

## CG Power and Industrial Solutions Limited

Registered Office:  
CG House, 6th Floor, Dr Annie Besant Road, Worli, Mumbai 400 030, India  
T: +91 22 2423 7777 F: +91 22 2423 7733 W: www.cgglobal.com  
Corporate Identity Number: L99999MH1937PLC002641



Smart solutions.  
Strong relationships.

Our Ref: COSEC/258/2019-20

March 11, 2020

**By portal**

### **The Corporate Relationship Department**

BSE Limited  
1<sup>st</sup> Floor, New Trading Ring  
Rotunda Building,  
Phiroze Jeejeebhoy Towers,  
Dalal Street, Mumbai 400 001  
**Scrip Code : 500093**

### **The Assistant Manager – Listing**

National Stock Exchange of India Ltd.  
Exchange Plaza, Bandra-Kurla Complex,  
Bandra (East),  
Mumbai 400 051

**Scrip Id : CGPOWER**

Dear Sir/Madam,

**Subject: Intimation/ Disclosure pursuant to Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015**

**Ref: Our letter no. COSEC/72/2019-20 dated September 18, 2019 in relation to Interim Order issued by the Securities and Exchange Board of India dated September 17, 2019 in the matter of CG Power and Industrial Solutions Limited.**

In furtherance to our captioned letter, please find enclosed herewith a copy of the Confirmatory Order no. WTM/GM/CFD/78/2019-20 dated March 11, 2020 ('Order') passed by the Securities and Exchange Board of India ("SEBI").

We would appreciate if you could take the same on record.

Thanking you

Yours faithfully,  
For CG Power and Industrial Solutions Limited

  
**Ravi Rajagopal**  
**Compliance Officer**



**Encl. as above**

## SECURITIES AND EXCHANGE BOARD OF INDIA

## CONFIRMATORY ORDER

UNDER SECTION 19 READ WITH SECTIONS 11(1), 11(4) AND SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 –

IN THE MATTER OF CG POWER AND INDUSTRIAL SOLUTIONS LIMITED.

	NOTICEES	PAN
1.	CG POWER AND INDUSTRIAL SOLUTIONS LIMITED	AAACC3840K
2.	GAUTAM THAPAR	ABNPT6298B
3.	V. R. VENKATESH	AAKPV9947M
4.	MADHAV ACHARYA	ABOPA4250D
5.	B. HARIHARAN	ADXPB2158A
6.	AVANTHA HOLDINGS LIMITED	AABCB6134E
7.	ACTON GLOBAL PRIVATE LIMITED	AAOCA2658K
8.	SOLARIS INDUSTRIAL CHEMICALS LIMITED	NOT AVAILABLE

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## **BACKGROUND –**

1. Vide an *Ad Interim Ex-Parte Order* dated September 17, 2019 (“**Interim Order**”), Securities and Exchange Board of India (“**SEBI**”) had issued the following directions against CG Power and Industrial Solutions Limited (“**CG Power/Company**”), Gautam Thapar, V. R. Venkatesh, Madhav Acharya, B. Hariharan, Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited (collectively referred to as “**Noticees**”) under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 (“**SEBI Act**”) –
  - (i) “*Noticees no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders.*”
  - (ii) *Noticees no. 2–5 are restrained from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders.*
  - (iii) *The concerned stock exchanges are permitted to allow the aforementioned persons/entities at paragraph 6.1(i) to square off their existing open positions in the Futures and Options segment, if any, immediately. The aforementioned persons/entities shall not be allowed to take fresh positions or increase their open positions or execute trades. Further, the concerned stock exchanges shall ensure that no fresh positions are created for the aforementioned persons/entities.*
  - (iv) *Noticees no. 6–8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG*

*Power and Industrial Solutions Limited, as per Table X at paragraph 4.4. B. To the extent of their liability, the aforesaid Noticees are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders.*

- (v) Noticee no. 1 i.e. CG Power and Industrial Solutions Limited, is directed to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Noticees/entities mentioned at paragraph 5.5 A. along with due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.*
- (vi) BSE shall appoint an independent Auditor/Audit Firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015–16 onwards till date. The expenses for the aforementioned forensic audit shall be borne by the Company. The independent Auditor/Audit Firm so appointed shall verify inter alia the following –*
  - a. Manipulation of Books of Accounts;*
  - b. Misrepresentation including of financials and/or business operations;*
  - c. Wrongful diversion/siphoning of company funds;*
  - d. Any other related matter.*
- (vii) Noticees no. no. 1–8 shall extend necessary co–operation to the independent Auditor/Audit Firms appointed as per this Order and shall furnish all information/documents sought from them from time to time.*
- (viii) The independent Auditor/Audit Firm so appointed as per this Order shall submit a Report to SEBI within six months from the date of this Order.”*

2. Subsequent to the Interim Order, Noticees no. 2–6 (Gautam Thapar, V. R. Venkatesh, Madhav Acharya, B. Hariharan, Avantha Holdings Limited) had filed an Appeal before the Hon’ble Securities Appellate Tribunal (“**SAT**”) (***Gautam Thapar and Others vs. SEBI and CG Power and Industrial Solutions Limited, Appeal No. 413 of 2019***), challenging the Interim Order. The Hon’ble SAT vide an Order dated October 1, 2019, had *inter alia* observed:

4. "... SEBI after considering the Preliminary Investigation Report given by the Company and further considering the Audit Report, prima facie found that there was a serious misstatement of accounts and diversion of funds from the Company and its subsidiaries in violation of the SEBI Act, SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**" for convenience) and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations, 2015**" for convenience). SEBI upon examining the evidence, prima facie found that the appellants had perpetrated certain irregularities which included:

- (i) The use of certain assets of the Company as collateral including being Co-Borrower and/or Guarantor for enabling third parties to obtain loans without due authorisation from the Board of CG Power.
- (ii) Routing transactions through subsidiaries, Promoter-affiliated Companies and other connected parties for the ultimate benefit of companies related to Promoter Group.
- (iii) Inappropriate netting-off the liabilities with the receivables from different entities
- (iv) The use of different accounting heads for concealing payments made by CG Power.
- (v) Interest free advances to Promoter-affiliated Companies.
- (vi) Entering into dubious transactions for reducing the liability of the Promoter affiliated Companies towards CG Power/Group Companies."

...

18. We therefore, find no merit in the appeal and is dismissed with the following directions:

- a) The appellants shall file a reply before the WTM of SEBI on or before October 15, 2019. In the event the appellants want further time then appropriate application will be filed before the WTM of SEBI which will be considered and appropriate orders would be passed.
- b) In the event any document is required by the appellants either from Company or from SEBI, a formal request to that effect shall be made by

*the appellants which document(s) shall be supplied in accordance with law within three working days.*

- c) Upon receipt of the reply, SEBI will grant an opportunity of hearing to the appellants and after considering their submissions pass a Confirmatory Order within a period of four weeks from the date when the hearing is concluded.”*

3. Accordingly, pursuant to the Order of the Hon'ble SAT,
- i.* Vide a letter dated October 4, 2019, Noticees no. 2–6 and 8 *inter alia* requested that all correspondences exchanged between the Company and SEBI, be provided by SEBI and also requested for all information/documents relied upon by SEBI for passing the Interim Order. The aforementioned Noticees had also sought an extension of time to file their replies to the Interim Order.
  - ii.* Vide a letter dated October 10, 2019, SEBI provided the Noticees no. 2–6 and 8 with a copy of the correspondences dated August 26, 2019 and September 16, 2019, as addressed by the Company to SEBI along with a copy of the e–mail dated August 30, 2019, from Neelkant (erstwhile CEO of the Company) to SEBI.
  - iii.* Subsequently, vide a letter dated October 12, 2019, Noticees no. 2–6 and 8 reiterated the request for information/documents as contained in their letter dated October 4, 2019.
  - iv.* Vide a letter dated October 16, 2019, SEBI directed the Company to provide the entire Vaish Report along with the Annexures therein to Noticees no. 2–6 and 8. SEBI further directed all the Noticees to file their replies on or before October 31, 2019. Vide a separate letter dated October 16, 2019, SEBI also permitted Noticee no. 6 (a) to make payments towards dues to statutory authorities; (b) incur expenses towards provident fund, pension and gratuity, insurance and similar other expenses; (c) to make payments/wages to employees/retainer/staff/security guards, etc.

## HEARING:

4. Thereafter, an opportunity of personal hearing was granted to all the Noticees on various occasions and such dates along with details of appearances/responses are listed out hereunder:

*i.* **November 22, 2019:**

- a. Noticee no. 1 i.e. CG Power and Industrial Solutions Limited (“**CG Power/Company**”) was represented by its authorised legal representatives i.e. Zal Andhyarujina, Advocate and Cyril Amarchand Mangaldas.
- b. Noticee no. 2 (Gautam Thapar), 6 i.e. Avantha Holdings Limited (“**AHL/Avantha Holdings**”) and 8 i.e. Solaris Industrial Chemicals Limited (“**Solaris**”) were represented by their authorised legal representatives i.e. J. J. Bhatt, Advocate and Bharucha and Partners.
- c. Noticee no. 3 (V. R. Venkatesh) was represented by their authorised legal representatives i.e. Sandeep Parekh, Advocate and J. L. Legal Advisors.
- d. Noticee no. 4 (Madhav Acharya) was represented by their authorised legal representatives i.e. KRCV Seshachalam, Advocate and Vishesha Law Services.
- e. Noticee no. 5 (B. Hariharan) was represented by Pradeep Sancheti, Advocate and RegStreet Law Advisors.
- f. Noticee no. 7 i.e. Acton Global Private Limited (“**Acton**”) had failed to appear for the hearing.
- g. Noticees no. 2–6 and 8 had *inter alia* made submissions regarding non-compliance by the Company/SEBI with the SAT Order dated October 1, 2019, in respect of the request for information/documents made by the said Noticees. They had also sought certain clarifications/modifications to the Interim Order. SEBI had directed that the said Noticees may submit a list of specific information/documents required from the Company on or before November 22, 2019 and the Company shall consider such requests and provide such information/documents and where the Company was of the view that the information/documents cannot be provided, it shall provide reasons to substantiate its refusal to do so. SEBI further directed that Noticees no. 2–

6 and 8 may file applications for clarification/modification of the Interim Order on or before November 25, 2019.

ii. During the intervening period, vide a letter dated November 25, 2019, SEBI had directed that the information as available with the Company and which has been requested by Noticees no. 2–6 and 8 be provided as per their specific requests on or before December 4, 2019. Further, SEBI had also directed that e-mails referred to in the Vaish Report and in the Annexures thereto along with all other e-mails sent/received by the aforementioned Noticees be provided by the Company on or before December 4, 2019. SEBI had also directed all the Noticees to submit their supplementary reply to the Interim Order on or before December 11, 2019.

iii. **December 13, 2019:**

- a. The authorised legal representatives for Noticees no. 2, 3, 6 and 8 had appeared and made submissions on behalf of their clients *inter alia* regarding issues concerning the sufficiency of documents provided by the Company, reliance on the Vaish and Deloitte Reports, RAC and Board of Directors of the Company having knowledge of the ***Impugned Transactions*** (i.e. nine transactions referred to in the Interim Order and which are reproduced at paragraph 21 of this Order, etc.). Noticees no. 2, 3, 6 and 8 also reiterated the contents of their Application for clarification/modification of the Interim Order.
- b. Noticees no. 1, 4 and 5 had also appeared for the hearing.
- c. Noticee no. 7 had failed to appear for the hearing.

iv. **December 19, 2019:**

- a. The authorised legal representatives for Noticees no. 4 and 5 had appeared and made submissions on behalf of their clients on issues concerning reliance on the Vaish and Deloitte Reports in light of the disclaimers therein, RAC and Board of Directors of the Company having knowledge of the ***Impugned Transactions***, *locus standi* of the Company to be heard, etc.



- b. The authorised legal representatives for Noticee no. 1 had disputed the submissions of Noticees no. 2–6 and 8 *inter alia* contending that the Company was not aware of all the *Impugned Transactions* except for a part of the Nashik property transaction (see paragraph 21.1). Further, it was submitted that the Company had a right to be heard before SEBI as it was an affected party having regard to the liabilities and regulatory scrutiny faced by it on account of the actions of Noticees no. 2–8.
  - c. Noticees no. 2, 3, 6 and 8 had also appeared for the hearing.
  - d. Noticee no. 7 had failed to appear for the hearing.
- v. **January 2, 2020:**
- a. The authorised legal representatives for Noticee no. 1 had *inter alia* submitted that ₹530 Crore *related party transactions* approved by the RAC in its meeting held on August 30, 2016, did not include any of the *Impugned Transactions*. It was further submitted that the RAC had exercised a reasonable amount of oversight over the *related party transactions* by capping the future transactions to ₹1000 Crore, with an interest of 2% over the prevailing bank's interest rate, subject to prior approval of RAC.
  - b. The authorised legal representatives for Noticees no. 2–6 and 8 had disputed the submissions of Noticee no. 1 and had relied on a list of transactions submitted during the hearing by Noticee no. 4. However, the aforesaid list was disputed by Noticee no. 1 *inter alia* on the ground that the figures indicated therein did not match with the total amount mentioned in the minutes of the RAC meeting held on August 30, 2016.
  - c. Noticee no. 7 had failed to appear for the hearing.
- vi. **January 15, 2020:**
- a. Noticees no. 1–8 were granted a final opportunity to appear for the hearing/file written submissions.
  - b. The authorised legal representatives of Noticees no. 1–6 and 8 filed their written submissions.

5. Upon completion of the personal hearing in the instant proceedings, SEBI had filed an Application (***SEBI vs. Gautam Thapar and Others, Misc. Application No. 70 of 2020 in Appeal No. 413 of 2019***), praying for extension of time to enable SEBI to pass the Confirmatory Order. The Hon'ble SAT vide an Order dated February 18, 2020, had *inter alia* observed:

*“3. ... we allow the application and direct SEBI to pass the confirmatory order on or before **March 10, 2020**. It is made clear that SEBI, while passing the Confirmatory Order, can only rely upon such documents supplied by the company or from any other sources which are also made available to the appellants.”*

**REPLIES/SUBMISSIONS OF THE NOTICEES:**

6. **NOTICEES NO. 2, 6 AND 8 – GAUTAM THAPAR, AVANTHA HOLDINGS AND SOLARIS INDUSTRIAL CHEMICALS LIMITED:** Replies dated (a) October 31, 2019 (b) December 11, 2019 and (c) January 15, 2020 – In their replies/oral submissions, the aforementioned Noticees *inter alia* submitted as under:
- i. *The present proceedings are not adversarial and the issues are limited to the case alleged against these Noticees in the Interim Order. The limited locus of the Company is to place on record before SEBI the Company's compliance with the directions set out in paragraph 6.1 (v) of the Interim Order.*
  - ii. *These Noticees have been repeatedly asking the Company for information/documents available with the Company since September 5, 2019. Till date the Company has held back, indeed suppressed information/documents from not just these Noticees but also the authorities including SEBI on specious grounds. The Company's omissions to make available information to the “investigators” appointed by the Company has been noted by M/s Vaish Associates Advocates (“Vaish”). More importantly, the Report dated September 24, 2019 (“MCA Report”) of the Ministry of Corporate Affairs (“MCA”) notes this startling fact. SEBI is fully aware of the MCA Report which forms the basis on which MCA has filed Petition No. 4127 of 2019 before NCLT, Mumbai in which petition SEBI*

*is arraigned as Respondent No.18. Consequently, these Noticees have been compelled to file replies before SEBI on the basis of limited information available with these Noticees and the selective and incomplete information provided by the Company to these Noticees. Resultantly, the present proceedings are in complete breach of the principles of natural justice.*

- iii. On November 25, 2019 these Noticees also made an application for modification /clarification on which SEBI's Orders are awaited. These Noticees were provided a copy of the Company's e-mail dated 25 November 2019 to SEBI only at the hearing on 13 December 2019 when these Noticees pointed out this patent unfairness. After sighting this e-mail of 25 November 2019 these Noticees, at the hearing held on 13 December 2019, further pointed out that the communications between the operating personnel of the Company, the MD&CEO and RAC were crucial since even from the limited record available to these Noticees it was clear that (i) the Accounts, Secretarial, Treasury and Legal Departments were not only aware of the Impugned Transactions but involved in the execution of the Impugned Transactions; and (ii) that the members of the RAC and Board were not only aware of the Impugned Transactions but took a conscious decision to implement these Impugned Transactions. At the personal hearing on 13 December 2019 when this non-compliance was pointed out by these Noticees the learned Member stated that SEBI had "deeply considered" these Noticees' requests and had taken a "conscious decision" that the Disclosure Order was sufficient for these Noticees' to provide a suitable defence. SEBI's approach and "conscious decision" and the Company's conduct is in breach of SAT's Order but much worse, the entire proceedings are in breach of the principles of natural justice and fair play. It is well settled that a party who is required to show cause is entitled to all relevant documents for the purpose of its defence. Relevance must be determined with reference to the alleged delinquent. The law is that even if authorities have in their possession documents which the authorities consider irrelevant, the views of the authorities are irrelevant, the entire record (including the record considered irrelevant) must be provided by the authorities to the alleged delinquent. (Vinod Kumar Arora @ Vinod Kumar v. Administrator, Union*

*Territory of Delhi and Others, 11R (1984) 1 Del 497, paras. 10 to 12, Securities Exchange Board v. Price Water House, (Supreme Court) Civil Appeal Nos. 6003-6004 of 2012, para 2, Price Waterhouse v. SEBI, (SAT) Appeal No. 8 of 2011, para 20, M.S Naina v. Collector of Customs, West Bengal, Calcutta, 1971 SCC Online Cal 202, para 14, Sunder Ispat Ltd. v. Commissioner of Customs and Central Excise, 2001 SCC Online AP 1515, paras. 11-13).*

- iv. *The so-called investigations of Vaish are private and sponsored by the Company; second, the credibility of the Vaish Report, on the face of it, is dubious; third, the Vaish Report itself noted that the Company had been less than forthcoming; fourth, the Deloitte Report (para1(I) at Second Interim Reply / Additional Compilation / Vol. IV / pgs. 2095 - 2096) itself stressed that it should not be construed that any fraud had been committed; fifth, with forensic tools that were available (if not with Vaish then with Deloitte) search and identification of the relevant documents would be completed in a matter of days, if not hours; sixth, there was no question of the Vaish “investigation” being compromised when at least 3 other investigations were simultaneously on-going — investigations commissioned by the Company’s lenders, investigation ordered by SEBI via the stock exchanges, and investigations by SFIO.*
  
- v. *The Vaish Report is unreliable, riddled with inconsistencies and contains several disclaimers and qualifications and only a preliminary Report. Neither Neelkant nor members of the RAC were interviewed by Vaish. Instead, Vaish interviewed ‘certain officials’ i.e. low level personnel in the Company who reported to Neelkant and susceptible to influence and inducement. It has now come to light that Ravi Rajagopal the Company's Executive Vice President and Global Head, Legal, Governance and Risk, simply ‘forgot to inform’ Neelkant that Vaish wished to interview him. Vaish also claims to have held “personal meetings” with certain officials of the Company related to the finance function to gather documents/information. These so called “personal meetings” were neither minuted nor recorded. The Vaish Report is silent on what transpired at these meetings, who these officials were and what information was gathered from these meetings.*

- vi. *Pertinently, Rajagopal was the “principal point of contact for collecting information and seeking clarifications”. It is now on record that Ravi Rajagopal was not only aware of the Impugned Transactions but also implemented and executed these Impugned Transactions. Noticee 3 also alleges that Rajagopal influenced the interview process and that the interviews were vetted by him and not recorded contemporaneously.*
- vii. *Strangely, several relevant documents provided to Vaish by the Company find no mention in the Vaish Report such as (i) the extract of the 93<sup>rd</sup> Minutes of RAC Meeting held on August 30, 2016; and (ii) the “Note for approval” exchanged between Somashis Mohapatra, Deputy General Manager Corporate Legal and Rajagopal which specifically sought approval of Rajagopal in respect of the signing of the agreement with Baba Iron and which bears the noting “approved by Neelkant”. Several so called “inferences” and “observations” made by Vaish and Deloitte are on the basis of the transcript of interviews with / information provided by certain officials but without any proper verification. Illustratively:*
- 1. As regards the impugned transaction in respect of outstanding receivables from identified entities, the observation at 5.6.2.13 at pg.79 of the Vaish Report that “is a unique case as there has been no similar transactions in the past or any time after the date of the said transaction with the Custodian or any third party.”*
  - 2. Much has been made out of the accounting entries in the books of the Company and that certain items were under the head “Exceptional Item” while ignoring the fact that as per Schedule VI of the Companies Act, 2013 (Companies Act) only 10 limited heads are permitted. In SAP System additional codes can only be made after following a lengthy process which would have to be replicated globally across all subsidiaries failing which consolidation could not take place.*
  - 3. The statements observations at paras. 1.2 4.(IV)(d) and (f) of the Deloitte Report “based on the verbal explanation provided by representative of CG*

*India, there was no agreement or Memorandum of Understanding between CG India, BGEPL and AHL/Acton to support this set-off' and "Based on the verbal and written explanation provided by V R Venkatesh, we were informed the following facts: ... CG India agreed for payment of interest on the advances (IC) received from BGEPL, subject to the condition that such interest payments would be adjusted from the royalty payable to AHL" are absent in the "transcripts" annexed to the Vaish Report;*

- 4. With respect to the impugned transaction in relation to the Nashik property, much has been said about the consent of MIDC not having been obtained. However, since the impugned agreement did not create any rights, such consent was not at all required.*
- viii. Vaish also failed to obtain proper clarifications or make proper inquiries in that although it noted that several transactions were likely implemented with the authorisation of the banks involved. Vaish did not make any inquiries in this regard.*
- ix. It is also revealing that the Vaish Report has strongly worded disclaimers and caveats. These include:*
- 1. That the Vaish Report is only an "information report based on the documents/ information/ inputs provided to us (Vaish) by the Company in respect of certain identified transactions"; (para 7.1)*
  - 2. The representations by the management and the assumption documents or copies supplied are "true, accurate and correct"; (para 7.2)*
  - 3. That Vaish has "not independently verified the truthfulness, accuracy or correctness of the documents. Information/ representations provided" nor has any independent validation with any external source been carried out in respect of the information provided; (para 7.3)*
  - 4. The Vaish Report is "based solely on the facts, representations and/or assumptions as narrated" and Vaish has not reported on matters which it found not material or were regarded as 'not so significant'. Besides, there*

*is no clarification as to what matters were reportedly not material or were not significant still less, the test for determining materiality or significance; (para 7.5)*

- 5. In the event that the Company chooses to share the Vaish Report with any third party it shall indemnify Vaish and its partners, associates, employees or staff against any third-party allegations and/or claims or actions; (para 7.7)*
  - 6. Vaish also disclaims all responsibility to any person to whom the Vaish Report is shown; (para 7.7)*
  - 7. Vaish also clarifies that the possibility of Courts or government authorities taking another view cannot be ruled out. (para 7.16)*
- x. It is also relevant to note that while the Company appointed Vaish, Vaish in turn appointed Deloitte. At the hearing on 13 December 2019 serious doubts were raised on the legality of the Deloitte Report as it came to light that Deloitte had acted as auditors for the Company and / or its subsidiaries. When called upon by Noticee no.3 to certify that the Company had not acted in contravention of Section 144 of the Companies Act, the Company refused and instead legal counsel appearing for the Company vaguely refuted the allegation by stating that Deloitte were not auditors of the Company or its subsidiaries for the ‘relevant period’ with the caveat that he would revert after seeking instructions. Despite taking time for obtaining instructions, the Company’s counsel gave no further clarification. Remarkably, counsel categorically refused to provide any certification as the Company did not “deem it necessary”. Whether the relevant period comprised of the period relevant for the Impugned Transactions or the preparation of the report has also not been clarified by the Company. There are therefore serious doubts as to what credence, if any, can be given to the Deloitte Report which is also subject to numerous disclaims and reservations.*
- xi. ‘The Deloitte Report at the outset sets out a “Notice to the reader” which expressly states that the Deloitte Report is subject to the disclaimers and limitations. The notice to the reader also stipulates that if the reader does not*

*accept the limitations disclaimers, the reader must irretrievably destroy the Deloitte Report.*

- xii. It is also significant that the Vaish Report relies solely on the contents of the Deloitte Report. Vaish had neither the capabilities nor the wherewithal to carry out any investigation. As submitted by Noticee no. 3, Vaish was interposed to enable Deloitte being appointed.*
- xiii. In a nutshell, neither the Company nor Vaish nor Deloitte accept responsibility for the contents of the Vaish / Deloitte Reports. Further, the Reports themselves clarify that the contents cannot form the basis of any allegations of fraud / diversion of funds. To date, of the veracity of the Vaish / Deloitte Report remains untested. At the highest the Vaish / Deloitte Report are expressions of subjective and preliminary opinions which, according to the authors' clearly worded cautions, are unreliable and ought not to be relied upon by anyone.*
- xiv. Crucially, the National Company Law Tribunal while hearing Company Petition No. 4127 of 2019 (in which SEBI is also a party) has observed that the Vaish Report, procured at the behest of the company, cannot be relied upon. SEBI's counsel, at the hearing before NCLT on 9 January 2020, was requested by NCLT to caution SEBI in this regard. This has also been reported in the media.*
- xv. The Company's case that SEBI carried out an independent examination is baseless. SEBI by its letter dated 16 October 2019 on documents has candidly stated that "SEBI's interim order refers to the findings of the Phase — I Investigation report of Vaish Associates." The Interim Order, on the face of it, is based on the Vaish / Deloitte Report. Having regard to the NCLT observations the very substratum of the Interim Order has been destroyed. The only inference that must be drawn is that the Company is prevaricating and is abusing SEBI's powers and process. As a matter of fact, as seen from the annexure to the Company's letter dated 4 December 2019 (Second Interim Reply / Additional Compilation / Vol. III/ pgs. 1239–1253), the Company is*



*deliberately holding back vital information available to the Company that is essential for the defence of these Noticees:*

- 1. The Company claims that Statutory Auditor Presentations for FY2015 — 16 Q1 and Q2 of FY 2016 — 17 and are “presently not available with the Company” (see Sr. No. 1 / pg. 1241) — such a claim is not credible;*
- 2. The detailed list of Related Party Transactions presented before the RAC on 30 August 2016; 7 December 2016; 9 February 2017; 11 August 2017; 9 November 2017; 12 February 2018; 30 May 2018 and FY 2018 — 19 have not been provided on the ground that “the detailed Related Party Transactions list was presented to the Board directly and maintained by the concerned CFO and were not made available to the Company Secretary/ the Secretarial Team” (see Sr. No. 2 / pg. 1241) — this is motivated. These documents form part of the record of the Company and were presented to the RAC;*
- 3. The Company also claims that the CFO presentation made on 26 May 2017 (i.e. for the quarter ending 31 March 2017) to the RAC is “not presently available with the Company” — This claim lacks any credibility;*
- 4. Treasury Reports for FY 2016 — 2019 have been held back on the specious contention that the Treasury Reports formed part of the minutes of the Board Meeting when in fact the Board Meetings record only “highlight” and as a matter of fact Treasury Reports were e-mailed from the Treasury Department to the Secretarial Department (See the e-mail at Second interim Reply / Additional Compilation / Vol. 1/ pgs. 405 — 407);*
- 5. The limited documents available reveal that the Company's Treasury, Accounts, Legal and Secretarial department executed the Impugned Transactions and that the MD&CEO and members of the RAC were aware of the Impugned Transactions. These Noticees have been asking for communications exchanged between the operating personnel in these departments of the Company and the MD&CEO and members of the RAC since inception, i.e. 5 September 2019 but the Company has refused to provide such information on one false pretext or the other;*

6. *Even though the Ops Committee met on a weekly basis (see Second Interim Reply / Additional Compilation / Vol. 111 / pgs. 1687-1690), the Company claims that Minutes of the Ops Committee do not exist. This is shocking.*
  7. *The Company claims that the RAC Chairman briefed the Board orally and no presentations / notes / reports were made — again surprising in a listed Company;*
  8. *The Company has even failed to provide those documents that the other Noticees disclosed to MCA.*
- xvi. *Unsurprisingly, the information that the Company has held back and claims is “presently not available” pertains to the relevant periods when the Impugned Transactions took place. There is no explanation even attempted by the Company as to why crucial documents are “presently not available”. The only inference must be that the documents exist and the contents of these documents are against the Company. The Company’s mala fides are writ large.*
- xvii. *Even at the personal hearings, the Company’s arguments were completely contradictory — the Company has admitted to the corporate purpose of the Impugned Transactions —the liquidity crunch and group funding requirements imposed by the banks / lenders (see paras. 26 to 30 of the First Interim Reply). The Company has also admitted that the RAC and the Board were aware of the Impugned Transactions. Plainly, there was no suppression. There was not and could never have been any fraud. The miscreants are very much within the Company.*
- xviii. *There is an underlying ulterior purpose and a pre-meditated design driving the Company. Between 2011 — 2016 KKR, a private equity firm, lent substantial amounts to the Avantha Group. KKR's CEO was also appointed on the Board of the Avantha Group entities. In 2017, KKR agreed to funding, secured by a pledge of 22% of the shares in the Company on the condition that upon repayment of the debt, AHL could redeem the shares until sale of the shares by the Debenture Trustee.*

- xix. *By mid-2018 KKR had the option of converting its debt into equity. KKR did not invoke the pledge. Instead, KKR suggested that one Tranzmute be appointed as a consultant to the Company to “increase operational efficiencies and create value” for the Company. Tranzmute was business advisory firm and a 50 — 50 partnership between Narayan K Seshadri and KKR Capital Markets India Pvt. Ltd.*
- xx. *It is relevant to note that although the Company had reported losses, it had unlocked value and its operational profitability was increasing across India, Sweden and Indonesia. The Company's share price around then was approximately ₹64 per share.*
- xxi. *On 29 November 2018 Tranzmute made a proposal to “enhance value and avoid any precipitative actions even after which AHL's indebtedness is not resolved” and identified intervention as “Address related party transactions — Recent restatement of financials and perceived “opaqueness” of RPT by investors is affecting CGPISL” and “Advances to related party appear to have been restated by ₹ 245 Cr.” (See para 73 of the Second Interim Reply and Second Interim Reply / Additional Compilation / Vol. III / pgs. 1654 — 1670). Tranzmute suggested being involved across levels of governance and management structure in the Company. The Impugned Transactions were therefore known to KKR, to Tranzmute and of course to the RAC and the Board. Tranzmute's presentation was also recorded in the Minutes of AHL's Board Meeting held on 29 November 2018 (See Second Interim Reply / Additional Compilation / Vol. III / pgs.1671 — 1678).*
- xxii. *KKR later decided to appoint Seshadri on the Board of the Company as an “independent” Director. Meanwhile, on 13 February 2019, as set out more particularly in para 60 of the Second Interim Reply and para 134 below, the Company and AHL entered into a new brand usage agreement and an arrangement to repay the loans and advances obtained by AHL. Seshadri was appointed on 8 March 2019 (Second Interim Reply/ Additional Compilation /*

*Vol. II / pgs. 792 — 794). Around the same time, KKR invoked the pledge of shares of the Company held by AHL (See Second Interim Reply / Additional Compilation / Vol. II / pgs. 795 — 808) and Bharti (SBM) Holdings Pvt. Ltd. acquired shares of the Company. Bharti presently holds 8.03%. During this time, there was a big swing in the stock price and volumes peaked between February — May 2019. Surprisingly, on the same day, i.e. 8 March 2019, the Ops Committee was proposed by the Board to be chaired by an “independent director” to “focus on operational improvement, credible decisions on the international business, any capital restructuring required, and other similar matters, so as to enable the Company to leverage the strong growth in its industrial and railways businesses”. The Ops Committee comprised of Seshadri, Mathur and KN Neelkant.*

- xxiii. In April 2019 a ‘whistleblower’ allegedly surfaced and on 24 April 2019, Vaish was purportedly appointed by the Ops Committee. No minutes evidencing appointment exist. As now revealed by Neelkant (See his e-mail of 29 August 2019), the members of the Ops Committee met with Vaish in April 2019. No record of that meeting exists.*
- xxiv. On 10 May 2019, Mathur, previously an independent director was appointed a Whole Time Director of the Company. Meanwhile, conveniently Neelkant — the MD&CEO who had been charge of the day to day operations of the Company - was asked to go on leave.*
- xxv. On 21 June 2019 the RAC was informed that the Ops Committee met weekly to assess the business and financial position of the Company and had also met with existing and new banks who “reinforced management changes”. Vaish had been appointed and was being steered in its investigations, the Ops Committee was in a place. The Company therefore decided to place the repayment and brand royalty arrangement with AHL in abeyance on June 21, 2019. On 6 August 2019 the Vaish Report dated 5 August 2019 was purportedly tabled before the RAC and Mathur and Seshadri who were present at the RAC Meeting to analyse Vaish's observations. On 19 August 2019 a*

Board meeting was convened at short notice which went on till the early hours of the morning of 20 August 2019. Despite the meeting lasting for over 13 hours, the Vaish Report was not tabled before the Board nor provided to the members. Noticee no. 2 and Neelkant were kept out of for a large part of the meeting. At 3 am, the Board was 'advised' that the contents of the Vaish Report would have to be disclosed since it contained "price sensitive information" and the Directors' signatures were obtained on an extract of a resolution that was neither tabled nor passed in respect of the Vaish Report which had also not been considered by the Directors. See Noticee no. 2's objections to the Minutes of the Board Meeting dated 19 August 2019 at Second Interim Reply / Additional Compilation / Vol. II / pgs. 1030 - 1032. Notably, although Noticee no. 2 was the Chairman and therefore had discretion in respect of the Minutes of the Board Meeting, neither was his dissent recorded in the Minute Books nor were his objections or version of the draft Minutes attached and placed in the Minutes Books. On 29 August 2019 a circular resolution was passed and Noticee no. 2 was allegedly removed as Chairman of the Board. The so called removal was completely illegal. This was made clear by Noticee no. 2 even in the Board meeting held on 30 August 2019 where he participated under protest and reserving all his rights. This was very quickly followed by the Company applying for change in promoter holding as reported by the press and subsequently in the Annual Report of the Company, the relevant extracts of which are at Annexure E. Clearly there was a game plan to portray the Company as an 'orphan' taking advantage of the wrongful removal of Noticee no. 2. Strangely, although the pledge was invoked back in March 2019 and shares stood transferred to the Debenture Trustee, KKR acquired 10% shareholding in the Company (at ₹14.52/- per share) only on 17 September 2019. By then the whistleblower had surfaced, Vaish had been steered and the stock price had fallen. (See Second Interim Reply / Additional Compilation / Vol. II / pgs. 1048 - 1052). Over the last 10 months, the spurts in volume of shares have been significant and the share price has fallen nearly 3/4<sup>th</sup> from ₹36.60 /- on 1 March 2019 to ₹12.65 in December 2019 and ₹11.35 as on 11 January 2020. (See Stock Price Analysis at Second Interim Reply / Additional Compilation / Vol. III / pgs. 1679 - 1684). These facts indicate that the Company was put in play by

vested interests and that large scale market manipulation took place using the Noticees as scapegoats.

- xxvi. *In this connection is also relevant to note that throughout the Company has been professionally managed and the Board was actively involved in formulating business strategies for the Company as well as reviewing plans. The Board has always predominantly comprised of independent directors and the majority view of the Board prevailed. The Promoters have never overseen the operation or management of the Company. Thapar has never played any executive role in the Company. The MD&CEO was in overall charge and had responsibility for the Company's operations and management, subject to oversight by the Board. The Company dealt with lenders on its own through its MD&CEO and the Treasury Department interfaced with the lenders at the operational level. If and when the Company wished to access the group level relationship with lenders, Hariharan provided that access. Thapar never dealt with any of the lenders. His role was limited to meeting high officials of lenders if and when such officials paid a courtesy call on Thapar as the Chairman.*
- xxvii. *Historically, the RAC has always comprised of non-executive directors, a majority of which are also independent directors. At the relevant time, i.e. FY 2016 onwards the RAC comprised:*

*FY 2016*

- a) Shirish Apte, Independent Director — A Chartered Account by profession and qualified in Business Administration and Chairman of Citi Bank Asia Pacific and a director in IH H Healthcare and Fortis Healthcare;*
- b) Sanjay Labroo, Independent Director—Qualified in Finance and Management and MD&CEO of Asahi Glass, he was also a Director in BILT at the relevant time;*
- c) Dr. Omkar Goswami, Non-executive Director — A renowned economist and founder and Chairperson of Corporate and Economic Research Group Advisory Pvt. Ltd. who served on 1-11P Board of Dr. Reddy's Laboratories and Infosys.*

*FY 2017*

- a) *Shirish Apte*
- b) *Sanjay Labroo*
- c) *Ramni Nirula, independent Director — Qualified in Business Administration and former MD&CEO of ICICI Securities Ltd. who also served on the Board of AHL.*

*FY 2018*

- a) *Dr. Omkar Goswami*
- b) *Sanjay Labroo*
- c) *Ramni Nirula*
- d) *Mender Balakrishnan, Independent Director — former Director of IDBI and Director of ABFL*

xxviii. *In terms of Section 177 of the Companies Act and the LODR, members of the audit committee must necessarily have the ability to read and understand financial statements and must:*

- a) *Review and monitor the effectiveness of the audit process;*
- b) *Oversee the financial reporting process and disclosure of financial information to ensure that the financial statement is correct, sufficient and credible;*
- c) *Examine the financial statements and auditors' reports including:*
  - i) *major accounting entries involving estimates based on the exercise of judgment by management;*
  - ii) *significant adjustments made in the financial statements arising out of audit findings;*
  - iii) *significant adjustments made in the financial statements arising out of audit findings;*
  - iv) *compliance with listing and other legal requirements relating to financial statements; and*
  - v) *disclosure of related party transactions;*

- d) *Approve related party transactions;*
- e) *Scrutinize inter-corporate loans and investments;*
- f) *Evaluate internal financial controls and risk management systems; and*
- g) *Monitor the end use of funds raised through public offers and related matters.*

xxix. *RAC also had a specific terms of reference and the Company adopted a Code of Conduct for its independent directors which includes “Pay sufficient attention and ensure that adequate deliberations are held before approving Related Party Transactions and assure themselves that the same are in the interest of the Company.” Schedule IV of the Companies Act also provides for proper review of related party transactions by Independent Directors.*

xxx. *Several independent directors also held directorships in Avantha Group Companies at the relevant time. Sudhir Mathur was an independent director on the Board of BGPPL till 15 May 2019. Ms. Ramni Nirula was on the Board of AHL and Labroo was on the Board of BILT. Ashish Guha, then an independent director and now Chairman of the Company was also a director in BILT. Therefore, the Company’s argument that the RAC acted 'reasonable' does not hold ground and there is no truth nor substance in the charge and the Interim Order must be vacated.*

xxxii. ***The Managing Director of a Company plays a pivotal role.*** *Under the Companies Act (Section 2(54) of the Companies Act, 2013), the MD is defined as one who “is entrusted with substantial powers of management of the affairs of the Company.” Neelkant was in charge of the day to day affairs and operations of the Company. The Accounts, Treasury, Secretarial and Legal Departments reported to him. The record reveals that Neelkant was also fully aware of the Impugned Transactions and that each aspect was communicated to him either by the other Noticees or Rajagopal and his team.*

xxxiii. ***Role of the Non-executive Chairman:*** *In contrast, Thapar was a non-executive Chairman and played no role in the day to day affairs or operations.*



*His role was that of advising the Board as and when his counsel was sought. Even under the Companies Act, a non-executive Chairman's role is limited and he only has discretion in regard to inclusion and non-inclusion of any matter in the Minutes. As in all companies the Minutes were drafted by the Secretarial / Legal team and circulated to all members of the Board / RAC and were duly approved.*

xxxiii. **Role of Ravi Rajagopal:** *Rajagopal is the Company's Executive Vice-President and Global Head - Legal, Governance and Risk. He is also a member of the 'Leadership Team' and on the 'Executive Committee' of the Company. The Company's record reveals that Rajagopal has throughout attended most meetings of the Board/RAC. Yet Vaish did not question him. In fact, Rajagopal was appointed as the principal point of contact for Vaish and for collating information for the compounding application as set out in para 124 below.*

xxxiv. *At the hearings, Rajagopal was instructing counsel on behalf of the Company. He however remained mute. The available record clearly shows that he not only was aware but drafted several documents for implementation of the Impugned Transactions. Even otherwise, as Global Head - Legal, Governance and Risk he would have been aware of the Impugned Transactions.*

xxxv. **Knowledge / authorizations by the Board — the Company's decision:** *The circumstances in which the Company authorised the transactions has been set out in paras. 24 to 31 of the First Interim Reply and para 32 of Acharya's Reply - the Company was facing liquidity problems and needed funds. The banks / lenders, ignoring the fact that the Company was professionally managed and uninfluenced by the promoter group, refused to provide funds until and unless a part of the funds were utilised for repayment of the group companies' loans. The lenders devised the structures of the Impugned Transactions which were then executed by the Company with the approval of the RAC and the Board.*

SUMMARY OF TRANSACTION WITH RELATED PARTY FOR THE QUARTER APRIL 2016 TO JUNE 2016

The Committee noted the list of transactions with Subsidiaries, Associates and other Related Parties for the quarter ended 30<sup>th</sup> June 2016, as placed before the Committee in compliance with Sections 177 and 188 of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Related Party Transaction with Avantha Holdings:

The Chairman apprised that during the week beginning Monday, 22 August 2016, the Committee members of Risk and Audit Committee (RAC) of the Company were each individually informed of a set of transactions that had occurred in the months of May and June 2016 between the Company (CGL) and AHL. AHL is one of the entities of the promoter group of the Company, and holds more than 34 per cent equity share capital of CGL, and which is the Related Party as defined by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations).

