvel BOT work (b) Wada BOT work (c) Entry Exit on State border check post (d) Sky walks in Mumbai etc.*
- (c) *It is prudent to state that I do not receive my retainership fee on the basis of any specific contract/project. Since I am working as a retainer, I do not maintain records of the work done by me for any contract/ project undertaken by JKIL. I merely charges my services on a monthly basis.*
- (d) *With regards to the copy of the invoices raised by me on JKIL for the said period, it is submitted that I raise monthly invoice to JKIL for the said period and it is submitted I raise monthly invoice to JKIL for the work undertaken by me and the payment for the same is done by JKIL on a monthly basis.*
- (e) *As stated earlier I have provided my services to JKIL for various contracts/ projects undertaken by them on an ongoing basis and since these reports/ notes are only for the internal consumption of the company, I do not maintain a record of reports/ notes provided by me to the company. So I am unable to provide any report from my end as desired by you in your mail.*
- (f) *For the purpose of my advising, I interacts with many employees of JKIL from time to time and there are no specific employees who are particularly engaged with me for the work undertaken by me.*
- (g) *With regards to total revenue received by me from JKIL as (1) FY 2008-09 – Rs. 5,60,000/- (2) FY 2009-10- Rs.12,00,000/- and (3) FY 2010-11 - Rs. 12,00,000/- .*

(h) *I do confirm that I am not related / connected to JKIL in any manner whatsoever. I work as an individual independent consultant and do not employ any staff.*  
.....”

From the above it is noted that Mr. Lele’s submission “small descriptive notes” is not consistent with pre-tender evaluation report prepared by Mr. Lele as submitted by JKIL. Thus, this needs further examination.

M. **Complete information not furnished**

- (a) During the course of hearing dated August 10, 2017 and SEBI’s letter dated August 16, 2017 JKIL was advised to submit the details of project-wise Turnover of the Company, since 2007. It is noted that JKIL has provided names of major clients comprising of the turnover for last three year 2014-15, 2015-16 and 2016-17. JKIL has not provided any details of year wise turnover since 2007 to 2014. JKIL further submitted that this information is bulk in nature and requires time to collect and the personnel of the company are putting best efforts in collecting and arranging the same, and the same would be submitted in a proper manner in due course. However, it is noted that till date JKIL has not provided the said details.

30. From the above I note the following:

- (a) As regards the contracts/sub-contracts works undertaken by JKIL, it is noted that JKIL did not submit the work completion certificate for these contracts/sub-contracts nor any supporting documentary evidence of actual work carried out. The details submitted by JKIL with respect to the land to be developed is not in consonance with the invoices submitted. Thus, there is *prima facie* suspicion that the revenue of the company was overstated to this extent resulting in misrepresentation of financials of the company.
- (b) Flowing from the above that the Company had failed to furnish evidence of actual work being carried out, the Company permitted misuse of its books of accounts by

routing non-genuine transactions through its books and reflected inflated revenue. Thus, there appears *prima facie* suspicion for misuse of books of accounts of the company.

31. Thus, there is *prima facie* suspicion of misrepresentation of business/financials as well as suspicion of misuse of books of accounts of the Company. Therefore, it is imperative that in the interest of investors, the financials of the Company be independently audited to establish the genuineness of its transactions / contracts and sub-contracts referred in paragraph 29 above including the role of KMPs, Directors and Promoters in those transactions. In view of the contention that SEBI is enquiring into the subject matter which was conferred to the Stock exchange vide August 7, 2017 letter, it is clarified that the present proceedings have brought out only *prima facie* suspicion of misrepresentation of business/financials as well as suspicion of misuse of books of accounts of the Company which warrants further audit. Therefore, it may not be considered that the subject matter for action under para 1(c) & (d) of letter dated 7/8/2017 gets exhausted by virtue of this proceedings.

**Issue No. 3.** *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

32. I note that there is *prima facie* suspicion on misuse of books of accounts and misrepresentation of financials/business of the Company. Thus, I find that it would be appropriate that the financials of the Company be independently audited to establish the genuineness of its transactions / contracts and sub-contracts referred in paragraph 29 above including the role of KMPs, Directors and Promoters in those transactions.

33. In view of the above, I am of the view that following interim actions are required to be taken, pending further enquiry/audit.

## **INTERIM ORDER**

34. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, direct, against M/s J. Kumar Infracorjects Limited that:

- i.* Exchange shall appoint an independent forensic auditor *inter alia* to further verify:
  - a. Misrepresentation including of financials and/or business by JKIL, if any, in the context of the transactions referred in paragraph 29 above including the role of KMPs, Directors and Promoters in those transactions;
  - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any, in the context of the transactions referred in paragraph 29 above including the role of KMPs, Directors and Promoters in those transactions.
- ii.* The directions contained in SEBI's letter dated August 07, 2017 in para 1 (c) and 1 (d), as may be applicable, stands modified accordingly.

35. Accordingly the representation of M/s J. Kumar Infracorjects Limited is disposed of.

36. The above directions shall take effect immediately and shall be in force until further Orders.

37. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, M/s J. Kumar Infracorjects Limited is advised to file its reply/objections to this interim order. The company, from the date of receipt of this Order, may file its reply, if any, receivable by SEBI within 30 days from such receipt, and may also indicate in the reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. In the event of M/s J. Kumar Infracorjects Limited failing to file reply or requesting for an opportunity of personal hearing in its reply within the said 30 days, the preliminary findings of this Order and ad-

interim directions at paragraph 34 above shall stand confirmed automatically, without any further orders.

38. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.

39. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

-Sd-

**DATE: SEPTEMBER 28, 2018**

**PLACE: MUMBAI**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**