

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

ORDER

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

IN THE MATTER OF

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

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

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), in the interest of investors, vide its letter dated August 7, 2017 took pre-emptive interim measures under section 11(1) of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”), in respect of certain listed companies identified as “shell companies” by the Ministry of Corporate Affairs including J. Kumar Infraprojects Limited (hereinafter referred to as “**JKIL**” / “**Company**”). SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI, vide the said letter dated August 7, 2017 also placed the scrip of JKIL in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyers by way of 200% deposit on the trade value, so as to alert them about trading in the scrip. The said measures were initiated by SEBI pending final determination after
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verification of credentials and fundamentals of the company by the exchanges, including by way of audit and forensic audit, if necessary. The measures also envisaged, on final determination, delisting of the company from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended, but was allowed under strict monitoring so that investors could take informed investment decisions till SEBI and Stock Exchanges complete their detailed examination of such companies.

2. Aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI and other related communications of the stock exchanges, JKIL filed an appeal No. 174 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 10, 2017 stayed the letter of SEBI dated August 7, 2017 and directed BSE and NSE to forthwith reverse their decisions dated August 7, 2017. Subsequently, Hon'ble SAT vide order dated August 11, 2017 disposed the appeal No. 174 of 2017 noting the fact that SEBI/Stock Exchanges are considering the representation of JKIL against the ex-parte communication of SEBI dated 7/8/2017. Accordingly, Hon'ble SAT disposed the appeal staying the directions contained in para 1(a) & (b) of the letter dated August 7, 2017 *qua* JKIL.
3. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of a *quasi-judicial* order, in the interest of natural justice, an opportunity of personal hearing was granted to JKIL on August 10, 2017. The authorized representative of JKIL had appeared for the said hearing. Certain queries were asked from JKIL response whereunto was submitted by JKIL.
4. Subsequently, further opportunities of hearing were provided to JKIL on November 28, 2017 and January 09, 2018 which were attended by its authorized representatives. JKIL was also given opportunity to file its written replies in the matter.

5. Thereafter, SEBI vide Interim Order dated September 28, 2018 (hereinafter referred to as “**Interim Order**”), had modified, subject to para 34 of the interim order and the order passed by Hon’ble SAT noted earlier, the actions envisaged in SEBI’s letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against JKIL as under:

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

6. The *prima facie* observations in the Interim Order are as under:

“A. I note that company through its various replies had submitted copy of its Annual Reports for the years for F.Y. 2013-14, 2014-15 and 2015-16, the background about the company overview, management, milestones, facts about the company, turnover of the company etc., information / details of ongoing construction / details of completion of various projects including civil, irrigation, transportation, road, metro, land development etc., profile of highly reputed independent directors. The same have been considered. However, the present enquiry is restricted only to contracts/sub-contracts under taken by JKIL during the period 2008-09, 2009-10 and 2010-11.

B. It is to be noted that SEBI carried out investigation in the matter of M/s PACL Limited (PACL) and during the course of investigation, LODR it was found that PACL had

mobilized funds from its customers to the tune of Rs.49,100 crores till June 15, 2014. Further, recovery proceedings and adjudication proceedings have been initiated against PACL and its directors.

C. Genuineness/Authenticity of Contracts and Sub-contracts

- (a) *During the course of hearing dated August 10, 2017 and vide SEBI's letter dated August 16, 2017 JKIL was advised to submit the nature of association as per the contract with PACL and workings of the Company in estimating the value of the contracts, supported by documentary evidence. Details of the role of the Company vis-à-vis the sub-contracted parties, workings of the Company in accepting the sub-contract and supporting documentary evidence were also sought.*
- (b) *It is noted that JKIL vide letter dated August 24, 2017 and September 15, 2017 has submitted the copy of work order cum agreements/contracts entered with PACL Limited and also the copy of work order cum agreements/contracts entered with the sub-contractors. The details of the same are mentioned at paragraphs 14(c) and 17 above. Upon perusal of said work order cum agreements/contracts the following are noted:*
- (i) *With respect to contract of JKIL with PACL dated May 11, 2009, JKIL vide its reply dated August 24, 2017 has attached sub-contract of M/s Trinethra Infra Ventures Ltd ('Trinethra') dated October 01, 2009. From the said sub-contract it is noted that work to be completed is mentioned as 531 Acres. Further, JKIL vide its reply dated September 15, 2017 had resubmitted the sub-contract of Trinethra dated October 01, 2009 in support of contract of JKIL with PACL dated May 11, 2009. From the said sub-contract it is noted that the work to be completed is mentioned as 1487 Acres. Thus, sub-contract of Trinethra dated October 01, 2009 in support of JKIL contract with PACL dated May 11, 2009 submitted by JKIL vide its reply dated August 24, 2017 and September 15, 2017*