These related party transactions (RPTs) involved CGL making loans to AHL to help it tide over some financial dues to certain banks, and aggregated to ₹ 530 Crore.

The RAC was further informed by Madhav Acharya, Executive Director Finance and the CFO of CGL that the Company was asked by the concerned banks to provide requisite letters to them, in order to regularize these related party transactions. Alternatively, the banks would freeze all credit facilities to CGL on grounds that CGL is a member of Avantha group. The regularizing letters were submitted by CGL during the same period (May-June 2016).

The inter-company loans to AHL, are interest bearing, and have been pegged at the going bank rate + 200 basis points per annum. The loans are expected to be repaid on or before 31 March 2017. Subsequent to receiving this information telephonically during the week beginning 22 August 2016, the RAC

asked management to obtain independent legal opinion about these RPTs. Such opinions were taken from two noted law firms:

- (i) Shardul Amarchand Mangaldas and Company and
- (ii) Crawford Bayley and Company.

Specifically, the RAC required opinions on whether these RPTs could be considered to fall under the ambit of the Company's policy on what constituted 'normal course of business' and whether these were in conformity with all relevant provisions of the Companies Act, 2013 and the Listing Regulations. According to the written opinion of both legal firms:

1. CGL India's RPT policy specifically treats loan transactions and interest payments thereon between CGL and related parties as transactions that fall under the Company's 'ordinary course of business'.
2. The RPT between CGL and AHL is in accordance with CGL, India's RPT policy (especially its Clause 3.2 read together with Clause 3.4). Moreover, CGL India's RPT policy incorporates the relevant provisions of the Companies Act, 2013, its rules, and Listing Regulations and rules.
3. This transaction falls outside the purview of Section 188(1) of the Companies Act, 2013. Therefore, while it requires assent from the Company's RAC and the Board, it does not need approval of the shareholders.
4. The transaction is not 'material' since ₹ 530 Crore is less than 10% of the Company's consolidated turnover.
5. It is also far lower than 60 per cent of the Company's paid-up share capital, free reserves and securities premium amount, or 100 per cent of its free reserve and securities premium reserves, as stated by section 185(2) of the Companies Act, 2013. Hence, the prohibition stated in Section 186(2) does not arise.

Given the circumstances that necessitated such a transaction, and after carefully considering these legal opinions, CGL's RAC noted and approved the above mentioned RPTs with AHL aggregating to ₹ 530 Crore.

However, given that these transactions involve a group company, in the event that such further transactions may be required or necessitated in the future, the RAC believed that an appropriate resolution needs to be framed that clearly states:

1. *What should be the upper bound for such a class of transactions; and*
2. *That such transactions, subject to the limits clearly stated, should still be informed to the RAC, before these transactions are entered into.*

*This can be done by e-mail or a phone call.*

After detailed deliberations, the RAC decided that the upper limit of such RPTs with the Promoter Group Companies including AHL should not exceed an aggregate cumulative value of ₹ 1,000 Crore (Rupees One Thousand Crore Only) of such loans outstanding at any given point of time, provided that no loan(s) shall be advanced /outstanding to the said Related Party exceeding 10% of Consolidated Turnover of the Company as on 31' March, 2016, without prior approval of the Shareholders as required under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Moreover, to ensure 'arm's length', such transactions need to be charged no less than the bank's rate of interest plus 200 basis points.

*The Committee further decided to recommend the proposal for advancing loans to our promoter group companies including Avantha Holdings to the Board of Directors of the Company for its further consideration and approval pursuant to the provisions of section 179 of the Companies Act 2013. Therefore, it was:*

“RESOLVED THAT loans and advances by the Company to any of its promoter group companies including Avantha Holdings Limited shall not singly or cumulatively exceed the sum of ₹1000 Crore (Rupees Thousand Crore Only) at any given point of time, and that such loans shall carry an interest rate no less than the bank's rate of interest plus an extra 200 basis points per annum; and that such loans will be fully repaid before March 31, 2017.

RESOLVED FURTHER THAT besides, further draw-downs, even under the aggregate facility, must be informed to the Risk and Audit Committee prior to any further advance being made.”

xxxvii. *Crucially:*

- a) *Neelkant was present at this meeting. All the non-executive directors were also present at this meeting. Rajagopal and the Company Secretary also attended;*
- b) *the RAC Minutes of 30 August 2016 have not even been referred to in the Vaish Report;*
- c) *the statement presented by Acharya formed part of the RAC proceedings of 30 August 2016;*
- d) *the Company claimed that this statement is not "presently available with the Company" till the hearing on 2 January 2020 when for the first time since September 2019 the Company sought to dispute the statement produced by Acharya at C10 to the First Interim Reply as the statement presented at the RAC Meeting;*
- e) *Unsurprisingly, when asked to produce the statement presented and the list of related party transactions at the RAC Meeting on 30 August 2016, the Company failed to do so even though such document forms part of the record of the Company. In the absence of the Company producing the statement tabled at the RAC Meeting on 30 August 2016, Acharya's statement must be accepted;*
- f) *At the personal hearings, the Company admitted that the RAC was aware of the Impugned Transactions; at the least "parts" of the transaction. This verbal argument is self-serving, contrary to the record and must be rejected;*

xxxviii. *The RAC also obtained legal opinions on the legality of such arrangements. The opinion from Crawford Bayley and Co. was obtained in respect of "... ₹ 530 Crore which was remitted by the Company to AHL was paid in approximately 5 tranches and was deployed by AHL towards paying some of the banks who were foreseeing a situation of a non-performing asset at AHL." An opinion from*

*Shardul Amarchand Mangaldas and Co. (First Interim Reply / Ann. D-2 / pgs.482 - 488) was sought in respect of “a loan to Avantha Holdings, a related party, which in turn will on lend this to BIC” Limited.” The legal advice obtained confirmed that:*

- a) The transactions were in the ordinary course of business;*
- b) The transactions did not fall within the purview of related party transactions under Section 188(1) of the Companies Act;*
- c) The transactions were in consonance with the Company's India Related Party Transactions Policy; and*
- d) The Company was under no legal obligation to obtain shareholder approval for validating or ratifying the transactions;*
- e) the transactions were not material for the purpose of the LODR*

*xxxix. The legal opinions are not referred to in the Vaish Report. The inescapable inference would be that the Company held these back and the Vaish “investigation” was superficial.*

*xl. The Board was also apprised of the deliberations that took place at the RAC meeting held on 30 August 2016 and noted the same.*

*xli. There was nothing clandestine still less, fraudulent. At all relevant times Acharya diligently informed members of the RAC (and therefore the Board) in writing and also orally as required by the RAC members.*

*xlii. Contemporaneous Record of the Company: In addition to the RAC Meeting on 30 August 2016, the Minutes of the RAC Meeting held on 13 November 2018 (See Second Interim Reply / Additional Compilation / Vol. ill pgs.1497 — 1509) reveal that*

- a) details of outstanding loans and investments made by the Company to its subsidiaries as at 30 September 2018 and the loans and advances extended to group companies was presented to the RAC.*
- b) A repayment schedule in respect of the loans and advances was also discussed and the RAC members agreed that this would be discussed at the Board Meeting on the same day.*

- c) *The Statutory Auditors also asked the Company to ensure compliance with Sections 185 and 186 of the Act.*
- xliii. *The Minutes of the RAC Meeting held on 22 January 2019 (See First interim Reply / Ann. S -2 /pgs.885 - 892) record that:*
- a) *The Board accepted the repayment schedule received from AHL at the Board Meeting on 13 November 2018. The monetization of the brand royalty payments to be made to AHL by the Company, securitized for the benefit of the Company was also discussed at length and recommended to the Company's Board for its approval.*
- xliv. *The Minutes of the RAC Meeting held on 12 February 2019 are crucial. (See the Second Interim Reply / Additional Compilation / Vol. III / pgs.1510 — 1525). The Statutory Auditors made a detailed presentation on the un-audited stand alone and consolidated financial results of the Company for Q3 of FY 2018 — 19. The Statutory Auditors presented qualifications on:*
- “They (the Auditors) further presented the limited review conclusion which was as follows:*
- a) *Qualification on recoverability of loan given by the Company to its wholly owned subsidiary CG Power Solutions Limited (CG PSOL); and Qualification on recoverability of loan given by the Company to its wholly owned subsidiary CG Power Solutions Limited (CG PSOL); and*
- b) *Qualification on recoverability of loan given by CG PSOL to Avantha Holdings”*

*The Statutory Auditors also briefed the RAC on accounting and reporting matters including:*

*“Thereafter a brief on accounting and reporting matters was presented which included the following:*

- a) *The Company has restated respective prior period financial information in relation to loan given by Aditya Birla Finance Limited to CG PSOL currently the loan is being served by CG. Hence considering the same being served by CG, such loan should be accounted in the CG standalone financial*

*statements from effective date of disbursal. This restatement has impacted retained earning disclosed in the financial results for March 31, 2018 and respective period finance costs and the corresponding impact on the net profit/ loss of respective periods.*

- b) During the period, the Company has made provision in relation to certain identified trade receivables which are overdue amounting to ₹108 Crore. The Company has disclosed this provision under exception items describing the nature.*
- c) The management has taken a provision of approx. ₹120 Cr during the year in relation to trade advances given to CG Middle East FZE and CG International Holdings Singapore PTE Limited. The Auditors had requested for detailed assessment from management and Board of directors of the Company in relation to such provisions accounted by the Group and outstanding balances as at December 31, 2018, whether recoverable or plan for settlement. The financial information in relation to above subsidiaries are compiled by management and approved by Board of Directors. The joint Statutory Auditor of the Company have neither performed review nor audit procedures on this financial information and hence limited review report is qualified in relation to such scope and extent.*
- d) In relation to the outstanding loans/advances extended by the Company to CG PSOL and by CG PSOL to Avantha Holdings, the status was discussed with management. The Committee was informed that Company is working on preparing a revised repayment schedule, which was under discussion between respective management teams, namely CG and Avantha Holdings. The Auditors felt that they may be constrained to modify or qualify their limited review report for the quarter ended December 31, 2018 for the standalone and consolidated financial results. Thereafter, loans and investments in subsidiaries was presented and also other major outstanding / receivable from group companies. Here, the Auditors also pointed out that in relation to loans given by the Company in past to its wholly owned subsidiary and at CG group level to Avantha Group, there is non-compliance under sections 185 and 186 of the Companies Act, 2013 which was flagged in the previous Risk and Audit Committee meeting. They*



also said that, at the present time, the Company had not yet applied for compounding of such non-compliances and urged that this action be carried out as soon as possible, especially before the annual audit...

The Risk and Audit Committee informed the Auditors that it had recommended to the Board a range of valuation between ₹370.60 Crore to 437.37 Crore for the proposal for monetization of part of the royalty payable to Avantha Holdings; and that the Board will consider the range and take an appropriate decision..." (Emphasis supplied)

- xlvi. Detailed lists of related party transactions were also presented at the RAC meetings. The Company has failed to produce the lists presented on 30 August 2016; 7 December 2016; 9 February 2017; 11 August 2017; 9 November 2017; 12 February 2018; 30 May 2018 and for FY 2018 — 2019.
- xlvi. **Legal Opinions:** In addition to the legal opinions obtained by the Company as set out in para 97 above, an opinion was also obtained on whether the Impugned Transactions were in compliance with Section 185 of the Companies Act and there is reason to believe that Susheel Todi forwarded this opinion to S R B C and Co. LP sometime in November 2018.
- xlvii. **Treasury Reports:** Treasury Reports presented to the Board from time to time set out the loans and advances made to AHL –
- (i) The Minutes of the 522nd Board Meeting held on 30 August 2016 noted "Company ₹530 Crore was utilized for loans to Avantha Holdings
  - (ii) The Minutes of the 523<sup>rd</sup> Board Meeting held on 7 December 2016 noted that ₹680 Crore was utilized for loans to related parties (Avantha Holdings)
  - (iii) Minutes of the 525<sup>th</sup> Board Meeting note that ₹829 Crore was utilized for loans to related parties (Avantha Holdings)
  - (iv) Minutes of the 526<sup>th</sup> Board Meeting note that ₹955 Crore was utilized for loans to related parties (Avantha Holdings)
  - (v) Minutes of the 527<sup>th</sup> Board Meeting note that ₹984 Crore was utilized for loans to related parties (Avantha Holdings)

- (vi) *Minutes of the 528<sup>th</sup> Board Meeting note that ₹1014 Crore was utilized for loans to related parties (Avantha Holdings)*
- (vii) *Minutes of the 532<sup>nd</sup> Board Meeting note that ₹1065 Crore was utilized for loans to related parties (Avantha Holdings)*
- (viii) *Minutes of the 533<sup>rd</sup> Board Meeting note that ₹963 Crore was utilized for loans to related parties (Avantha Holdings)*
- xlvi. *The Minutes of Meeting dated 5 and 6 August 2013 records that the Board authorised payment of advance amounts to ANL on account of fees towards brand royalty on a "need basis" and authorised the then CEO and Acharya to take all decisions in this regard.*
- xlvii. *The Minutes of the Board Meetings also reflect approval of the Impugned Transactions:*
- a) *The Minutes of Meetings held on 27 May 2016, 10 December 2016 and 10 February 2017 duly records that the Company had advanced a loan to CG Power Solutions Ltd. (CG PSOL);*
- b) *The Minutes of Meeting dated 26 May 2017 records that the Board duly authorised Atul Gulatee, Global Head, Corporate Treasury, Madhav Acharya and Neelkant to "(I) decide the actual amount of availment of loans for a subsidiary or subsidiaries, based on their cash flow requirements and other business needs; (ii) take final decisions with respect to the terms and conditions for the above facilities; (iii) decide the subsidiaries to be leveraged, take actions for channelizing the funds through inter-corporate loans within the Group and other initiatives to achieve the best possible arrangement with the respective banks/financial institutions".*
- c) *the Minutes of the Meeting dated 12 February 2018 record that the Board noted the Board Resolution passed by its subsidiary CG Singapore in relation to the € 44 million transaction*
- d) *The Minutes of Meeting dated 13 November 2018 rightly recognised that AHL was committed to repay the loans and advances taken by it from the*

*Company and CG PSOL and that the Board had accepted a schedule for repayment of these advances which included monetization of the brand royalty for the benefit of the Company and pledge of AHL's shareholding in Jhabua Power Ltd. and Avantha Power and Infrastructure Ltd. and also authorised Neelkant to make any application including that of compounding*

e) *Similarly, the Minutes of the Board Meeting held on 12 February 2019 record that AHL and the Company had agreed to set off the Net Present Value of the royalty against the receivables by the Company / its subsidiary and that AHL had agreed to repay the remaining amount by May 2019. These Minutes also recorded that "...the joint statutory auditors of the Company — M/s SRBC and CO LLP, Chartered Accountants and M/s K.K. Mankeshwar and Co., Chartered Accountants have conducted the limited review of the financial results of the Company (both stand-alone and consolidated) for 3<sup>d</sup> quarter and nine months December 31, 2018 and have submitted a modified limited review report thereon. The modification was on recoverability of loan given by the Company to its wholly owned subsidiary CG Power Solutions Ltd. (CG PSOL) and recoverability of loan given by CG PSOL to Avantha Holdings Further, the opinion was also modified with respect to trade advances given in CG Middle East FZE and CG International Holdings Singapore Pte. Limited as the financial information in relation to above subsidiaries are compiled by management and approved by Board of Directors..."*

- i. *The minutes of the RAC meeting held on February 12, 2019 are also crucial. The Statutory Auditors made a detailed presentation on the un-audited stand alone and consolidated financial results of the Company for Q3 of FY 2018 - 19. The Statutory Auditors presented qualifications in relation to recoverability of the loan given by the Company to its subsidiary CG PSOL and the loan given by CG PSOL to AHL. The Statutory Auditors also briefed the RAC on accounting and reporting matters including:*
- a) *the restatement of prior period financial information in relation to the loan given by ABFL to CG PSOL amounting to Rs. 180 crores -the Statutory*

*Auditors pointed out that since the Company was a co-borrower and presently servicing the loan, the loan should be accounted for in the stand-alone statements;*

- b) provisioning in relation to certain identified trade overdue receivables amounting to Rs.108 crores;*
- c) a review of the FD balances lying with banks against the borrowings as at 31December 2018;*
- d) provisioning of approx. Rs.120 Crore during the year in relation to trade advances given in CG Middle East FZE and CG Singapore;*
- e) the Statutory Auditors also pointed out that the financial information was compiled by the management and approved by the Board;*
- f) Status of the outstanding loans / advances extended by the Company to CG PSOL and by CG PSOL to AHL along with the repayment schedule.*

### **Annual Report**

*38. The Annual Report for FY 2016 -17 specifically provided for offsetting financial assets and liabilities and as set out in para 59 of Noticee No.4's Reply, the netting off of the Impugned Transactions was carried out after proper deliberations with the Auditors of the Company and the Company's Head of Accounts.*

- li. At the meetings on 12 February 2019 and 8 March 2019 the Board also deliberated the approval of the scheme of merger of the Company and CG PSOL. A key take away from this proposed merger was that the borrowing of CG PSOL from the Company would stand extinguished.*
- lii. It is relevant to note that no monies were transferred to AHL under the Kanjurmarg transaction.*
- liii. With reference to the allegation that Noticee No. 2 negotiated with Yes Bank to sanction the Rs.500 Crore credit facility to Avantha Holdings, it is relevant to note that:
  - a) Noticee No.2 did not negotiate- nor even met any officials of Yes Bank- in respect of the credit facility sanctioned by Yes Bank to Avantha Holdings*
  - Noticee No.2 was also not involved in the day to day operation of the**

*Company and unaware of the issuance of these cheques, as pointed out by Noticee No.2 in his reply to Yes Bank Ltd. dated 4 July 2019.*

*b) As seen from the interim reply of Noticee No.3, these cheques were periodically issued by the Treasury Department of the Company and this was known to Neelkant was also the internal and statutory auditors and the members of the RAC.*

7. In their submissions during the hearing, Noticees no. 3, 4 and 5 had adopted the submissions made on behalf of Noticees no. 2, 6 and 8. Additionally, Noticees no. 3, 4 and 5 had also made separate submissions which are reproduced in the subsequent paragraphs. Noticee no. 4 had also adopted the submissions made on behalf of Noticees no. 3 and 5.

8. **NOTICEE NO. 3 – V. R. VENKATESH:** Replies dated (a) November 2, 2019 (b) December 11, 2019 and (c) January 15, 2020 – In his replies/oral submissions, Noticee no. 3 *inter alia* submitted as under:

*i. Noticee was not an employee of the Company when a majority of these transactions were initiated. He was brought into the company from the company's Belgian subsidiary CG Holdings Belgium NV. His role was limited and as can be expected from the nature of the transactions under scrutiny, it would be fair to assume that they were driven by the Board of the company.*

*ii. Four (4) of the transactions were fructified and executed before the appointment of the Noticee as CFO at CG Power. With respect to the four transaction the Noticee performed only some ministerial tasks, for example, where postdated cheques were being issued by the company since 2015 i.e. before the Noticee joined as CFO, he has only renewed the cheques on expiry, based on the requests of the concerned financial institutions. These were based on multiple authorizations much above his pay grade. These transactions must be dropped qua Noticee no. 3, as they were initiated before the Noticee was appointed as CFO at CG Power.*

*iii. That all the transactions were fully authorised by the Board, the RAC and the CEO and Managing Director. The Noticee's participation on the Board of other*

group companies was also based on authority provided to him by the Board of CG Power. It is disingenuous to pin the blame on the Noticee without even investigating the roles of the other Board members who authorised these transactions. The data provided shows clearly, that the transactions had various levels of authorizations.

- iv. In support of our submission regarding Section 144 of the Companies Act that the Deloitte report cannot be relied upon as it is the fruit of a poisonous tree, i.e. as the source of the evidence or evidence itself is tainted with illegality, then anything gained from it is tainted as well, we herewith enclose a copy of the Order of the Hon'ble Supreme Court of India in the matter of H. N. Rishbud and Inder Singh vs. State of Delhi and Ors. (AIR 1955 SC 196). The aforesaid judgment has been followed by the Hon'ble Supreme Court in their recent judgment in the matter of **R.A.H Siguran vs. Shankare Gowda** on August 18, 2017.
- v. There have been some instances, where the lenders for relatively small/minor sums of monies due from other Group companies not being repaid to them through further financing on their structures, caused severe adverse impact in this regard are given below:
  - A. A leading bank such as ICICI restricted availability of funds to CG Power in October 2015 till the time the CG Power cleared the liabilities to the extent of USD 0.92 million of Sabah Forest Industries SDN BHD, a subsidiary of AHL. It is pertinent to note that CG Power had not guaranteed the repayment of the liabilities of Sabah Forest Industries SDN BHD. However, due to the discussions within the Risk and Audit Committee and also with the MD & CEO of the Company, the demand of ICICI Bank was not acceded to. Consequently, ICICI Bank did not make available the facility required by the Company. Further, it not only did not provide the facility required by the Company but it also refused to renew the facility of the Company to the tune of about Euro 37 Million even though CG Power had always been prompt with its payments to ICICI Bank and had not defaulted with respect to its loans with any bank or financial institution. The restriction on use of banking facilities put the Company under the great amount

*of financial stress and reduced the working capital of the Company at a time when the Company faced unfavorable market conditions.*

- B. Further, amongst others, Credit Agricole, a member of the consortium of lenders providing working capital facility to the CG companies to the tune of about Rs. 150 crores demanded that the Company pay approximately Rs. 5 crores due on the behalf of Sabah Forest Industries SDN BHD, a subsidiary of AHL, in March 2016. It is stated that similar to the aforesaid transaction, the lender recalled the facility of Rs. 150 Crore of the Company in June 2016 despite there being no default in repayment of debt by the Company or its subsidiaries.*
- C. In December 2016, the largest global credit insurer namely COFACE for an alleged small default to a supplier named as Roquette Freres in France of 265,800 Euros by a group company namely BILT Graphic Paper Products Limited stopped overnight credit insurance to suppliers of CG Power and shut down credit insurance line of approx. 75-100 million Euros. As a result of this business of the CG Power had to pretty much become overnight cash-and-carry.*
- vi. **Nashik Property and Kanjurmarg Property and ABFL:** The Noticee was appointed as an employee director in Blue Garden and Acton (both companies have been admittedly recognized as Connected Party by CG Power in their reply dated October 16, 2019). The Noticee was posted in Belgium and was on the rolls of CG Holdings Belgium NV during October 2007 until 12.12.2017. The Noticee was not even a director of Blue Garden Estate Private Limited or Acton Global Private Limited in May-August 2016 when the funds are alleged to have been transferred from Blue Garden to CG Power or from CG Power to other entities. the transactions involving Nashik Property and Kanjurmarg Property were in fact conceived and structured by the lender namely Aditya Birla Finance Limited (a Birla group NBFC). It is submitted that the funds for these transactions originated from ABFL and were received back by ABFL itself. These transactions were also examined by the legal department of CG Power under the instructions of MD&CEO. The entire work relating to setting up of Acton and BGEPL was undertaken by the legal department of CG Power,*

and especially Ravi Rajagopal (Head - Legal, Compliance, Governance and Risk) and Manoj Kaul, Company Secretary.

It is further submitted that K. N. Neelkant (MD&CEO) in the Earnings Conference Call on 14.11.2018 (recorded transcripts) specifically stated with respect to certain queries that loans and advances and netting off has been happening for a period of time and that it has always been reflecting in the balance sheet and as part of loan and advances in the balance sheet and that a separate specific disclosure of ₹778 Crore was made as having been given to a Group Company because the repayment schedule of such amount has been agreed upon and therefore, there was a need felt to disclose the same separately. This clearly further evidences that the CEO and MD himself was well aware of the transactions. A copy of the transcript of the conference call recording is at Page Nos. 82 to 100 of the Preliminary Reply dated November 2, 2019. The aforesaid transactions are also covered under the omnibus resolution passed by the Board. As this was a continuing transaction which was continuing since May 2016 the Noticee was authorized to sign the undertaking in 2018.

The allegations about non-disclosure of the transactions with AHL, Acton, Blue Garden undertaken in FY 2016-2017 (as indicated under the head of sale of Nashik Property and Kanjurmarg Property) are denied as being misconceived, apart from the fact that Balance Sheet and P & L Accounts were finalized and approved by the RAC I Board even before I was made the CFO. Also, the entire fund movement was through banking transfers and was known to internal auditors and external auditors of the Company (who had duly examined the banking transfers), and were also duly reflected in the consolidated/netted figures of the Company. Without prejudice to the above, I submit that the said transactions were for the period of FY 2016-2017 whereas I was made CFO of the Company only in August 2017.

- vii. **YES Bank Cheques:** The alleged transaction had taken place sometime in 2015/2016 i.e. before the Noticee was appointed as the CFO (August 2017). The Noticee had no reason to believe that the alleged comfort letter dated November 4, 2015 was not signed duly and properly at the relevant time. The Noticee used to sign these cheques to Yes Bank, as a joint authorised



signatory. This was also within the knowledge of the MD&CEO Neelkant. It is submitted that on query with the treasury department (Atul Gulatee) of CG Power throughout that such issuance of cheques was a periodical exercise (as PDC cheques towards security were issued and replaced **every** quarter) and that previously the treasury head (Atul Gulatee) used to sign these cheques. It is submitted that the Board of CG Power was fully aware of these cheques and/or comfort letter of CG Power. On or around March 2018 the Company was put under pressure to either repay the amount of ₹ 200 Crore or to create mortgage on CG House in that the MD&CEO of CG Power i.e. K. N. Neelkant was also a signatory to the said Resolution. It is also submitted that the Board of CG Power (through resolution dated 09.11.2017) had approved enhancement of borrowing limits for Overseas Entities from Euro 125 million to Euro 175 Million.

- viii. **Euro 44 Million borrowing from CG Singapore:** The loan arrangement with CG Singapore was structured by Standard Chartered Bank (SCB), and the monies given by Standard Chartered Bank pursuant to the loan facility given to CG Singapore were ultimately received by Standard Chartered Bank (SCB) itself. The avilment of the loan facility was approved by CG Singapore Board, which amongst others consisted of Neelkant (CEO&MD of CG Power) and an independent director. The Noticee had duly informed the CEO&MD of the utilization of the funds. The resolution of the CG Singapore, so approving the borrowing was also placed before CG Power Board for being noted and was noted on 12th February 2018. It cannot be said that the CG Board or CG Singapore Board was unaware of the reasons of the borrowing or its end use or that the same was authorised without any need whatsoever.
- ix. **CG Middle East FZE - CG International BV ("CG IBV") and IndusInd Bank:** The amount of 40 million Dollars (approx. ₹ 260 Crore) that was borrowed from Indus Ind bank by CG Middle East FZE / CG IBV was ultimately received by Indus Ind Bank itself. Neelkant was also a director of CG IBV. Neelkant had sought the confirmation from Hariharan and subsequently approved the induction of Hariharan as a Director on CGIBV. The transaction was also duly authorized and was within the limits of the Board approval granted by CG Power on 26 May 2017. Atul Gulatee instructed/requested the Noticee to sign

*the documentation in relation to this transaction. The structure of the transaction was proposed by IndusInd bank. As per the structure given by the IndusInd Bank, it was to fund CG IBV / CG Middle East FZE with 40 million USD and then receive its money back through Avantha Group Company namely Jhabua Power Infrastructure Limited. After receipt of the said ₹ 250 Crore (USD 40 million), Indus Ind Bank renewed a working capital facility of ₹ 75 Crore in the Company in or around October/November 2017 and non-fund based facility of ₹ 75 Crore (USD 10 million) in CG Singapore in or around March 2018.*

- x. *As far as the allegation of not disclosing the loan / borrowing from IndusInd in CG Middle East FZE is concerned, it is submitted that the accounts of the said company are prepared by the auditor in accordance with the laws and accounting policies as applicable in that geography who was coordinating with Susheel Todi, Global Head - Accounting and Taxation. Furthermore, Atul Gulatee was the global head of treasury and Susheel Todi was head of corporate accounts, and it was their responsibility to look after the said aspects.*
- xi. **Service Contracts with CG Middle East FZE:** *The Noticee entered into each of the contracts upon the instructions of the MD&CEO of the CG Power. Additionally, as a matter of normal practice, this was also brought to the notice of Hariharan who did not raise any objections to the same considering that MD&CEO of the CG Power had approved it. It is also relevant to note that CG Power since about 2014 had been trying to sell (and with heightened efforts during 2017) its overseas/Hungarian business (and was in advanced stages of negotiations to execute share sale / purchase and related documentations) which was in serious difficulties due to quality issues in its product. These issues had caused serious problems with various customers across geographies and threatened the very survival of CG Power business globally. Consequently, the MD&CEO, and the Board of CG Power, and the legal team was directed to see that all concerns in this regard are sorted out expeditiously and at any cost. It is further submitted that CG Power Board vide its resolution dated 9th November 2017, enhanced the limit of loans to subsidiaries from Euro 300 Mn to Euro 400 Mn. Out of the above, the CFO and the management*

was given full powers upto Euro 350 Mn to execute transactions without referring it back to the CG Power Board.

- xii. Considering the above situation and in continuance of CG Power's Board resolution dated 9<sup>th</sup> November 2017, CGIBV, the holding company of all overseas subsidiaries, passed a resolution dated February 7, 2018 authorizing and granting special powers to Neelkant (CEO&MD), Ravi Rajagopal (Head – Legal Compliance, Governance and Risk) and the Noticee to act individually to perform amongst others “all actions necessary or useful within the framework of the execution of share sale and purchase agreement, including but not limited to drafting , modifying amending , signing and executing all related documents , deeds, agreements powers of attorney , notices, acknowledgements, letters, memoranda, statements and certificates as may be ancillary , necessary , required or useful in connection with the transaction and/or the share sale purchase agreement”. In pursuance of the above resolution, the Noticee along with Ravi Rajagopal under the guidance of CEO and MD, executed contracts with various parties to settle issues with the customers in Middle East and Africa and paid advances to complete the work. It is submitted that there has been no illegality of any kind on the part of the Noticee in executing the above service contracts.
- xiii. **Outstanding trade receivables of ₹ 108 Crore:** The alleged transactions were authorized and initiated prior to the Noticee being appointed as CFO. It is submitted that a CFO does not get involved in the identification of the buyers or sellers or in dealings with them.
- xiv. It is further submitted that Neelkant in the earning conference call dated 13.02.2019 (whose transcripts are recorded) was specifically asked a question by Puneet Gulatee (representative of HSBCJ on 108 Crore which was being written off and Neelkant without any indication of any wrong doing indicated 108 Crore to be confirmed number.
- xv. As per letter dated 22nd May 2019 signed by the Whole time Director of CG Powers, Sudhir Mathur, addressed to the joint statutory auditors of the company M/s SRBC and CO (E&Y) and KK Mankeshwar and co, the purchasers seemed to have changed their addresses. All other details have been reconfirmed by the Whole time director and the Legal Head of CG Power.

*The purchasers/parties had also handed over C- forms (issued by the department of Trade and Taxes, Govt. of NCT of Delhi which is affirmation of the genuineness of the parties being verified by the Governmental authorities - also indicates that the purchasers are paying taxes to the concerned governmental authorities) to the company. The purchaser parties also gave a balance confirmation as on March 31st, 2018 which were duly examined by the treasury, external and internal auditor, and the Risk Audit Committee was accordingly briefed by the auditors.*

- xvi. ***Avantha Brand Royalty, Indus-Ind Bank - The allegation relating to the conditional deposit thereof:*** *The terms and conditions of AHL Letter were duly known to MD&CEO and the Company made the fixed deposit of ₹ 229 Crore only under the instructions of MD&CEO. The deposit of the monies by CG with a specific banker i.e. IndusInd Bank was itself in compliance with the AHL Letter in compliance of the AHL terms. The terms were such that IndusInd Bank wanted the deposit of monies only with its bank whereas the other FDs of the bank at the relevant time were with Union Bank. In fact the AHL Letter condition to deposit the money with Indus Ind was discussed in the Board Meeting dated 13.11.2018. On 15.11.2018 Shikha Kapadia, Company Secretary through e-mail to the Noticee sent a draft certified copy of the resolution of the Board of Directors wherein she specifically recorded the deposit with Indus Ind bank as per the request of Avantha Holdings. This amply demonstrate that the matter was in fact discussed and approved at Board level in the meeting on 13.11.2018, otherwise there was no occasion for the Company Secretary to have even sent draft minutes in relation to the above. Upon receipt of the money from AHL, 229 Crore out of 294 Crore was kept with IndusInd Bank in fixed deposits. In fact even prior to return of the monies to AHL, specific approval of MD&CEO Neelkant was taken including for return of the interest accrued on FD.*

9. **NOTICEE NO. 4 – MADHAV ACHARYA**: Replies dated (a) October 31, 2019 (b) December 11, 2019 and (c) January 15, 2020 – In his replies/oral submissions, Noticee no. 4 *inter alia* submitted as under:

- i. *The Noticee joined Crompton Greaves Power and Industrial Solutions Ltd. (formerly Crompton Greaves Ltd) (hereinafter referred to as 'the Company') in the year 2008 as Vice President, Finance. He was promoted and re-designated as CFO in the year 2009. Thereafter, he joined the Board of the company as Executive Director and CFO on April 1, 2016.*
- ii. *The Noticee expressed his intention to resign from the services of the Company in December 2016 and also went on leave from June 18, 2017 till July 31, 2017 to enable a smooth transition. V R Venkatesh was appointed to take over from the Noticee as CFO. The Noticee finally exited from the services of the Company on August 11, 2017. He did not attend any Board Meeting thereafter and finally exited from the Board of the Company also w.e.f. September 30, 2017. After August 11, 2017, the Noticee never had any interface with the Company and is not concerned with any of the transactions that were mentioned in the Ex-parte Order which had taken place after his leaving the Company.*
- iii. *It is also relevant to note here that CG Power has not provided the list of transactions that were specifically noted by RAC on 30.08.2016 and have been categorically referred to in the above said minutes. The said list was sent by Atul Gulatee (head of the treasury department) to me through e-mail and was presented by me to RAC members. The said list specifically included ABFL Loan of Rs.150 Crore received until then by CG Power and transfer of Rs.145 Core of CG Power's (standard chartered bank account) account to Avantha Holdings' bank account i.e.*
  - (i) 13.05.2016: Rs. 40 Crore
  - (ii) 17.05.2016: Rs. 25 Crore
  - (iii) 18.05.2016: Rs. 35 Crore
  - (iv) 19.05.2016: Rs. 45 Crore
  - (v) Total : Rs. 145 Crore

*The above list was presented to RAC during the meeting dated 30.08.2016, and reference to which is given in the RAC Resolution dated 30.08.2016.*

- iv. ***Blue garden and Acton are related parties and not connected parties.***
- Both BGEL and Acton are known to the Board at the relevant time, to have been incorporated by the Company itself. The shareholders and Directors of the Company are employees of the Company and they act and are accustomed to act in accordance with the advice, directions or instructions of a director or manager. The entire work relating to setting up of Acton and BGEPL including their Registration with ROC (“**Registrar of Companies**”) and applying for PAN and secretarial work was undertaken by the Secretarial department of the Company led by Manoj Kaul, Company secretary. It is pertinent to note that Manoj Kaul, Company Secretary of CG Power reported to Ravi Rajagopal who is a permanent invitee to all RAC and Board meetings. Ravi Rajagopal reports to the MD&CEO. As can be seen from e-mail dated March 22, 2016 (Page 181 of the Reply Compilation) from Vyoma Desai, Associate of practicing Company Secretary engaged by the Company, she had sent the e-mail congratulating all for successfully achieving the certificate of incorporation for both the companies. The said e-mail was marked to Abhishek Kabra [Treasury department], Manoj Kaul, the Company Secretary of the Company, Atul Gulatee [Treasury department], Sashi Kapur [Secretarial department], all senior management of the Company. Various e-mails exchanged between the senior officials of the Company and the CS are enclosed. Thereafter, Abhishek Kabra vide e-mail of the same date asked Vyoma Desai to furnish MOA/AOA, Shareholders list and Directors list. He had also asked Vyoma Desai to provide address proof document for applying for PAN. He had also instructed that the shares of the Blue Garden should be transferred to Acton to make it subsidiary of Acton. Vide another e-mail dated March 23, 2016, Abhishek Kabra had requested Vyoma for certain Documents for opening Bank accounts for both the Companies and escrow account for Blue Garden. The Company Secretary, and through him the Head- Legal , compliance and risk and the MD&CEO, were in the know of all the e-mails mentioned above. From the above, it is ex-facie clear that the incorporation*

- of BGEPL and Acton were done by the Company. Their Board of Directors and Shareholding was decided by the Company.
- v. Blue garden and Acton were incorporated at the instance of Aditya Birla Finance Ltd. (ABFL). ABFL structured the Impugned Transactions with the active involvement of the Company, Ravi Rajagopal, Neelkant and other senior officials of the company. The need for incorporating these companies arose because ABFL which was a lender to Avantha group had decided that it would be making further funds available to the group by structuring an indirect financing mechanism with a view to get around the guidelines regarding group lending. ABFL had decided that BGEPL should become subsidiary of Acton, This was necessary because ABFL structured the transaction in such a way that Acton shall pledge the shares of BGEPL after transfer of funds to BGEPL. From the above it is evident that the Blue Garden and Acton are part of CG Group and transactions relating to the Nashik and Kanjurmarg are within the knowledge of the Company, RAC and the Board.
- vi. It is submitted that Transactions involving Nashik Property and Kanjurmarg property with these two entities were structured by ABFL. This can be seen from e-mails dated February 14, 2016 and February 16, 2017 from one Rakesh Pingulkar, Chief Manager of ABFL. The structure of funds transfer is clearly stated in the said e-mail. Out of a total of about ₹ 390 Crore that was given by Aditya Birla Finance Limited ("ABFL") to (Blue Garden Estate Private Limited) ("BGEPL") ₹ 240 Crore was to be received back by ABFL for clearance of its dues, and the remainder was to be used for the Group's other debts/liabilities. It is noteworthy that after the receipt of ₹ 240 Crore back through Acton upto February 2017 as per the structure devised by ABFL itself, ABFL gave additional credit facilities of ₹ 200 Crore to CG Power for its own operations. It is submitted that Avantha Holdings Ltd gave a corporate guarantee to ABFL for this loan to CG Power.
- vii. With reference to the allegations on Nashik and Kanjurmarg property transactions, it is further submitted that the only allegation against the Noticee is that he signed certain documents. There was no allegation in the Ex-parte Order that he signed the said documents without authority. Without prejudice to the above, it is submitted that transaction was done within the knowledge

*of the Company/ Board and Management and the Notice had express powers to execute the MOU/ Agreements on behalf of the Company.*