specifies different area of work to be completed. This discrepancy has not been explained by JKIL.

(ii) With respect to contract of JKIL with PACL dated August 1, 2010, JKIL in its reply dated August 31, 2017 has attached sub-contract with Rithwik Projects Private Ltd. dated August 18, 2010. From the said sub-contract it is noted that work to be completed is mentioned as 14,00,000 cum. Further, JKIL vide its reply dated September 15, 2017 resubmitted the sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of contract with PACL dated August 1, 2010, from the said sub-contract it is noted that the work to be completed is mentioned as 13,13,888.89 cum. Thus, sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of JKIL contract with PACL dated August 1, 2010 submitted by JKIL vide its reply dated August 24, 2017 and September 15, 2017 mention different area of work to be completed. This discrepancy has not been explained by JKIL.

(iii) None of the agreements between PACL and JKIL are on stamp paper nor have been notarized. None of the agreements between JKIL and sub-contractors are on stamp paper nor have been notarized. Thus the dates of the execution cannot be verified.

(iv) The agreements between JKIL and sub-contractors are signed only on the last page by the representative of JKIL and is not signed by any representative of sub-contractors on any page.

(c) Thus, from the above there is a doubt on the authenticity/genuineness of the documents (contracts and sub-contracts) submitted by JKIL.

D. Normal commercial business practice:

(a) It is noted from the annual report of JKIL for the financial year (FY) 2008-09 that the annual total income of JKIL during FY 08-09 is Rs. 41,361.40 lakhs and operating profit is Rs. 6,754.70 lakhs i.e. the operating profit ratio of approx.

16%. From the agreement between PACL and JKIL dated 10.08.2008, it is noted that the agreement entitles JKIL to charge Rs. 70,000/- per acre. While sub-contracting the same work, amounts are charged by Proto Developers and Technologies is Rs. 69,450/- per acre and Indu Projects Limited is Rs. 69,300/- per acre. Thus, in the said instances, the gross profit ratio for JKIL is approx. 1%. However, operating profit ratio will further reduce after considering operating expenses as may have been incurred by JKIL.

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

E. Invoices:

(a) Upon perusal of invoices submitted by JKIL in respect of contracts and sub-contracts, following are noted:

(i) On a sample check, similar/same invoice numbers for different dates are noted.

The examples are as under:

- Two invoices dated 27.01.2010 and 03.02.2010 generated by JKIL on PACL have same invoice no. PACL/024/2009-10.

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

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

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

F. Internal Working Papers:

- (a) During the course of hearing dated August 10, 2017 and SEBI's letter dated August 16, 2017 JKIL was advised to submit the workings of the Company in estimating the value

of the contract supported by documentary evidence. Details were also sought of the role of the Company vis-à-vis the sub-contracted parties, workings of the Company in accepting the sub-contracts and supporting documentary evidence.

(b) It is noted that the Company did not submit any documents substantiating the estimation of value of the contract/sub-contract. With respect to the working of the company, JKIL vide its reply dated August 24, 2017 stated that "the same was done by the internal management of the company and the document prepared in furtherance of the same were preserved by the company for three years i.e. till 2012. In fact once a contract is awarded, the details are of no use to us and hence we generally do not preserve the same. Therefore, because of the unavailability, we cannot provide any information regarding the same." JKIL further stated that, these internal working do not form part of "book and paper" or "books of accounts".