- viii. It is also submitted that Jitendra Balakrishnan was on the Board of the Risk committee of AHL, when the transaction was initiated was appointed on the Board of Noticee no. 1 company subsequently on 02/05/2017; he approved the financials of the company for the year ended 31-3-2017 at the Board meeting of the company held on 26-5-2017. Shockingly, at the meeting held on 19-8-2019, post which certain announcements were made to the stock exchanges, resulting in the impugned order, Jitender Balakrishnan did not disclose his knowledge of the transaction or how he was conflicted in the announcement that the company was not in knowledge of the transactions involving ABFL. It may be noted that Jitender Balakrishnan by virtue of being Risk committee member at AI3FL, had scrutinized all the lending transactions.*
- ix. Another important point that to note is that Ashwin Mankeshwar, Managing Partner, KK Mankeshwar and Co, the Statutory Auditor of the company from 2018 till date was on the Board of Blue Garden and Acton as is evidenced by records of Registrar of Companies.*
- x. The Chairman of the Company Gautam Thapar executed and issued two letters of comfort. One dated 23rd January, 2017 (For ₹50 Crore) and the other dated (nil) (for ₹150 Crore) with regard to the transaction. The said letters of Comfort were drafted by ABFL and cleared by Ravi Rajagopal, the Head legal, Compliance and Risk.*
- xi. The details of this transaction were reported and explained to the RAC in its meeting dated 30th August, 2016. The Minutes were edited/vetted by Omkar Goswami, independent director RAC as well as Shirish Apte Chairman of RAC as is evident in the e-mail dated 1/9/2016 and 3/9/2016. The minutes clearly mention "a set of transactions' during May and June 2016. In this regard please refer to the first part of the Minutes, of the RAC held on 30-8-2016.*
- xii. The list of transactions which were furnished to the RAC is at page 109 and 110 of the Reply compilation. The company had failed to give these details from its records. The Minutes of the above RAC meeting specifically refers to a list of transaction having been placed before it.*



- xiii. *Further the RAC members who are financial wizards were very well aware that CG Power did not have enough cash of its own for its lending activities and that the funds were sourced/raised from ABFL for onward lending to Avantha group. The name of ABFL is specifically mentioned in the list of transactions submitted by the Noticee to RAC.*
- xiv. *It is submitted that in fact the RAC at its meeting on 30-8-2016 permitted related party lending upto ₹ 1000 Crore as against ₹ 530 outstanding as of that date; thereby giving its consent to CG power to borrow further for the onward lending. It is further submitted that the free fund available as on 31/3/16, were only Rs 160 Crore and with rapidly deteriorating financial situation, the RAC had no choice but to look into entire set of transactions to understand the source of Rs 530 Cr of borrowings and onward lending to the Group. Further, the minutes also mention that there were circumstances which 'necessitated' these transactions; Therefore the reasons and purpose of these transactions, being for the corporate benefit of CG Power, the sources of funds and its application were all within the knowledge of the RAC members, the invitees to the RAC being Ravi Rajagopal, MD&CEO Neelkant and other officials and any denial is an afterthought and motivated.*
- xv. *The lending to Acton for its further lending to Avantha Holdings is also within the knowledge and consent of the Board. At the relevant time there were common Directors on the Boards of Avantha Holdings and the Company.*
- xvi. *It was alleged in para 4.1.b of the Ex-parte Order that the Assignment Agreement was signed by the Noticee. It was alleged that the said Assignment Agreement was executed without the approval from MIDC. In this regard, it is submitted that the said the Assignment Agreement was "subject to all the approvals from MIDC". Hence, the allegation is factually incorrect. The Noticee anyway, had been given omnibus authority to execute any documents as may be required.*
- xvii. *It is submitted further that the RAC in its 92<sup>nd</sup> meeting held on May 26, 2016 granted omnibus approval for entering into transactions with Related Parties in compliance with the Listing Regulations, which was valid for financial year 2016-17. The meeting of the Board dated 25/26 May, 2017 had recorded this fact.*

xviii. *In relation to Kanjurmarg property transaction it is submitted that the Board minutes dated 16th October, 2014 says that the property can be sold to Evie or any other buyer. In the very same Board Minutes it was approved that the Noticee has power to execute any sale deed or related documents with respect to Kanjurmarg Property*

xix. *There was allegation that the transactions relating to BGEL and Acton were not captured in the financial statements of the Company appropriately. In this regard it is submitted that these two transactions were netted off as per the request received from BGEPL which had to recover monies from Acton. The letter of request in this regard received from BGEPL was forwarded by the Noticee to Sushil Todi (global head-accounts and tax) and Anil Gupta (head of accounts) for "their review and necessary action". The process of netting off was done as per the applicable accounting policies by the accounts department in consultation with the statutory auditors and was fairly disclosed in the Annual Report of the Company in the year FY 2016-17. The process of netting off, as I understand, was done as per the applicable accounting policies by the accounts department in consultation with the auditors and was fairly disclosed in the Annual Report of the Company in the year FY 2016-17 recorded as below:*

*"Significant accounting policy*

*...*

***(iii) Offsetting of financial instruments:***

*Financial assets and financial liabilities are offset and the net amount is reported in the balance sheet if there is a currently enforceable legal right to offset the recognized amounts and there is an intention to settle on a net basis, to realise the assets and settle the liabilities simultaneously."*

*The accounts were also adopted by the Risk and Audit Committee, the board of directors and also subsequently by the shareholders in the Annual General Meeting of the Company.*

xx. *The accounts were accordingly prepared, Audited and adopted by the Risk and Audit Committee, the Board of Directors and also subsequently by the shareholders in the Annual General Meeting of the Company. The audited financials for 31-3-2017 were approved at the Board meeting on 26-5-2017*

when Jitendra Balakrishnan who was Risk Committee member at ABFL, was also present as independent director of CG Power. Ashwin Mankeshwar, who is the current joint statutory auditor of the Company, was one of the directors of Blue Garden and Acton and he cannot deny knowledge of the existence of these companies and the ABFL transactions.

xxi. The other allegation against this Noticee is that he had executed Agreement on behalf of CG Singapore without the Board authorization. It is submitted that the Noticee was a Director of the Company from November 1, 2013 to November 12, 2017. The Noticee left CG Power in August 2017 as CFO and from the Board on 30-9-2017. The funds related to this agreement were transferred to Mirabelle Trading Pte. Ltd in the year 2018 much later after the Noticee left the Company. The Agreement was dated 15 January 2013. The specific agreement (as provided by the Company) could not have been executed by the Noticee as the on the first page of the agreement the name of the Company is mentioned as "CG Power and Industrial Solutions Limited" whereas this name of the Company came into existence only in 2017 after demerger of consumer business.

xxii. One more allegation that the Noticee is concerned was the allegation that the Noticee had executed PSOL Loan Agreement dated 02.05.2016 without Board approval. It is submitted that CG PSOL is a wholly owned subsidiary of the Company. On 5-8-2013 in the meeting of Board of directors of the Company, the Company had passed an omnibus resolution authorizing the Company to provide loans, inter corporate deposit, debentures and other funding to subsidiary and associates of the Company for limits specified therein. It is submitted that the agreement with CG PSOL dated 02.05.2016, was signed in good faith in the light of the said resolution. This agreement was signed on the instructions of MD&CEO of the Company. It is submitted that the transaction with regard to procurement from the identified suppliers was done by the MD&CEO. Once the procurement was completed, MD&CEO had decided that the material be sent to outside agency for processing as was the practice. As far as payment is concerned, it is submitted that an amount of ₹ 313 Crore was outstanding from CG PSOL, as. on December 31st, 2016 and therefore instead of Company making payments to the suppliers, it was

*decided that CG PSOL will make this payments and accordingly, the Company entered into tripartite agreements with each of the suppliers and CG PSOL on various dates. The action of Noticee of not making payment to the suppliers had saved the Company an amount of ₹ 259 Crore. It is submitted that the Noticee did not have any role in or control over the purchases or sales of inventory. Purchases and sales in CG Power are made by the sales team / procurement team which reports to the MD&CEO, KN Neelkant. There are no documents, whatsoever, submitted by the company/ SEBI to indicate that Noticee was involved in buying or selling the said material.*

*xxiii. Further, the transaction with respect to the purchase and sale has also been justified and reconfirmed by the Whole Time Director, Sudhir Mathur in his letter dated 22.05.2019 sent to the statutory auditors of the Company. The letter by the whole time director to the statutory auditors was sent after the draft of the same was approved by the Board in its meeting held on May 22nd, 2019. This clearly demonstrates that the Board Members were aware of the said transaction and thus raised no objection to the letter sent by the whole time director to the Statutory Auditors. Further, the independent directors of the company were made aware of these purchases by the Statutory Auditors of the company, by way of reduction of liability reduction of CGPSOL, vide their presentation dated 26/05/2017 in the presence of CEO&MD- K. N. Neelkant. The Noticee as CFO had only signed the tri partite agreement as it involved an offset of the liability with the subsidiary, and was not in any way involved in the purchase and sales which departments were reporting to MD&CEO.*

*xxiv. SEBI did not apply its independent mind and blindly accepted the report submitted by a purported law firm Vaish Associates/ Deloitte.*

10. **NOTICEE NO. 5 – B. HARIHARAN:** Replies dated (a) October 31, 2019 (b) December 11, 2019 and (c) January 15, 2020 – In his replies/oral submissions, Noticee no. 5 *inter alia* submitted as under:

*i. The Noticee was at the relevant time a Non-Executive Director of CG Power and had ceased to be a Director of the Company with effect from March 8, 2019.*

- ii. *The Noticee has consistently maintained that all the concerned decisions were with the knowledge and/or consent of the Board of Directors and/or RAC. The documents to the extent produced by the Noticee clearly support this position. In particular, the Company during the course of its submissions before SEBI has not only accepted and confirmed the minutes of meeting of the RAC dated August 30, 2016 but it has also come with a positive case/assertion inter alia to the following effect:*
- A. *The Board of Directors/members of the RAC were informed and were aware of the loan given to the Group Companies, including Avantha Holdings, to the tune of ₹530 Crore;*
  - B. *The RAC of the Company did not raise any issue with respect to the loans that were given to the group companies but it also further approved loans up to an aggregate cumulative value of ₹1,000 Crore;*
  - C. *Further, the RAC also stated that no prior approval of the RAC was required before entering into transactions involving a group company to the tune of ₹ 1,000 crores, In fact, the intimation relating to such transactions could be given by a mere e-mail or a phone call;*
  - D. *The RAC also noted the necessity for entering into the transactions with group companies in order to maintain a healthy relationship with banks and other financial institutions, as otherwise, they would freeze all credit facilities to CG Power on the grounds that CG Power is a member of Avantha Group;*
  - E. *CG Power is part of the Avantha Group, which includes Solaris Industrial Chemicals Limited, Avantha International BV. and BILT Graphic Paper Products Limited.*
- iii. *There is no allegation of siphoning off as far as the Noticee is concerned or any undue favour or benefit being received.*
- iv. *The defence of the Noticee no. 5 is greatly dependent on the information available with CG Power. The Noticee being a non-executive director of the Company, having superannuated on March 8, 2019, does not have access to the information available with the Company with respect to the transactions mentioned in the SEBI Ex-Parte Ad-Interim Order (including in particular to*

show the knowledge of the other Board members such as MD&CEO, and other functionaries of the Company). However, the Company has refused to cooperate with the Noticee and has suppressed information/documents which are required by the Noticee for the purpose of his defence.

- v. An adverse inference must be drawn against the Company for not furnishing the relevant documents to SEBI or to the Noticee. The Noticee has relied on the observations of the Supreme Court in the case of *CITI Bank N.A. v. Standard Chartered Bank*, (2004) 1 SCC 12.
- vi. Vaish Report and Deloitte Report are not independent, and are prejudicial, biased and completely unreliable information – These two reports are nothing but a façade set up by the Company to create an impression as if investigation has been carried out whereas as a matter of facts these reports are nothing but collation of selected, incomplete, convenient and somewhat incorrect facts furnished by the Company itself. It is thus a circuitous way to disguise the approach explained above. Further, it is pertinent to note that both Deloitte and Vaish Associates who have conducted the inquiry and prepared the alleged preliminary investigation report have stated that it is not sufficient to rely only on their reports to draw any conclusions. Deloitte has expressly stated in the report that it has not even verified the completeness of the information provided to them by CG Power nor has it conducted any forensic audit.
- vii. SEBI has not carried out any independent investigation and has mechanically placed reliance on Deloitte and Vaish Report which is completely unsustainable.
- viii. The Risk and Audit Committee as well as the Board of directors of CG Power were fully aware of the borrowings (inflow) of, and onward lending (outflow) by, CG Power to group companies.
- ix. The allegations with respect to B. Hariharan (Noticee no. 5) in the SEBI Ex-Parte Ad-Interim Order are only limited to 5 (five) out of a total 9 (nine) transactions mentioned therein. The allegations against Noticee no. 5 as contained in paragraph 5.4 of the Interim Order are effectively only that the transactions were not approved by the Board of Directors.

x. *Transaction specific reply –*

A. *The Company had expressly authorized its subsidiaries to borrow upto Euro 175 million vide resolution of the Board of CG Power dated 26.05.2017 wherein it was stated that:*

*52532 ANY OTHER BUSINESS*

*525.32.01 NEW FINANCIAL FACILITIES TO OVERSEAS SUBSIDIARIES*

*RESOLVED THAT in supersession of Resolution No. 518.33 passed at the 518th Meeting of the Board of Directors held on 24d February 2016. •*

*(c) Within the above mentioned overall limits of Euro 115 Million, KN Neelkant, CEO and Managing Director.*

*M Acharya, Executive Director-Finance and (FO, and A. Gulatee, Global Head-Corporate Treasury in consultation with M. Acharya, be and are hereby severally authorized to:*

*(Hi) decide, the subsidiaries to be leveraged, take actions for channelizing the funds through inter-corporate loans within the Group, and other initiatives to achieve the best possible arrangement with the respective banks/financial institutions” (Minutes of Meeting of Board of CG Power dated 26.05.2017)*

*The same was reiterated by the Company in the meeting of Board of Directors of CG Power dated 09.11.2017, with the exception of change in authorized signatories. (Minutes of Meeting of Board of CG Power dated 09.11.2017)*

B. *The Board of CG Singapore, which included KN Neelkant, MD&CEO of the Company, had specifically approved the borrowing through its Board resolution dated 06.10.2017. In the resolution of CG Singapore dated 06.10.2017, it was stated that:*

***“2. DESCRIPTION OF THE TRANSACTION AND DOCUMENTS***

***2.1 IT IS NOTED THAT:***

*2.1.1 The Company had been negotiating with Standard Chartered Bank to arrange for the Company to obtain a loan facility in aggregate amount of up to EUR 44,000,000 ("the Facility) from a group of lenders (the Lenders)*

*2.1,2 the Company will be using the facility to finance the general corporate purposes, including working capital of the Company and Subsidiaries (as*

defined in the Facility Agreement) and any other member of the CG Group (as defined in the Facility Agreement) '

**(CG Singapore Board Resolution dated 06.10.2017)**

It is also pertinent to note that the resolution of the CG Singapore, approving the borrowing was also placed before CG Power Board for being noted on 12.02.2018. **(See Board Minutes of CG Power dated 12.02.2018)**

Thereafter, the disbursement to CG Singapore from Standard Chartered Bank took place on 14.02.2018, that is, after the Board of Directors of CO Power had taken note of the resolution of CG Singapore approving the borrowing of Euro 44 Million.

The money has neither come into CO Power nor gone out of CG Power. The whole transaction was conducted because Standard Chartered Bank wanted to replace its borrowing from CG IBV to CG Singapore.

The loan arrangement with CG Singapore was structured by Standard Chartered Bank, and the monies given by Standard Chartered Bank pursuant to the loan facility given to CG Singapore were ultimately received by Standard Chartered Bank itself through CG IBV.

- C. Standard Chartered Bank had in fact on e-mail demanded the transfer of loan from the books of CG IBV to CG Singapore. Email dated 30.01.2018 from Standard Chartered Bank to VR Venkatesh, Noticee no. 3 is quoted herein below:

"Dear Venkatesh,

Trying to reach you. I do appreciate you are busy with Hungary closure.

We are still awaiting execution of document for the transfer of loan from CG IBV to CG Singapore. This is pending your resolution of CG Singapore for authorized signatories.

Need your earliest execution-I have an issue internally so kindly do expedite pls.

Kind Regards,

Ajay.

(Email dated 30.01.2018 from Standard Chartered Bank)



- D. *The monies (Euro 44 million) taken from Standard Chartered Bank by CG Singapore were transferred to Avantha International B.V. and thereafter to CG IBV (wholly owned subsidiary of CG Power) by Avantha International B.V and then CG IBV paid the said monies to Standard Chartered Bank itself on the same day i.e. 14.02.2018, The Bank account statement of Avantha International B.V exhibiting the transfer on Euro 44 million to CO IBV on the same day as receipt i.e. 14.02.2018 is annexed. The same can also be verified from the bank accounts of CO IBV which have been suppressed in this regard.*
- E. *It is therefore evident that the transaction by CG Singapore is with express approval by of its Board of directors headed by KN Neelkant as Chairman who is also the MD&CEO of CG Power. The Noticee no. 5 has only executed documents after having approval of the Board of directors of CG Singapore and not on his own.*

**xi. *Loan Agreement between CG Power and its wholly owned subsidiary CG PSOL was well within the knowledge of the Board and the same is reflected in various minutes of the Board of CG Power.***

- A. *During the course of arguments, the counsel for the Company admitted that the loan agreement between CG Power and CG PSOL was in the knowledge of Board. He further admitted that the allegation against the Noticee in SEBI Ex-Parte Ad-Interim order is that Hariharan had in an unauthorized manner signed the loan agreement on behalf of CO PSOL without knowledge/consent of Board/RAC.*
- B. *Without prejudice to the aforesaid, it is stated that CG PSOL is a wholly owned subsidiary of the Company and the loan agreement on behalf of CG Power was signed on the instructions of MD&CEO of the Company.*
- C. *Considering that CG PSOL was a wholly owned subsidiary of CG Power no agreement was even required to the purposes of loan, but in any case as I recollect there was a due board resolution.*
- D. *The loan agreement was of 02.05.2016. In the Board meetings dated 27.05.2016, 07.12.2016 and 10.02.2017, the amounts loaned as inter-corporate deposit to CG PSOL, has specifically been recorded. Therefore,*

*it is vehemently denied that the loan transaction with CG PSOL was without Board approval.*

**xii. Sale of Nashik Property to Blue Garden Estate Private Limited.**

- A. *The transaction was carried out in May 2016 (noted by RAC in the minutes dated 30.08.2016), which was much before the undertaking had been signed by the Noticee. While the Noticee no. 4, Madhav Acharya has given a list of transactions as noted by the RAC in its minutes of meeting dated 30.08.2016, the Company has not given any other list, therefore, the list given by the Noticee is deemed to be admitted.*
- B. *The Noticee sometimes used to sign the documents for CG Power however at the request of MD&CEO/RAC/Board of Directors only, and this document must also have been signed at his behest after requisite clearance from the legal department of CG Power.*
- C. *The transaction was also examined by the legal department of CG Power under the instructions of NIO and CEO. In fact, the entire work relating to setting up of Acton and Blue Garden, the two special purpose vehicles, was undertaken by the legal department of CG Power, and especially Ravi Rajagopal, Global Head-Legal, Governance and Risk and Manoj Kaul, Company Secretary.*
- D. *That the transaction structure was provided by Aditya Birla Finance Limited ("ABFL") itself including the insistence to create 2 special purpose vehicles in its e-mails dated 08.02.2016, 20.01.2017 and 16.02.2017. Out of a total of about ₹ 150 Crore that was given by ABFL to Blue Garden, ₹ 53 Crore was to be received back by ABFL for clearance of its own dues, and the remainder was to be used for the Group's other debts/liabilities. Out of ₹ 145 Crore received by Avantha Holdings entire sum of ₹ 145 Crore were transferred by Avantha Holdings to BILT (a stressed listed company) which transferred the monies as follows:*
- (i) *₹ 135 Crore to Reliance Mutual Fund (towards discharge of commercial paper liabilities)*
- (ii) *₹ 10 Crore to Taurus Mutual Fund (towards discharge of commercial paper liabilities)*

- E. *As per the transaction structure, there has been no loss to CG Power as the monies did not belong to CG Power as such. Furthermore, CG Power till date has not yet paid the monies to Blue Garden, hence there is no actual loss to CG Power,*
- F. *RAC had deliberated over the various issues including to related party transactions including the loans from ABFL and onwards lending to other entities for a long time, and in this connection had **also sought appropriate legal advice. RAC had independently** examined the issues and arrived at a decision to go ahead/ratify with the ABFL transactions.*
- G. *As per Section 63 of the Indian Contract Act, 1872, a tripartite agreement to set-off debts is a valid contract. Further, the Supreme Court in *Chrisomar Corpn. vs. MIR Steels (II) Ltd., (2018) 16 SCC 117* has held this form of setting off under Section 63 to be valid.*

*xiii. **Signing of Yes Bank cheques by the Noticee.***

- A. *It is denied that the Noticee has signed any cheque in an unauthorized manner. The Noticee had signed the cheques on behalf of the Company as 'Collateral Security'.*
- B. *The entire story of Board of CG Power getting to know of these cheques and/or comfort letter of CG Power for the first time only in April 2019 has been concocted with a view to take a defence in the legal proceedings initiated by Yes Bank. This matter was discussed prior to May 2019 and even in the Board Minutes dated 22.05.2019 (a meeting which was attended by all directors including all 3 independent directors), there was no mention of any allegation regarding purported lack of authority in issuance of the cheques.*
- C. *The following facts are relevant, which have been suppressed by the Company:*
  - i. *Atul Gulatee vide his e-mail dated 11.04.2018 to VR Venkatesh, CFO of CG Power had stated that Yes Bank had stopped certain payments to vendors, which was just before the date (26.04,2018) on which the Yes Bank security cheque was to be replaced. Thereafter, after the submission of security cheque on 26.04.2018, in an e-mail,*

*Abhishek Kabra (finance department) had stated that the finance limits had been restored by Yes Bank. Therefore, it is submitted that the transaction with respect to the Yes Bank cheque was undertaken with the knowledge of the members of the Board/RAC in order to protect the interests of the Company and in order to avoid a complete financial breakdown.*

- ii. The existence of the comfort letter to Yes Bank and the cheques to Yes Bank both was known to the MD&CEO of CG Power. Such issuance of cheques was a periodical exercise (as PDC cheques towards security were issued and replaced every quarter).*
- iii. Request towards renewal/revalidation of the cheques in favour of Yes Bank used to be officially made by the Yes Bank to the treasury department (headed by Atul Gulatee) regularly. Then through MD&CEO, the Noticee was requested to sign it together with a finance/treasury department person.*

*D. From the aforesaid, it is clear that the Board of Directors of CG Power were aware that cheques were issued as security, and in fact talked about preparing an appropriate legal defence for the company and its directors. Sudhir Mathur, the current Whole Time Director of CO Power, also had various discussions with Yes Bank in this regard with a view to resolve the matter. If there was a fraud as alleged, there was really no question of Sudhir Mathur discussing anything with Yes Bank.*

*xiv. **Guarantee by CG IBV to IndusInd Bank with respect to USD 40 Million Loan by CG Middle East FZE.***

*A. It is alleged that the Noticee has signed the guarantee on behalf of CG IBV in an unauthorized manner. The Board of Directors of CG Power in its meeting held on 26.05.2017 authorized the persons named therein (including KN Neelkant, CEO and MD of CO Power), inter alia, to: “decide, the subsidiaries to be leveraged, take actions for channelizing the funds through inter-corporate loans within the Group, and other initiatives to achieve the best possible arrangement with the respective banks/financial institutions”*

- B. The Noticee was made to understand by the MD&CEO of the Company that the structure of transaction was proposed by IndusInd Bank itself. It is also important to note that the amounts borrowed by CG Middle East FZE were through group entities used by another group company, namely Jhabua Power Private Limited to pay back IndusInd Bank itself towards repayment of its loan. The role of the Noticee as per the SEBI Ex-Parte Ad-Interim Order was only limited to signing the guarantee on behalf of CG IBV, which the Noticee did as the authorized signatory of CG IBV.*
- xv. The transactions mentioned in the SEBI ex-parte ad-interim order were bona fide and were expressly authorized to ensure either grant of new facilities or continuance of existing facilities by banks/financial institutions to CG Power. It is submitted that even though CG Power was professionally managed, as per the perception of the banks/lenders they viewed financial facilities of CG Power as a part of the Avantha Group. Due to global economic factors, banks/financial institutions were aware of the need of CG Power for additional funds for its operations, and certain Avantha Group companies' need for monies for servicing of existing debts. It is noteworthy that in lieu of certain minor financial defaults taking place by companies within a 'group', the lenders/bankers choked/froze the credit facilities to the entire 'group'.*
- xvi. It is submitted that in the present case there was no urgency to pass the Ex-Parte Ad-Interim Order and certainly none to restrict the Noticee from accessing the securities market and associating himself with listed entities, which is required to be done by the Noticee to earn his livelihood.*
- xvii. CG Power has no right to levy any allegations in the proceedings before SEBI, as the proceedings under Chapter IV (Including Section II), SEBI Act arise out of the Interim Order and are not adversarial proceedings.*

Subsequent to the aforementioned submissions, vide an e-mail dated March 6, 2020, Noticees no. 2, 5, 6 and 8 have submitted that the NCLT vide its Order dated March 6, 2020, have contended that the Vaish Report which forms the basis of the Company's wrongful and misleading disclosure cannot be relied upon in light of the following:

*“Evidently the existing management had caused an inquiry into the matter through a Legal firm and also an Auditors' firm and the Vaish Report was released. Having seen the seriousness of the matter this Bench also is conscious of the fact that the SEBI is conducting inquiry into the matter independently. The representatives of the Government who appeared in this matter assured this Bench that no inquiry report of any private party, be it is present or future, shall influence their investigation nor will it have any bearing on the ongoing efforts of bringing out the real facts. In this scenario the re-opening of accounts at this point of time is what the Applicant is praying for in the present application. We are of the considerate view, after hearing all the parties concerned, that the permission is hereby accorded to the Applicant for re-opening of the books of accounts and recasting of the financial statements of the Respondent No. 1 Company and its subsidiary Companies for the past 5 (five) years.”*

11. **NOTICEE NO. 1 – CG POWER:** Replies dated (a) October 16, 2019 (b) December 12, 2019 and (c) January 15, 2020 – In its replies/oral submissions, Noticee no. 1 *inter alia* submitted as under:
  - i. *The key submission of the Company, i.e., Noticee no. 1, is that as a result of the specified unauthorized transactions executed at the behest of and by Noticees no. 2, 3, 4 and 5 and for the benefit of inter alia, Noticees no. 2, 6, 7 and 8 ("**Impugned Transactions**"), and dealt with under the SEBI Order and the phase 1 investigation report by the independent legal firm, Vaish Associates Advocates ("**Vaish**") dated August 5, 2019 ("**Report**"), an amount of approximately ₹ 3000 Crore has been illegally siphoned off from the Company. The crux of the Company Replies is as set out below:*
    - a. *As stated in the Report, the Impugned Transactions were unauthorized and illegal, since they were undertaken to the detriment of the Company and its shareholders;*
    - b. *As stated in the SEBI Order, the Company and its shareholders have been victims of the Impugned Transactions, which have resulted in not only a huge financial loss to the Company, but also a loss in value to its shareholders. This*

*is borne out of the investigation carried out by Vaish, and the specified observations set out in the Report;*

- c. As a result of the Impugned Transactions, a total amount of ₹3,023.08 Crore on a consolidated basis and ₹2,439.94 Crore on standalone basis is due to the Company from its promoters, related parties, connected parties, as of March 31, 2019;*
- d. The conduct of the Noticees no. 2 — 8 has also exposed the Company to additional risks, including potential criminal action against the Company, the seriousness of which cannot be overstated;*
- e. The Report has brought out the manner in which the Impugned Transactions were carried out and the persons involved in the same. The insinuations made by the Other Noticees on the manner in which the investigation was conducted by Vaish and the resultant Report, the Company's alleged attempts at suppressing information and other similar statements are completely baseless, and are an attempt to mislead and derail the on-going investigations. These are summarily denied;*
- f. The Company has submitted itself to investigations, proving its bona fides. Should the investigations reveal further wrongdoing by Noticees no. 2, 6 and 8, or any other persons, the Company will proceed against such persons;*
- g. The Company has, in line with the directions issued to it under the SEBI Order, initiated the recovery process through issuance of recovery notices to the persons that owe money to the Company;*
- h. Vaish was appointed by the Company to conduct an investigation into the Impugned Transactions, with a view to act in a fair and transparent manner, and in order to ensure the independence of the investigation. Vaish had further appointed Deloitte Touche Tohmatsu India LLP ("**Deloitte**") for accounting and financial review of the Impugned Transactions. Vaish is a reputed law firm in India, and is known to have undertaken investigations of similar nature. Deloitte is an internationally recognised organisation with respect to undertaking such investigations. The Board of Directors of the Company ("**Board**") has reviewed the Report, and believes in the veracity of the findings of the Report. Accordingly, any adverse allegation and/ or allusions with*

*respect to the findings under the Report and/ or the basis of its preparations, are denied;*

- i. With respect to information sharing, the Company has, at all times, acted in a fair and transparent manner, and in due compliance with applicable laws, including in terms of the directions passed under the order dated October 1, 2019, passed by the Hon'ble SAT in Appeal no. 413 of 2019, as well as the directions issued by SEBI from time to time;*
- j. At the Hearings, submissions were made by the Other Noticees that the current proceedings are not adversarial in nature in so far as the Company is concerned, and that the Company had no right to review the replies of the Other Noticees and/ or make submissions in relation to the acts and omissions of the Other Noticees before SEBI. In this regard, it is clarified that as an affected party, the Company has the right of representation before the Hon'ble WTM. Since the Company has a direct, real and subsisting interest in the subject matter of these proceedings, it is imperative that the Company be heard by SEBI. In fact, if the SEBI Order is modified in any manner, the same will have immense consequences for the Company and therefore, it has a right to be heard and be represented before the Hon'ble WTM.*
- k. Noticee no. 3, during the Hearings, had raised questions regarding the independence of Deloitte on the basis that Deloitte had been a statutory auditor of certain subsidiaries of the Company and therefore, was prohibited from being appointed for the purposes of the investigation in the affairs of the Company, under Section 144 of the Companies Act, 2013. On the basis of this submission, Noticee no. 3 urged the Hon'ble WTM to discard any reliance on the Report. In this regard, as submitted at the Hearings, it is confirmed on behalf of the Company that Deloitte was not the statutory auditor of the Company and/ or any of its subsidiaries during the period of the Impugned Transactions. Accordingly, the restrictions set out under Section 144 of the Companies Act, 2013 are not applicable.*
- l. In terms of the chronological and factual analysis of the Impugned Transactions, only the interest free advance of INR 145 Crores to Noticee no. 6 by the Company under the Nashik Property Transaction could have possibly been in the knowledge of the RAC. However, as it is evident from the August*



30 Minutes, when the RAC was informed of the consolidated loan of INR 530 Crores to Noticee no. 6 in the week commencing August 22, 2016, the same was presented as a consolidated figure, and no break-up in relation to 1NR 530 Crores was provided for its consideration. Further, the legal opinions sought by the RAC were limited to the loans advanced to Noticee no. 6 and legality of the same, however the Impugned Transactions were neither specified nor identifiable from the said opinions. As such, it is clear and evident that the RAC did not approve diversion of funds of the Company undertaken through the Nashik Property Transaction.

- m. Further, it is noted from the Company's submissions that the loans to AHL, as approved by the RAC and which were recorded in the resolutions passed at the RAC meeting held on August 30, 2016, were never a part of the Impugned Transactions:

<b>SR. No.</b>	<b>PARTICULARS OF THE TRANSACTION</b>	<b>DATE OF INITIAL AGREEMENT/MOU/FACILITY</b>	<b>BRIEF DETAILS OF THE IMPACT ON THE COMPANY, IN TERMS OF THE REPORT</b>
1.	SALE OF NASHIK PROPERTY TO BLUE GARDEN ESTATE PRIVATE LIMITED ("BGEPL", AND SUCH TRANSACTION THE "NASHIK PROPERTY TRANSACTION")	ASSIGNMENT AGREEMENT BETWEEN THE BGEPL AND THE COMPANY - MAY 2016	INR 198 CRORE ROUTED TO NOTICEE NO. 6 AND NOTICEE NO. 7; AND INR 62.59 CRORES PAID TO BGEPL AS INTEREST ON ADVANCE CONSIDERATION
2.	SALE OF KANJURMARG PROPERTY TO BGEPL ("KANJURMARG PROPERTY TRANSACTION")	MEMORANDUM OF UNDERSTANDING BETWEEN BGEPL AND THE COMPANY - FEBRUARY 1, 2017	INR 190 CRORE ROUTED NOTICEE NO. 7; AND 1NR 39.33 CRORES PAID TO BGEPL AS INTEREST ON ADVANCE CONSIDERATION
3.	CHEQUES ISSUED BY THE COMPANY IN FAVOUR OF YES BANK LIMITED ("YES BANK/YBL")	SANCTION LETTER BY YBL TO NOTICEE NO. 6 - OCTOBER 25, 2015	LEGAL NOTICES SENT TO THE COMPANY AND ITS DIRECTORS UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 AND A CRIMINAL COMPLAINT FILED BEFORE THE MAGISTRATE COURT IN DELHI
4.	EUR 44 MILLION LOAN AVAILED BY CG INTERNATIONAL HOLDINGS SINGAPORE PTE. LIMITED ("CG SINGAPORE") FROM STANDARD CHARTERED BANK ("SCB"), GUARANTEED BY THE COMPANY	FACILITY AGREEMENT BETWEEN CG SINGAPORE AND SCB — DECEMBER 15, 2017	EUR 44 MILLION ROUTED TO AVANTHA INTERNATIONAL ASSETS BV ("AVANTHA INTERNATIONAL")
5.	USD 40 MILLION FOREIGN	SANCTION LETTER BY	USD 40 MILLION ROUTED TO NOTICEE NO. 8, AN AVANTHA GROUP COMPANY

	CURRENCY TERM LOAN AVAILED BY CC MIDDLE EAST FROM INDUSIND BANK, GUARANTEED BY CG INTERNATIONAL BV	INDUSIND BANK TO CG MIDDLE EAST FZE— OCTOBER 25, 2017	
6.	OUTSTANDING ADVANCES TO VENDORS IN CG SINGAPORE	CG SINGAPORE ENTERS INTO A SERVICES AGREEMENT WITH MIRABELLE TRADING PTE. LIMITED ("MIRABELLE") — PURPORTED TO BE JANUARY 15, 2013	ADVANCE PAYMENTS MADE TO MIRABELLE AMOUNTING USD 13.15 MILLION
7.	OUTSTANDING ADVANCES TO VENDORS IN CG MIDDLE EAST FZE	PERIOD OF FY 2017-18 AND FY 2018-19	SEVERAL ADVANCES AMOUNTING TO EUR 34 MILLION ARE OUTSTANDING IN THE BOOKS OF CG MIDDLE EAST FZE BETWEEN THE PERIOD OF FY 2017-18 AND FY 201819
8.	OUTSTANDING TRADE RECEIVABLES AGGREGATING TO INR 108 CRORES FROM IDENTIFIED CUSTOMERS	COMPANY, PSOL AND 6 IDENTIFIED SUPPLIERS ENTER INTO A TRIPARTITE AGREEMENT FOR SALE OF GOODS - JANUARY 1, 2017	APPARENT FICTITIOUS PURCHASE OF GOODS TO REDUCE LIABILITY OF PSOL TOWARDS THE COMPANY BY INR 257. 69 CRORES
9.	INR 229 CRORES PAID TO CG POWER SOLUTIONS LIMITED ("PSOL")	NOTICEE NO. 6 ADDRESSES A LETTER TO THE COMPANY PROPOSING TO MAKE A DEPOSIT OF INR 229 CRORES — SEPTEMBER 28, 2018	AS PER THE ACCOUNTING TREATMENT PSOL APPROPRIATED THE AMOUNT AGGREGATING TO INR 229 CRORES RECEIVED FROM NOTICEE NO. 6 TOWARDS PART PAYMENT OF ADVANCES BY PSOL TO NOTICEE NO. 6 AND THEREAFTER THE COMPANY APPROPRIATED THE AMOUNT AGGREGATING TO 1NR 229 CRORE RECEIVED FROM PSOL TOWARDS PART PAYMENT OF ADVANCES BY THE COMPANY TO PSOL.

n. In this regard, the Other Noticees have sought to rely on an e-mail dated June 2, 2016 sent by Atul Gulatee, an ex-employee of the Company, to certain parties (whose names have been deceptively redacted ("AG E-mail"), along with an attachment setting out a table of advances made to Noticee 6 during the period February 4, 2016 up to May 31, 2016 ("List of Advances"). The AG E-mail and the List of Advances have been provided as Annexure C-9 and Annexure C-10 respectively to the GT Reply 1, copies of which are enclosed as Annexure 7. In terms of their submissions, Noticees no. 3, 4 and 5 have also sought to place reliance on the AG E-mail and the List of Advances to demonstrate that the Impugned Transactions were approved by the RAC. It is disappointing and shocking to note that the names of the recipients of the AG Email have been redacted in order to deliberately mislead the Hon'ble WTM. No explanation has been adduced for such redaction.