(c) Section 2(8) of Companies Act 1956, defines "book and paper" and "book or paper" as "book and paper" and "book or paper" include accounts, deeds, vouchers, writings, and documents"; and now, Section 2(12) and 2(13) of the Companies Act, 2013, defines the following:

2(12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

2(13) "books of account" includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

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

Further, as per Section 209 (4A) of the Companies Act, 1956: "The books of account of every company relating to a period of not less than eight years immediately

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

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

G. Work Completion Certificate:

- (a) *SEBI vide letter dated August 29, 2017 had advised JKIL to submit the details of completion of contracts along with the work completion certificate for the same. JKIL vide reply dated September 15, 2017 submitted that “..... since PACL was a Non-government organization, no strict procedures as those followed in government organizations were there. We had obtained the contract from PACL and had sub-contracted the same to various other entities. There was no requirement of providing a work completion certificate on the part of either of the parties. However, at the end of completion of each of the work contract, PACL had issued letters to us stating the quantity of work found to be satisfactorily completed by us....”*
- (b) *It is noted that JKIL has not submitted work completion certificate issued by JKIL to PACL or by the sub-contractors to JKIL. JKIL has provided acknowledgement from PACL for completion of work for work orders cum agreements dated August 10, 2008, April 05,*

2009, May 11, 2009 and August 01, 2010 and stated that there was no requirement of providing a work completion certificate on the part of either of the parties. But, it is noted that, one of the clause of submitted copies of work orders cum agreements, state that "The parties have mutually agreed that the Second Party shall raise bills on the basis of stage wise completion of the work containing complete details of work completed duly agreed upon between the parties". Thus the reply is inconsistent with agreements.

H. Reconciliation of Agreements with Invoices

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

(b) From the contracts / sub-contracts / work-order-cum-agreement submitted by JKIL, it is noted that JKIL has provided the details of the land which was subject matter for development along with details of Village, Tehshil, Dist., Total Area and S.D. No., the said details of land development are attached as a list to the contracts / sub-contracts / work-order-cum-agreement. From the invoices submitted by JKIL in regard to the contracts / sub-contracts / work-order-cum-agreement, it is noted that in said invoices, the details of

khasra no. or S. D. No. are not mentioned. Therefore, it is not possible to identify which invoices are for which particular land development project mentioned in the list attached with the contracts / sub-contracts / work-order-cum-agreement. Further, it is noted that JKIL has not submitted the reconciliation of details of work mentioned in the invoices with the list enclosed with the contracts / sub-contracts / work orders cum agreements.

I. Lack of Evidence of Actual Work Being Carried:

From the detailed discussion held in paragraphs 29 (E), (F), (G) and (H) above with respect to invoices, internal workings, work completion certificate and reconciliation of agreements and invoices, it is noted that invoices are not supported by any work completion certificates, the date of invoices from PACL by JKIL and the date of invoices given to sub-contractors by JKIL were on the same date. With respect to the invoices & agreements of land development contracts/sub-contracts, there are insufficient details to identify the land for which contracts/sub-contracts was taken/given i.e. khasra number/plot number, actual date of commencement of work and completion of work etc. The fact that JKIL was given a contract in respect of lands which could not be identified for performance of the contract shows that JKIL was aware at the time of receiving and granting sub contract, that the same cannot be executed. This is further corroborated by the fact that JKIL did not produce any work completion certificate, workings of the company in estimating/accepting the value of the contract/sub-contracts, visit report of engineer, computation of cost, site photographs, travel expenses, actual working papers with respect to contracts/sub-contracts undertaken. The fact that such contracts whose subject matter cannot be identified for execution were knowingly entered into by the Company raises the prima facie suspicion that the Company has entered into such contracts for raising its revenue figures in order to misrepresent its financials and misuse of its books of accounts for the benefits of others.

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

contract/sub-contract. Para 21 of Accounting Standard 9 – Construction contracts for Recognition of Contract Revenue and Expenses, states that “When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.” Further as per para 2 of Guidance Note on Turnover in case of Contractors, the recognition of revenue is attributed to the proportion of work completed (referred to as percentage of completion method). The revenue from contracts are recognized as revenue in the statement of profit and loss in the accounting period in which the work is performed.