- o. It is pertinent to note that the alleged information to the members of the RAC through the AG E-mail and the List of Advances has not been recorded in the August 30 Minutes. As set out above, preparation of the August 30 Minutes was initiated by Noticee no. 4, and reviewed by the members of the then RAC. Further, they were subsequently approved by Noticees no. 2, 4 and 5. Accordingly, the August 30 Minutes accurately reflect the proceedings at the RAC Meeting. In line with the 'Guidance Note on the Meetings of the Board of Directors' published by the Institute of Company Secretaries of India, 'Minutes' are the official recording of the proceedings of the meeting and the business transacted at the meeting. Accordingly, when minutes are duly drawn and signed, the contents of the minutes are presumed to be true and the burden of proof lies on those who allege the contents to be not true.*
- p. In any event, a bare perusal of the List of Advances will demonstrate that the information set out therein is bereft of any veracity. To clarify, the said list specified the 'advances' to Noticee no. 6 for the period February 2016 — May 2016. However, the August 30 Minutes refer to the loans advanced to Noticee no. 6 during the period May 2016 — June 2016. Further, the total amount of advances to Noticee no. 6 under the said list is also inconsistent with details of the AHL Loans under the August 30 Minutes. In addition, it is to be noted that the Other Noticees have advanced no evidence or proof that the recipient of the AG E-mail and List of Advances were the members of the then RAC. In addition, the Company is not aware of the List of Advances.*
- q. The Company's submissions in this regard are further substantiated by the Report and the fact that the Impugned Transactions or money involved in the Impugned Transactions was never reflected in the financial statements of the Company. Since these were illegal transactions, the Other Noticees never notified nor sought any approval from the RAC or the Board for entering into, or executing them, and the Other Noticees have not demonstrated that the Impugned Transactions were approved by the RAC/ Board.*
- r. The RAC (which is the audit committee of the Company) was constituted in accordance with Section 177 of the Companies Act, 2013, i.e., with a majority of independent directors. As set out above, the terms of reference of an audit committee under the Companies Act, 2013 include approval or modifications*

of transactions with related parties. Further, the audit committee is empowered to investigate matters under Section 177(4) of the Companies Act, 2013 and for the same purpose, obtain any professional advice from external sources. The August 30 Minutes clearly demonstrate the RAC's conduct when it was apprised of the AHL Loans and also the steps taken to regulate any future transactions in the nature of loans with promoter group companies. Therefore, the law requires the audit committee to exercise reasonable care, diligence and skill reasonably expected from a director. However, it does not necessitate the audit committee to employ any higher standards. The RAC is therefore entitled to generally rely upon the veracity of the information presented to it by the officials of the Company especially the chief financial officer. In the present case, the RAC relied on the information provided by Noticee 4 (who was then the executive director — finance and CFO) in good faith. The RAC was informed by Noticee no. 4 that if the AHL Loans amounting to ₹ 530 Crore were not ratified, the credit facilities of the Company would be frozen by the relevant lenders, on account of the Company forming part of the 'Avantha' group. In order to prevent this, RAC ratified these loans. Further, pursuant to its powers under Section 177(6) of Companies Act, 2013, the RAC sought legal opinions for reputed law firms, namely, Shardul Amarchand Mangaldas and Crawford Bayley and Company, before ratifying the AHL Loans. Thereafter, the RAC set conditions on future lending. In light of the above, it is submitted that appropriate steps were taken by the RAC based on the information they received, vis — a — vis the AHL Loans. Based on consideration of the circumstances that necessitated the AHL Loans, and in order to safeguard the interests of the Company going forward, the RAC passed the following other relevant resolutions in terms of the RAC Meeting: (i) capping loans to promoter group companies to ₹ 1,000 Crore; (ii) requiring any further disbursements to be undertaken post prior intimation to the RAC ("Future Lending Procedure"); (iii) setting an interest rate on such advances at 200 basis points over and above the banks' interest rates; and (iv) setting the timeline for repayment as March 31, 2017. In addition, after having set the limits and other conditions for any future loans to promoter group companies, the RAC monitored further disbursements of such loans and raised concerns

whenever if it was informed of the same by Noticee no. 4, from time to time, through e-mail correspondence. The relevant communication between the members of the RAC and Noticee no. 4 is enclosed. A brief summary of such correspondence is set out below:

- (i) When Noticee no. 4 informed the RAC on October 19, 2016 that related party exposure had increased by ₹ 100 Crore in terms of the Future Lending Procedure, Shirish Apte, one of the members of the then RAC, on October 19, 2019, inquired the circumstances of such an increase;
  - (ii) In addition, Goswami, another member of the then RAC, inquired as to the total exposure of the Company to related parties; and
  - (iii) Following up on the above, Sanjay Labroo, another member of the then RAC, sought clarifications as to whether such amount was released within the 'group' or if the same for the purposes of providing for the shortfalls elsewhere.
- ii. **Cheques issued by the Company in favour of YBL:** In terms of this transaction, post-dated cheques were purportedly issued on behalf of the Company to YBL, for the loan availed of by Noticee no. 6. Issuing such cheques was akin to providing a guarantee under Section 186 of the Companies Act, 2013, however, no Board approval was obtained for the same. Further, the details of such guarantees, including their purpose, were required to be appropriately disclosed to the shareholders as part of the financial statements of the Company, however, the same was not done, in violation of Section 164 of the Companies Act, 2013. In addition, issuing such cheques was also in violation of Section 185 of the Companies Act, 2013, and the requisite corporate authorizations for the same were never obtained, In addition, this transaction may have also been in violation of the LODR Regulations 2015. Thus, it can be seen that the conduct of the Other Noticees has exposed the Company to additional risks and liabilities.
- iii. **GT Reply 1 and Convenience Compilation tendered on behalf of Noticees no. 2, 6, and 8 on December 13, 2019 ("GT Convenience Compilation"):**
- a. Annexure C-1, page 37 of GT Reply 1

*In this regard, please note the Other Noticees have sought to place reliance on an e-mail dated February 8, 2016, sent from a Rakesh Pingulkar from ABFL setting out certain information requests. The Other Noticees have alleged that on account of this e-mail, the transactions involving ABFL were to the knowledge of the RAC/ Board and were approved by them. As set out in the Company Replies, as well as in terms of the Company's oral submissions, the Other Noticees have provided no proof or documentary evidence, including Board resolution/ resolutions passed by the RAC to substantiate their claims. Further, in so far as the above e-mail is concerned, the name of the recipients are once again, deceptively redacted. On account of this, no reliance can be placed on it, and it cannot certainly be the basis to state that the said transactions were to the knowledge of and/ or approved by the RAC/ Board.*

**b. Annexures C-3 to C-6; C-11; C-26 of GT Reply 1 and pages 201 — 205 of the GT Convenience Compilation**

*The above annexures set out the correspondence from certain ex-employees of the Company and other third parties, with respect to the incorporation of the Noticee no. 7 and BGEPL and matters related to the ABFL transactions. Again, it is pertinent to note that the name of the recipients are deceptively redacted. In certain cases, the recipient is Noticee no. 4. On account of this, no reliance can be placed such correspondence, and it cannot certainly be the basis to state that the said transactions were to the knowledge of and/ or approved by the RAC/ Board.*

**c. Annexure C-26 of GT Reply**

*The above annexure sets out an e-mail from Chaturvedi and Shah, the then auditors of the Company, enclosing presentation allegedly made by them to the RAC on May 26, 2017, for FY 2016— 17. Again, the name of the recipients have been deceptively redacted. However, it is certain that Noticee no. 5 is a recipient since the e-mail has been printed from his e-mail account. In view of this, no reliance can be placed on this correspondence to suggest that the Impugned Transactions were to the knowledge of and/ or approved by the RAC/ Board.*

**d. Pages 280 — 281 of the GT Convenience Compilation**

*The documents at the above pages pertain to credit facilities to be extended by YBL to the Company. It is clarified that this loan is separate from the loans advanced by YBL to Noticee no. 6. It is further clarified that the Company had also been advanced loans by ABFL, which are distinct from the loans advanced by ABFL to BGEPL in relation to the Nashik Property Transaction and the Kanjurmarg Property Transaction.*

- iv. *Reply dated October 31, 2019, filed by Noticee no. 4 ("**Noticee no. 4 Reply**")*
- a. *It has been submitted that Noticee no. 4 was authorised under the general power of attorney executed in his favour by the Company in 2009 ("**General POA**"), as the basis for the execution of the documents pertaining to the Nashik Property Transaction and the Kanjurmarg Property Transaction. In this regard, it is pertinent to note the following:*
- b. *Clause 3.7 of the General POA provides as under:*  
*"to grant loans or advances, as sanctioned by the Board of Directors to any subsidiary or associate of the Company on such terms and conditions as the said Attorney may deem expedient, whether unsecured or secured, in the best interest of the Company."*
- c. *Clause 9.1, with respect to property matters under the General POA provides as under:*  
*"9.1. Acquisition, Sale, Lease etc.:  
To purchase, bid at an auction, take on lease, and/or to acquire in manner or to sell, lease, grant tenancy, grant business centre services or otherwise transfer in any manner any immovable properties, whether commercial or residential, or any interests therein, decide the terms and conditions thereof as well as create charge or mortgage thereon, and generally to sign all documentation relating thereto, for the Company and/or its employees, in accordance with the Rules of Procedure for Management ("**Rules of Procedure**") and / or as approved by the Managing Director / Board of Directors."*
- d. *In this regard, it is to be noted that Rules of Procedure of the Company allow only the Board to exercise full powers for disposal of immovable properties*

of the Company. In addition, the documentation relating to the disposal of immovable property was required to be approved by the legal department of the Company. However, as is borne out from the Report and the SEBI Order, Noticee no. 4 purportedly executed documents on behalf of the Company in violation of the General POA, as well as in dereliction of his duties as a director and KMP of the Company.

- e. In fact, it is to be noted that in terms of the statement of Shyam Sundar Pachisia from M/s. S R B C and Co. LLP, one of the joint statutory auditors of the Company, made before the inspectors, (as provided on page 745 of Volume 1V of the petition filed by the Union of India, acting through the Ministry of Corporate Affairs under Section 130 of the Companies Act, 2013 before the National Company Law Tribunal, Mumbai), the following was specified:

"Who is the key decision maker in the Company?"

Response: We have noticed that most of the authorisation for the transactions are either by the Ex-CFO or the current CFO."

It is clarified that 'Ex-CFO' above refers to Noticee no. 4, and the 'current CFO' above refers to Noticee no. 3.

- v. Therefore, as the Impugned Transactions were undertaken for the benefit of entities owned and controlled by Noticee no. 2, which in turn make Noticee no. 2 the actual beneficiary, the latter must be restrained from disposing, alienating or selling his assets, to the extent of the amount owed by the entities controlled by Noticee no. 2 to the Company including through their related entities and cohorts.



## **FINDINGS:**

12. I have considered the *Interim Order* along with the replies/submissions made by the Noticees (vide various letters as detailed above) and all the relevant material on record. I note that Noticee no. 7 had not filed any reply to the *Interim Order* or made any submissions for consideration during the course of these proceedings; further, the aforementioned Noticee had failed to appear for the personal hearing before me. Even though it remained *ex parte*, I have perused the documents available on record while evaluating the case against the said Noticee.

## **PRELIMINARY OBJECTIONS RAISED BY THE NOTICEES –**

13. **ADVERSARIAL PROCEEDINGS:** In their replies, Noticees no. 2–6 and 8 have submitted that the instant proceedings are not adversarial in nature (i.e. between the Company on one side and Noticees no. 2–6 and 8 on the other side) and that the issues are limited to the case alleged against them in the Interim Order. They have further contended that the limited locus of the Company is to place on record before SEBI its compliance with the directions set out in paragraph 6.1 (v) of the Interim Order (see paragraph 1 of this Order). I note that the instant proceedings have arisen since SEBI, upon consideration of the disclosure made by the Company to the Stock Exchanges and other relevant material, had *prima facie* found that Noticees no. 2–6 and 8 were indulging in diversion/siphoning of the funds of the Company which was against the interests of its shareholders. SEBI had taken action immediately by way of the Interim Order to stop further diversion/siphoning of the funds of the Company. The Hon'ble SAT in its Order dated October 1, 2019, had also affirmed the action taken by SEBI observing that *“it was thus extremely necessary that an action on urgent basis was required to stop further defalcation/ diversion/ siphoning of the funds of the Company and to protect the interest of the investors and its shareholders and to instil confidence in the securities market.”* Having regard to the aforementioned, I agree with the Company's contention that as an affected party having a real and subsisting interest in the subject matter of these proceedings, it has to be heard by SEBI.

14. **SUFFICIENCY OF DOCUMENTS:** As noted from the preceding paragraphs, Noticees no. 2–6 and 8 have raised objections regarding compliance by the Company/SEBI with the Order of the Hon’ble SAT dated October 1, 2019, in respect of information/document required to be provided to them. Noticees no. 2–6 and 8 have submitted that despite repeated requests to SEBI and CG Power for records and documents made vide letters/e-mails as detailed in the preceding paragraphs, SEBI and the Company had ignored the same and had called upon them to file a reply in the matter with incomplete and insufficient documents/information. Further, during the hearing held before the Hon’ble SAT on February 18, 2020, the Noticees have also submitted that voluminous documents have been supplied by the Company to SEBI to which the Noticees have had no access. The Noticees had contended that if SEBI were to place reliance on such documents in the instant proceedings, then such documents should be supplied to them.
15. On the issue of sufficiency of documents, upon a consideration of the request for information/documents made by Noticees no. 2–6 and 8, I note that SEBI had directed the Company to provide the information requested by them as per their specific requests on or before December 4, 2019. Further, SEBI had directed that e-mails as referred to in the (a) in the Vaish Report dated August 5, 2019 and in the annexures thereto and (b) all e-mails sent / received by the aforementioned Noticees, be provided by the Company to the aforesaid Noticees on or before December 4, 2019. From the material available on record, it is noted that the Company vide separate letters each dated December 4, 2019, had provided the following *available* information to Noticees no. 2–6 and 8, viz.:
- i. Details of information/documents provided by the Company after directions from SEBI* – The request for information/documents received from Noticees no. 2-6 and 8 and the information/documents supplied by the Company are tabulated below:

**TABLE I – INFORMATION SHARED BY THE COMPANY WITH NOTICEES NO. 2-6 AND 8**

Sr. No.	INFORMATION/DOCUMENTS SOUGHT BY THE NOTICEES NO. 2, 6 AND 8	INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY
1.	STATUTORY AUDITORS PRESENTATIONS / NOTES / REPORTS FOR FY 2015-17	THE PRESENTATIONS MADE BY THE STATUTORY AUDITORS FOR FY 2016-17, EXCEPT FOR THE QUARTER ENDED JUNE 30, 2016 AND SEPTEMBER 30, 2016.
2.	LIST OF RELATED PARTY TRANSACTIONS PLACED BEFORE THE RAC AFTER 26 MAY 2016 AND IN PARTICULAR ON 30 AUGUST 2016, 7 DECEMBER 2016, 9 FEBRUARY 2017, 26 MAY 2017, 11 AUGUST 2017, 9 NOVEMBER 2017, 12 FEBRUARY 2018, 30 MAY 2018 AND FOR FY 2018-19	THE OMNIBUS TRANSACTIONS, ALONG WITH THE LIMITS UTILISED AGAINST THOSE TRANSACTIONS, AS PRESENTED TO THE RAC, AND DETAILED IN THE AGENDA PAPERS, AS PRESENTLY AVAILABLE WITH THE COMPANY, HAVE ALREADY BEEN PROVIDED THROUGH COMPANY LETTER DATED OCTOBER 7, 2019 (REF: COSEC/112/2019-20) ("COMPANY LETTER 2") THE SAME FOR THE PERIOD SPECIFICALLY REQUESTED I.E. 26 MAY 2016, 30 AUGUST 2016, 7 DECEMBER 2016, 9 FEBRUARY 2017, 26 MAY 2017, 11 AUGUST 2017, 9 NOVEMBER 2017, 12 FEBRUARY 2018, 30 MAY 2018 AND FOR FY 2018-19 HAVE ALSO BEEN PROVIDED. DETAILED RELATED PARTY TRANSACTION LIST AS AVAILABLE IN THE RECORDS IN RELATION TO MEETING HELD ON 26 MAY 2016 AND 26 MAY 2017 HAVE ALSO BEEN PROVIDED.
3.	STATEMENTS OF INTER-CORPORATE LOANS, INVESTMENTS AND GUARANTEES PRESENTED BEFORE THE RAC PARTICULARLY ON 30 AUGUST 2016, 9 NOVEMBER 2017, 12 FEBRUARY 2018, 30 MAY 2018, 13 NOVEMBER 2018 AND 12 FEBRUARY 2019	THE INFORMATION REQUESTED WAS PART OF THE TREASURY REPORTS WHICH FORMED PART OF THE MINUTES OF THE MEETINGS OF BOARD OF DIRECTORS OF THE COMPANY <i>IN TOTO</i> , WHICH HAS ALREADY BEEN PROVIDED TO NOTICEE 2 THROUGH COMPANY LETTER DATED SEPTEMBER 19, 2019 (COSEC/74/2019-20) ("COMPANY LETTER 1"). IN ANY EVENT, THE TREASURY REPORTS FOR THE PERIOD APRIL 1, 2016 TO MARCH 31, 2019 HAVE BEEN PROVIDED.
4.	PRESENTATIONS MADE BY THE CFO ON THE QUARTERLY FINANCIAL RESULTS	PRESENTATIONS MADE BY THE CFO AS AVAILABLE WITH THE COMPANY, HAVE ALREADY BEEN PROVIDED AS PART OF THE SUPPORTING DOCUMENTS TO RELEVANT AGENDAS TO THE BOARD MEETINGS OF THE COMPANY, THROUGH COMPANY LETTER 2. IN ANY EVENT, PRESENTATIONS MADE BY THE CFO ON THE QUARTERLY RESULTS FROM APRIL 1, 2016 UP TO MARCH 31, 2019 HAVE BEEN PROVIDED.
5.	UTILISATION OF BORROWINGS / LENDING/ GUARANTEE APPROVALS PRESENTED TO THE BOARD	THE INFORMATION REQUESTED FORMED PART OF THE TREASURY REPORTS WHICH FORMED PART OF THE MINUTES OF THE BOARD OF THE COMPANY <i>IN TOTO</i> , WHICH HAVE ALREADY BEEN PROVIDED THROUGH COMPANY LETTER 1. IN ANY EVENT, THE TREASURY REPORTS FOR THE PERIOD APRIL 1, 2016 TO MARCH 31, 2019 HAVE BEEN PROVIDED.
6.	TREASURY REPORTS	THE TREASURY REPORTS OF THE COMPANY FOR THE PERIOD FROM APRIL 1, 2016 TO MARCH 31, 2019 HAVE BEEN PROVIDED.
7.	REPORT / NOTES / PRESENTATIONS BY CHAIRMAN OF RAC TO THE BOARD INCLUDING: i. "517.07 SHIRISH APTE (CHAIRMAN) BRIEFED ... THE KEY ISSUES DISCUSSED WERE .... INTERNAL AUDIT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2015..."	IN RELATION TO LEGAL (LITIGATION) AND RISK (ERM) PRESENTATIONS, THE SAME HAVE ALREADY BEEN PROVIDED, AS WERE AVAILABLE WITH THE COMPANY THROUGH COMPANY LETTERS 2.

**TABLE I – INFORMATION SHARED BY THE COMPANY WITH NOTICEES NO. 2–6 AND 8**

SR. No.	INFORMATION/DOCUMENTS SOUGHT BY THE NOTICEES NO. 2, 6 AND 8	INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY
ii.	"521.07. INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS"	IN ANY EVENT, LEGAL (LITIGATION) AND RISK (ERM) PRESENTATIONS FOR THE PERIOD AS REQUESTED HERE HAVE ALSO BEEN PROVIDED.
iii.	"522.07. INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS ..... INTERNAL AUDIT PRESENTED A DETAILED AND MICRO LEVEL ANALYSIS.";	FURTHER, THE PRESENTATIONS MADE BY THE OPERATIONS COMMITTEE FORM PART OF THE MINUTES OF RAC MEETINGS WHICH HAVE ALREADY PROVIDED THROUGH COMPANY LETTER 1.
iv.	"523.07. INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS";	IN ANY EVENT, THE PRESENTATIONS MADE BY THE OPERATIONS COMMITTEE AS FORMING PART OF THE MINUTES OF RAC MEETINGS HELD ON AUGUST 19, 2019 HAVE BEEN PROVIDED.
v.	"524.07. INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS / INTERCOMPANY TRANSACTIONS";	ALL INTERNAL AUDIT PRESENTATIONS FORMED PART OF THE AGENDA OF THE BOARD MEETINGS AND HAVE ALREADY BEEN PROVIDED THROUGH COMPANY LETTER 2.
vi.	"525.16... INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS / INTERCOMPANY TRANSACTIONS . ENTERPRISE RISK MANAGEMENT (ERM) PRESENTED BY RAVI RAJAGOPAL...";	AS A MATTER OF PRACTICE, PLEASE NOTE THAT THE CHAIRMAN OF THE RAC ORALLY BRIEFS THE BOARD ON THE DISCUSSION AND DECISION TAKEN AT THE RAC MEETINGS. SUCH BRIEFINGS WERE RECORDED IN THE BOARD MINUTES AND THE SUPPORTING DOCUMENTS INCLUDING THE AFORESAID PRESENTATIONS FORMS PART OF THE RESPECTIVE AGENDA FOLDERS OF RAC MEETINGS WHICH WERE PROVIDED EARLIER.
vii.	"526.09. INTER-ALIA TOOK NOTE OF LITIGATION SUBMISSION AND STATEMENT OF RELATED PARTY TRANSACTIONS / INTERCOMPANY TRANSACTIONS";	
viii.	"527.08. INTER-ALIA TOOK NOTE OF LITIGATIONS, NOTIFIED CLAIMS, CONTRACTUAL LIQUIDATED DAMAGES AND DEBTORS OVER 365 DAYS AT THE COMPANY, RELATED PARTY TRANSACTIONS DURING THE 2ND QUARTER ENDED 30TH SEPTEMBER 2017 AND INTERCOMPANY TRANSACTIONS. NOTED DETAILS OF RELATED PARTY TRANSACTIONS ,, AND THE KEY REPRESENTATIONS MADE BY THE MANAGEMENT";	
ix.	"528.8 ... INTER-ALIA TOOK NOTE OF UPDATE ON LITIGATIONS, SUMMARY OF RELATED PARTY TRANSACTIONS FOR THE 3RD QUARTER ENDED 31ST DECEMBER, 2017, REPORT ON INTER-CORPORATE LOANS AND INVESTMENTS, INTERNAL AUDIT PRESENTATION AND CRITERIA FOR DETERMINING OMNIBUS LIMITS FOR RELATED PARTY TRANSACTIONS FOR FY2018- 19"	
x.	"531.9 ... INTER-ALIA TOOK NOTE OF UPDATE ON LITIGATIONS, ENTERPRISE RISK MANAGEMENT, SUMMARY OF RELATED PARTY TRANSACTIONS FOR THE 4TH QUARTER ENDED MARCH 31, 2018, INTER-CORPORATE LOANS AND INVESTMENTS, INTERNAL AUDIT PRESENTATION"	
xi.	"532.8 ... INTER-ALIA TOOK NOTE OF LEGAL AND RISK PRESENTATION, SUMMARY OF RELATED PARTY TRANSACTIONS FOR THE 1ST QUARTER ENDED JUNE 30, 2018, INTER CORPORATE LOANS / INVESTMENTS, INTERNAL AUDIT PRESENTATION"	
xii.	"533.9 ... INTER-ALIA TOOK NOTE OF LEGAL AND RISK PRESENTATION, SUMMARY OF RELATED PARTY TRANSACTIONS FOR THE 2ND QUARTER ENDED SEPTEMBER 30, 2018, INTER CORPORATE LOANS / INVESTMENTS, INTERNAL AUDIT PRESENTATION"	
xiii.	"534.9 ... INTER-ALIA TOOK NOTE OF LEGAL AND RISK PRESENTATION, SUMMARY OF RELATED PARTY	

**TABLE I – INFORMATION SHARED BY THE COMPANY WITH NOTICEES NO. 2-6 AND 8**

<b>Sr. No.</b>	<b>INFORMATION/DOCUMENTS SOUGHT BY THE NOTICEES NO. 2, 6 AND 8</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
	<p>TRANSACTIONS FOR THE 3RD QUARTER ENDED DECEMBER 31, 2018, INTER CORPORATE LOANS / INVESTMENTS, INTERNAL AUDIT PRESENTATION AND CRITERIA FOR GRANT OF OMNIBUS APPROVAL FOR RELATED PARTY TRANSACTION FOR FY 2019 -20"</p> <p>xiv. "534.9 ... INTER-ALIA TOOK NOTE OF LEGAL AND RISK PRESENTATION, SUMMARY OF RELATED PARTY TRANSACTIONS FOR THE 3RD QUARTER ENDED DECEMBER 31, 2018, INTER CORPORATE LOANS / INVESTMENTS, INTERNAL AUDIT PRESENTATION AND CRITERIA FOR GRANT OF OMNIBUS APPROVAL FOR RELATED PARTY TRANSACTION FOR FY 2019 -20"</p> <p>xv. "540.8 ... THE OPS COMMITTEE ALSO PROVIDED ITS DETAILED RECOMMENDATIONS TO THE RAC IN THIS REGARD DRAFT OF THE DISCLOSURE WAS PRESENTED BY THE RAC. A REVISED DRAFT. WAS SUBMITTED FOR APPROVAL"</p> <p>xvi. "541.7 ... PRESENTED TO THE BOARD THE RECOMMENDATIONS OF THE RAC ON THE STANDALONE AND CONSOLIDATED FINANCIAL STATEMENTS AS PLACED BEFORE THE RAC MEETING"</p>	
8.	THE BOARD RESOLUTIONS OF SUBSIDIARY COMPANIES TABLED BEFORE THE BOARD	THE BOARD RESOLUTIONS OF SUBSIDIARIES TABLED BEFORE THE BOARD OF THE COMPANY FOR THE PERIOD FROM APRIL 1, 2015 TO AUGUST 30, 2019, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
9.	VIDEO RECORDING OF THE BOARD MEETING HELD ON 30 AUGUST 2019 AND NOMINATION AND REMUNERATION COMMITTEE MEETING HELD ON 30 AUGUST 2019.	IN LINE WITH THE SEBI EMAIL, NOTICEE NO. 2 AND/ OR THE LEGAL REPRESENTATIVES OF NOTICEES NO. 2, 6, AND 8 MAY INSPECT THESE VIDEO RECORDINGS AT THE PREMISES OF THE COMPANY ON ANY WORKING DAY BETWEEN 11 A.M. TO 5 P.M. WITH AN ADVANCE NOTICE OF ONE WORKING DAY. THE RIGHT OF INSPECTION HAS BEEN PROVIDED TO NOTICEE NO. 2 IN THE PAST AS WELL.

**TABLE II – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 3**

<b>Sr. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 3</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
1.	MINUTES OF RAC AND BOARD MEETINGS OF THE COMPANY (CG) FROM APRIL 1, 2012 TO DECEMBER 31, 2014 ALONG WITH ALL ANNEXURES AND PRESENTATIONS MADE TO THE RAC AND/OR THE BOARD WITH RESPECT TO THE CONCEPTUALIZATION AND FORMATION OF JV IN INDONESIA (INCLUDING DRAFT MINUTES)	THE SIGNED MINUTES, DRAFT MINUTES AND AGENDA OF MEETINGS OF THE BOARD AND RAC OF THE COMPANY, ALONG WITH THE SUPPORTING DOCUMENTS INCLUDING PRESENTATIONS FOR CONCEPTUALIZATION AND FORMATION OF JV IN INDONESIA, FOR THE PERIOD FROM APRIL 1, 2012 TO DECEMBER 31, 2014, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
2.	MINUTES OF RAC AND BOARD MEETINGS OF THE COMPANY (CG) FROM 1ST APRIL 2016 TO 11TH AUGUST 2017 ALONG WITH ALL ANNEXURES AND PRESENTATIONS MADE AGAINST EACH AGENDA ITEM SPECIFIED THEREIN (INCLUDING DRAFT MINUTES)	THE SIGNED MINUTES, DRAFT MINUTES AND AGENDA OF MEETINGS OF THE BOARD AND RAC OF THE COMPANY, ALONG WITH THE SUPPORTING DOCUMENTS, FOR THE PERIOD FROM APRIL 1, 2016 TO AUGUST 11, 2017, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
3.	PRESENTATION MADE BY THE STATUTORY AUDITORS EVERY QUARTER TO THE RAC OF THE COMPANY (CG) FROM 1ST APRIL, 2016 TO AUGUST 2017	THE PRESENTATIONS MADE BY THE STATUTORY AUDITORS TO THE RAC FOR THE QUARTERS ENDED DECEMBER 31, 2016, MARCH 31, 2017 AND JUNE 30, 2017 HAVE BEEN PROVIDED.

**TABLE II – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 3**

<b>Sr. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 3</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
4.	LEGAL OPINIONS OBTAINED BY THE BOARD OF THE COMPANY (CG) FROM EXTERNAL LEGAL ADVISORS FOR THE PERIOD BETWEEN 1ST APRIL 2016 AND 30TH AUGUST 2017, PERTAINING TO RELATED PARTY TRANSACTIONS AND / OR THE <i>IMPUGNED TRANSACTIONS</i>	LEGAL OPINIONS OBTAINED FROM SHARDUL AMARCHAND MANGALDAS AND CRAWFORD BAYLEY AND CO. IN RELATION TO THE RELATED PARTY TRANSACTIONS/ IMPUGNED TRANSACTION FOR THE PERIOD BETWEEN APRIL 1, 2016 AND AUGUST 30, 2017 HAVE BEEN PROVIDED.
5.	SIGNED AND EXECUTED VERSION OF THE DOCUMENTS RELATED TO GUARANTEE PROVIDED BY THE COMPANY WITH RESPECT TO THE FACILITY AGREEMENT (AS REFERRED IN PARA NO. 4.1(IV)(A) OF THE INTERIM ORDER)	THE EXECUTED COPY OF THE GUARANTEE IN RELATION TO THE FACILITY AVAILED FROM STANDARD CHARTERED BANK AS REFERRED IN PARAGRAPH NO. 4.1(IV)(A) OF THE INTERIM ORDER BY SEBI DATED SEPTEMBER 17, 2019 HAS BEEN PROVIDED.
6.	ALL PRESENTATIONS MADE BY THE THEN MD&CEO TO THE CG BOARD PERTAINING TO THE JV OF CG-PLN OF INDONESIA FROM JAN 2012 TILL DEC 2014	PRESENTATIONS MADE BY THE THEN MD&CEO TO THE BOARD PERTAINING TO THE JOINT VENTURE FOR THE PERIOD BETWEEN JANUARY 2012 AND DECEMBER 2014 AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
7.	ALL PRESENTATIONS AND E-MAILS MADE BY MD&CEO TO THE CG BOARD AND / OR MEMBERS OF THE CG BOARD ON THE HUNGARIAN DIVESTMENT DURING JANUARY 1, 2017 TO DECEMBER 31, 2018;	THE PRESENTATIONS MADE BY MD&CEO TO THE COMPANY OR MEMBERS OF THE COMPANY ON HUNGARIAN DIVESTMENT FOR THE PERIOD BETWEEN JANUARY 1, 2017 AND DECEMBER 31, 2018, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.

**TABLE III – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 4**

<b>Sr. No.</b>	<b>DOCUMENT/ INFORMATION SOUGHT BY NOTICEE NO. 4</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
1	ALL MINUTES OF RAC AND BOARD MEETINGS OF THE COMPANY FROM APRIL 1, 2012 TO DECEMBER 31, 2013 AND JANUARY 1, 2014 TO AUGUST 30TH, 2019 ALONG WITH ALL ANNEXURES AND PRESENTATIONS MADE TO THE RAC AND/ OR BOARD INCLUDING DRAFT MINUTES CIRCULATED BY COMPANY SECRETARY	THE MINUTES OF THE MEETINGS OF THE BOARD, AND THE RAC, ALONG WITH THE AGENDAS AND SUPPORTING DOCUMENTS (INCLUDING THE PRESENTATIONS, AS AVAILABLE WITH THE COMPANY) FOR THE PERIOD APRIL 1, 2016 TO SEPTEMBER 30, 2017, HAVE ALREADY BEEN PROVIDED IN THE PAST. FOR THE REMAINING PERIOD AS REQUESTED THE MINUTES OF MEETINGS OF THE BOARD AND RAC OF THE COMPANY, ALONG WITH THE AGENDAS AND SUPPORTING DOCUMENTS (INCLUDING PRESENTATIONS), AS AVAILABLE WITH THE COMPANY, HAVE BEEN PROVIDED. THE DRAFT MINUTES OF SUCH BOARD AND RAC MEETINGS AS AVAILABLE WITH THE COMPANY FOR THE REQUESTED PERIOD HAVE ALSO BEEN PROVIDED.
2	AGENDA OF RAC AND BOARD MEETINGS AND NOTES ON DELIBERATIONS THEREON FROM APRIL 1, 2012 TO DECEMBER 31, 2013 AND JANUARY 1ST, 2014 TO AUGUST 30, 2019	THE MINUTES OF MEETINGS OF THE BOARD AND RAC OF THE COMPANY, ALONG WITH THE AGENDAS AND SUPPORTING DOCUMENTS (INCLUDING PRESENTATIONS), AS AVAILABLE WITH THE COMPANY, HAVE BEEN PROVIDED.
3	PRESENTATION MADE BY STATUTORY AUDITORS EVERY QUARTER TO THE RAC FROM APRIL 1ST, 2016 TO AUGUST 30TH, 2019	THE QUARTERLY PRESENTATIONS MADE BY THE STATUTORY AUDITORS TO THE RAC FROM APRIL 1, 2017 TO SEPTEMBER 30, 2017 AS AVAILABLE WITH THE COMPANY HAVE ALREADY BEEN PROVIDED BY THE COMPANY, THROUGH COMPANY LETTER DATED OCTOBER 7, 2019.

**TABLE III – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 4**

SR. No.	DOCUMENT/ INFORMATION SOUGHT BY NOTICEE NO. 4	INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY
		IN ANY EVENT, PRESENTATIONS MADE BY THE STATUTORY AUDITORS TO THE RAC FOR THE QUARTERS ENDED DECEMBER 31, 2016 AND MARCH 31, 2017, FY 2017-2018 AND PERIOD FROM APRIL, 2018 TO AUGUST 30, 2019, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED. THERE ARE NO PRESENTATION MADE BY THE STATUTORY AUDITORS FOR THE YEAR ENDED MARCH 31, 2019, AND FOR 1ST QUARTER OF FY2019-20
5	ALL MINUTES AND AGENDA PAPERS OF THE BOARD MEETINGS OF CGIHS, CGME AND CGIBV (SUBSIDIARIES OF THE COMPANY) FROM APRIL 1, 2016 TO AUGUST 30, 2019 TOGETHER WITH ALL BACKGROUND PAPERS INCLUDING ANNEXURES AND PRESENTATIONS , IF ANY, AGENDA NOTES AND DRAFT MINUTES	THE SIGNED MINUTES/CIRCULAR RESOLUTIONS, THE DRAFT MINUTES/DRAFT CIRCULAR RESOLUTIONS AND THE AGENDA ALONG WITH BACK UP DOCUMENTS OF MEETINGS OF THE BOARD AND RAC OF THE CGIHS, CGME AND CGIBV, ALONG WITH THE SUPPORTING DOCUMENTS, FOR THE PERIOD FROM APRIL 1, 2016 TO AUGUST 30, 2019, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
6	THE DOCUMENTS PERTAINING TO AMOUNT UTILIZED BY ACTON TOWARDS PAYMENT OF PURPORTED LIABILITY OWED BY BILT GRAPHIC PAPER PRODUCTS LIMITED (“BGPPL”) TO ABFL. (AS REFERRED I. PARA NO 4.1 (II)(B) OF THE INTERIM ORDER.	AVAILABLE IN PHASE 1 INVESTIGATION REPORT - ANNEXURE 3, CLAUSE 2.2.3(G).
7	DOCUMENT RELATING TO CHARGE IN THE FORM OF NEGATIVE LIEN CREATED IN FAVOUR OF YES BANK LIMITED ON THE KANJURMARG PROPERTY (AS REFERRED IN PARA 4.1(II)(C) OF THE INTERIM ORDER)	A COPY OF THE EXECUTED LOAN AGREEMENT DATED JULY 22, 2016 IN RELATION TO THE NEGATIVE LIEN CREATED IN FAVOUR OF THE YES BANK LIMITED ON THE KANJURMARG PROPERTY AS REFERRED IN PARAGRAPH NO. 4.1(II)(C) OF THE INTERIM ORDER BY SEBI DATED SEPTEMBER 17, 2019 AND ALSO CHARGE FORM FILED WITH THE REGISTRAR OF COMPANIES HAS BEEN PROVIDED.
8	YES BANK LETTER/ INTIMATION TO THE COMPANY REQUESTING FOR THE RENEWAL OF THE CHEQUE FURNISHED OF Rs 210 CRORE WITH THE COMFORT LETTER DATED 4/11/2015 ( AS REFERRED IN PARA NO 4.1(II)(C) OF THE INTERIM ORDER)	PARAGRAPH 4.1(II)(C) OF THE INTERIM ORDER PASSED BY SEBI DATED SEPTEMBER 17, 2019 (“SEBI ORDER”) DOES NOT REFER TO ANY REQUEST FOR RENEWAL OF CHEQUES BY YES BANK LIMITED.  IN THE EVENT THE REFERENCE IS TO PARAGRAPH 4.1(III) (A) OF THE SEBI ORDER, E-MAIL BY YES BANK LIMITED TO THE COMPANY FOR THE RENEWAL OF THE CHEQUE WORTH ₹ 210 CRORE HAS BEEN PROVIDED.
9	ALL DOCUMENTS RELATED TO GUARANTEE PROVIDED BY THE COMPANY WITH RESPECT TO THE FACILITY AGREEMENT ( AS REFERRED IN PARA NO 4.1(IV)(A) OF THE INTERIM ORDER)	THE EXECUTED COPY OF THE GUARANTEE AGREEMENT IN RELATION TO THE FACILITY AVAILED FROM STANDARD CHARTERED BANK AS REFERRED IN PARAGRAPH NO. 4.1(IV)(A) OF THE SEBI ORDER HAS BEEN PROVIDED.
10	LETTER DATED 29/9/2018 FROM AVANTHA HOLDINGS TO THE COMPANY (AS REFERRED IN PARA NO 4.1 (IX)(D) OF THE INTERIM ORDER	THE REQUESTED INFORMATION HAS ALREADY BEEN PROVIDED BY THE COMPANY TO THE NOTICEE THROUGH E-MAIL DATED OCTOBER 18, 2019. IN ANY EVENT, THE LETTER DATED SEPTEMBER 28, 2018 FROM AVANTHA HOLDINGS TO THE COMPANY HAS ONCE AGAIN BEEN PROVIDED.

**TABLE III – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 4**

<b>SR. No.</b>	<b>DOCUMENT/ INFORMATION SOUGHT BY NOTICEE NO. 4</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
12	LETTER/ E-MAIL OF K. K. MANKESHWAR AND CO, CHARTERED ACCOUNTANTS TO THE COMPANY ACCEPTING APPOINTMENT AS STATUTORY AUDITORS OF THE COMPANY	THE LETTER OF CONSENT OF KK MANKESHWAR AND APPOINTMENT LETTER FROM THE COMPANY TO THEM AS THE STATUTORY AUDITORS OF THE COMPANY HAVE BEEN PROVIDED.
13	LETTER OF AWARENESS SIGNED BY THE CHAIRMAN OF THE COMPANY WITH RESPECT TO THE SPV TRANSACTIONS OF THE COMPANY (BLUE GARDEN AND ACTON) FROM APRIL 1, 2016 TO MARCH 31ST, 2017	A COPY OF THE LETTER OF AWARENESS DATED JANUARY 23, 2017 SIGNED BY NOTICEE NO. 2 RESPECT TO THE SPV TRANSACTIONS OF THE COMPANY HAS BEEN PROVIDED.
14	TREASURY REPORTS SUBMITTED BY THE TREASURY DEPARTMENT (ATUL GULATEE OR OTHERS) TO THE BOARD EVERY QUARTER FROM APRIL 1, 2016 TO MARCH 31, 2019.	COPIES OF THE TREASURY REPORTS OF THE COMPANY FOR THE PERIOD APRIL 1, 2016 AND MARCH 31, 2019, AS AVAILABLE WITH THE COMPANY HAVE BEEN PROVIDED.
15	FIRST DRAFT OF MANAGEMENT DISCUSSION AND ANALYSIS ( MD AND A) PREPARED BY INDEPENDENT DIRECTOR DR. OMKAR GOSWAMI AND FORWARDED TO THE COMPANY ( CFO AND ACCOUNTS TEAM) FOR THE YEAR 2016-17	FIRST DRAFT OF MANAGEMENT DISCUSSION AND ANALYSIS (MD AND A) PREPARED BY DR. OMKAR GOSWAMI AND FORWARDED TO THE COMPANY (CEO, CFO AND ACCOUNTS TEAM) FOR THE YEAR 2016-17 HAS BEEN PROVIDED.

**TABLE IV – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 5**

<b>SR. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 5 – B. HARIHARAN</b>	<b>INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY</b>
1.	ALL E-MAILS / CORRESPONDENCE (a) AMONGST THE DIRECTORS OF CG POWER; (b) BETWEEN ANY DIRECTOR ON ONE HAND IN PARTICULAR, INCLUDING SUDHIR MATHUR (WHOLE TIME EXECUTIVE DIRECTOR) AND THE STATUTORY AUDITOR(S) OF THE COMPANY  WITH RESPECT TO THE SECTION 143(12) OF COMPANIES ACT LETTER BY THE AUDITORS TO THE COMPANY PERTAINING TO INFORMATION QUA ALLEGED FRAUD;	THE LETTERS RECEIVED FROM M/S SRBC AND CO. LLP AND THE RESPONSES SENT TO THEM PURSUANT TO THE NOTICE UNDER SECTION 143(12) HAVE BEEN PROVIDED.
2.	MINUTES OF RAC AND BOARD MEETINGS OF THE COMPANY FROM 1 APRIL, 2012 TO 31 DECEMBER 2013 AND 1 APRIL 2016 TO 30 AUGUST 2019 ALONG WITH ALL ANNEXURES AND PRESENTATIONS MADE TO THE RAC AND/OR THE BOARD INCLUDING DRAFT MINUTES;	THE MINUTES OF THE MEETINGS OF BOARD OF THE COMPANY AND THE RAC, ALONG WITH THE AGENDA AND OTHER PRESENTATIONS FOR THE PERIOD HE WAS A DIRECTOR AS WAS AVAILABLE WITH THE COMPANY, HAVE ALREADY BEEN PROVIDED TO THE NOTICEE IN THE PAST.  FOR THE REMAINING PERIOD AS REQUESTED, THE MINUTES AND AGENDA OF MEETINGS OF THE BOARD AND RAC OF THE COMPANY, ALONG WITH THE SUPPORTING DOCUMENTS, FOR THE PERIOD FROM APRIL 1, 2012 TO OCTOBER 31, 2012, AND MARCH 9, 2019 TO APRIL 30, 2019, AS AVAILABLE WITH THE COMPANY, HAVE BEEN PROVIDED.  CERTAIN AGENDA DOCUMENTS FOR MEETING HELD ON MAY 25, 2012, JULY 20, 2012 AND JANUARY 28 AND 29, 2013 WERE PROVIDED AS AVAILABLE WITH THE COMPANY AND WE ARE UNABLE TO ASCERTAIN WHETHER THOSE ARE FINAL OR DRAFT AGENDAS.



TABLE IV – INFORMATION SHARED BY THE COMPANY WITH NOTICEE NO. 5		
Sr. No.	DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 5 – B. HARIHARAN	INFORMATION/DOCUMENTS SUPPLIED BY THE COMPANY
		THE DRAFT MINUTES OF BOARD AND RAC MEETINGS AS AVAILABLE IN THE RECORDS OF THE COMPANY FOR THE REQUESTED PERIOD HAVE BEEN PROVIDED.
3.	PRESENTATION MADE BY THE STATUTORY AUDITORS EVERY QUARTER TO THE RAC/FROM 1 APRIL, 2016 TO 30 AUGUST 2019;	THE QUARTERLY PRESENTATIONS MADE BY THE STATUTORY AUDITORS TO THE RAC FOR FY 2017-2018 AND APRIL 1, 2018 UP TO MARCH 8, 2019 HAVE ALREADY BEEN PROVIDED TO THE NOTICEE BY THE COMPANY, THROUGH COMPANY LETTER DATED OCTOBER 16, 2019.  IN ANY EVENT, PRESENTATIONS MADE BY THE STATUTORY AUDITORS TO THE RAC FOR THE QUARTERS ENDED DECEMBER 31, 2016, MARCH 31, 2017; FY 2017-2018 AND APRIL 1, 2018 UP TO AUGUST 30, 2019 HAVE BEEN PROVIDED. KINDLY NOTE THERE ARE NO PRESENTATION MADE BY THE STATUTORY AUDITORS FOR THE YEAR ENDED MARCH 31, 2019, AND FOR 1ST QUARTER OF FY2019-20
4.	DOCUMENTS IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> (INCLUDING PRESENTATIONS AND CORRESPONDENCE BETWEEN THE MD AND PERSONNEL / RAC / BOARD MEMBERS AS AVAILABLE WITH THE COMPANY);	ALL DOCUMENTS IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> HAVE BEEN PROVIDED TO THE NOTICEE, AS MADE AVAILABLE BY VAISH ASSOCIATES TO THE COMPANY, ON OCTOBER 18, 2019.
5.	COMPLETE LIST OF THE WARRANTY CLAIMS ON THE COMPANY AND OR ITS SUBSIDIARIES NOTIFIED BY THE BUYER DURING PROJECT SPEAR (DIVESTMENT OF ALL OVERSEAS SUBSIDIARIES OF POWER BU) AS REFERRED IN PARA NO. 4.1 (VII) (A) OF THE INTERIM ORDER;	THE COMPLETE LIST OF WARRANTY CLAIMS ON THE COMPANY AND ITS SUBSIDIARIES DURING PROJECT SPEAR AS REFERRED TO IN PARAGRAPH NO. 4.1 (VII) (A) OF THE INTERIM ORDER PASSED BY SEBI ON SEPTEMBER 17, 2019 HAVE BEEN PROVIDED.
6.	DRAFT MINUTES SENT BY COMPANY SECRETARY TO ALL THE DIRECTORS, MD&CEO, MODIFICATION (S) SUGGESTED, IF ANY AND THE FINAL MINUTES RECORDED ALONG WITH THE SECRETARIAL WORKING NOTES DURING THE BOARD PROCEEDINGS FOR THE PERIOD FROM 1 APRIL 2017 TO 30 AUGUST 2019.	THE DRAFT MINUTES OF BOARD AND RAC MEETINGS FOR THE PERIOD BETWEEN APRIL 1, 2017 AND AUGUST 30, 2019 WERE PROVIDED.
7.	LETTER/EMAIL OF CG POWER APPOINTING ASHWIN MANKESHWAR, PARTNER OF KK MANKESHWAR, STATUTORY AUDITORS	THE LETTER OF APPOINTMENT OF ASHWIN MANKESHWAR AS THE STATUTORY AUDITOR OF THE COMPANY HAS BEEN PROVIDED.

- ii. ***Details of information/documents not provided by the Company after directions from SEBI*** – The following tables indicate the list of information/documents sought by Noticees no. 2–6 and 8 that were not provided by the Company along with the reasons to substantiate why they were not provided to the said Noticees.

TABLE V – INFORMATION NOT SHARED BY THE COMPANY WITH NOTICEES NO. 2–6 AND 8		
Sr. No.	DOCUMENTS/INFORMATION SOUGHT BY NOTICEES NO. 2, 6 AND 8	COMPANY'S RESPONSE
1.	MINUTES OF THE OPERATIONS COMMITTEE	AS COMMUNICATED IN TERMS OF THE LETTER SENT BY THE COMPANY, THE INFORMATION REQUESTED FOR IS NOT SEPARATELY AVAILABLE WITH THE COMPANY.

2.	EMAILS AND COMMUNICATIONS EXCHANGED AMONGST MEMBERS OF THE OPS COMMITTEE AND M/S VAISH ASSOCIATES IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> LEADING TO THE VAISH REPORT FROM THE TIME THAT M/S VAISH ASSOCIATES WERE APPOINTED UNTIL THE VAISH REPORT.	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  PLEASE NOTE THAT THERE ARE NO COMMUNICATIONS OTHER THAN E-MAILS.
3.	COMMUNICATIONS EXCHANGED BETWEEN OPERATING PERSONNEL OF THE COMPANY, I.E. THE 5 MOST SENIOR EXECUTIVES / EMPLOYEES OF EACH THE TREASURY DEPARTMENT, ACCOUNTS DEPARTMENT, LEGAL DEPARTMENT AND SECRETARIAL DEPARTMENT OF THE COMPANY, RAVI RAJAGOPAL, THE MD&CEO AND MEMBERS OF THE RAC FROM 2016 TILL DATE, IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> LEADING TO THE VAISH REPORT.	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  PLEASE NOTE THAT THERE ARE NO COMMUNICATIONS OTHER THAN E-MAILS.
<b>Sr. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 3</b>	<b>COMPANY'S RESPONSE</b>
1.	ALL PRESENTATIONS AND E-MAILS MADE BY <i>MD&amp;CEO</i> TO THE CG BOARD AND / OR MEMBERS OF THE CG BOARD ON THE HUNGARIAN DIVESTMENT DURING JANUARY 1, 2017 TO DECEMBER 31, 2018;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
2.	ALL E-MAILS / CORRESPONDENCE BETWEEN JAN PRINS, ISTVAAN SZENDRODI, LIVIA NEMETH, RAVI RAJAGOPAL, AND THE MD&CEO IN RESPECT OF WARRANTY AND OTHER PRODUCT /CONTRACT RELATED CLAIMS PERTAINING TO THE HUNGARIAN ENTITY BETWEEN 1 JANUARY 2017 TO 31 DECEMBER 2018 AS REFERRED IN PARA NO. 4.1 (VII) (A) OF THE INTERIM ORDER;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.
3.	PRESENTATION MADE BY STATUTORY AUDITORS EVERY QUARTER TO THE RAC FROM APRIL 1ST, 2016 TO AUGUST 30TH, 2019	THE PRESENTATIONS MADE FOR THE QUARTERS ENDED JUNE 30, 2016 AND SEPTEMBER 30, 2016 ARE NOT PRESENTLY AVAILABLE WITH THE COMPANY.
4.	ALL E-MAILS BY/TO ERNST AND YOUNG / SRBC AND KK MANKESHWAR AND CO TO/FROM THE COMPANY AND VICE-VERSA I.E. TREASURY DEPARTMENT (ATUL GULATEE, ABHISHEK KABRA AND RAVIKANT ALLAM), ACCOUNTS DEPARTMENT (SUSHEEL TODI, SHRIKANT JADHAV AND SAMIR GHIYA), SECRETARIAL DEPARTMENT (COMPANY SECRETARY AT RELEVANT POINT OF TIME) , LEGAL DEPARTMENT (RAVI RAJAGOPAL AND SOMASHISH MOHAPATRA) AND DIRECTORS OF THE COMPANY BETWEEN MARCH 1, 2018 AND AUGUST 30, 2019.	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
<b>Sr. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 4</b>	<b>COMPANY'S RESPONSE</b>
1.	ALL E-MAILS BY/TO ERNST AND YOUNG / SRBC AND KK MANKESHWAR AND CO TO/FROM THE COMPANY AND VICE-VERSA I.E. TREASURY DEPARTMENT (ATUL GULATEE, ABHISHEK KABRA AND RAVIKANT ALLAM), ACCOUNTS DEPARTMENT (SUSHEEL TODI, SHRIKANT JADHAV AND SAMIR GHIYA), SECRETARIAL DEPARTMENT (COMPANY SECRETARY AT RELEVANT POINT OF TIME), LEGAL DEPARTMENT (RAVI RAJAGOPAL AND SOMASHISH MOHAPATRA) AND DIRECTORS OF THE COMPANY BETWEEN MARCH 1, 2018 AND AUGUST 30, 2019.	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.

2.	EMAILS AND CORRESPONDENCE AMONGST DIRECTORS OF THE COMPANY BETWEEN JUNE 1, 2016 TO OCTOBER 31ST, 2016	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED. THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.
3.	EMAIL CORRESPONDENCE BETWEEN CFO ( VENKATESH) AND CEO&MD BETWEEN JULY 1, 2017 TO AUGUST 10TH, 2017	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
<b>Sr. No.</b>	<b>DOCUMENTS/INFORMATION SOUGHT BY NOTICEE NO. 5</b>	<b>COMPANY'S RESPONSE</b>
1.	REQUEST LETTERS / E-MAILS SENT BY THE COMPANY TO / FOR REQUESTED INTERVIEWEES WHO COULD NOT BE OR WERE NOT INTERVIEWED BY M/S VAISH ASSOCIATES;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  THERE ARE NO REQUEST LETTERS SENT BY THE COMPANY TO / FOR REQUESTED INTERVIEWEES WHO COULD NOT BE OR WERE NOT INTERVIEWED BY M/S VAISH ASSOCIATES. THE COMPANY HAD RECEIVED A REQUEST FROM M/S VAISH ASSOCIATES FOR INTERVIEWING MR K N NEELKANT, THE THEN CEO AND MANAGING DIRECTOR OF THE COMPANY. HOWEVER THE ONWARD COMMUNICATION TO MR NEELKANT COULD NOT BE SENT BY THE COMPANY PRIOR TO THE SUBMISSION OF THE PHASE-1 REPORT.
2.	COPY OF THE TRI-PARTITE AGREEMENT / LETTERS BETWEEN BGEPL, THE COMPANY AND ACTON PRIVATE LIMITED FOR SETTLING CLOSING BALANCES;	THE INFORMATION REQUESTED BY THE NOTICEE IS NOT AVAILABLE WITH THE COMPANY.
3.	ALL YEARLY BUSINESS PRESENTATIONS MADE BY THE SALES AND MARKETING TEAMS OF BELGIUM AND HUNGARY TO THE MD&CEO FROM 1 JANUARY 2015 TO 31 AUGUST 2019 THAT COVER THE BUSINESS STRATEGY OF MIDDLE EAST AND AFRICA.	THE INFORMATION REQUESTED BY THE NOTICEE IS NOT AVAILABLE WITH THE COMPANY.
4.	EMAIL CORRESPONDENCE DONE AMONGST THE COMPANY DIRECTORS (PERSONS FROM TIME TO TIME), RAVI RAJAGOPAL, Ms. SHIKHA KAPADIA/PREVIOUS COMPANY SECRETARY AND SUSHEEL TODI OF THE COMPANY PERTAINING TO TRANSACTIONS SPECIFIED UNDER SEBI ORDER DATED 17 SEPTEMBER 2019 DURING THE PERIOD OF APRIL 2015 TO AUGUST 2019;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
5.	ALL E-MAILS BY ERNST AND YOUNG/SRBCC TO THE COMPANY I.E. TREASURY DEPARTMENT (ATUL GULATEE, SRIKANT JADHAV AND RAVIKANT ALLUM), ACCOUNTS DEPARTMENT (SUSHIL TODI, SHRIKANT JADHAV AND SAMIR GHIYA), SECRETARIAL DEPARTMENT (COMPANY SECRETARY AT RELEVANT POINT), LEGAL DEPARTMENT (RAVI RAJAGOPAL AND SOMASHISH MOHAPATRA) AND DIRECTORS OF THE COMPANY BETWEEN 1 MARCH 2018 AND 30 AUGUST 2019	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
6.	ALL E-MAILS AND LETTERS ON QUERIES RAISED BY RESPECTIVE STATUTORY AUDITORS (OF THE COMPANY AND ITS SPECIFIED SUBSIDIARIES) AND RESPONSES PROVIDED THERETO BY MD&CEO, RAVI RAJAGOPAL, SUSHEEL TODI, Ms. SHIKHA KAPADIA, SUDHIR MATHUR, SHRIKANT JADHAV AND SAMIR GHIYA DURING THE AUDIT OF ACCOUNTS AND DURING THE LIMITED REVIEW DONE EVERY QUARTER BEGINNING 1 APRIL 2016 TILL THE PERIOD 30 AUGUST 2019 IN RESPECT OF THE COMPANY AND ITS SPECIFIED	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  WITH RESPECT OF THE LETTERS THERE ARE NO SUCH LETTERS AVAILABLE IN THE RECORDS OF THE COMPANY.

	SUBSIDIARIES VIZ. CG INTERNATIONAL HOLDINGS SINGAPORE (CGIHS), CG MIDDLE EAST FZE (CGME), CG INTERNATIONAL BV (CGIBV), IN RESPECT OF TRANSACTIONS SPECIFIED UNDER SEBI ORDER DATED 17 SEPTEMBER 2019;	
7.	<p>ALL E-MAILS / CORRESPONDENCE</p> <p>(c) AMONGST THE DIRECTORS OF CG POWER;</p> <p>(d) BETWEEN ANY DIRECTOR ON ONE HAND IN PARTICULAR, INCLUDING SUDHIR MATHUR (WHOLE TIME EXECUTIVE DIRECTOR) AND THE STATUTORY AUDITOR(S) OF THE COMPANY</p> <p>WITH RESPECT TO THE SECTION 143(12) OF COMPANIES ACT LETTER BY THE AUDITORS TO THE COMPANY PERTAINING TO INFORMATION QUA ALLEGED FRAUD;</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p> <p>THERE ARE NO OTHER LETTERS / CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.</p>
8.	<p>RESPONSE LETTERS / E-MAILS BY THE POTENTIAL INTERVIEWEES WHO COULD NOT BE / WERE NOT INTERVIEWED BY VAISH AND DELOITTE;</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p> <p>THERE ARE NO LETTERS BY POTENTIAL INTERVIEWEES WHO COULD NOT BE/ WERE NOT INTERVIEWED BY VAISH AND DELOITTE.</p>
9.	<p>PRESENTATION MADE BY THE STATUTORY AUDITORS EVERY QUARTER TO THE RAC/FROM 1 APRIL, 2016 TO 30 AUGUST 2019;</p>	<p>PLEASE NOTE THAT THE PRESENTATIONS MADE FOR THE QUARTERS ENDED JUNE 30, 2016 AND SEPTEMBER 30, 2016 ARE NOT PRESENTLY AVAILABLE WITH THE COMPANY.</p>
10.	<p>EMAILS ADDRESSED / COPIED TO OR RESPONDED BY DIRECTORS, RAVI RAJAGOPAL, SOMASISH MOHAPATRA OF THE COMPANY FROM OR TO YES BANK, INDUSIND BANK, STANDARD CHARTERED BANK, AXIS BANK, ICICI BANK AND ADITYA BIRLA FINANCE LIMITED BETWEEN 1 JANUARY 2016 TO 30 AUGUST 2019 WITH RESPECT TO THE <i>IMPUGNED TRANSACTIONS</i> IN SEBI ORDER DATED 17 SEPTEMBER 2019;</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p>
11.	<p>ALL LETTERS AND E-MAILS WRITTEN BY VAISH OR DELOITTE TO THE COMPANY AND RESPONSES THERETO IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> SPECIFIED IN THE SEBI ORDER DATED 17 SEPTEMBER 2019;</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p>
12.	<p>EMAILS / LETTERS SENT BY VAISH OR DELOITTE TO ASK PAPERS / INFORMATION / DETAILS IN RESPECT OF ANY DISCLAIMERS THAT THEY MAY HAVE MADE IN THEIR PRELIMINARY REPORT AND THE RESPONSES THERETO PROVIDED BY THE COMPANY;</p>	<p>PLEASE NOTE THAT THERE ARE NO SUCH E-MAILS FROM VAISH OR DELOITTE, TO THE COMPANY. DELOITTE IS IN ANY CASE APPOINTED BY VAISH, AND NOT THE COMPANY.</p>
13.	<p>EMAILS SENT BY ACCOUNTS DEPARTMENT (SUSHIL TODI, SHRIKANT JADHAV AND SAMEER GHIYA) OF THE COMPANY TO ACCOUNTS / CA FIRMS THAT SUBSEQUENTLY BECAME STATUTORY AUDITORS (ERNST AND YOUNG/SRBCC AND K.K. MANKESHWAR AND Co.) OF THE COMPANY FOR THE PERIOD 1 APRIL 2017 TO 30 AUGUST 2019</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p>
14.	<p>ALL E-MAIL / CORRESPONDENCE INTER-SE THE COMPANY SECRETARY / HEAD – LEGAL, COMPLIANCE AND RISK WITH THE <i>MD&amp;CEO</i> FROM 1 JANUARY 2018 TO 30 AUGUST 2019, PERTAINING TO TRANSACTIONS SPECIFIED UNDER SEBI ORDER DATED 17 SEPTEMBER 2019;</p>	<p>WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.</p> <p>THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.</p>

15.	ALL E-MAILS WRITTEN BY ABFL (ADITYA BIRLA FINANCE LIMITED) TO ATUL GULATEE, ABHISHEK KABRA, RAVI RAJAGOPAL, SUDHIR MATHUR, K N NEELKANT OF THE COMPANY FROM 1 JANUARY 2016 TO 30 AUGUST 2019 IN RESPECT OF ANY TRANSACTIONS ACTUALLY UNDERTAKEN OR PROPOSED WITH THE COMPANY AND / OR ITS SUBSIDIARIES;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.
16.	ALL E-MAIL / CORRESPONDENCE BETWEEN SUSHEEL TODI WITH THE MD&CEO OF THE COMPANY BETWEEN 1 APRIL 2017 AND 30 AUGUST 2019 IN RELATION TO THE <i>IMPUGNED TRANSACTIONS</i> ;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED. THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.
17.	ALL LETTERS AND E-MAILS AMONGST RAVI RAJAGOPAL, SUDHIR MATHUR, K N NEELKANT WITH REGARD TO THE YES BANK POST DATED CHEQUE MATTER BETWEEN 1 APRIL 2018 TO 30 AUGUST 2019;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED. THERE ARE NO LETTERS AVAILABLE IN THE RECORDS OF THE COMPANY.
18.	ALL E-MAILS / CORRESPONDENCE BETWEEN HENRI MOTTARD AND JEAN MICHEAL AUBERTIER (MD&CEO POWER BU), LAURIENT DI MORTIER (CEO AND MD, CG GROUP) AND KN NEELKANT, (MD&CEO, CG GROUP) IN RESPECT OF WARRANTY CLAIMS AT OVERSEAS BUSINESS UNITS BETWEEN 1 JANUARY 2016 TO 31 DECEMBER 2016 AS REFERRED IN PARA NO. 4.1 (VII) (A) OF THE INTERIM ORDER;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED.  THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.
19.	ALL E-MAILS / CORRESPONDENCE BETWEEN HENRI MOTTARD AND RAVI RAJAGOPAL IN RESPECT OF WARRANTY CLAIMS AT OVERSEAS BUSINESS UNITS BETWEEN 1 JANUARY 2016 TO 31 DECEMBER 2016 AS REFERRED IN PARA NO. 4.1 (VII) (A) OF THE INTERIM ORDER;	WITH RESPECT TO E-MAILS, AS DIRECTED BY SEBI, THE E-MAILS SENT/RECEIVED BY THE NOTICEES ALONG WITH THE E-MAILS MARKED TO THEM HAVE BEEN PROVIDED. THERE ARE NO OTHER CORRESPONDENCE AVAILABLE IN THE RECORDS OF THE COMPANY.
20.	DRAFT MINUTES SENT BY COMPANY SECRETARY TO ALL THE DIRECTORS, <i>MD&amp;CEO</i> , MODIFICATION (S) SUGGESTED, IF ANY AND THE FINAL MINUTES RECORDED ALONG WITH THE SECRETARIAL WORKING NOTES DURING THE BOARD PROCEEDINGS FOR THE PERIOD FROM 1 APRIL 2017 TO 30 AUGUST 2019	THE COMMENTS MADE BY MD&CEO OR OTHER DIRECTORS ARE NOT READILY AVAILABLE.  PLEASE ALSO NOTE THAT SECRETARIAL WORKING NOTES ARE NOT AVAILABLE.

16. The allegation regarding insufficiency of documents as raised by Noticees no. 2–6 and 8 has been carefully analysed by me in light of the information provided by the Company as detailed at Tables I–IV above. As stated during the personal hearing held on December 13, 2019, I find that all relevant and available documents as obtained by SEBI and which were relied upon in the Interim Order, have been provided to the aforementioned Noticees for ensuring a suitable defence for them. Further, as regards the additional information provided by the Company to SEBI, it is observed that such information have already been provided to Noticees no. 2–6 and 8 except for certain e-mails. In this context, it is stated that where e-mails provided by the Company to SEBI have not been

shared with the aforementioned Noticees, the same have not been relied upon by SEBI in the instant proceedings. Therefore, in my considered view, the aforesaid allegation does not stand. In addition, I have also noted that the aforementioned Noticees themselves have submitted several documents including e-mails, Board resolutions, etc. during the hearing, which have also been considered in the instant proceedings.

17. **RELIANCE PLACED BY SEBI ON THE VAISH AND DELOITTE REPORTS:** Noticees no. 2–6 and 8 have contended that the Vaish and Deloitte Reports cannot be relied upon by SEBI in light of the observations of the NCLT in its Order dated March 6, 2020 in Company Petition no. 4127 of 2019 and also the disclaimers contained therein. In this context, it is pertinent to note that in its Order dated October 1, 2019, the Hon'ble SAT had observed: “... *we find that considering the allegations spelled out in the ex-parte ad-interim order which we need not refer on merits at this stage, we find that upon the examination of the evidence, a prima facie opinion was correctly arrived at by the WTM based on objective facts indicating diversion of funds from a listed Company which was not in the interest of its shareholders. ... We are of the opinion that, in the instant case, there was ample evidence to show urgency and, considering the material that has been brought on record, the matter being serious, warranted an inference by the regulator.*” As rightly observed by the Hon'ble SAT, the *prima facie* findings was correctly arrived at by SEBI based on the material brought on record *inter alia* the Vaish and Deloitte Reports. I therefore, find that the contention of Noticees no. 2–6 and 8 cannot be accepted. Further, given the nature of the instant proceedings and the interests of the shareholders/investors, SEBI has considered and examined the *prima facie* findings arrived at against the Noticees in the Interim Order in light of further information including documents, Board Minutes, etc. submitted by the Company and Noticees no. 2–6 and 8 during the hearing and thereafter.
18. Further, the aforesaid Noticees have also contended that the Deloitte Report cannot be relied upon by SEBI in light of violation of the provisions of Section 144 of the Companies Act, 2013, by Deloitte. In this context, I note that in its reply dated January 15, 2020, the Company had confirmed that Deloitte was not the

Statutory Auditor of the Company and/or any of its subsidiaries during the period of the *Impugned Transactions* or at the time Deloitte was appointed by Vaish. Further, vide an e-mail dated February 13, 2020, the Company had informed SEBI that Deloitte was not associated with the Company or its subsidiaries during the investigation period. The aforementioned clarification as received by SEBI from the Company was also circulated to Noticees no. 2–6 and 8 and no further response has been received from them. I am therefore inclined to accept the submissions made by the Company as regards the reliance placed on the Deloitte Report.

**SPECIFIC FINDINGS IN RELATION TO THE *IMPUGNED TRANSACTIONS*:**

19. As regards the submissions concerning the *Impugned Transactions*, the same have been examined in light of the *prima facie* findings contained in the Interim Order, the additional information/documents provided by the Company (detailed at paragraph 15) and also the information/documents provided by Noticees no. 2–6 and 8, to ascertain in view of the submissions made by the aforementioned Noticees' and the Company as to (a) whether the *Impugned Transactions* were in the knowledge of the Company, (b) whether the Board of Directors of the Company had approved the entire structure of the *Impugned Transactions* and (c) whether there was any diversion/siphoning of funds of the Company to the Promoter Group Companies.

19.1 The shareholding of CG Power as on the Quarter ended December 31, 2019, is as under:

<b>TABLE VI – SHAREHOLDING OF CG POWER</b>			
<b>Sr. No.</b>	<b>NAME</b>	<b>PRESENT SHAREHOLDING</b>	
		<b>NO. OF SHARES</b>	<b>%</b>
<b>A.</b>	<b>PROMOTER/ PROMOTER GROUP</b>		
1.	VARUN PRAKASHAN PRIVATE LIMITED	5,022	0.00
2.	AVANTHA REALTY LIMITED	3,552	0.00
3.	AVANTHA HOLDINGS LIMITED	0	0.00
	<b>TOTAL</b>	8,574	0.00
<b>B.</b>	<b>PUBLIC SHAREHOLDING</b>	62,60,50,334	100.00
<b>C.</b>	<b>TOTAL (A + B)</b>	<b>62,67,46,142</b>	<b>100.00</b>

19.2 The details of the Board of Directors of CG Power for Financial Years 2016–2020 (as on March 9, 2020) are provided –

<b>TABLE VII – BOARD OF DIRECTORS FOR THE FINANCIAL YEAR 2016–17 [SOURCE: BSE WEBSITE]</b>	
<b>NAME</b>	<b>DESIGNATION</b>
GAUTAM THAPAR	CHAIRMAN
K. N. NEELKANT	MANAGING DIRECTOR AND CEO
MADHAV ACHARYA	EXECUTIVE DIRECTOR (FINANCE) AND CFO
B. HARIHARAN	NON-EXECUTIVE DIRECTOR
OMKAR GOSWAMI	NON-EXECUTIVE DIRECTOR
RAMNI NIRULA	INDEPENDENT DIRECTOR
SANJAY LABROO	INDEPENDENT DIRECTOR
VALENTIN VON MASSOW	INDEPENDENT DIRECTOR

<b>TABLE VIII – BOARD OF DIRECTORS FOR THE FINANCIAL YEAR 2017–18 [SOURCE: BSE WEBSITE]</b>	
<b>NAME</b>	<b>DESIGNATION</b>
GAUTAM THAPAR	CHAIRMAN
K. N. NEELKANT	MANAGING DIRECTOR AND CEO
B. HARIHARAN	NON-EXECUTIVE DIRECTOR
OMKAR GOSWAMI	NON-EXECUTIVE DIRECTOR
RAMNI NIRULA	INDEPENDENT DIRECTOR
SANJAY LABROO	INDEPENDENT DIRECTOR
VALENTIN VON MASSOW	INDEPENDENT DIRECTOR
JITENDER BALAKRISHNAN (W.E.F. MAY 2, 2017)	INDEPENDENT DIRECTOR
ASHISH KUMAR GUHA (W.E.F. NOVEMBER 9, 2017)	INDEPENDENT DIRECTOR

<b>TABLE IX – BOARD OF DIRECTORS FOR THE FINANCIAL YEAR 2018–19 [SOURCE: BSE WEBSITE]</b>	
<b>NAME</b>	<b>DESIGNATION</b>
GAUTAM THAPAR	CHAIRMAN
K. N. NEELKANT	MANAGING DIRECTOR AND CEO
SUDHIR MATHUR	WHOLE TIME EXECUTIVE DIRECTOR
B. HARIHARAN <sup>#</sup>	NON-EXECUTIVE DIRECTOR
OMKAR GOSWAMI	NON-EXECUTIVE DIRECTOR
RAMNI NIRULA	INDEPENDENT DIRECTOR
VALENTIN VON MASSOW	INDEPENDENT DIRECTOR
JITENDER BALAKRISHNAN	INDEPENDENT DIRECTOR
ASHISH KUMAR GUHA	INDEPENDENT DIRECTOR
NARAYAN K. SESHADRI (W.E.F. MARCH 8, 2019)	INDEPENDENT DIRECTOR

<sup>#</sup>RESIGNED W.E.F. MARCH 8, 2019.

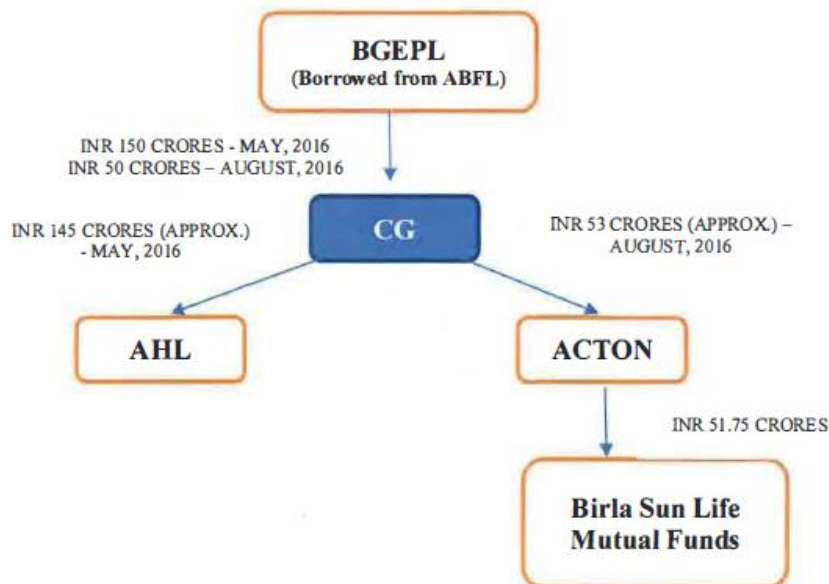


TABLE X – BOARD OF DIRECTORS FOR THE FINANCIAL YEAR 2019–20 [SOURCE: BSE WEBSITE]	
NAME	DESIGNATION
GAUTAM THAPAR*	NON-EXECUTIVE DIRECTOR
K. N. NEELKANT*	MANAGING DIRECTOR AND CEO
SUDHIR MATHUR	WHOLE TIME EXECUTIVE DIRECTOR
OMKAR GOSWAMI*	NON-EXECUTIVE DIRECTOR
RAMNI NIRULA	NON-EXECUTIVE INDEPENDENT DIRECTOR
VALENTIN VON MASSOW*	INDEPENDENT DIRECTOR
JITENDER BALAKRISHNAN	NON-EXECUTIVE INDEPENDENT DIRECTOR
ASHISH KUMAR GUHA	NON-EXECUTIVE INDEPENDENT DIRECTOR CHAIRPERSON
NARAYAN K. SESHADRI	NON-EXECUTIVE INDEPENDENT DIRECTOR
PRADEEP MATHUR (W.E.F. DECEMBER 30, 2019)	NON-EXECUTIVE INDEPENDENT DIRECTOR
DR. ADITI RAJA (W.E.F. JANUARY 24, 2020)	NON-EXECUTIVE INDEPENDENT DIRECTOR
DR. RATHIN ROY (W.E.F. JANUARY 24, 2020)	NON-EXECUTIVE INDEPENDENT DIRECTOR

\*GAUTAM THAPAR, NON-EXECUTIVE CHAIRMAN AND PROMOTER DIRECTOR WAS REMOVED AS CHAIRMAN OF THE COMPANY AS PER A FILING MADE BY THE COMPANY ON AUGUST 29, 2019. HE HAD RESIGNED AS A DIRECTOR W.E.F. OCTOBER 9, 2019. OMKAR GOSWAMI WAS A DIRECTOR TILL DECEMBER 14, 2019. K. N. NEELKANT WAS A DIRECTOR TILL SEPTEMBER 30, 2019. VALENTIN VON MASSOW WAS A DIRECTOR TILL AUGUST 5, 2019, DID NOT SEEK REAPPOINTMENT.

20. As per the Interim Order, *BSE shall appoint an independent Auditor/Audit Firm for conducting a detailed forensic audit of the books of accounts of CG Power from the Financial Year 2015–16 onwards till date. The independent Auditor/Audit Firm so appointed shall verify inter alia the following – (a) manipulation of Books of Accounts; (b) misrepresentation including of financials and/or business operations; (c) wrongful diversion/siphoning of company funds; and (d) any other related matter. The independent Auditor/Audit Firm shall submit a Report to SEBI within six months from the date of (Interim) Order.* In this regard, BSE had appointed MSA Probe Consulting Private Limited (“**MSA Probe**”) for conducting a detailed forensic audit of the books of the Company from financial year 2015–16 onwards (“**SEBI Forensic Audit**”). The SEBI Forensic Audit had started on October 15, 2019 and the Report of this audit is awaited. Pending receipt of the Report, in the instant proceedings, the submissions of the Noticees in respect of the *Impugned Transactions* have been examined in light of the information/documents available on record, pursuant to which findings have been recorded. (**For ease of reference, the submissions made by Noticees no. 2–6 and 8 have been referred to as Noticees’ submissions while the submissions of Noticee no. 1 have been identified as the Company’s/CG Power’s submissions**).

21.1 **SALE OF NASHIK PROPERTY TO BLUE GARDEN ESTATE PRIVATE LIMITED (“BLUE GARDEN/BGEPL”).**



21.1.1 As noted from the Interim Order,

- A. In 1979, Maharashtra Industries Development Corporation (“**MIDC**”) had leased a property it owned in Nashik (“**Nashik property**”) to CG Power for a lease term of ninety–five years. As per the terms of the Lease Agreement, CG Power cannot assign/part with possession of land without the consent of MIDC. In May 2016, CG Power entered into an Assignment Agreement with Blue Garden for assignment of its lease rights in the Nashik property, for a consideration amount of ₹264 Crore, without obtaining approval from MIDC. The Assignment Agreement was executed by Madhav Acharya (Executive Director–Finance) on behalf of CG Power and Atul Gulatee (Director) for Blue Garden. For payment of the consideration amount, Blue Garden took a loan of ₹200 Crore from Aditya Birla Finance Limited (“**ABFL**”), which was guaranteed by Avantha Holdings (Holding Company of CG Power) (“**Avantha Holdings**”) on behalf of CG Power. The Nashik property was used as a ‘Collateral Security’ for the loan taken by Blue Garden from ABFL (by way of right of

creation of mortgage). The aforementioned amount was immediately paid to CG Power as an advance wherein the Company had to pay an interest of 15% per annum on such advance. CG Power then further advanced said amount to Avantha Holdings (₹145 Crore) and Acton Global Private Limited (“**Acton**”) (₹53 Crore) without any interest.

B. The majority shareholder of Avantha Holdings was Gautam Thapar (approximately 87%) and it also had Gautam Thapar, Ramni Nirula and B. Hariharan as its Directors at the relevant time. The aforementioned three individuals are/were Directors of CG Power. Blue Garden is an entity incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Acton, Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power). Acton is an entity incorporated in March 2016 and at the time of execution of the Assignment Agreement, its shareholders were Nagendra Sayyaparaju and Abhishek Kabra (employees of CG Power). The amount so raised by Blue Garden and the onward lending to Avantha Holdings and Acton were not reflected/recorded in the financial statements of the Company. The following Directors/employees of CG Power and Acton were involved in the instant transactions, viz. –

- Gautam Thapar (erstwhile Chairman of CG Power) – Had executed the Letter of Awareness (of loan availed by Blue Garden and subsequent payment to CG Power).
- Madhav Acharya (erstwhile Executive Director of CG Power) – Had executed various documents on behalf of CG Power.
- Atul Gulatee (erstwhile Global Head of CG Power – Treasury and one of the first Directors of Blue Garden) – Had executed various documents on behalf of Blue Garden.
- B. Hariharan (erstwhile Director of CG Power) – Had executed an Undertaking (“*Collateral Security*”) on behalf of CG Power.
- V. R. Venkatesh (CFO of CG Power) – Had executed a Mortgage (in the event of default) Undertaking in 2018.

- Nagendra Sayyaparaju (employee of CG Power) – One of the Directors and initial shareholder of Acton, Holding Company of Blue Garden.
- Abhishek Kabra (Senior Manager – Treasury in CG Power) – One of the Directors and initial shareholder of Acton.

#### **21.1.2 Noticees' submissions:**

- A. *The transaction was structured by the lender.*
- B. *The Company & its officials were aware of the transaction. (The entire work relating to setting up of Acton and BGEPL was undertaken by the legal department of CG Power and Manoj Kaul, Company Secretary.).*
- C. *RAC was aware of this transaction and had approved transfer of funds to Avantha Holdings.*
- D. *The legal department of CG Power vetted the letter of awareness signed by Gautam Thapar.*
- E. *Noticee No.4 had the express powers to execute the MOU/Agreements on behalf of the Company.*
- F. *The receivables from Acton were netted off against the liability towards BGEPL as per the applicable accounting policies.*
- G. *Two transactions were netted off as per the request received from BGEPL which had to recover monies from Acton. The letter of request in this regard received from BGEPL was forwarded by the Noticee to Sushil Todi (global head-accounts and tax) and Anil Gupta (head of accounts) for their review and necessary action.*
- H. *Blue garden and Acton are related parties and not connected parties. Both BGEL and Acton are known to the Board at the relevant time, to have been incorporated by the Company itself. The shareholders and Directors of the Company are employees of the Company and they act and are accustomed to act in accordance with the advice, directions or instructions of a director or manager. The entire work relating to setting up of Acton and BGEPL including their Registration with ROC and applying for PAN*

and secretarial work was undertaken by the Secretarial department of the Company.

**21.1.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:**

**A. Was the structure of the transaction proposed by Aditya Birla Finance Limited (ABFL)? Was the Company/its officials aware of the structure of the transaction?**

The following e-mails, as provided by the Noticees, were examined to ascertain if the structure of the transaction was proposed by ABFL and whether the Company and its officials were aware of the structure of the transaction:

1. An e-mail dated February 8, 2016 from one Rakesh Pingulkar, Chief Manager, Large Corporate Finance – Group, ABFL to an **unknown recipient** on the subject 'Information requirement on Avantha and CG' which is reproduced below:

*"Dear Sir,*

*A gentle reminder on the information required to take this proposal ahead.*

*This proposal will be carried in 3 phase.*

*Phase 1*

- *The information sharing and drafting of terms and conditions*
- *Along with this we also need clarity on the 2 SPV's i.e., SPV A is an existing company or newly floated one. Similarly with SPV B as well.*

*Phase 2*

- *We will compile all the information furnished to ABFL and then present the 1<sup>st</sup> cut to our risk team, Now this will go through it and*

*raise few queries which will require few rounds of meeting you and your officials.*

- *Once they are satisfied with the information, we will put case for final sanction.*

### *Phase 3*

- *Final sanction note will carry the whole-structure, flow of money, SPV's (A&B) details i.e., Directors, shareholders, Corporate guarantor, Pledge of shares etc. At this stage will clearly mark in entity role and obligations towards this transaction.*
- *After all these parameters have been met, committee will go for sanction of the case.*

*Please below the information required in Phase 1. This a 1<sup>st</sup> cut information from our side, we may ask for few details after evaluating the 1<sup>st</sup> cut information.*

#### *Crompton Greaves:*

*Projections from FY 16 to FY 20*

*Latest debt profile of CG as on December 31, 2015 - ...*

*Key developments in CG in the past 6-9 months*

*MoA/AoA along with PAN*

#### *Avantha Holdings:*

*Last three years audited financials*

*Provisional financials upto Sept 2015*

*Company brief write up, Board of Directors, shareholding pattern...*

*Debt profile in Avantha Holding ...*

*MoA/AoA along with PAN*

*Along with the above information, we also request that if can share the possible structure of the 2 SPV's that will be a part in this transaction. If*

*it is an-existing borrower, please include brief business profile, directors, shareholding pattern last three year financials.*

*Please share this information at the earliest, as we have left with only few days to turn around this transaction before 31st of March 2016.*

*Regards*

*...*

2. Another e-mail dated February 9, 2016 from Atul Gulatee, *inter-alia* to *Rahul Joshi*)

*“Dear Rahul, these docs (registered deed) are required for a bank documentation at the earliest... Pls let us know by when can we expect these and the cost involved (stamp duty etc.)...Pls. treat the matter as very urgent.”*

3. E-mail dated March 22, 2016 from Abhishek Kabra, Corporate Treasury, Crompton Greaves) to (presumably Vyoma Desai, *Practicing Company Secretary*) on the subject “*Certificate of Incorporation*”

*“Thanks Vyoma,*

*As discussed, we need to apply PAN for both companies. Pls. provide address proof document for both the companies... We have to also transfer the Blue garden shares to Acton in order to make blue garden as subsidiary of Acton Global. Pls let us know the process... Pls also share certified copy of the following documents of both companies... 1. MOA/MOA 2. Shareholders List 3. Directors List...*

*Thanks...*

*Abhishek.”*

4. E-mail dated March 22, 2016 from CS Vyoma Desai, Associate, Abbas Lakdawalla, Practicing Company Secretary to Abhishek Kabra, Manoj Koul with CC to Atul Gulatee, Sakshi Kapur:

*“Dear All,*

*Congratulations!!! We have successfully achieved Certificate of Incorporation for both the Companies. Please find attached the COI for your records.”*

5. E-mail dated March 22, 2016 from Abhishek Kabra (Corporate Treasury, Crompton Greaves) to Jagadish Ambardekar (Senior Manager Corporate Taxation, Crompton Greaves) on the subject “PAN”

*“ ...As discussed Pls find attached following documents for both the companies for getting PAN card for them. 1. Acton Global private Limited... 2. Blue Garden Estates Private Limited... Request you to pls proceed today only, in order to get the Pan card by next week...”*

6. Email dated March 23, 2016 from Abhishek Kabra to Vyoma Desai on the subject “Certificate of Incorporation”

*“Dear Vyoma,*

*We would need the following documents for opening of bank account. Request you to Pls. provide on priority.*

*Normal operating account for both the company*

- Board resolution for opening an account and authorization for operating the account – signed by min 2 directors...*
- If BR is signed by Company Secretary then require Signature proof of the Company Secretary.*
- Require List of directors on company letter head.*

*Escrow Account for Blue Garden Pvt. Limited*



- *Board Resolution...*
- *Beneficial ownership until the ultimate beneficiary..."*

7. E-mail dated January 20, 2017 from Atul Gulatee to Madhav Acharya (forwarding mail from Rakesh Pingulkar to Atul – Jan 20, 2017). This e-mail was forwarded by Madhav Acharya to dinesh@kkmindia.com

“...