The income and the expense of the contracts/sub-contracts are recognized on the basis of percentage of completion method. As stated in the previous paragraph the Company has entered into contracts/sub contracts the subject matter of which was not identifiable for execution of the contract. Also, the Company in its reply submitted that there was no requirement of providing a work completion certificate on part of either of the parties. From the annual report of JKIL for FY 2008-09, 2009-10 and 2010-11, it is noted that JKIL follows the percentage completion method as mentioned in Accounting Standard. In the absence of work completion certificates or percentage of completion of contracts / sub-contracts and non-identifiable nature of the subject matter of contract for execution, it raises a prima facie suspicion on how such income can be recognized in the books of accounts of JKIL. However, it is observed that JKIL booked income on such contracts in the F.Y. 2008-09, 2009-10 and 2010-11.

K. Thus there arises a prima facie suspicion that its books of accounts were misused to show revenues from contracts with entities when no such contracts were prima facie intended for execution at all. Even if there is flow of funds, the prima facie fact that the contract was intended to be for non-execution, shows that the books of accounts have

been misused to reflect the flow of funds in order to create an appearance of revenue creation, while no such revenue could have been created for a work not intended to be done. Therefore, it raises a strong suspicion that the company prima facie, has created entries of revenue in respect of the contracts, in the books of the Company thereby also misrepresenting its financials.

- L. With respect to the Contracts for land development projects between JKIL and PACL, JKIL vide its reply dated February 15, 2018, has submitted pre-tender evaluation report prepared by a consultant namely Lele S S Consulting Engineer for projects in Rajasthan in 2008 and 2009, Madhya Pradesh in 2009 and Tamil Nadu in 2010, invoices generated by Lele S S Consulting Engineer for services provided by them and bank statements highlighting payment made to Lele S S Consulting Engineer towards invoices generated by them. In regard to this, SEBI vide email dated April 12, 2018 advised Lele S S Consulting Engineer (Mr. Lele S S) to provide the details of any pre-tender work/any other work was undertaken by them for JKIL during the FY 2008-09, 2009-10 and 2010-11, copies of invoices raised by them on JKIL during these three years, copy of the report submitted to JKIL and also names of the officer/people from JKIL staff who accompanied them for this pre-tender work/any other work undertaken for JKIL, total revenue vis-à-vis total fees received from JKIL and any relation/connection with JKIL in any manner whatsoever, etc.*

Mr. Lele S S vide email dated April 18, 2018 inter alia stated as under:

“.....

- (a) I am a consultant providing consultancy services of technical evaluation of any contract, advising on technical specific areas for tenders etc. In order to provide these services, I work as temporary consulting staff working on retainer basis for the company. It is to be noted that my work involves me working with the staff of the company and adding technical details by way of small descriptive notes so that the company is able to tender for the contract. I was also associated with other*

Clients as M/s Mahavir Infra Projects, M/s DORSCH consult, M/s Bramputra associates etc.

- (b) In relation to the details of the contracts, it is submitted that I have provided my services for various contracts during the financial year 2008-09, 2009-10 and 2010-11. Some of the major contracts during my services period where I have provided my services are (a) Sion Panvel BOT work (b) Wada BOT work (c) Entry Exit on State border check post (d) Sky walks in Mumbai etc.*
- (c) It is prudent to state that I do not receive my retainership fee on the basis of any specific contract/project. Since I am working as a retainer, I do not maintain records of the work done by me for any contract/ project undertaken by JKIL. I merely charges my services on a monthly basis.*
- (d) With regards to the copy of the invoices raised by me on JKIL for the said period, it is submitted that I raise monthly invoice to JKIL for the said period and it is submitted I raise monthly invoice to JKIL for the work undertaken by me and the payment for the same is done by JKIL on a monthly basis.*
- (e) As stated earlier I have provided my services to JKIL for various contracts/ projects undertaken by them on an ongoing basis and since these reports/ notes are only for the internal consumption of the company, I do not maintain a record of reports/ notes provided by me to the company. So I am unable to provide any report from my end as desired by you in your mail.*
- (f) For the purpose of my advising, I interacts with many employees of JKIL from time to time and there are no specific employees who are particularly engaged with me for the work undertaken by me.*
- (g) With regards to total revenue received by me from JKIL as (1) FY 2008-09 – Rs. 5,60,000/- (2) FY 2009-10- Rs.12,00,000/- and (3) FY 2010-11 - Rs. 12,00,000/- .*
- (h) I do confirm that I am not related / connected to JKIL in any manner whatsoever. I work as an individual independent consultant and do not employ any staff.*
-”*