*It will help u to get an opinion of qualifying Acton as a non-NBFC.*

*Tabular Column:*

*Acton:*

*Liabilities – ICD 200 cr;*

*Investment – 100% ownership of BGEPL; Combined value of assets/rights owned by BGEPL is 775 cr.*

*Asset – Loan of BILT – 200 cr.*

*BGEPL:*

*Liab – ABFL Loan I – 200 cr; ABFL Loan II – 200 cr;*

*Assets – Condition mortgage alongwith registered agreement to sale – ₹265 cr; Rts to mortgage land in Kanjurmarg via assignment agreement – ₹510 cr.*

*As explained in the table, it clearly shows that Acton Global has assets higher than its secondary business of investing in loan. Plus there is no income generation or recognition of interest..."*

**Findings:**

The e-mail dated February 8, 2016 of Rakesh Pingulkar, Chief Manager, Large Corporate Finance – Group, ABFL talks about a proposal to turn around a transaction before March 31, 2016. However, it is not clear as to who were the recipients of the email since the same has been redacted by the

Noticees. Further, from the e-mail exchanges, it can be said with certainty that Madhav Acharya and Atul Gulatee were aware of the end-use of the loan taken by BGEPL. A few officials of CG Power, namely, Abhishek Kabra, Atul Gulatee, Manoj Kaul were aware of the formation of Acton and BGEPL. However, at this stage, it could not be ascertained if they were aware of the entire structure of the transaction. Since a forensic audit has been ordered by SEBI, the report of the Forensic Auditors should throw further light on this issue.

***B. Did the legal department of CG Power vet the letter of awareness signed by Gautam Thapar?***

The following e-mail trail was examined to determine if the legal department of CG Power had approved the letter of awareness signed by Gautam Thapar:

1. Email dated April 12, 2016 from Rakesh Pingulkar, ABFL to Madhav Acharya on the subject "*Letter of Comfort*"

*"Dear Madhav Sir,*

*As per our discussion with Devang Boss, please find attached the Letter of comfort specifically worded for ABFL"*

2. Email from Madhav Acharya to Ravi Rajagopal – April 12, 2016 – on the subject Letter of Comfort: "*As discussed*"
3. Email from Ravi Rajagopal to Madhav Acharya - April 12, 2016 on the subject Letter of Comfort: "*Dear Madhav... Attached with changes...*"
4. Email from Madhav Acharya to Rakesh Pingulkar and Devang Rawal of ABFL - April 12, 2016 on the subject Letter of Comfort: "*Hi Devang/Rakesh, Pls find attached the draft letter of comfort with suggestions from our legal team. I would like your confirmation on the*

*draft before I meet Thapar to seek his consent, which I plan to do tomorrow. Would appreciate your quick revert..."*

5. Email from Rakesh Pingulkar to Madhav Acharya - April 12, 2016 on the subject Letter of Comfort:

*"... Our legal has gone through the revised letter of comfort. Most of the changes have been accepted except 2 points... Point no. 3 has been reworded to suit both ABFL and CG and 3<sup>rd</sup> last point from the second page has been deleted."*

6. Email from Madhav Acharya to Ravi Rajagopal – April 12, 2016 on the subject Letter of Comfort: *" Hi Ravi... Can you pls confirm if this is acceptable to us? Thanks"*

7. Email from Ravi Rajagopal to Madhav Acharya - April 12, 2016 on the subject Letter of Comfort: *" Looks ok"*

**Findings:**

The draft Letter of Comfort as available in Madhav Acharya's e-mail does not contain the name of the counterparty and the loan amount. The subject of the e-mail is *"Letter of comfort with respect to ₹ Crore [Rupees] availed/ to be availed by \_\_\_\_\_ from ADITYA BIRLA FINANCE LTD."* This draft letter of comfort has been vetted by the legal department (Ravi Rajagopal) of CG Power.

However, in the absence of specific details in the draft Letter of Comfort, at this stage, it cannot be said with certainty whether the legal department was aware of a) the entire structure of the transaction b) beneficiary of the loan c) the end use of the loan d) the terms and conditions of the loan.

- C. Was there a Board approval for using Nashik property as collateral for the loan? Did Madhav Acharya have the power to enter into an**

***Assignment Agreement with Blue Garden for assignment of Nashik property?***

In May 2016, CG Power entered into an Assignment Agreement with Blue Garden for assignment of its lease rights in the Nashik property. The Assignment Agreement between CG Power and Blue Garden (with respect to Nashik property of ₹264 Crore) was executed by Madhav Acharya (Executive Director–Finance) on behalf of CG Power and Atul Gulatee (Director) for Blue Garden. Madhav Acharya had been granted a General Power of Attorney by the Company through an agreement dated November 19, 2009. The relevant portion of the General Power of Attorney with respect to property matters is reproduced below:

*“9. Property matters:*

*9.1 Acquisition, sale, lease etc.*

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

**Findings:**

Madhav Acharya has submitted that he was authorized through the General Power of Attorney to enter into this transaction. However, as per the Rules of Procedure of the Company for approval of fixed asset disposal – immovable property, CFO and CEO jointly have the powers for transactions upto ₹50 Crore. Any disposal of property above ₹50 Crore requires Board’s approval. The Board minutes and in particular, minutes of the meeting dated May 27, 2016 and August 30, 2016, have been examined and it is noted that there is

no mention of the sale of Nashik property in the Board meeting; hence, there is no Board approval for the same. Further, the Power of Attorney executed by Madhav Acharya in favour of Blue Garden is also without authorization of the Board of CG Power. Hence, Madhav Acharya appears to have misused the General Power of Attorney granted by the Board and has acted in a manner detrimental to the Company and its shareholders.

***D. Was there a Board approval for transfer of funds to Avantha Holdings and Acton?***

The minutes of the RAC meeting held on August 30, 2016 is reproduced below:

*“The Chairman apprised that during the week beginning Monday, 22<sup>nd</sup> August 2016, the Committee members of Risk and Audit Committee (RAC) of the Company were each individually informed of a set of transactions that had occurred in the months of May and June 2016 between the Company (CGL) and Avantha Holdings (AHL). AHL is one of the entities of the promoter group of the Company, and holds more than 34 per cent equity share capital of CGL and which is the Related Party as defined by SEBI LODR....*

*These RPTs involved CGL making loans to AHL to help it tide over some financial dues to certain banks, and aggregated to ₹ 530 Crore.*

*The RAC was further informed by Madhav Acharya, Executive Director Finance and the CFO of CGL that the Company was asked by the concerned banks to provide requisite letters to them, in order to regularize these related party transactions. Alternatively, the banks would freeze all credit facilities to CGL on grounds that CGL is a member of Avantha group. The regularizing letters were submitted by CGL during the same period (May-June 2016).*

*The inter-company loans to AHL are interest bearing, and have been pegged at the going bank rate + 200 basis points per annum. The loans are expected to be repaid on or before 31 March 2017.*

*Subsequent to receiving this information telephonically during the week beginning 22 August 2016, the RAC asked management to obtain*

*independent legal opinion about these RPTs. Such opinions were taken from two noted law firms:*

- i) Shardul Amarchand Mangaldas and Company and*
- (ii) Crawford Bayley and Company.*

*Specifically, the RAC required opinions on whether these RPTs could be considered to fall under the ambit of the Company's policy on what constituted 'normal course of business' and whether these were in conformity with all relevant provisions of the Companies Act, 2013 and the Listing Regulations. According to the written opinion of both legal firms:*

- a) CGL India's RPT policy specifically treats loan transactions and interest payments thereon between CGL and related parties as transactions that fall under the Company's 'ordinary course of business'.*
- b) The RPT between CGL and AHL is in accordance with CGL India's RPT policy especially its Clause 3.2 read together with Clause 3.4). Moreover, CGL India's RPT policy incorporates the relevant provisions of the Companies Act, 2013, its rules, and Listing Regulations and rules.*
- c) This transaction falls outside the purview of Section 188(1) of the Companies Act, 2013. Therefore, while it requires assent from the Company's RAC and the Board; it does not need approval of the shareholders.*
- d) The transaction is not 'material' since ₹ 530 Crore is less than 10% of the Company's consolidated turnover.*
- e) It is also far lower than 60 per cent of the Company's paid-up share capital, free reserves and securities premium amount, or 100 per cent of its free reserves and securities premium reserves, as stated by section 186(2) of the Companies Act, 2013. Hence, the prohibition stated in section 186(2) does not arise.*

*Given the circumstances that necessitated such a transaction, and after carefully considering these legal opinions, CGL's RAC noted and approved the above mentioned RPTs with AHL aggregating to ₹530 Crore. However, given that these transactions involve a group company, in the event that such further transactions may be required or necessitated in the future, the RAC*

believed that an appropriate resolution needs to be framed that clearly states:

- 1) What should be the upper bound for such a class of transactions; and
- 2) That such transactions, subject to the limits clearly stated, should still be informed to the RAC, before these transactions are entered into. This can be done by e-mail or a phone call.

After detailed deliberations, the RAC decided that the upper limit of such RPTs with the promoter group companies including AHL should not exceed an aggregate cumulative value of ₹ 1,000 Crore (Rupees One Thousand Crore Only) of such loans outstanding at any given point of time, provided that no loan(s) shall be advanced/outstanding to the said Related Party exceeding 10% of Consolidated Turnover of the Company as on 31<sup>st</sup> March, 2016, without prior approval of the Shareholders as required under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Moreover, to ensure 'arm's length', such transactions need to be charged no less than the bank's rate of interest plus 200 basis points...

"RESOLVED THAT loans and advances by the Company to any of its promoter group companies including Avantha Holdings limited shall not singly or cumulatively exceed the sum of ₹1,000 Crore (Rupees Thousand Crore Only) at any given point of time, and that such loans shall carry an interest rate no less than the bank's rate of interest plus an extra 200 basis points per annum; and that such loans will be fully repaid before March 31, 2017.

RESOLVED FURTHER THAT besides, further draw-downs, even under the aggregate facility, must be informed to the Risk and Audit Committee prior to any further advance being made."

### **Findings:**

#### **Transfer of funds to Avantha Holdings:**

Avantha Holdings, being the holding Company of CG Power, is a 'related party' of the Company and all transactions with related parties require prior

approval of the Audit committee (as per Regulation 23(2) of LODR). The RAC in its meeting held on August 30, 2016 had given its post-facto approval for the transactions with Avantha Holdings for an amount of ₹530 Crore. (*Reliable copies of the split-up is not available*). It further capped future transactions with Avantha Holdings to a maximum amount of ₹1000 Crore and all such transactions required prior approval of RAC through phone/e-mail. If it is assumed that the on-lending to Avantha Holdings is included within the ₹530 Crore post-facto approval by RAC, a part of the transaction has been approved by RAC. However, this would in no way legitimize the transaction since there was no Board approval for the initial part of the transaction i.e., using Nashik property as a collateral for taking loans from ABFL.

Further, the RAC had given approval for future transactions with AHL with the condition that such loans shall have an interest at the rate of 2% over the prevailing bank rate. The Noticees have contended that interest payment to Blue Garden was to be offset against advances for royalty payment made by CG Power to Avantha Group. However, the books of the Company do not reveal any such adjustments which ostensibly leads one to conclude that the loans have been granted on an interest free basis, against the approval of RAC.

Transfer of funds to Acton: A part of the funds (₹53 Crore) received from Blue Garden was transferred to Acton. The Rules of Procedure of CG Power permit the CFO, individually and CEO, on recommendation of CFO, to provide loans, inter-corporate deposits, debentures, and other funding upto ₹50 Crore and ₹70 Crore, respectively, (maximum amount between two CG Board meetings), to CG Group companies. In this case, Acton is neither a CG Group Company nor a 'related party' at the time of the initiating the transaction. Hence, in accordance with the Rules of Procedure of the Company, Board's approval was required for advancing money to Acton. However, no such approval is available in the minutes of the Board meeting.



***E. Was the RAC aware of the end use of the loan?***

The minutes of the RAC meeting refers to legal opinion given by two law firms i.e., Shardul Amarchand Mangaldas and Company and Crawford Bayley and Company on the transfer of funds to Avantha Holdings Extract of the opinion given by Shardul Amarchand Mangaldas on August 29, 2016 is placed below:

*“We have for our consideration the following facts:*

- 1. Crompton Greaves Limited (the Querist) has a paid up share capital of ₹ 125.35 Crore and free reserves and securities premium of ₹ 4002.70 Crore aggregating to ₹ 4128.05 Crore.*
- 2. The Querist is proposing to give a loan to Avantha Holdings, a related party, which in turn will on lend this to BILT Limited...”*

**Findings**

It is mentioned in the legal opinion of Shardul Amarchand Mangaldas that CG Power is proposing to give loan to Avantha Holdings, a related party, which in turn will on- lend this to BILT Limited.

Another letter from Crawford Bayley and Co dated 29<sup>th</sup> August 2016, has mentioned that the opinion was sought by Madhav Acharya, Executive Director – Finance. Be that as it may, the opinion and the approval relate only to the transfer of funds to Avantha Holdings; however, the transfer of funds to Acton was unauthorized and was not known to the Board of CG Power.

***F. Did B. Hariharan and V.R. Venkatesh take Board’s approval for executing Undertaking (‘Collateral Security’) and Mortgage undertaking for the transaction?***

**Findings**

B. Hariharan – had executed an Undertaking (‘Collateral Security’) wherein it was stated that MIDC had granted its consent for creation of mortgage on the Nashik property and in case ABFL exercises its rights for the realization of its dues in case the default is committed by BGEPL, CG Power will pay differential premium/transfer charges/ fees to MIDC as per the guidelines prevalent at that time without any demur. However, no such document has been produced by him confirming the approval of MIDC. The Rules of Procedure of the Company

require Board's approval for this transaction (Property transaction); therefore, execution of the undertaking by B. Hariharan was in violation of the Rules of Procedure of the Company, thereby violating the code of conduct of the Company.

Similarly, execution of mortgage undertaking (undertaking and confirming to create and perfect the mortgage in favour of ABFL over the Nashik Property to secure the outstanding within 7 days of any event of default) by V. R. Venkatesh was in violation of Rules of Procedure of CG Power since there was no approval of the Board for using Nashik property as a collateral for the loans taken by BGEPL.

***G. Noticee no. 2 has submitted that with respect to the impugned transaction in relation to the Nashik property, much has been said about the consent of MIDC not having been obtained. However, since the impugned agreement did not create any rights, such consent was not at all required. Further, Noticee no. 4 has submitted that the Assignment Agreement was "subject to all the approvals from MIDC".***

**Findings:**

While Noticee no. 2 has stated that as the Assignment Agreement did not create any rights, such consent was not at all required. However, I note that B. Hariharan has executed an Undertaking ('Collateral Security') wherein it was stated that MIDC had granted its consent for creation of mortgage on the Nashik property and in case ABFL exercises its rights for the realization of its dues in case the default is committed by BGEPL, CG Power will pay differential premium/transfer charges/ fees to MIDC as per the guidelines prevalent at that time without any demur. I note that there are obvious contradictions between the submissions made by the aforesaid Noticees during these proceedings and the representation contained in the documents.

**H. Was there any tri-partite agreement between CG Power, Blue Garden and Acton for netting of the receivables against the payables to one another?**

**Findings**

As per Indian Accounting Standard 32: “A financial asset and a financial liability shall be offset and the net amount presented in the balance sheet when, and only when, an entity: a) currently has a legally enforceable right to set off the recognized amounts; and b) intends either to settle on a net basis, or to realize the asset and settle the liability simultaneously. ...In unusual circumstances, a debtor may have a legal right to apply an amount due from a third party against the amount due to a creditor provided that there is an agreement between the three parties that clearly establishes the debtor’s right of set-off...”

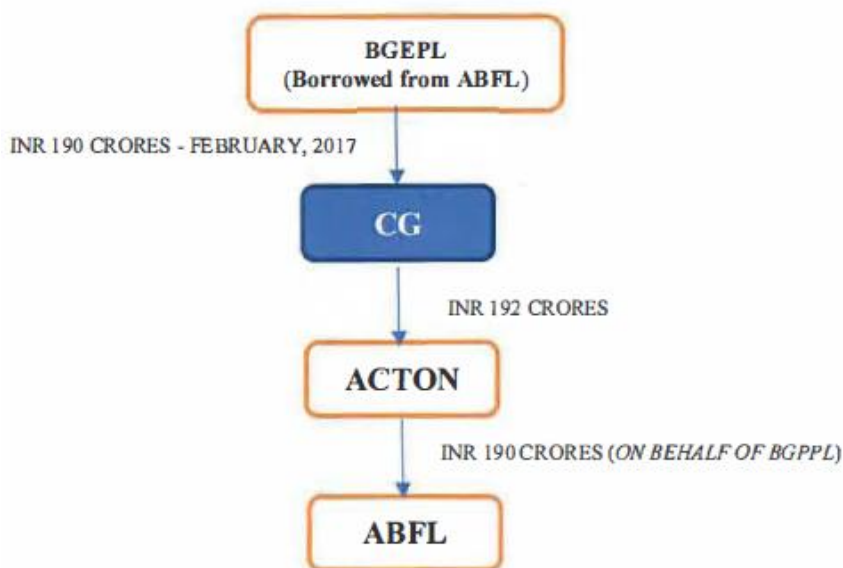
The Noticees have submitted that netting off happened pursuant to the request received from Blue Garden which had to recover monies from Acton. However, no Tripartite Agreement executed between CG Power, Blue Garden and Acton has been furnished either by the Noticees or by the Company. The loan amount received from Blue Garden and on-lent to AHL were not reflected in the financial statements. In the absence of any agreement between CG Power, Acton and Blue Garden for netting-off, it may be concluded that there was misrepresentation of the financial statements of CG power to the extent of money received from BGEPL and on-lent to Acton and AHL. As indicated earlier, Madhav Acharya was involved in this transaction and despite knowing that these transactions were not recorded in the books of account, he has certified the books of accounts to be true and fair.

**I. Whether Blue garden and Acton are ‘related parties’ or connected parties?**

**Findings**

While Noticee no. 4 has contended that Blue Garden and Acton are ‘related parties’, I note that they do not fall under the definition of ‘related party’ as given in LODR Regulations 2015. Hence, Noticee no. 4’s contention cannot be accepted.

## 21.2 SALE OF KANJURMARG PROPERTY TO BLUE GARDEN.



### 21.2.1 As noted from the Interim Order,

- A. CG Power had earlier entered into an Agreement (“**Evie Sale Agreement**”) to sell a property it owned in Kanjurmarg (“**Kanjurmarg Property**”) to Evie Real Estate Private Limited (“**Evie**”) for a consideration of ₹498 Crore. The Company had received ₹11 Crore from Evie, as initial consideration. The sale was to be completed before October 27, 2019. However, even before the aforesaid transaction could get terminated, CG Power entered into an Memorandum of Understanding in February 2017 (“**MOU**”) with Blue Garden for transfer of the same property for a consideration amount of ₹498 Crore (₹189 Crore to be paid in advance) with a condition that the MOU will take effect only upon the failure of the Evie Sale Agreement. For payment of a part of the consideration amount, Blue Garden took a loan of ₹190 Crore from ABFL. When the aforesaid amount was received by Blue Garden in February 2017, it was immediately paid as an advance by Blue Garden to the Company in terms of the MOU. CG Power thereafter advanced the money to Acton (₹192 Crore) without charging any interest. Acton in turn, utilised the

aforementioned amount towards payment against the liability owed by BILT Graphic Paper Products Limited (“**BGPPL**”) to ABFL. At the time of execution of the MOU, there was a charge in the form of negative lien created in favour of Yes Bank Limited (“**Yes Bank**”) on the Kanjurmarg Property. Despite such prior charges, a Power of Attorney was created in favour of Blue Garden for creation of the mortgage in the case of default under the MOU by CG Power.

B. No approval was obtained from the Board of CG Power for the execution of the MOU or transfer of money/advance received therein. The amount of ₹190 Crore received from Blue Garden and subsequent transfer of ₹192 Crore to Acton were not disclosed in the Audited Financial Statements of CG Power as the asset was offset against the liability (i.e. there was third party liability of Blue Garden and the asset for receivables from Acton). Thus, the financials have been misrepresented to the aforementioned extent. The following Directors/employees of CG Power and Acton were involved in the instant transactions, viz. –

- Gautam Thapar – BGPPL is an Avantha Group Company.
- Madhav Acharya – Had executed various documents on behalf of CG Power including signing of the MOU.
- Atul Gulatee – Had executed various documents on behalf of Blue Garden including signing of the MOU.
- V. R. Venkatesh – CFO of CG Power and one of the Directors of Blue Garden and Acton.
- Nagendra Sayyaparaju – One of the directors of and initial shareholder of Acton (i.e. holding company of Blue Garden).
- Abhishek Kabra – Senior Manager – Treasury as he was one of the Directors of and initial shareholder of Acton (i.e. holding company of Blue Garden).
- Anirudh Chopra – Director of Acton and Blue Garden.

**21.2.2 Noticee's submissions:**

- A. *The Board has authorized the sale of Kanjurmarg Property to Evie or any other buyer.*
- B. *The RAC was informed and was aware of this transaction.*

**21.2.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was there Board approval for using of Kanjurmarg property as collateral for the loan?**

The Board of directors of CG Power in the meeting held on October 16, 2014 had decided as under:

“ ...

**RESOLVED THAT:**

- a) *The company be and it is hereby authorized to undertake sale-cum-assignment of the following property of the Company entirely or in one or more parts:*

...

*To M/s. Evie real estate ltd. for an aggregate minimum amount of ₹302.26 Crore; or to any other purchaser(s) offering terms similar or better than the proposed purchaser;*

*Provided that all costs of the transaction including, but not limited to payment of stamp duty, registration charges, and other incidental costs, will be borne by purchaser only;*

b) *M Acharya, Executive Vice President and Chief Financial Officer, R Rajagopal, Executive Vice President and Global Head – Legal, Governance and Risk, S Arora, General Manager – Corporate Legal, and M Kulkarni, Senior Manager – Corporate Administration be and they are hereby severally authorized to:*

- i. *Take all actions and sign and execute severally, the irrevocable Power(s) of Attorney, Agreement of Sale, Conveyance and Assignment, Letter of Possession, related Declarations, Affidavits, Undertakings, Indemnities and all other documentation for the sale of the above mentioned property and to give full effect to this Resolution;*
- ii. *Appear before the concerned Sub-Registrar of Assurance and lodge all required documents for registration by executing them, and to carry out all such tasks, as may be necessary for registration of the documentation mentioned at (b)(i) above “*

Further, in the meeting held on June 21, 2019, the Board of directors approved the sale of Kanjurmarg property to M/s. Evie Real Estate Pvt. Ltd subject to the terms and conditions contained in the Agreement for Sale dated October 28, 2015:

*“... RESOLVED THAT:*

- (a) *The approval of the Board is be and hereby accorded for finalizing, signing and execution of the indenture of conveyance an assignment/deed of conveyance for sale of 53,462.77 sq mts (~ 13 acres) of land situated at Kanjurmarg, Mumbai housing its transformer manufacturing unit to M/s. Evie Real Estate Pvt. Ltd. at a consideration of ₹498.96 Crore, subject to the terms and conditions contained in the Agreement for Sale dated October 27, 2015.*
- (b) *The CEO and Managing Director, the Whole Time Executive Director, the CFO... or such other employee or person as may be authorized by the CEO and Managing Director or the whole-Time Executive Director be and are hereby severally authorized to:*

*(c) I) take all actions and sign and execute severally, a indenture of conveyance and assignment/ deed of conveyance in favour of the Buyer and / or its nominees and register the same in the name of the Buyer and / or its nominees and for this purpose sign and execute irrevocable Power(s) of Attorney, Letter of Possession, related Letters, Declarations, Affidavits, Undertakings, Indemnities and all requisite documents as may be required to give full effect to this Resolution;”*

### **Findings**

It is seen from the material available on record that the Board had approved the sale of Kanjurmarg property to M/s. Evie Real Estate Pvt. Ltd on 16<sup>th</sup> October 2014. As per the agreement entered with Evie on October 28, 2015, the last date for the condition precedent for the sale to be completed was October 27, 2019. On June 21, 2019, the Board gave go-ahead for completing the transaction.

Parallely, on February 1, 2017, Madhav Acharya had entered into a MoU with BGEPL to assign, sell, transfer the rights of Kanjurmarg property to BGEPL in case the sale under Evie Sale Agreement does not go through within 42 months from the date of the agreement.

It is observed that there is no specific Board approval for the agreement entered with BGEPL by Madhav Acharya. Though the Board had approved the sale to any other purchaser who offers similar or better terms, this parallel transaction required the approval of the Board as per the rules of procedure of the Company. Even otherwise, the Board should have been informed about the transaction subsequently. In the Board minutes dated June 21, 2019 there is no mention of the transaction entered into with BGEPL by Madhav Acharya.

Execution of the Kanjurmarg Power of Attorney and Vendor Undertaking (Company will become a Co-borrower in case of default by Blue Garden) both dated February 1, 2017, by Madhav Acharya appear unauthorized as there was no Board approval for the transaction with BGEPL.

### **B. Was there Board approval for transfer of funds to Acton?**



**Findings:**

Rules of Procedure of CG Power permit the CFO, individually and CEO, on recommendation of CFO, to provide loans, inter-corporate deposits, debentures, and other funding upto ₹50 Crore and ₹70 Crore, respectively, (maximum amount between two CG Board meetings), to CG Group Companies. In this case, Acton is neither a CG Group Company nor a related party at the time of the initiating the transaction. Hence, in accordance with the Rules of Procedure of the Company, Board's approval was required for advancing money to Acton. However, no such approval is available in the minutes of the Board meeting.

***C. Noticee no. 4 has contended that he had diligently informed members of the RAC (and therefore the Board) in writing and also orally as required by the RAC members. Further, the Treasury Reports presented to the Board from time to time set out the loans and advances made to AHL.***

**Findings:**

The submission is not relevant as funds have been transferred to Acton and not to promoter group companies in Kanjurmarg property transaction. In respect of Nashik property transaction, the funds had already been transferred prior to RAC's meeting on August 30, 2016.

**21.3 CHEQUES ISSUED BY THE COMPANY IN FAVOUR OF YES BANK LIMITED.**

**21.3.1** As noted from the Interim Order,

A. Yes Bank had sanctioned Credit facility amounting to ₹500 Crore to Avantha Holdings vide a Sanction Letter dated October 25, 2015. CG Power had issued a Comfort Letter dated November 4, 2015 and had furnished a cheque for ₹210 Crore in favour of Yes Bank for the aforementioned Credit facility. The Board of CG Power only became aware of the Comfort Letter when a request was made by Yes Bank in April, 2019, for renewal of the above mentioned cheque. The following

Directors/employees of CG Power were involved in the instant transactions, viz. –

- Gautam Thapar – Personally represented to Yes Bank that he was the person-in-charge of CG Power.
- Atul Gulatee – Had signed the cheques issued by CG Power.
- B. Hariharan – Had signed the cheques issued by CG Power.
- V. R. Venkatesh – Had signed the cheques issued by CG Power.

### **21.3.2 Noticees' submissions:**

- A. *The company was aware of the postdated cheques being issued routinely (was also within the knowledge of the MD&CEO Neelkant).*
- B. *Board of CG Power was fully aware of these cheques and/or the comfort letter of CG Power.*

**21.3.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was there Board approval for the guarantee furnished by CG Power (as postdated cheques) in respect of the loan given by Yes Bank to Avantha Holdings?**

**Findings:**

Letter of Comfort dated November 4, 2015 was signed by B. Hariharan on behalf of CG Power for the credit facility amounting to ₹500 Crore availed by Avantha Holdings from Yes Bank. The extracts of the Letter of Comfort is as below:

- i. *We shall take all necessary steps and do whatever is necessary in order to ensure the repayment by the borrower of its indebtedness to you under the facilities as and when the same becomes payable.*

- ii. *We irrevocably, unconditionally and absolutely promise and assure you that we shall ensure due and prompt payment/repayment of the facilities by the borrower and we shall make sure that the said promise and assurance is upheld in letter and spirit, if situation arise, we shall infuse necessary monies in such form and manner in the borrower for ensuring the aforesaid commitment of prompt payment/repayment by the borrower.*
- iii. *We agree and undertake to pay the amount as and when outstanding on due date to your bank.*
- iv. *We also indemnify your bank against all losses, claims, damages, damages arising out of granting/sanctioning the said facilities.*

The contents of the Letter of Comfort confirm that it is in the nature of guarantee to the credit facilities availed by Avantha Holdings. Approval of the Board of directors is required for giving guarantee on behalf of the Company to a non-CG Group Company. The minutes of the Board meeting held on October 28 and 29, 2015 dated February 1 and 2, 2016 have been perused and there is no approval for the Letter of Comfort signed by B. Hariharan. I also note that the letter of comfort signed by B. Hariharan is in violation of Section 185 of the Companies Act, 2013.

***B. Did Hariharan, Venkatesh and Atul Gulatee have the powers to sign these cheques?***

**Findings:**

The Noticees have contended that they had the powers to sign cheques for the bank accounts of CG Power maintained with IndusInd Bank. However, signing post-dated cheques for this transaction was unauthorized/illegal since there was no Board approval for the transaction.

In terms of this transaction, post-dated cheques were purportedly issued on behalf of the Company to YBL, for the loan availed of by Noticee 6. Issuing such cheques was akin to providing a guarantee under Section 186 of the 2013 Act, however, no Board approval was obtained for the same.

### **C. Communication between CG officials and Yes bank**

#### **Findings:**

The Noticees have provided e-mail communications from Yes Bank requesting revalidation of Postdated cheques issued by CG Power for the ₹500 Crore Credit Facility availed by AHL. However, the e-mails provided by the Noticees indicate that they were addressed/marked only to B. Hariharan, Atul Gulatee and Venkatesh of CG Power.

#### **21.4 €44 MILLION BORROWING BY CG INTERNATIONAL HOLDINGS SINGAPORE PTE. LIMITED (“CG SINGAPORE”) FROM STANDARD CHARTERED BANK (“STANDARD CHARTERED”), WHICH WAS GUARANTEED BY A CORPORATE GUARANTEE FROM CG POWER.**

##### 21.4.1 As per the Interim Order,

A. The Board of CG Power had purportedly authorized its overseas subsidiaries (vide a Resolution dated November 9, 2017) to avail of new fund-based and non-fund based banking facilities of upto €175 million from banks and financial institutions. Accordingly, CG Singapore, a wholly owned subsidiary of CG Power, entered into a Facility Agreement with Standard Chartered in 2017 for availing a term loan of € 44 million, the guarantee for which was provided by CG Power. The term loan was availed to finance the general corporate purposes, including working capital, of the Borrower Group and any other member of the Group Companies of CG Power (including by way of inter-company loans). The entire facility was drawn by CG Singapore on February 14, 2018. On that same day, there was a remittance instruction provided by CG Singapore for remittance of €44 Million to an overseas entity by the name of Avantha International Assets B.V. (private investment entity of Gautam Thapar) (“**Avantha International**”). The Board of CG Power was not aware of the aforementioned borrowing. Further, the remittance was contrary to the provisions of the Facility Agreement, which required the term loan to be used only to finance the general corporate purposes, etc. of CG Power.

Further, the Board of CG Power was also not informed of the aforementioned deviation. In addition, while the facility from Standard Chartered was availed at an interest rate of 2.25% + EURIBOR per annum, by CG Singapore, the advance/remittance to Avantha International was interest free. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Gautam Thapar – Chairman of CG Power. Further, Avantha International is the private investment entity of Gautam Thapar.
- B. Hariharan – Had signed the remittance instruction for CG Singapore.
- V. R. Venkatesh – Had signed the remittance instruction for CG Singapore.

**21.4.2 Noticees' submissions:**

- A. *Board of CG Power and CG Singapore approved the borrowing from Standard Chartered.*
- B. *The transaction was structured by Standard Chartered*
- C. *Avantha International is not the ultimate beneficiary of the funds. It repaid the amount to CG IBV which then paid it back to Standard Chartered*

**21.4.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was there approval of the Board of CG Power and CG Singapore for the borrowing from Standard Chartered Bank?**

The Board of CG Power in its meeting held on November 9, 2017 had approved borrowing upto Euro 175 million by overseas subsidiaries of CG Power.

*"(13) NEW FINANCIAL FACILITIES BY OVERSEAS SUBSIDIARIES*

*"RESOLVED THAT in supersession of Resolution No 525.32.01 passed at the 525th Meeting of the Board of Directors held on 26th May 2017, the Company's overseas subsidiaries be and are hereby authorised to:*

- (a) collectively avail of new funds-based and non funds-based banking facilities of upto Euro 175 million in the aggregate, from banks/financial institutions inclusive of the facilities already availed under the resolution dated 26th May 2017;*
  
- (b) to secure the new funds and non-funds-based banking facilities by hypothecation/ mortgage or any other type of security, on movable and immovable properties of the overseas subsidiaries, guarantees/ collateral/ securities from the Company or any other Subsidiary/ Associate/ Group Company of the Company and such other securities as mutually*

*agreed to between the Company, the overseas subsidiary and the banks/financial institutions;*

*(c) within the above mentioned overall limits of Euro 175 million, Mr K N Neelkant, CEO and Managing Director and V R Venkatesh, Chief Financial Officer of the Company be and are hereby jointly authorised to:*

*(i) decide the actual amount of avilment of loan(s) for a overseas subsidiary(ies), based on their cash flow requirements and other business needs;*

*(ii) take final decisions with respect to the terms and conditions for the above facilities and documentation related thereto;*

*{iii) decide, the subsidiaries to be leveraged, take actions for channelizing the funds through inter-corporate loans within the Group, and other initiatives to achieve the best possible arrangement with the respective banks/financial institutions;*

*(d) Mr K N Neelkant, CEO and Managing Director, V R Venkatesh, Chief Financial Officer and Mr Atul Gulatee, Head – Corporate Treasury of the Company be and are hereby severally authorised to take all actions and sign all documentation for giving effect to this Resolution; provided however that the transactions/documentation has been approved as mentioned at (c) above;*

*Provided that the Board of Directors be notified at each Meeting held immediately after availing of any fund based or non-funds based facilities, the details of such transactions, as well as the terms and conditions approved, in terms of the above mentioned delegatory authority;*

*(e) the Common Seal of the Company be affixed to the documents mentioned above, if necessary, in the presence of the CEO and Managing Director, any other Director, Key Managerial Personnel or any duly authorised Constituted Attorney of the Company, who shall sign the same in authentication thereof, in accordance with the Company's Articles of Association."*

The Board of directors of CG Singapore have passed a resolution dated December 6, 2017 approving execution of documents for obtaining loan upto EUR 44 million from Standard Chartered Bank.

*"... the Company had been negotiating with Standard Chartered Bank to arrange for the Company to obtain a loan facility in an aggregate amount of up to EUR 44,000,000 (the "Facility") from a group of lenders (the "Lenders");*

*2.1.1 the Company will be using the Facility to finance the general corporate purposes, including working capital, of the Company and Subsidiaries (as defined in the Facility Agreement) and any other member of the CG Group (as defined in the Facility Agreement);*

*...*

*3.2.1 each director (an "Authorised Signatory") be severally authorized to execute on behalf of the Company the Documents, in the form of the copy circulated with these written resolutions, with any amendments any Authorised Signatory may approve;"*

### **Findings**

The loan of Euro 44 million from Standard Chartered has the approval of the Board of CG Power and CG Singapore. As per the facility agreement executed with the bank, the loan was to be used to finance the general corporate purposes, including the working capital, of the Company and subsidiaries and any other member of the CG Group. However, the transfer of funds by CG Singapore to Avantha International Assets B.V., which is not a CG Group Company was certainly not authorised. The remittance



instruction (dated February 14, 2018) was signed by V. R. Venkatesh and B. Hariharan.

***B. Who was the ultimate beneficiary of the loan? Why did it move through multiple layers?***

The Noticees have claimed that Avantha International was not the ultimate beneficiary of the loan amount. They have submitted that the amount was transferred from Avantha International to CG IBV, which then repaid it to Standard Chartered.

As admitted by the Noticees, CG IBV had earlier lent money to Avantha International. In May 2017, EUR 44 Million was borrowed by CG IBV and transferred to Avantha International. This borrowing was transferred to the books of CG Singapore, as desired by Standard Chartered, with guarantee from CG Power.

The Forensic Auditors' Report may give a better picture on the claim made by the Noticees. Ultimately, Avantha International will be the beneficiary if there is a previous transaction between CG IBV and Avantha International.

***C. Structuring of the transaction by Standard Chartered***

The Noticees have claimed that the transaction was structured by Standard Chartered and have referred to an e-mail dated January 30, 2018 from Ajay Gundgurthi of Standard Chartered Bank to V. R. Venkatesh, with CC to B. Hariharan, Gupta, Akshay::

*"Dear Venkatesh,*

*Trying to reach you. I do appreciate you are busy with Hungary closure.*

*We are still awaiting execution of document for the transfer of loan from CGIBV to CG Singapore. This is pending your resolution of CG Singapore for authorized signatories.*

*Need your earliest execution – I have an issue internally so kindly do expedite pls*

*Kind Regards*

Ajay”

**Findings**

The Forensic Auditors’ Report may give a better picture on the earlier transaction between CG IBV and Standard Chartered as regards the claim of the Noticees.

***D. Remittance instruction signed by B. Hariharan and V. R. Venkatesh***

**Findings**

The Board resolution of CG Singapore specifies that the loan shall be used to finance general corporate purposes, including working capital of the company and subsidiaries and any other member of the CG Group. Remittance to Avantha International, signed by B. Hariharan and V. R. Venkatesh, which is not a part of the CG Group, is a clear breach of the resolution of the Board.

**21.5 \$40 MILLION FOREIGN CURRENCY TERM LOAN BY CG MIDDLE EAST FZE FROM INDUSIND BANK, INDIA, WHICH WAS GUARANTEED BY A CORPORATE GUARANTEE FROM CG IBV.**

**21.5.1** As noted from the Interim Order,

A. CG Middle East FZE (“**CG Middle–East**”), an indirect wholly owned subsidiary of CG Power, availed of a Term Loan borrowing from IndusInd Bank, India on the basis of a Sanction Letter dated October 25, 2017. There is a corporate guarantee from CG International BV (“**CG IBV**”), the parent company of CG Middle–East. The entire facility was drawn down in October 2017 by CG Middle–East but the monies were received by CG IBV. Once drawn, substantially the whole sum was paid by CG IBV to the Company (CG Power), which in turn remitted the said monies to CG Power Solutions Limited (“**PSOL**”) and which in turn further remitted the said monies to Solaris Industrial Chemicals Limited (“**Solaris**”). The Board of CG Power was not aware of the aforementioned borrowing. No Board resolution was passed by CG Power for the corporate guarantee furnished to IndusInd Bank. Further, CG Middle–East (V. R. Venkatesh is its sole Director) is

mainly a sales office and does not have any significant business operations or employees. CG Middle–East had availed of the credit facility at an interest rate of 4.5% + 3 months LIBOR. However, the amounts were advanced/remitted to Solaris on an interest free basis. The borrowing of \$40 million was not reflected in the financial statements of CG Middle–East and the provision of guarantee was not reflected in the financial statements of CG IBV. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Gautam Thapar – Solaris Industrials Chemicals Limited is a Avantha Group Company.
- B. Hariharan – Had, without Board authorization, executed the Deed of Guarantee with IndusInd Bank.
- V. R. Venkatesh – Had, without Board authorization, executed the Facility Agreement along with Deed of Guarantee with IndusInd Bank.

**21.5.2 Noticees' submissions:**

- A. *The transaction was structured by IndusInd Bank.*
- B. *The transaction has the approval of the board of CG Power.*
- C. *Solaris is not the ultimate beneficiary of the transaction. The money was repaid to IndusInd bank by Jhabua Power.*

**21.5.3 Issues examined in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was the transaction authorized by the Board of CG Middle East?**

V.R. Venkatesh has submitted a copy of the Board resolution passed by the Board of directors of CG Middle East on October 25, 2017:

*".... The company proposes to enter into the following documentation in connection with a dollar term loan facility from IndusInd Bank Limited (the 'Lender) in an aggregate amount equal to US\$40,000,000:*

*...*

*2.2 the undersigned is authorized to execute the Finance documents and any related documents on behalf of the Company;*

*2.3 the undersigned is authorized to:*

*a. agree any amendments to the Finance documents;*

*b. agree to terms of any related documents'*

*c. sign all other documents and Noticees delivered by the Company in connection with the Finance documents or any related documents;*

*d. take any action necessary in connection with the transaction contemplated by the Finance documents or any related documents; and*

*e. if required, file this resolution or any other document's with the Department of the Dubai..."*

**Findings**

The resolution was signed by V. R. Venkatesh himself, who was the sole director on the Board of CG Middle East.

**B. Was the transaction authorized by the Board of CG IBV and CG Power?**

**Findings**

The borrowing is covered under the Resolution dated May 26, 2017 passed by the Board of CG Power authorizing the overseas subsidiaries to avail new funds-based and non-funds-based banking facilities of upto Euro 175

million, collectively. The utilizations under the resolution needs to be reported on a quarterly basis to the Board. However, in the subsequent Board minutes, there is no mention of this facility having been utilized by CG Middle East.

A letter dated October 25, 2017 addressed to IndusInd Bank, signed by Venkatesh and Hariharan, states that *“We hereby, also undertake/confirm/certify that Board resolution of CG International BV for executing corporate guarantee in favor of IndusInd Bank for the aforementioned credit facilities along with corporate guarantee duly signed as per authorization in accordance with the Board resolution shall be submitted within 90 days from the date of first disbursement under the said credit facilities.”* There is no record of such a resolution being passed by the Board of CG IBV for giving guarantee for the loan availed by CG Middle East. Further, V. R. Venkatesh has signed a letter dated October 25, 2017, on behalf of CG Power and Industrial Solutions Ltd., undertaking to comply with all terms and conditions stipulated in the sanction letter dated October 25, 2017 of IndusInd bank for the facility extended to CG Middle East FZE. This was without the approval of the Board of CG Power. Further, the loan was never reflected in the financial statements of CG Middle East and CG IBV.

**C. Who is the ultimate beneficiary of the transaction – Solaris or Jhabua Power?**

Vaish report has mentioned that the money was diverted to Solaris Industrial Chemicals Ltd. V.R. Venkatesh in his reply has stated that the ultimate beneficiary of this loan amount was Jhabua Power Limited, which was a subsidiary of Avantha Group. The impending Forensic Audit Report will help in identifying the full money trail in this transaction.

#### **D. Structuring by IndusInd bank**

An e-mail dated October 25, 2017 from one Nishu Malhotra of IndusInd Bank to Venkatesh and Atul Gulatee of CG Power on the subject "Docs" has been enclosed by V. R. Venkatesh in his reply to SEBI.

“

*Dear Both*

*Request you to please urgently provide signed scanned copies of the following:*

- 1. Sanction Letter – CG ME to be signed by Venkatesh and CG IBV to be signed by Venkatesh and Hariharan*
- 2. Board resolution of CG ME to be signed by Venkatesh (on letter head of CG ME)*
- 3. Shareholder resolution of CG IBV to be signed by Venkatesh and Hariharan (on letter head of CG IBV)*
- 4. Drawdown request letter – To be signed by Venkatesh. In the transfer details please insert Bank account details of CG IBV*

*Please also confirm on rate, Fixed rate of 6.65% for the tenor as against 3 m Libor + 450 bps.*

*Balance documents to be closed and executed during the day.*

*Regards,”*

#### **Findings**

In this particular transaction, all the documents viz., Resolution of CG Middle East, Undertaking to obtain Board approval of CG IBV signed by V.R. Venkatesh and B. Hariharan, Letter signed by V. R. Venkatesh on behalf of CG Power, E-mail from Nishu Malhotra of IndusInd Bank, Sanction letter, Drawdown letter, are dated October 25, 2017.

Further, V. R. Venkatesh has submitted an end-use letter dated March 20, 2018 to IndusInd bank confirming that the funds have been used towards cash flow mismatches, long term working capital requirements, loans and advances to group entities/associates and transaction cost and expenses. However, as admitted by the Noticees, the loan was diverted to Solaris

Industrial Chemicals Limited, a group company of Avantha and not CG Power, which is contrary to the purpose for which the loan was granted.

***E. Noticee no. 5 has contended that his role as per the Interim Order was only limited to signing the guarantee on behalf of CG IBV, which he did as the authorized signatory of CG IBV.***

**Findings**

I note that there was no approval of the board of CG IBV to provide guarantee for the loan availed by CG Middle East. Accordingly, the Noticees' submission cannot be accepted.

**21.6 OUTSTANDING ADVANCES TO VENDORS IN CG SINGAPORE.**

**21.6.1** As noted from the Interim Order,

A. In accordance with a Service Agreement executed in January 2013 ("**Mirabelle Agreement**"), CG Singapore had made certain advances to Mirabelle Trading Pte. Limited ("**Mirabelle**") during the period March 2018– July 2018. The services provided by Mirabelle in accordance with the Mirabelle Agreement *inter alia* included:

- Creating new business opportunities for the transformer business and other businesses of CG Power.
- Setting up of JV in Indonesia and all activities connected thereto – The services were with respect to a joint venture of CG Singapore with a local utility company in Indonesia. A 51: 49 Joint Venture in Indonesia was pursued between CG Singapore and a local utilities Company i.e. PT Prima Layanan Nasional Enjiniring. The JV entity was set up in May 2014 by the name of PT Crompton Prima Switchgear Indonesia.
- Establishing business in Malaysia.
- Identifying customers and getting orders, arranging for financing, etc. for a total fee of \$20.15 million.

B. The Mirabelle Agreement was executed on behalf of CG Singapore by Madhav Acharya, a Director of CG Power but not CG Singapore. No Board Resolution, etc. authorizing Madhav Acharya to enter into the said Agreement was available. At the relevant time of executing the Mirabelle Agreement, Mirabelle was a *'related party'* of CG Singapore. Mirabelle (an associate Company of Avantha Holdings) had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement. Further, advances made to Mirabelle did not carry any interest. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Gautam Thapar – Mirabelle is an associate Company of Avantha Holdings.
- Madhav Acharya – Had, without Board authorization, executed the Mirabelle Agreement.

#### **21.6.2 Noticees' submissions:**

A. *Noticee no. 4 has said that Mirabelle agreement could not have been signed by him.*

**21.6.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

#### **A. Did Madhav Acharya have the power to execute the Mirabelle agreement**

No resolution is available authorizing Madhav Acharya to execute the agreement (since he was not a director of CG Singapore at that point in time).

#### **B. Execution of Mirabelle agreement by Madhav Acharya**



The Service agreement between Mirabelle Trading Pte. Ltd and CG International Holdings Singapore, dated 15<sup>th</sup> January 2013, appears to have been signed by Madhav Acharya on behalf of CG Power and Deepa Nanda on behalf of Mirabelle.

As pointed out by Madhav Acharya, the agreement mentions “*Customer is a subsidiary of CG Power and Industrial Solutions Limited (CG)....*” customer - CG Singapore – as subsidiary of CG Power and Industrial Solutions Limited. The name of the Company at that point of time was Crompton Greaves Ltd. Further, except the last page of the agreement, there is no signature on the other pages of the document. The last page does not have the date on which the agreement was signed. I have taken note of the infirmity in the document and the same cannot be relied upon.

**C. Role of V. R. Venkatesh and B. Hariharan**

The payments to Mirabelle were signed by Venkatesh and Hariharan. In the absence of proper agreement/Board approval, the rationale behind these high value payments and the role of Venkatesh and Hariharan need to be examined. The Forensic Auditors’ Report may give a better picture on the role of the Noticees.

## 21.7 OUTSTANDING ADVANCES TO VENDORS IN CG MIDDLE EAST.

### 21.7.1 As noted from the Interim Order,

A. As noted from the Interim Order, several advances amounting to approximately €34 million have been identified by M/s SRBCC and Co. LLP (Auditors of CG Power appointed in September 2018) (“**SRBCC**”) in the books of CG Middle–East between the Financial Years FY 2017–18 and 2018–19, which continue as outstanding as on the date of the preliminary investigation report:

<b>TABLE XI – OUTSTANDING ADVANCES TO VENDORS IN CG MIDDLE EAST</b>	
<b>NATURE OF PAYMENT</b>	<b>AMOUNT (IN MILLION EURO)</b>
ADVANCES/PAYMENTS TO VENDORS (CONSUMER CONTRACTS) (ITEM 1)	26.50
ADVANCES TO GROUP ASSOCIATE COMPANIES (ITEM 2)	0.62
INTEREST ON INDUSIND TERM LOAN (ITEM 3)	1.20
OTHER ADVANCES/ACCOUNTS RECEIVABLES (ITEM 4)	5.60
<b>TOTAL</b>	<b>33.92</b>

B. In relation to Item 1, CG Middle–East appointed various Service Agents in relation to certain Customer Contracts (sale/purchase of transformers, etc.) in order to mitigate the risk of any potential claims. The aggregate value of such Contracts made with Service Agents is approximately €35 million, which represents an excess of 45% of the aggregate value of the aforesaid Customer Contracts, which does not appear to represent a sound and viable business strategy. Further, such Service Agents did not appear to have any expertise in the service proposed to be provided by them. As regards Items 2–4, €0.62 million was advanced as an interest free loan by CG Middle–East to Ballarpur International Holdings BV (wholly owned subsidiary of Ballarpur Industries Limited, an associate company of Avantha Holdings) (“**Ballarpur International**”); €1.2 million was towards interest costs incurred in relation to the Term loan facility availed by CG Middle–East from IndusInd Bank; €5.6 million represented balances from debtors which have been written off as CG Middle–East has not been able to realise the same.

No Board resolution was passed by CG Middle–East for the execution of contracts with Service Agents. Further, no Board approvals were granted in respect of loan facility provided to Ballarpur International. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Gautam Thapar – Ballarpur International is an associate Company of Avantha Holdings.
- V. R. Venkatesh – Had, without Board authorization, executed contracts with Service Agents.

**21.7.2 Noticees' submissions:**

- a. *Contracts with service agents were entered into upon the instructions of the MD & CEO of the CG Power.*

**21.7.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was there Board approval for the service agreements executed by V. R. Venkatesh?**

There is no Board approval for the service agreements executed with different parties by V.R. Venkatesh.

**B. Rationale behind executing the service agreements**

From the Interim Order, it is noted that the value of the service agreements have been much higher than the underlying customer contracts. Further, the companies with which these services agreements have been executed do not have the experience or the expertise of providing services for which they have been engaged. The Forensic Auditors' Report may throw light on the rationale behind executing the service agreements.

### **C. Write offs of receivables**

V.R. Venkatesh has provided an e-mail communication with Neelkant on November 11, 2018 – Subject – Outstanding issues – EY

*“Dear Neel*

*Please refer the above – I am enclosing the latest financials that include the impact*

- 1. Write down of 20 Crore from Debtors*
- 2. Write down of 10 Million from Middle East*
- 3. Write down of PCFC liability of 20 Crore*
- 4. Write down of the intangible assets in SWG ...”*

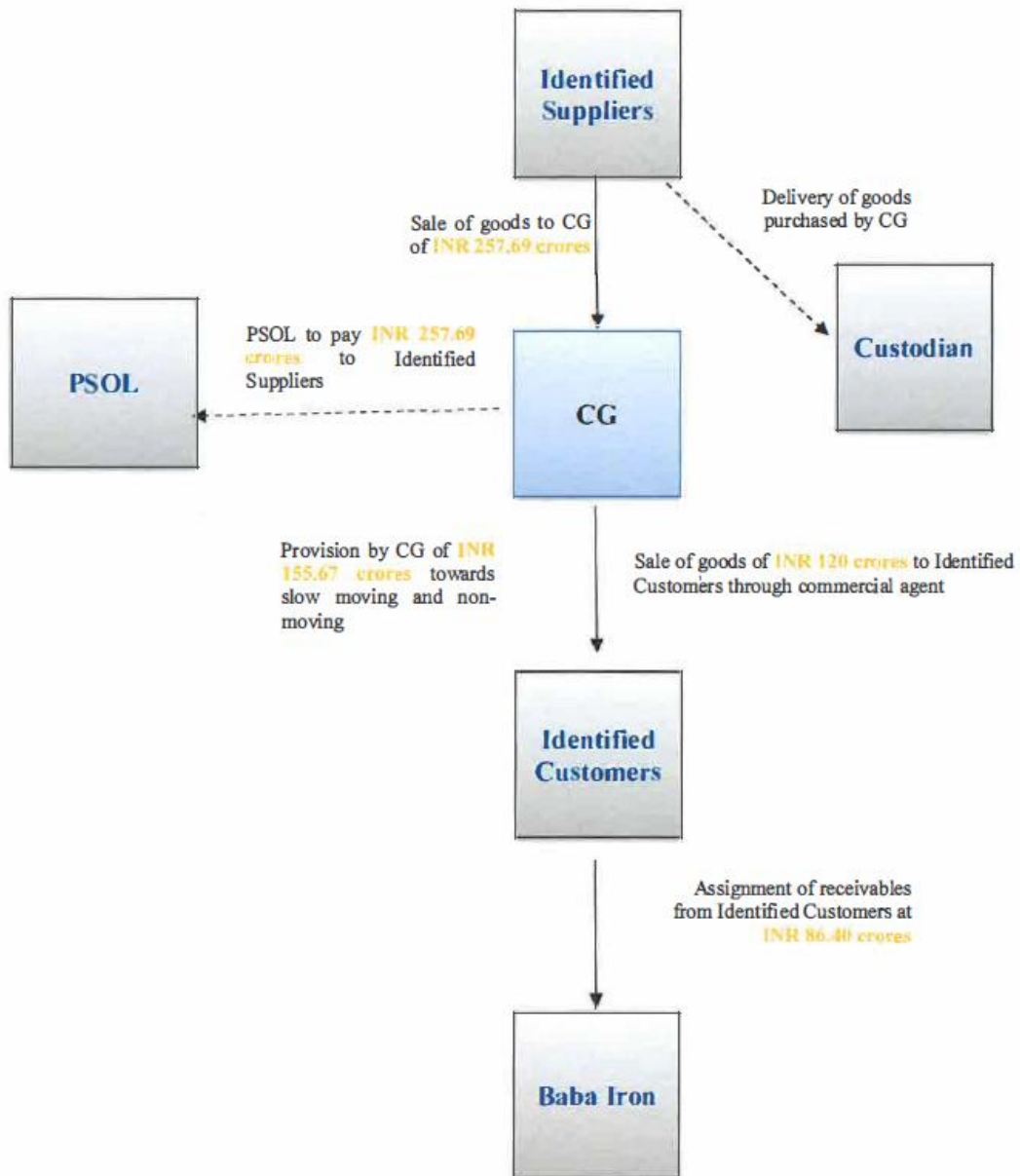
#### **Findings**

It could not be ascertained if these refer to the write offs mentioned in the Interim Order. A clearer picture will emerge upon receipt of the Forensic Auditors’ Report.

### **D. Interest free loan**

The issue of interest free loans is being examined by the Forensic Auditors.

**21.8 OUTSTANDING TRADE RECEIVABLES AGGREGATING TO ₹108 CRORE FROM IDENTIFIED CUSTOMERS.**



**21.8.1** As noted from the Interim Order,

- A. The Company had entered into Tripartite Agreement on January 1, 2017, with Identified Suppliers and PSOL (subsidiary of CG Power) for purchase

of commodities. The liability of the Company towards the Identified Suppliers (jointly by Mahalaxmi Traders, Swastik Trading Company, Star International, Kaushal Trading Company, Shri Bala Ji Projects and Shri Sai Sales Projects) owing to purchase of commodities shall be discharged by PSOL as PSOL owed certain monies to the Company pursuant to a Loan Agreement dated May 2, 2016. The inventory appeared to have been sold to the Identified Customers (jointly by Miriam International, Sidhi Vinyank Traders and Jain Enterprises) for an aggregate amount of ₹120 Crore. The Company made a provision to the extent of ₹155.67 Crore towards slow moving and non-moving inventory. Further, the Company made a provision of ₹12 Crore as liquidated damages out of the aggregate amount of ₹120 Crore receivables. The Supplier Agreements were executed on the letterhead of each of the Identified Suppliers, who were all based out of Delhi and also had identical formats in respect of their letterheads. Necessary documentation to support the purchase from the Identified Suppliers were not made available and many such Suppliers did not appear to exist at their addresses as noted from the records of the Company. The format of the P.O. issued by the Identified Customers and the description of goods mentioned in the P.O. for each of the Identified Customer is identical. The Identified Customers did not pay the amounts due as on the applicable due date(s). Baba Iron, an NBFC, with whom a Debt Servicing Agreement was signed, did not appear to exist at the address provided by the Company. The purchases and sales appear dubious and seemed to have been made with the objective of reducing the outstanding loan availed by PSOL from the Company. Further, the PSOL Loan Agreement (Loan agreement between CG Power and PSOL) was executed without the authorizations by the respective Board of directors of the Company or PSOL. The following Directors/employees of CG Power were involved in the instant transactions, viz. –

- Madhav Acharya – Had executed PSOL Loan Agreement without Board approval. Further, procurement and sale transactions by the Company were executed at his behest.

- B. Hariharan – Had executed PSOL Loan Agreement without Board approval.
- V. R. Venkatesh – Had approved payments to be made to the Commercial Agent (who brought in the identified customers) and had signed the Journal Voucher whereby the Company made a provision to the extent of ₹155.67 Crore towards slow moving and non-moving inventory, which was not in accordance with the Rules of Procedure of CG Power.

**21.8.2 Noticees' submissions:**

- A. *On 5-8-2013 in the meeting of board of directors of the Company, the Company had passed an omnibus resolution authorizing the Company to provide loans, inter corporate deposit, debentures and other funding to subsidiary and associates of the Company for limits specified therein.*
- B. *Transaction with regard to procurement from the identified suppliers was done by the MD & CEO.*

**21.8.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. CG Power and CG PSOL Loan agreement**

CG Power and CG PSOL had entered into an agreement on May 2, 2016 whereby CG Power was to lend ₹1000 Crore to CG PSOL. The important provisions in the agreement are as given below:

- Date: 2<sup>nd</sup> May 2016
- Short term loan of ₹ 1000 Crore – for tenure of 11 months from the remittance of first tranche.
- Purpose – business needs and working capital needs
- Unsecured
- Condition precedent – Borrower has to give Board resolution approving the borrowing + a copy of the by-laws of the borrower.

- Executed by Madhav Acharya on behalf of CG Power and B. Hariharan on behalf of CG PSOL.

By a letter agreement dated April 2, 2017, signed by Madhav Acharya on behalf of CG Power and CG PSOL, the parties had agreed to roll over the earlier agreement for an extended period of 24 months. Further, it was also agreed that while during the course of the year, the outstanding may go beyond the amount mentioned in the agreement, however, at the close of the financial year the closing balances will not exceed the amount mentioned in the original loan agreement.

***B. Was there Board approval for the loan agreement between CG Power and CGPSOL?***

In the meeting of the Board of directors held on May 27, 2015, the Board had authorized the CFO i.e. Noticee no. 4, to sanction loans to subsidiaries up to an amount ₹50 Crore (outstanding between two Board meetings).

Any amount beyond ₹50 Crore requires Board's approval. However, Madhav Acharya has executed an agreement for lending upto ₹1000 Crore to CGPSOL.

It is to be noted that CG PSOL is a wholly owned subsidiary of the Company and any loan to a wholly owned subsidiary does not require the approval of Audit committee as per Regulation 23 of LODR (*Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval*). However, it is relevant to note that loans to CG Group Companies beyond a certain limit requires approval of CG Board as per the Rules of Procedure of the Company. There is no such Board approval for this Loan Agreement signed by Madhav Acharya with CG PSOL.



**C. Noticees no. 2–6 and 8 have contended that “the Minutes of Meetings held on 27 May 2016, 10 December 2016 and 10 February 2017 duly records that the Company had advanced a loan to CG PSOL.**

### **Findings**

The following Board meetings have recorded the loans given by the Company to PSOL as under:

- a. May 27, 2016 - ₹9.17 Crore (outstanding as on 31<sup>st</sup> March 2016 – ₹186. 53 Crore)
- b. August 30, 2016 – ₹6.1 Crore (Outstanding as on 30<sup>th</sup> June 2016 – ₹192. 368 Crore)
- c. December 7, 2016 – ₹9.78 Crore (Outstanding as on 30<sup>th</sup> September 2016 – ₹202.33 Crore)
- d. February 10, 2017 – ₹110.69 Crore (Outstanding as on 31<sup>st</sup> December 2016 - ₹313.02 Crore)
- e. May 25–26, 2017 - ₹30.07 Crore (Outstanding as on 31<sup>st</sup> March 2017 - ₹343.09 Crore).

However, it may be noted that there is no board approval for the loan agreement with CG PSOL and the Noticee no. 4's action is violation of the powers delegated to him due to the following reasons:

- a. As per the board resolution of May 27, 2015, the CFO can sanction loans to subsidiaries up to an amount of ₹50 Crore. Hence, an agreement to lend upto ₹1000 Crore requires Board's approval.
- b. As per the board resolution of May 27, 2015, the tenure of the loan can be a maximum of one year. The PSOL Loan agreement was initially executed for a period of 11 months but was extended to two more years vide letter agreement dated April 2, 2017. The same done without the approval of the Board of CG Power.

### **D. Genuineness of the transaction**

*Did the purchase and sale really happen?* – From the preliminary findings, it appears that this transaction has been carried out on paper to reduce the

liability of CG PSOL towards CG Power. The agreements executed on the letterheads of the Supplier companies appear to be identical. The Purchase orders issued by the customers are also identical. It may be noted that Madhav Acharya and B. Hariharan had entered into an agreement on behalf of CG Power and CG PSOL. The condition stipulated in the agreement is that at the end of a financial year, the outstanding amount shall not exceed ₹1000 Crore. Hence, it appears that this transaction has been carried out to reduce the liability of PSOL towards CG Power. However, the Forensic Auditors' Report may give a better picture on the genuineness of the transaction.

#### ***E. Agreement of CG Power with Baba Iron***

*The Noticees have submitted a copy of the "Note for approval" exchanged between Somashis Mohapatra, Deputy General Manager Corporate Legal and Rajagopal which specifically sought approval of Rajagopal in respect of the signing of the agreement with Baba Iron and which bears the noting "approved by Neelkant".*

*"For recovery of unrealized debt of ₹ 120,00,00,000/- (Rupees One Hundred and Twenty Crore) by CGPISL from identified defaulting customers, an agreement for sale of receivables is proposed to be executed as per the terms advised by CEO&MD and communicated to the undersigned by you, with Baba Iron Industries Pvt. Ltd... (Baba Iron) with CIN U27109WB1988PTC044104 having its registered office at Krishna Square, 2A Grant Lane 7<sup>th</sup> Floor, Kolkata 700012. It is accordingly proposed to sale the receivables to Baba Iron at a discount of 28% i.e. at ₹ 86, 40, 00, 000/- (Rupees Eighty six Crore Forty Lakhs only) which shall be paid by Baba Iron to CGPISL in four equal quarterly installments starting 1<sup>st</sup> July 2019.*

*In the event Baba Iron is not able to recover, the agreement can be terminated. In such an event the Company can proceed with filing of appropriate legal proceedings against the Customers on the basis of balance confirmation issued*

*by the Customers on 6.3.3018. As such no risk is envisaged as CG's legal rights do not get affected.*

*The attached specific draft agreement has been prepared and finalized. Request for your approval and authorization for signing of the agreement.*

*(Somashis Mohapatra, Deputy General Manager – Corporate Legal)*

*Approved by*

*(Ravi Rajagopal, EVP & Global Head – Legal, Governance & Risk)*

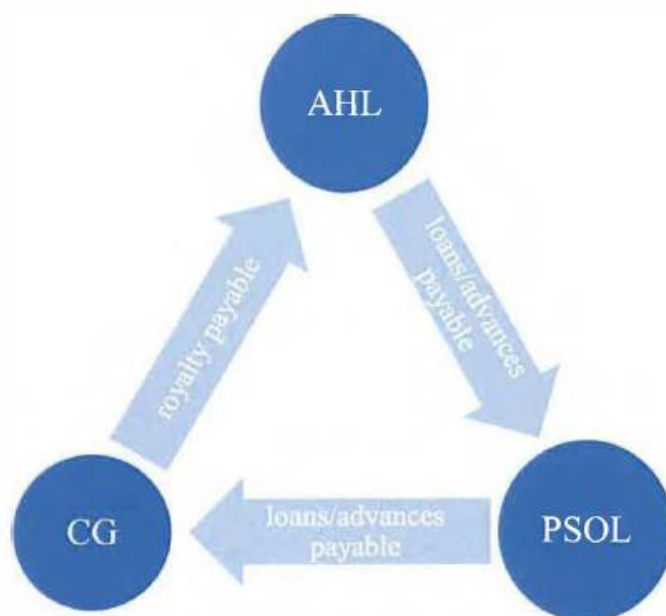
*...”*

**Finding**

The agreement with Baba Iron has been signed by Somashis Mohapatra, Deputy General Manager, Corporate Legal, CG Power. Noticee no. 5 has submitted a copy of a document titled 'Note for approval' where Somashis Mohapatra has sought approval of Ravi Rajagopal for signing the agreement with Baba Iron. Ravi Rajagopal has written “May be signed. Approved by Neelkant”.

While I take note of this document, at this stage, I am not convinced about the genuineness of the original purchase and sale transaction for reasons stated above. I also note that the Company has neither received money from the Identified Customers nor from Baba Iron. Hence, a clearer picture may emerge from the Forensic Auditor's Report.

## 21.9 ₹229 CRORE PAID TO CG POWER SOLUTIONS LIMITED (“CG POWER SOLUTIONS”).



### 21.9.1 As noted from the Interim Order,

A. Avantha Holdings and CG Power had entered into a Brand License and Brand Support Agreement dated January 25, 2010 for granting CG Power the right to use ‘Avantha’ brand owned by Avantha Holdings for the consideration mentioned therein. Thereafter, Avantha Holdings and CG Power entered into various amendment agreements to record the revised terms and conditions for the use of ‘Avantha’ brand (collectively, “**Old Royalty Agreement**”). The last royalty payment made by CG Power to Avantha Holdings for using the ‘Avantha’ brand was on August 31, 2018. Thereafter, Avantha Holdings and CG Power entered into Avantha Brand Usage Agreement dated February 13, 2019 (“**New Royalty Agreement**”) which superseded and replaced the earlier Old Royalty Agreement and monetized 50% of the royalty payable by CG Power to Avantha Holdings of ₹411.20 Crore from October 1, 2018 in perpetuity and the balance 50% of the annual royalty payments would be payable by CG Power on its annual consolidated net operating revenue to Avantha Holdings. While the New Royalty Agreement was executed between Avantha Holdings and CG

Power, it is understood that Avantha Holdings and CG Power were still in talks to revise the terms pertaining to consideration payable by CG Power to Avantha Holdings.

B. PSOL had taken loans from CG Power and had in turn had made certain advances to Avantha Holdings, which stood at ₹778 Crore as on November 13, 2018. The amounts were however, not repaid by Avantha Holdings to PSOL. Towards repayment of these advances, Avantha Holdings addressed a letter dated September 28, 2018 to CG Power (“**Avantha Holdings Letter**”) wherein Avantha Holdings proposed to make a deposit of ₹229 Crore (“**Deposit Amount**”) with CG Power subject to the following:

- CG Power placing the Deposit Amount in a fixed deposit;
- Royalty being paid by CG Power to Avantha Holdings on or before March 20, 2019;
- The amount of royalty to be paid by CG Power to Avantha Holdings shall be appropriated out of the Deposit Amount towards part repayment of earlier advances by CG Power/ PSOL to Avantha Holdings;
- Royalty being paid to a specific bank account of Solaris maintained with IndusInd Bank, Barakhamba Road Branch, New Delhi;
- If royalty is not paid on or before March 20, 2019, the Deposit Amount to be refunded by CG Power.

C. PSOL received a payment of ₹294 Crore from Avantha Holdings on September 29, 2018 and transferred the entire sum to CG Power on the same day. Subsequently, CG Power created 5 fixed deposits with IndusInd Bank aggregating to ₹229 Crore and the balance ₹65 Crore out of ₹294 Crore was utilized by CG Power. As stated above, Avantha Holdings and CG Power entered into New Royalty Agreement on February 13, 2019. However, Avantha Holdings and CG Power were still in talks to revise the terms pertaining to consideration payable by CG Power to Avantha Holdings. Since, Avantha Holdings and CG Power could not reach a

consensus on the payment terms prior to March 20, 2019, CG Power did not pay royalty to Avantha Holdings as contemplated under the Avantha Holdings' Letter.

**21.9.2 Noticees' submissions:**

- A. *The terms and conditions of AHL Letter were duly known to MD & CEO and the Company.*
- B. *AHL Letter condition to deposit the money with Indus Ind was discussed in the Board Meeting dated 13.11.2018.*

**21.9.3 Consideration of issues related to the Impugned Transaction in light of Noticees' submissions:** The transaction has been examined on the following lines:

**A. Was the Board aware of the Conditional deposit of ₹225 Crore as claimed by V. R. Venkatesh:**

The Board of CG Power in its meeting held on November 13, 2018 accepted the repayment schedule received from Avantha Holdings against advances extended by the Company/its subsidiaries:

*"...RESOLVED THAT the repayment schedule received from AHL against advances extended by the Company/its subsidiaries including the terms and conditions of such advances be and hereby approved including the following:*

- a) *Repaying funds amounting to 225 Crore, comprising 80 Crore from AHL and 145 Crore from the proceeds of sale of Solaris Chemtech Industries Limited;*
- b) *Pledging of....*
- c) *Giving up 50 basis points of the annual brand royalty payment due to it from the Company over a period of 15 years, whose net present value, estimated between ₹400 and ₹ 450 Crore, to be appropriately securitized for the benefit of the Company.*

*Neelkant and Venkatesh authorized to negotiate, finalize and execute the terms and conditions basis the overall approval granted by the Board*

...

*The Board was clarified that:*

- i) Item (a) of the above resolution represented the proposed cash repayment out the amount receivable by the Company/its subsidiary from AHL and item (c) of the above resolution represented the proposed amount that will be set off against the balance amount receivable by the Company/ its subsidiary from AHL.*
- ii) Item (b) above resolution represented the security provided by AHL to the Company/its subsidiary for the amount receivable by the Company/ its subsidiary from AHL till their loans to AHL are fully repaid ...”*

The following e-mail trails provided by V. R. Venkatesh have also been examined.

1. An e–mail from Dushyant Bhargava of IndusInd bank (dt.28<sup>th</sup> March 2019) to Abhishek Kabra with CC to Venkatesh  
*“Dear Abhishek.... PFA FD closure and four fund transfer letters – separately for 229 Crore i.e. original FD amount and interest amount. Please take full signatures with stamp wherever blanks are there (exact interest figure will be determined once FDs are closed).”*
2. Email from Venkatesh to Neelkant (dt.28<sup>th</sup> March 2019) on the subject ‘*FD lying with Indus Ind*’  
*“Dear Neel*  
*Further to the captioned subject.*  
*As you may be aware, AHL had monetized the royalty payment with Indus Ind, based on which AHL had transferred 229 Crore which is lying in a fixed deposit with Indus Ind bank. The calculations were based on the fact that CG will pay royalty @1% if revenues every half year to a specified bank account of the group with Indus Ind.*

*However given that the royalty rate is now reduced to 0.5%, we are not in a position to fulfill the conditions – after multiple rounds of discussions with Indus Ind, we have now agreed to return the fixed deposit with Indus Ind – this will be done such that the initial receipt of funds is reversed. The monies will be transferred from CG to CG P Sol to AHL.*

*This is in line with our discussions – request please approve so that the Treasury team can do the needful.*

*Best regards*

*Venkatesh”*

3. In response, Neelkant has sent an e-mail to S. Khandelwal of AHL, B. Hariharan, Sudhir Mathur:

*“Dear All*

*Refer our discussions on the subject*

*As agreed, CG is returning the FD of Indus Ind as per trailing mail below*

*This would increase the group receivables in CG books by an equivalent amount of ₹ 229 cr*

*FYI*

*Regards*

*Neelkant”*

4. Email from Neelkant to Venkatesh – December 28, 2018

*“...Status of receipt of 225 Crore – Have informed that we are still awaiting the same*

*...”*

**Findings**

V. R. Venkatesh in his e-mail to K.N. Neelkant has stated that since the royalty rate is now reduced to 0.5%, we are not in a position to fulfill the conditions agreed with Avantha Holdings. Hence, the Company has to return the ₹225 Crore received from Avantha Holdings.



However, the conditions stipulated in Avantha Holdings letter dated September 28, 2018, which were not brought to the notice of the board/ MD &CEO, are as below:

- CG Power placing the Deposit Amount in a fixed deposit;
- Royalty being paid by CG Power to Avantha Holdings on or before March 20, 2019;
- The amount of royalty to be paid by CG Power to Avantha Holdings shall be appropriated out of the Deposit Amount towards part repayment of earlier advances by CG Power/ PSOL to Avantha Holdings;
- Royalty being paid to a specific bank account of Solaris maintained with IndusInd Bank, Barakhamba Road Branch, New Delhi;
- If royalty is not paid on or before March 20, 2019, the Deposit Amount to be refunded by CG Power.

Avantha Holdings' letter does not talk about the rate of royalty; rather it talks only about the date before which the royalty amount has to be paid by CG Power. It appears that V. R. Venkatesh has misled the MD & CEO towards returning the money to Avantha Holdings.

On November 13, 2018, the Board had agreed to the proposal of Avantha Holdings to repay ₹225 Crore immediately and to further secure the remaining amount by way of creation of pledge of its shareholding in Avantha Power and Infrastructure Ltd and Jhabua Power and to give up 50 basis points of annual brand royalty payment over a period of 15 years. Nowhere in the Board minutes it is mentioned that ₹225 Crore will be a conditional deposit; in fact it has been clarified in the resolution that ₹225 Crore will be cash repayment out of the receivables for the Company/its subsidiaries. In fact, K. N. Neelkant in his e-mail dated December 28, 2018 has mentioned that the Company is still awaiting the receipt of ₹225 Crore; whereas the fixed deposits were already created in October 2018. Hence, it is difficult to agree to V. R. Venkatesh's contention that the Board of CG Power/ K. N. Neelkant were aware of the contents of Avantha Holdings' letter. Further, K. N. Neelkant in his e-mail dated March 28,

2019 has stated that the group receivables would increase by an amount of ₹229 Crore after return of the deposit.

22. In their submissions, Noticees no. 2–6 and 8, have vehemently contended that the aforementioned *Impugned Transactions* were carried out with the knowledge and approval of the Company as the MD&CEO along with the RAC were aware and had approved the said transactions. As detailed in paragraph 21, I am of the considered view that on the basis of the material available on record and analysis of all the transactions, the case of the Noticees has not been sufficiently made out. As observed in the preceding paragraphs, the information/documents submitted by Noticees no. 2–6 and 8 do not indicate that the *Impugned Transactions* (except the transfer of money from the Company to AHL in the Nashik property transaction) were brought to the notice of the RAC or that approval was obtained from the Board of Directors of CG Power.
23. As noted from the Company's submissions, it is observed that the following *Impugned Transactions* were initiated after the aforementioned RAC meeting, viz. –
- a. Kanjurmarg property transaction;
  - b. Euro 44 million loan availed by CG Singapore from Standard Chartered Bank;
  - c. US 40 million foreign currency term loan availed by CG Middle East from IndusInd Bank;
  - d. Outstanding trade receivables aggregating to ₹108 Crore from identified customers;
  - e. ₹229 Crore paid to PSOL; and
  - f. Outstanding advances to vendors in CG Middle East.

24. Noticees no. 2–6 and 8 have also sought to place reliance on the Earnings Conference Call on November 14, 2018 along with the minutes of the meetings of the Board of CG Power held on November 13, 2018 and January 22, 2019 to contend that the repayment of loans by AHL was brought to the notice of the Company. Having regard to the findings in the preceding paragraphs, I note that the submissions are not relevant since the *Impugned Transactions* were carried out between 2015–2018 without the Company’s knowledge or approval of its Board.
25. Incidentally, in its reply dated December 12, 2019, the Company had referred to its letter to SEBI dated December 9, 2019, wherein it was stated that while collating information/documents for the forensic investigation, certain forged resolutions, handwritten notes and approvals, which point to the involvement of Noticees no. 3, 4 and 5 in carrying out unauthorised financial transactions, have come to the Company’s attention. These will have to be examined by SEBI.
26. **Role of Gautam Thapar in the alleged irregularities –**
- A. As per the Interim Order, Gautam Thapar had *inter alia*:
- i. Executed Letter of Awareness in his personal capacity to ABFL (of loan availed by Blue Garden and subsequent payment to CG Power) but did not bring it to the notice of the Board.
  - ii. Involved in structuring of the transaction relating to the Nasik property between CG Power and Blue Garden, which finally resulted in an amount of ₹145 Crore being advanced to Avantha Holdings, without any interest.
  - iii. Involved in structuring of the transaction relating to the *Kanjurmarg property*, where a series of transactions between CG Power and Blue Garden and others resulted in the liability of BILT, another Avantha Group Company, being paid off by Acton, with the money received from CG Power.
  - iv. Transfer of money of €44 million by CG Singapore to Avantha International, the private investment entity of Gautam Thapar.

- v. Transfer of \$40 million by CG Middle–East to Solaris, the ultimate beneficiary, which is part of the Avantha group.
- vi. Negotiations with Yes Bank for sanctioning ₹500 Crore credit facility to Avantha Holdings, for which CG Power stood Guarantee.
- vii. Advances made by CG Singapore during March–July 2018 to Mirabelle, an Associate Company of Avantha Holdings.
- viii. Failed to inform the Board of CG Power of the aforesaid transactions and did not disclose his interest in the said transactions.
- ix. Allowed transactions to be executed by CG Power even though its Board was unaware of most of them.

B. Upon a consideration of the preceding paragraphs, I find that Gautam Thapar was involved in the *Impugned Transactions* as under:

- i. In Nashik and Kanjurmarg property transactions, the funds have moved out of CG Power to Avantha Holdings & BGPPL which are part of the Avantha Group;
- ii. Transfer of money of €44 million by CG Singapore to Avantha International, an Avantha Group Company.
- iii. Transfer of \$40 million by CG Middle–East to Solaris, the ultimate beneficiary, which is part of the Avantha group.
- iv. Advances made by CG Singapore during March–July 2018 to Mirabelle, an Associate Company of Avantha Holdings.

C. I also note that at the relevant time, Gautam Thapar was the Chairman of CG Power and was also a substantial shareholder (87%) in Avantha Holdings, a Promoter Company of CG Power. Further, Avantha International, BILT/BGPPL, Mirabelle, Solaris and Ballarpur International are Avantha Group Companies. As a result of the transactions detailed at paragraph 21, the liabilities of these Promoter Group Companies have been transferred to the books of CG Power and its subsidiaries. The funds and the assets of a listed entity have been clandestinely used for the benefit of the Promoter Group Companies. These transactions were carried out without the requisite

approval of the board of CG Power and were detrimental to the interest of the stakeholders/shareholders of the Company.

- D. Gautam Thapar has contended that he was only the Non-Executive Chairman of the Company and had no role in the day-to-day affairs of the Company. The role of K. N. Neelkant, the then MD&CEO has not been examined by SEBI. While SEBI shall examine the role of other people involved in these transactions, the fact is that funds have moved out of a listed entity in which Gautam Thapar was the Chairman, to Promoter Group Companies in which Gautam Thapar had a majority shareholding or had a significant influence/control. The *Impugned Transactions* could not have been carried out without the knowledge and tacit approval of Gautam Thapar since the ultimate beneficiaries were companies owned or controlled by him. Hence, I find no merit in his contention that he was a Non-Executive Chairman and had no role in the Company's affairs or the Impugned Transactions. In view of the above, at this stage, I confirm the findings against Gautam Thapar.

## 27. Role of V. R. Venkatesh in the alleged irregularities –

- A. As per the Interim Order, V. R. Venkatesh was *inter alia*:
- i. Involved in structuring of transactions related to transfer of *Nashik property* and *Kanjurmarg property*. He is presently a Director in Blue Garden and Acton, both of which have been used to tunnel moneys to Avantha Holdings.
  - ii. Executed an undertaking in favour of ABFL, for creation of right of mortgage of the *Nashik property*, without approval from the Board of CG Power.
  - iii. Unauthorized signing of cheques issued to Yes Bank as a guarantee for credit facilities availed by Avantha Holdings.
  - iv. Unauthorized remittance instruction for transferring money from CG Singapore to Avantha International, while being on the Board of both CG Power and CG Singapore.
  - v. Unauthorized execution of Facility Agreement and Deed of Guarantee to IndusInd Bank on behalf of CG Middle-East and CG IBV.

- vi. Gave instructions for draw down of the facility availed by CG Middle–East in the books of CG IBV.
- vii. Approved payments to be made to the Commercial Agents (who brought in identified customers to the company) who could not be traced by the Investigation Team.
- viii. Executing contracts with the Service Agencies to mitigate the risk of potential claims associated with certain customer contracts, without the authorization of the Board of CG Middle–East.

B. In addition to the above,

- i. In the case of ₹229 Crore paid by Avantha Holdings to PSOL, Avantha Holdings sent a letter to CG Power undertaking to deposit a sum of ₹229 Crore with CG Power subject to certain conditions, which were ultimately detrimental to CG Power. V. R. Venkatesh, on behalf of CG Power, sent a letter undertaking acceptance of the Conditional deposit and terms thereof. However, this did not have the approval of the Board of CG Power. By doing so, he aided Avantha Holdings, a Gautam Thapar Company, in reducing its liabilities towards CG Power and its Group Companies.
- ii. Moreover, it is pertinent to note that the CFO provides a certification under Regulation 33(2) of the LODR Regulations 2015, along with the CEO, that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading. The CFO should take due care to ascertain that the contents of the financial statements of the company are substantially accurate and that it presents a true and fair picture of the state of the company's financial affairs. *Prima-facie*, it appears that the V. R. Venkatesh has failed in his duties as CFO of the Company.

C. Upon a consideration of the preceding paragraphs, I find that V. R. Venkatesh who was the CFO of CG Power from August 12, 2017 till August 30, 2019, when the Company terminated his services, was involved in the *Impugned Transactions* as he had without authorization and Board approval:

- i.* Executed mortgage undertaking in respect of Nashik Property transaction;
- ii.* Signed post-dated cheques as a guarantee for the credit facilities extended to Avantha Holdings by Yes Bank;
- iii.* Signed remittance instruction for transfer of funds from CG Singapore to Avantha International, contrary to board resolution authorizing the loan;
- iv.* Signed documents relating to the \$40 million foreign currency term loan from IndusInd Bank;
- v.* Executed Deed of Guarantee on behalf of CG IBV, without the approval of the board of CG IBV;
- vi.* Approved payments to Mirabelle, an Avantha Group Company;
- vii.* Did not inform the Board of Directors about the contents of the Avantha Holdings' letter dated September 28, 2018, that the repayment of loans are subject to certain terms and conditions and thereby, misled the MD&CEO and the Board of the Company.

D. V. R. Venkatesh has contended that the Vaish Report has excluded all higher executives from its investigation and has named people who had executed ministerial duties and that all authorizations for the *Impugned Transactions* happened above his pay grade. He has further contended that he was the CFO of the Company for a brief period and some of the *Impugned Transactions* were initiated before he joined the Company. He has further stated that his actions with respect to the *Impugned Transactions* were to ensure that the credit facilities of the Company are not frozen. I note that it is the responsibility of the CFO to ensure that the financial statements of the Company present true and fair picture of the state of the company's financial affairs. A CFO is expected to exercise due care and diligence in ensuring that the transactions authorized by him have requisite approvals and that they are in the best interests of the Company. The actions of V. R. Venkatesh, as detailed above, are in violation of the Rules of Procedure of the Company, the Code of Conduct of the Company and the LODR Regulations 2015. It is further noted that V.R. Venkatesh has failed in his duties as a CFO of the Company and his actions have been detrimental to the Company and against

the interest of the stakeholders/shareholders of the Company. Upon consideration of all the above findings, at this stage, I confirm the findings contained in the Interim Order against V. R. Venkatesh.

**28. Role of Madhav Acharya in the alleged irregularities –**

- A. As per the Interim Order, Madhav Acharya had *inter alia*:
- i. Executed various documents, including MOU with BGEPL, on behalf of CG Power in the transactions involving sale of Nashik and Kanjurmarg properties to BGEPL.
  - ii. Executed agreement with Mirabelle without the authorization of the Board of CG Singapore.
  - iii. Executed PSOL Loan Agreement on behalf of CG Power, without the authorization of its Board.
  - iv. Procurement and sale transactions from identified suppliers and customers mentioned at paragraph 4.1(viii) were executed at his behest.
- B. Upon a consideration of the preceding paragraphs, I find that Madhav Acharya who was the CFO of CG Power from November 1, 2009 to August 11, 2017, was involved in the *Impugned Transactions* as under:
- i. Executed assignment agreement and Power of Attorney in favour of Blue Garden for sale of Nashik property without board approval;
  - ii. Entered in MoU with Blue Garden for assigning, sale and transfer of rights of Kanjurmarg Property without board approval and misusing the power of attorney granted by the board;
  - iii. Executed Power of Attorney in favour of Blue Garden and Vendor Undertaking in relation to the Kanjurmarg transaction without board's approval;
  - iv. Executed PSOL Loan Agreement on behalf of CG Power, without the authorization of its Board and in violation of the Rules of Procedure of the Company.



- v. Executed Tripartite Agreement with Identified suppliers without the approval of the board.
- C. I note that Madhav Acharya had misused the General Power of Attorney granted to him by the Board of CG Power and entered into transactions that were in violation of the Rules of Procedure of the Company. He had also misused the powers granted to CFO under various Board resolutions for entering into the *Impugned Transactions* for the benefit of the Promoter Group Companies. He had also given a false CFO certification that the financial statements of the Company for the Financial Year 2016–17 are true and fair; whereas the transactions entered into with Blue Garden and Acton have deliberately not been reflected in the statement. His actions were in breach of the Code of Conduct and Business Practices of the Company, LODR Regulations 2015 and against the interest of the Company and its stakeholders. Upon consideration of all the above findings, at this stage, I confirm the earlier *prima facie* findings against Madhav Acharya.

**29. Role of B. Hariharan in the alleged irregularities –**

- A. As per the Interim Order, Hariharan had *inter-alia*:
- i. Executed an Undertaking (*‘Collateral Security’*) on behalf of CG Power in the transaction relating to sale of the *Nashik property*.
  - ii. Had signed the cheques issued on behalf of CG Power to Yes Bank as guarantee for the loans availed by Avantha Holdings. He had failed to obtain authorization from the Board of CG Power for the aforementioned.
  - iii. Signed the remittance instruction for transfer of €44 Million to Avantha International Asset B.V., an Avantha Group Company.
  - iv. Executed Deed of Guarantee on behalf of CG IBV, without the authorization of the Board.
  - v. Executed the PSOL Loan Agreement without the authorization of the Board.

B. Upon a consideration of the preceding paragraphs, I find that B. Hariharan who was the Director of CG Power from November 1, 2012 to March 8, 2019, was involved in the *Impugned Transactions* as under:

- i. Executed an Undertaking (*'Collateral Security'*) on behalf of CG Power, without board approval, in relation to sale of Nashik Property.
- ii. Signed post-dated cheques as a guarantee for the credit facilities extended to Avantha Holdings by Yes Bank;
- iii. Signed remittance instruction for transfer of funds to Avantha International, contrary to board's approval;
- iv. Executed Deed of Guarantee on behalf of CG IBV, without the authorization of board of CG IBV.
- v. Approved payments to Mirabelle, an Avantha Group Company
- vi. Executed the PSOL Loan Agreement without the authorization of the Board.

C. I note that B. Hariharan was also a Director on the Board of some of the subsidiaries of CG Power and Avantha Group Companies. As a Non-Executive Director on the Board of CG Power, B. Hariharan was expected to bring in independent judgement on the decisions relating to the affairs of the Company. While he, as a Non-Executive Director, was expected to guide the management, he had, as noted at Paragraph 21, without authorization, signed certain documents relating to the *Impugned Transactions* which have brought in huge liabilities onto the books of the Company. Thus, he had failed in the fiduciary duty entrusted upon him as a Director by shareholders of CG Power. Hence, upon considerations of the facts, at this stage, I confirm the earlier findings against B. Hariharan.

**30. Role of Avantha Holdings, Avantha International, Acton, Ballarpur International, Mirabelle and Solaris in the alleged irregularities –**

A. As per the Interim Order, from the disclosures made by the Company, an amount of ₹2185.93 Crore is receivable balances for the CG Power Group from various Promoter Affiliate Companies and connected parties and

₹326.30 Crore is the advances/loan payable by the CG Power Group to its related/connected parties, details of which are provided as under:

<b>TABLE XII – RECEIVABLES BALANCES FROM VARIOUS PROMOTER AFFILIATE COMPANIES AND CONNECTED PARTIES</b>			
<b>[AMOUNT IN ₹CRORE]</b>			
<b>NAME OF ENTITY</b>	<b>RELATIONSHIP</b>	<b>AS ON 31.03.2019</b>	<b>UNDISCLOSED ITEMS DISCLOSED AND ADJUSTED IN 30.08.2019 PRESS RELEASE</b>
<b>A. ADVANCE/LOAN GIVEN</b>			
AVANTHA HOLDINGS LIMITED	PROMOTER COMPANY	1006.22	179.72
AVANTHA INTERNATIONAL ASSETS BV	RELATED PARTY	350.74	350.74
AVANTHA REALTY LIMITED	RELATED PARTY	10.65	-
AVANTHA POWER AND INFRASTRUCTURE LIMITED	RELATED PARTY	15.00	15.00
ACTON GLOBAL PRIVATE LIMITED	CONNECTED PARTY*	175.00	175.00
BALLARPUR INDUSTRIES LIMITED	RELATED PARTY	68.50	68.50
BALLARPUR GRAPHICS PAPER PRODUCT LIMITED	RELATED PARTY	552.33	552.33
BALLARPUR INTERNATIONAL HOLDINGS BV	RELATED PARTY	70.33	85.37
BLUE GARDEN ESTATE PRIVATE LIMITED	CONNECTED PARTY*	287.74	287.74
MIRABELLE TRADING PTE LIMITED	RELATED PARTY	93.33	93.33
SOLARIS INDUSTRIAL CHEMICALS LIMITED	RELATED PARTY	306.00	378.20
<b>TOTAL</b>		<b>2935.84</b>	<b>2185.93</b>
<b>B. ADVANCES/LOAN PAYABLE</b>			
BLUE GARDEN ESTATE PRIVATE LIMITED	CONNECTED PARTY*	320.00	320.00
MIRABELLE TRADING PTE LIMITED	RELATED PARTY	6.30	6.30
<b>TOTAL</b>		<b>326.30</b>	<b>326.30</b>
*‘CONNECTED PARTY’ IS THE EXPRESSION USED BY CG POWER TO REFER TO ENTITIES WHERE ITS EMPLOYEES ARE SHAREHOLDERS/DIRECTORS.			

B. The funds diverted from CG Power (amounting to ₹1223.80 Crore i.e. ₹1550.10 – ₹326.30) were fraudulently transferred to its Promoter Company i.e. Avantha Holdings and entities related/connected with the Company, viz. Avantha International, Acton, Ballarpur International, Mirabelle and Solaris, without the knowledge of the Company and without any approval from its Board. Accordingly, SEBI had directed CG Power to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Noticees/entities mentioned therein i.e. Avantha Holdings and entities related/connected with the Company, viz. Avantha International, Acton, Ballarpur International, Mirabelle and Solaris along with

due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.

- C. In this regard, from the Company's letter dated December 12, 2019 read with e-mail dated March 5, 2020, it is observed that Recovery Notices have been sent by the Company and on behalf of its subsidiaries CG PSOL, CG Singapore and CG Middle East, as detailed below (Notices issued by the Company upto March 9, 2020, have been included in the Table):

<b>TABLE XIII– DETAILS OF RECOVERY NOTICES ISSUED BY CG POWER, CG MIDDLE EAST FZE LTD., CG INTERNATIONAL HOLDINGS SINGAPORE PTE LTD. AND CG PSOL</b>					
		<b>AMT. (IN CR.)</b>	<b>NOTICES ISSUED ON</b>	<b>STATUS</b>	<b>RESPONSE RECEIVED</b>
<b>A. DETAILS OF RECOVERY NOTICES ISSUED BY CG POWER</b>					
1.	AVANTHA HOLDINGS LTD.	685.31	26-SEP-19	DELIVERED ON 01.10.2019	COUNTER CLAIM OF ₹411.20 CR. + GST ₹74.01 CR
2.	BALLARPUR INDUSTRIES LTD.	68.50	26-SEP-19		NO DUES
3.	SOLARIS INDUSTRIAL CHEMICALS LTD.	98.20	26-SEP-19		DETAILS SOUGHT
4.	SERVOMAX INFRATEL LTD.	101.00	26-SEP-19	RAPD RETURNED - INCORRECT ADDRESS	
5.	AVANTHA REALTY LTD.	10.65	26-SEP-19	DELIVERED ON 01.10.2019	DETAILS SOUGHT
6.	ACTON GLOBAL PVT. LTD.	175.00	25-OCT-19	RAPD RETURNED –	
7.	BLUE GARDEN ESTATE PVT. LTD.	176.12	25-OCT-19	COMPANY HAS SHIFTED	
<b>TOTAL</b>		<b>1314.78</b>			
<b>B. DETAILS OF RECOVERY NOTICES ISSUED BY CG MIDDLE EAST</b>					
1.	AVANTHA ASSET INTERNATIONAL B. V.	2.40	25-OCT-19		
2.	BALLARPUR INTERNATIONAL HOLDINGS B. V.	85.37	25-OCT-19		
3.	COLEMAN COMMODITIES PTE LTD	37.96	25-OCT-19	UNDELIVERED – INCORRECT CONTACT DETAILS.	
4.	EXCELLENCE PACIFIC PTE LTD.	4.49	25-OCT-19		
5.	EXIM MINERALS DMCC	0.65	25-OCT-19	UNDELIVERED – CONTACT DETAILS BELONG TO DIFFERENT COMPANY.	
6.	GOLDEN SEASONS GENERAL TRADING LLC	6.93	25-OCT-19		
7.	MAP GLOBAL TRADING FZC	2.00	25-OCT-19	UNDELIVERED – INCORRECT ADDRESS	
8.	MERCANCIA CONTINENTAL DMCC	5.32	25-OCT-19		NO DUES / REJECTED
9.	SHEEBA GENERAL TRADING LLC	3.88	25-OCT-19		
10.	UNNATI GENERAL TRADING LLC	144.79	25-OCT-19	UNDELIVERED – UNKNOWN COMPANY / COMPANY SOLD OUT	
<b>TOTAL</b>		<b>293.79</b>			

<b>C. DETAILS OF RECOVERY NOTICES ISSUED BY CG INTERNATIONAL HOLDINGS SINGAPORE PTE LIMITED</b>					
11.	AVANTHA ASSET INTERNATIONAL B. V.	348.34	25-OCT-19		
12.	MIRABELLE TRADING PTE LTD.	93.33	25-OCT-19	UNDELIVERED – COMPANY HAS MOVED TO A DIFFERENT ADDRESS & PHONE NOS. MISSING	
<b>TOTAL</b>		<b>441.67</b>			
<b>D. DETAILS OF RECOVERY NOTICES ISSUED BY CG PSOL</b>					
1.	AVANTHA HOLDINGS LTD	320.91	25-OCT-19		COUNTER CLAIM OF ₹411.20 CR. + GST ₹74.01CR
2.	AVANTHA POWER & INFRASTRUCTURE LTD.	15.00	25-OCT-19		NO DUES / REJECTED
3.	BALLARPUR GRAPHICS PAPER PRODUCT LTD.	552.33	25-OCT-19		DETAILS SOUGHT
4.	BLUE GARDEN ESTATE PVT. LTD.	111.63	25-OCT-19	COURIER & RAPD RETURNED.	
5.	SOLARIS INDUSTRIAL CHEMICALS LTD.	280.00	25-OCT-19		DETAILS SOUGHT
6.	CHOICE INFRA VENTURES LTD.	34.56	25-OCT-19		
7.	ESEDA INFRA SOLUTIONS PVT. LTD.	4.56	25-OCT-19		
8.	ESEDA MARKETING	36.46	25-OCT-19	(RAPD RETURNED)	
9.	HARI OM ENTERPRISES	1.64	25-OCT-19	COURIER & RAPD	
10.	RADHEY KRISHNA ENTERPRISES	1.39	25-OCT-19	RETURNED.	
11.	SURAM ASSOCIATES	1.70	25-OCT-19		DETAILS SOUGHT
<b>TOTAL</b>		<b>1,360.18</b>			

D. Vide the aforementioned e-mail, the Company had also informed SEBI that it had received letters from IndusInd Bank and Yes Bank claiming the amounts extended as loans by them to CG Middle East and Avantha Holdings submitting that such demand has been made pursuant to the guarantee given by CG IBV to IndusInd Bank and the purported Letter of Comfort issued without authorization to Yes Bank by B. Hariharan on behalf of the Company. The Company has also informed that ABFL using the Power of Attorney wrongfully issued by Blue Garden, had sought to create mortgage over the Kanjurmarg and Nasik Land and register the charge in their favour with the ROC; the Company had objected to creation of charge and had submitted the two letters each dated January 17, 2020, to ROC, following which the creation of charge was presently on hold. The Company has also informed SEBI that the following legal actions are also in the process of being filed:

- i. Declaration / Cancellation Suits for declaring the agreements signed on behalf of the Company with Blue Garden relating to the sale / assignment of Nasik and Kanjurmarg land and other documents related to creation of security, undertakings, etc. ("**Documents**") for declaring such Documents invalid.
  - ii. Filing of Recovery Suit by the Company and its subsidiary against AHL for recovery of amount of ₹685.31 Crore.
  - iii. Filing of Recovery Suit for recovery against BGPPL by the Company for recovery of ₹552.333 Crore.
  - iv. Filing of Recovery Suit for recovery against Avantha Holdings by CG Power Solutions Limited, the wholly owned subsidiary of the Company for recovery of ₹320.91 Crore.
  - v. Filing of Recovery Suit for recovery against Solaris Industrial Chemicals Limited by CG Power Solutions Limited, the wholly owned subsidiary of the Company for recovery of ₹ 280 Crore.
- E. Having regard to the findings at paragraph 21, at this stage, I am of the considered view that the aforementioned entities (Avantha International, Acton, Ballarpur International, Mirabelle and Solaris) as recipients of the fraudulent transfer of funds of the Company are liable for the manipulation in respect of the financials of CG Power.

## **CODE OF CONDUCT OF CG POWER –**

31.1 The CG Power Code of Conduct and Business Practices (“**Code of Conduct**”) as on April 1, 2017, is reproduced below:

### **2. “General**

*Directors and employees must –*

- a. *Fulfil the functions of the office with integrity as well as professionalism and exercise the powers attached thereto, with due care and diligence;*
- b. *Act in the best interest of, and fulfil the fiduciary obligations to the Company’s shareholders, whilst also considering the interests of other stakeholders;*
- c. *Take informed business decisions based on independent judgment and in the best interest of the Company, not influenced by personal interest or gain;*  
...
- f. *Act in a manner that will protect the Company's reputation;*
- g. *Abide by the Company's "Values" and Code of Business Practices;*  
...
- i. *Comply, in spirit and in letter, with all applicable laws, rules and regulations, and also honour the philosophy of “good faith”, guided by one’s sense of right and wrong;*
- j. *Adhere to the terms of the powers delegated by the Board; ...”*

### **3. Integrity in working**

*Employees of CG are required to observe ethical practices in all activities undertaken on behalf of CG. Every employee must avoid a situation which might be considered Improper or might bring CG into disrepute. Employees are expected to conduct business in an ethical, law abiding and responsible manner. It must be understood that in paying attention to profits and business objectives there is no conflict with paying attention to ethics.”*

### **4. Conflict of interest**

*A ‘Conflict of Interest’ arises in a situation where an employee has a private or personal interest which is sufficient to influence the objective exercise of his/her judgement in the discharge of duties. Involvement in a situation in which, the Company’s interest has an actual or potential conflict with the employee’s private or personal interest is an unacceptable practice and will be viewed as a dilution of the trust that CG has reposed in the employee. In general, a conflict of interest exists for employees, who use their position In the Company for the benefit of their own self, friends, family or relatives.*

*An employee’s primary employment obligation is to the Company. The Company’s employees shall avoid entering into any situation in which their personal or financial interests may conflict with those of the Company including related party transactions. Employees should not place themselves in a position where they are, or appear to be, under personal obligation to any person who might benefit or seek to gain special consideration or favour resulting from the relationship. Business decisions must be taken on an arm’s length basis, duly supported by relevant facts and justified rationale such as quality, track record, competitive pricing, etc. ...*

*Employees should always act in the best interest of CG and should not enter into any kind of private transactions that directly or indirectly bring personal advantage. If a Conflict of Interest has occurred or if an employee faces a situation that may involve or lead to a Conflict of Interest, the employee shall disclose it to his or her Line Manager and/or the HR or the Legal Function to resolve the situation in a fair and transparent manner.”*

## **8. Fraud**

*The Company is committed to the elimination of fraud and to rigorous Investigation of any suspected cases of fraud. Where fraud or any criminal act is found, to ensure that wrongdoers are appropriately dealt with, all acts of fraud will be subject to strict disciplinary action, including dismissal, possible civil and/or criminal action against the concerned employee, forfeiture of employee benefits, including salary/retirement benefits etc.*



*Some examples of fraud include:*

- *Disregarding or violating Company's Rules of Procedure or other standard processes.*
- *Preparing/submitting/manipulating supplier quotes with the intent of awarding contracts to another identified supplier.*
- *Submitting false expense reports.*
- *Forging or altering cheques.*
- *Misappropriating assets or misusing Company's property.*
- *Unauthorised handling or reporting of transactions.*
- *Inflating sales numbers by shipping inventory known to be defective or non-conforming.*
- *Making any entry on Company records or financial statements that is not accurate and in accordance with proper accounting standards.*
- *Misuse of authority to gain benefit for yourself or for others.*
- *Withholding information of fraud committed on the Company.*

### **13. Compliance with Laws and Regulations**

*The Company's activities are subject to the laws of different jurisdictions, statutory requirements and statutory codes. Each of us is required to adhere strictly to both the letter and spirit of all applicable laws, regulations and statutory codes. The laws that apply to particular international transactions and activities include those of the countries where the transaction occurs. The applicable laws also include certain laws of the jurisdiction, where we operate and governing international operations of the Company.*

*The employees of the Company are required to adhere to the Compliance Policy of the Company as notified by the General Counsel of the Company.*

*Each of us is expected to co-operate fully in the investigation of any alleged violation of the law. Concealing a violation or altering or destroying evidence may be illegal and will be treated as a serious breach of the Code."*

## **18. Abiding by Company's Policies and Procedures**

*Employees are required to comply with all policies and procedures (including this code of conduct and management/system controls, circulars and guidelines issued from time to time as available on the CGHR4U and/or notified/communicated to employees from time to time.*

## **19. Financial Discipline**

*At CG, we expect our employees to guard the Company's financial credibility and the trust that all its stakeholders have reposed in it. This Integrity should translate into authentic accounting practices as well as sincerity and honesty whilst implementing the Company's financial procedures. This obligation extends to reporting any financial indiscipline irregularity that an employee may become aware of. Shareholders, management and other interested parties must have complete and accurate financial information in order to make informed decisions. Many employees participate in accounting processes that directly impact the integrity of external financial statements and internal management reports.”*

- 31.2 The above mentioned provisions of the Company's Code of Conduct fasten an obligation on its Directors and employees to ensure *inter alia* that they act in the best interest of the Company, adhere to the terms of the powers delegated by the Board, conduct business in an ethical, law abiding and responsible manner, report any financial indiscipline irregularity that they may be aware of, etc. Further, the Rules of Procedure provide for delegation of authority and decision making levels with respect to areas of importance in the Company's day-to-day operations. Upon a consideration of the findings in the preceding paragraphs, it is clearly evident that Noticees 2–5 had failed to adhere with the requirements mandated under the Code of Conduct read with the Rules of Procedure, thereby violating Regulation 26(3) of the LODR Regulations 2015 (reproduced at paragraph 35).

## CONCLUSION:

32. In the Interim Order, SEBI *prima facie* found that Noticees 2–8 had perpetrated certain irregularities which included:
- (i) The use of certain assets of the Company as collateral including being Co–Borrower and/or Guarantor for enabling third parties to obtain loans without due authorisation from the Board of CG Power.
  - (ii) Routing transactions through subsidiaries, Promoter–affiliated Companies and other connected parties for the ultimate benefit of companies related to Promoter Group.
  - (iii) Inappropriate netting–off the liabilities with the receivables from different entities.
  - (iv) The use of different accounting heads for concealing payments made by CG Power.
  - (v) Interest free advances to Promoter–affiliated Companies.
  - (vi) Entering into dubious transactions for reducing the liability of the Promoter affiliated Companies towards CG Power/Group Companies.
33. In these proceedings, the above mentioned findings stand confirmed as recorded in the preceding paragraphs. At this stage, the analysis of the *Impugned Transactions* point out to various occasions of diversion of funds from the listed company to the Promoter Group Companies. The Noticees have misused the powers granted by the Board of the Company to enter into *Impugned Transactions* for the ultimate benefit of the Promoter Group Companies. Further, certain subsidiaries of the Company viz., CG PSOL, CG IBV, CG Middle East, CG Singapore etc. have been used to route the funds. The standards of corporate governance at unlisted subsidiaries are generally lower than the standards of corporate governance at a listed entity. The Noticees appear to have misused certain approval exemptions available under the LODR for ‘*Related Party transactions*’ between a holding company and its wholly owned subsidiary, whose accounts are consolidated with the holding company and placed at the general meeting for approval, and have therefore used the subsidiaries as conduits for diverting funds to the promoter group companies. While in a few cases the money

has gone back to the banks, the assets of CG Power have reduced and the liabilities of promoter group companies have come on to the books of CG Power and its subsidiaries. Such acts destroy the confidence of investors and affect the market sentiment as a whole. Accordingly, after carefully considering the findings in the preceding paragraphs, I am of the considered view that this is a unique case where a listed entity and its shareholders have been defrauded by its Promoters acting in concert with some of its Directors, some of whom were also Directors in Promoter Group Companies.

34. In their submissions, Noticees no. 2–6 and 8 have contended that *“in lieu of certain minor financial defaults taking place by companies within a ‘group’, the lenders/bankers choked/froze the credit facilities to the entire ‘group’.”* Hence they had to carry out the *Impugned Transactions* for the benefit of the Company, at the insistence of the Lenders. I find the Noticees’ contention to be misplaced since if such contention is accepted, the whole argument on diversion of money would not arise. Essentially the money belonging to the listed company and its shareholders has been transferred to an unlisted company where almost the entire stake is held by the Promoter and the shareholders/Board of the listed company were unaware. Further, in most of the *Impugned Transactions*, neither did the Board approve such transfers nor did it delegate the authority to approve such transfers to a committee or an individual. Hence, I do not accept the contention of the Noticees that money was *‘diverted’* to the Promoter Group Companies at the insistence of the *Lenders* to ensure that credit facilities for the Company are not frozen. It is fundamentally wrong to state that the powers of the Board of CG Power in authorizing and approving transactions for the benefit of the Company and its stakeholders can be exercised by an individual without appropriate authority to do so.
35. At this stage, I find it relevant to reproduce the following applicable provisions of the SEBI Act, 1992 (“**SEBI Act**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“**PFTUP Regulations 2003**”) and the **LODR Regulations 2015**:

## **SEBI Act**

12A. No person shall directly or indirectly—

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

## **PFTUP Regulations 2003**

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

No person shall directly or indirectly –

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

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

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

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

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

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

### **LODR Regulations 2015**

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

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

(i) Disclosure of information:

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

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

(ii) Key functions of the Board of Directors –

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(iii) Other responsibilities:

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

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

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

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

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

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

*a) The quarterly financial results submitted shall be approved by the Board of Directors:*

***Provided*** *that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.*

36. As per the Interim Order:

*I. Gautam Thapar, V. R. Venkatesh, Madhav Acharya, B. Hariharan along with the Promoter Company and entities related/connected with the Company, viz. Avantha Holdings, Acton Global Private Limited and Solaris Industrial Chemicals Limited have prima facie violated Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) and (r) of the PFUTP Regulations, 2003.*

- II. Gautam Thapar, Madhav Acharya and B. Hariharan have *prima facie* violated Regulations 4(2)(f)(i)–(ii), 4(2)(f)(iii)(3) and (6) of the LODR Regulations 2015.
- III. Gautam Thapar, Madhav Acharya and B. Hariharan have *prima facie* violated Regulation 26(3) of the LODR Regulations 2015 on account of having violated the provisions of the Code of Conduct for employees of CG Power.
- IV. V. R. Venkatesh has *prima facie* violated Regulation 4(2)(f)(i)(2) and Regulation 26(3) of the LODR Regulations 2015.
- V. V. R. Venkatesh and Madhav Acharya have *prima facie* violated Regulation 33(2)(a) of the LODR Regulations 2015.
37. Upon a consideration of the preceding paragraphs, I find that the *Impugned Transactions* indicate a serious misstatement of accounts and diversion/siphoning of funds from a listed Company and/or its subsidiaries/ associates, which are in violation of the provisions of the SEBI Act, PFUTP Regulations 2003 and the LODR Regulations 2015. Accordingly, I find that Noticees no. 2–8 have violated the aforementioned provisions of law.
38. **ROLE OF MD&CEO, RAC, AUDITORS AND OTHER EMPLOYEES OF CG POWER:** In their submissions, Noticees no. 2–6 and 8 have *inter alia* contended that the *Impugned Transactions* were carried out with the knowledge and approval of the Company as the MD & CEO, RAC and the Company’s employees were either directly involved or informed of such *Transactions* at every stage and further, requisite approval for such *Transactions* were accorded by the MD & CEO and the Board of Directors along with the RAC. The aforementioned Noticees have contended that SEBI has not investigated the role of the MD & CEO/RAC/Board of Directors/other employees in the *Impugned Transactions* and had only issued directions/prohibitions against the said Noticees. The Noticees have further submitted that “*several independent directors also held*



*directorships in Avantha Group Companies at the relevant time. Sudhir Mathur was an independent director on the Board of BGPPL till 15 May 2019. Ms. Ramni Nirula was on the board of AHL and Labroo was on the Board of BILT. Ashish Guha, then an independent director and now Chairman of the Company was also a director in BILT. Therefore, the Company's argument that the RAC acted 'reasonable' does not hold ground and there is no truth nor substance in the charge and the Interim Order must be vacated."*

39. In this context, it needs to be stated that the defence of Noticees no. 2–6 and 8 cannot rest upon non–initiation of investigations against the MD and CEO/RAC/Board of Directors/other employees. In any case, SEBI has already ordered a forensic audit and the Report is expected very shortly. However, upon a consideration of the findings in the preceding paragraphs, I am of the view that the role of the aforementioned entities may be examined by SEBI. Further, I also note that Noticee no. 4 has submitted that Ashwin Mankeshwar, Managing Partner, KK Mankeshwar and Co., the Statutory Auditor of the Company from 2018 till January 25, 2020 was on the Board of Blue Garden and Acton as is evidenced by records of Registrar of Companies. In light of the same, the role of the aforesaid Statutory Auditor may also be examined by SEBI.
40. **COMPLAINTS RECEIVED BY SEBI:** I note that Noticee no. 4 had raised the issue of a big corporate war going on the between two groups and that the Noticees have been made scapegoats. There has been a specific allegation against KKR, a private equity firm, which holds 8.10% of the shares in the Company, through KKR India Financial Services Private Limited, with respect to market manipulation, insider trading and change in control of the company. I also note that certain allegations have been made against Narayan Seshadri, an Independent Director on the board, with respect to his firm Tranzmute's partnership with KKR. Pursuant to the Interim Order, SEBI had also received 3 complaints concerning (a) alleged siphoning of funds by Noticee no. 4 and (b) a failure on the part of the Board of Directors of the Company to adhere to highest standards of corporate governance including involvement of KKR

Group in the affairs of the Company. The subject matter of these complaints have not been specifically addressed in this Order; however, SEBI may examine the said complaints.

**APPLICATIONS SUBMITTED BY THE NOTICEES FOR MODIFICATION, RELAXATION OF DIRECTIONS CONTAINED IN THE INTERIM ORDER.**

**41. APPLICATION DATED NOVEMBER 25, 2019 AS FILED BY NOTICEES NO. 2, 6 AND 8:**

Noticee no. 2 sought the following clarifications in so far as the directions at 6.1(i) in relation to *'dealing in securities in any manner whatsoever, either directly or indirectly, till further orders'* and *'being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders'* are concerned:

- i.* Noticee no. 2 holds shares in both listed and unlisted/private companies and seeks clarification that the above directions do not apply to securities in unlisted or private companies.
- ii.* That the term *'dealing with'* does not apply to voting as a shareholder on matters that are put to vote for the approval of shareholders.
- iii.* What is the scope of the term *'material unlisted subsidiary'*?
- iv.* What is the scope of *'being associated'* with *'any listed entity or its material unlisted subsidiary'*?
- v.* The term *'being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, till further orders'* would not apply to any existing shares held by Noticee no. 2 in any Company in respect of voting as a shareholder on matters that are put to vote for the approval of shareholders.

42. Noticees no. 6 and 8 also sought modifications in respect of the directions directing them to restrain themselves from *'disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders.'* Noticee no. 8 sought modification of the Interim Order (which was permitted for Noticee no. 6 vide SEBI letter dated October 16, 2019) such that it also be permitted (a) to make payments

to statutory authorities; (b) expenses towards provident fund, pension and gratuity, insurance and similar other expenses; (c) payments/wages to employees/retainer/staff/security guards, etc. Additionally, Noticee no. 6 sought a modification of the Order so that it is able to fund the maintenance expenses of its offices including charges towards internet/telephone/ mobile/ telecommunication/printing/fax/electricity/water/ conveyance charges/canteen/ office supplies. Noticee no. 6 also has a manufacturing unit which also requires expense for maintenance and upkeep. Noticee no. 6 reasonably expects that it shall incur ₹4.20 Crore towards maintenance and costs of its manufacturing unit from September 2019 to March 31, 2020 and ₹1.75 Crore towards routine expenses in the ordinary course of business for the same period. Noticees no. 6 and 8 also sought modification of the Interim Order in so far as it concerns expenses including legal and professional fees, to defend themselves against the charges levied against them in these and other proceedings.

43. **APPLICATION DATED NOVEMBER 22, 2019 AS FILED BY NOTICEE NO. 3:** His wife, Hema Venkatesh, suffers from chronic ear condition call Cholesteotoma and has undergone surgery thrice in the last 8 years. Further, in the past, there have been occasions where she had to be rushed to emergency, which requires substantial funds to be available. With the aforesaid, he be allowed to access the market with the limited scope of liquidating my mutual funds units and equity shares. Further, the mutual fund units held by his wife jointly with him may also be allowed to be liquidated. Since this is not a predictable requirement and the amount may be required at short notice, no restriction be placed on the quantum of redemption. Additionally, he may be allowed to be associated with any other company, whether listed or unlisted, except CG Power and their Group Companies.
44. **APPLICATION DATED NOVEMBER 24, 2019 AS FILED BY NOTICEE NO. 4:** The restraint on Noticee no. 4 be restricted to dealing in securities of CG Power only. The Noticee is unemployed now and there is no other source of income. He may be permitted to operate his demat account freely without any restrictions. His savings are stuck in demat account in the form of mutual fund units, shares and bonds and therefore, it is prayed, alternatively, that the Interim Order be modified to

liquidate part of the portfolio pending passing the Confirmatory order to meet day-to-day expenses and legal costs to fight this litigation in various forums including SEBI. His day-to-day expenses include children education, medical expenses and household expenses. His daughter is studying in the US pursuing her higher studies. Noticee no. 4 and his wife are diabetes patients. Further, since Noticee no. 4 is a professional, he may be permitted to take up any professional/consultancy job in any listed company or material subsidiary of the listed company so that he can earn his livelihood.

45. **APPLICATION DATED NOVEMBER 22, 2019 AS FILED BY NOTICEE NO. 5:** Noticee no. 5 is a senior citizen and has superannuated. A large majority of life savings of Noticee no. 5 are invested in mutual funds and also in a few equity shares. Further, Noticee no. 5 has a family to support, which includes his dependent mother. Accordingly, directions in the Interim Order be modified to allow him to access the securities market. Alternatively, Noticee no. 5 be allowed to sell his holdings in mutual funds and in equity shares as and when required by him to sustain his family and also towards his legal expenses for proceedings before SEBI and other authorities. The directions against Noticee no. 5 should be modified so as to apply only in relation to CG Power and Avantha Holdings, as has been done by SEBI in other cases.
46. **ISSUE OF CLARIFICATION:** I have considered the aforementioned Applications in light of the findings in the preceding paragraphs. Accordingly, the directions as contained in paragraph 6.1(i) and (ii) of the Interim Order (as reproduced at paragraph 1 of this Order) are hereby clarified as under:
- a. In relation to the restraint on *'dealing in securities in any manner whatsoever, either directly or indirectly, till further orders'*, the same shall apply to securities held by the Noticees in listed companies and their unlisted subsidiaries and private companies, if those companies are Promoters of listed companies. Further, the restraint shall also extend to voting as a shareholder on matters that are put to vote for the approval of shareholders in listed

companies/Promoter Companies of listed Companies and subsidiaries of listed companies.

- b. The term '*material unlisted subsidiary*' (as per Regulation 16 of the LODR Regulations 2015) shall mean a subsidiary, whose income or networth exceeds 10% of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.
- c. The restraint from '*being associated*' with '*any listed entity or its material unlisted subsidiary*' shall also operate as a prohibition against Noticees no. 2, 3, 4 and 5 from association with any Company, whether listed or material unlisted subsidiary including involvement in the capacity of an Advisor/Consultant.

47. **ISSUE OF LIQUIDATION OF SECURITIES:** For the instant issue, having regard to the submissions made by the Noticees no. 2–5, I am of the considered view that they may be permitted to liquidate upto 25% of the value of the securities held by them as on the date of the Interim Order.

#### **DIRECTIONS –**

48. I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, hereby dispose of the replies/submissions made by the Noticees no. 1–6 and 8 in accordance with the following directions:

- (i) Noticees no. 2–5 i.e. Gautam Thapar, V. R. Venkatesh, Madhav Acharya and B. Hariharan are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further orders. The aforementioned Noticees shall however, be permitted to liquidate upto 25% of the value of the securities held by them as on the date of the Interim Order.

- (ii) Noticees no. 2–5 are restrained from being associated with any intermediary registered with SEBI or any listed entity or its material unlisted subsidiary, in any manner whatsoever, till further orders.
- (iii) Noticees no. 2–5 shall not be allowed to take fresh positions or increase their open positions or execute trades in the F&O segment, till further orders.
- (iv) Noticees no. 6–8 i.e. Avantha Holdings Limited, Acton Global Private Limited and Solaris Industrial Chemicals Limited, are directed to retain funds/other assets to the extent of receivables shown as outstanding to CG Power and Industrial Solutions Limited, as mentioned at Table XII of paragraph 30A. To the extent of their liability, the aforesaid Noticees are restrained from disposing, selling or alienating, in any other manner, their assets or divert funds, till further orders. Noticee 8 shall however, be permitted (a) to make payments towards dues to statutory authorities; (b) incur expenses towards provident fund, pension and gratuity, insurance and similar other expenses; (c) to make payments/wages to employees/retainer/staff/ security guards, etc. and (d) to make payments towards legal expenses. Further, Noticee 6 shall continue to abide by the directions issued vide SEBI letter dated October 16, 2019. Additionally, Noticee 6 shall be permitted to make payments towards legal expenses.
- (v) Noticee no. 1 i.e. CG Power and Industrial Solutions Limited, shall continue to take all necessary steps to recover the amounts due to the Company, which were extended, either directly or indirectly, to the Noticees/entities mentioned at Table XII of paragraph 30A along with due interest expeditiously and take necessary action, including legal actions, to safeguard the interest of the investors of the Company.

49. A copy of this Order shall be forwarded to the recognized Stock Exchanges and Depositories for their information and necessary action.

**Place: Mumbai**  
**Date: March 11, 2020**

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**