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

M. Complete information not furnished

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

30. *From the above I note the following:*

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

(b) Flowing from the above that the Company had failed to furnish evidence of actual work being carried out, the Company permitted misuse of its books of accounts by routing non-genuine transactions through its books and reflected inflated revenue. Thus, there appears prima facie suspicion for misuse of books of accounts of the company.

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

7. Vide said interim order, SEBI had advised JKIL to file its reply/objections to the said interim order within 30 days from the date of receipt of the said interim order and also indicate in its reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
8. JKIL has submitted their reply/objections on October 27, 2018 (1st Reply”) made in the Interim Order dated September 28, 2018. Following documents/information was submitted by JKIL along with 1st reply:
 - a. copies of work order cum agreements entered by JKIL with Hindustan Constructions Company Limited dated June 15, 2010, with Larsen and Tourbo Limited dated November 23, 2009, with IDEB Projects (P) Ltd. dated January 15, 2009, with M Venkata Rao Infra Projects Pvt. Ltd. dated May 02, 2009 and with Sanskruti Nirman Pvt. Ltd. dated January 06, 2017
 - b. copies of work order cum agreements entered into by JKIL with L&T dated May 28, 2009, with JSW Energy (Ratnagiri) Limited dated January 07, 2008, with M

Venkata Rao Infra Projects Pvt. Ltd. dated November 25, 2008, with Tridhaatu Constructions Pvt. Ltd. dated March 19, 2016, with Summer Radius Realty Private Limited dated May 15, 2018, with Shreeji Micro Pile dated February 27, 2018, with M/s Asiad Infraprojects Ltd. dated August 27, 2018 and with M/s Evershine Foundation dated August 30, 2018.

c. sworn affidavit of Mr. S S Lele dated October 26, 2018.

9. Meanwhile, SEBI vide its letter dated November 12, 2018 provided an opportunity of hearing to JKIL on December 12, 2018. JKIL vide letter dated November 16, 2018 sought adjournment for any day between December 19 – 21, 2018. Acceding to the said request, SEBI scheduled the hearing on December 19, 2018. The said hearing was attended by the authorized representatives of JKIL, who *inter alia*, made the following submissions with respect to the *prima facie* observations (made at paragraph 29) of the interim order:

A. Genuineness/Authenticity of Contracts and Sub-contracts

- i. There was a discrepancy in the sub contract given to M/s Trinethra Infra Ventures Ltd with respect to area of work to be completed. The discrepancy appeared because the copy of the sub contract submitted vide letter dated August 24, 2017 was not the final version and after deliberations, the contract was revised and work area was enhanced to 1487 Acres. JKIL has *suo motu* provided the final copy of the final version of the sub-contract. During the course of hearing dated November 28, 2017, JKIL itself pointed out this inadvertent error. Trinethra was able to execute the work contract and payments were made as per the revised contract and the same is reflected in the books of accounts.
- ii. That similar inadvertent error occurred in sub-contract with Rithwik Projects Private Ltd. The payments were made as per the revised contract and the same is reflected in the books of account.
- iii. That there is no legal requirement to stamp or notarize such agreements as alleged in the interim order. It is purely a commercial decision of the parties. It is an

accepted industry practice. JKIL has provided various sample agreements with other prominent companies in the industry such as L&T, JSW Steel and HCC to demonstrate that these agreements are also not notarized or executed on stamp paper.

B. Normal commercial business practice:

- i. As regards the said charge in the interim order, it is submitted that from the information available on record, it is clear that the operating profit ratio of financial year 2008-2009 was approx. 16% and the same was earned only where JKIL itself has performed the contract, whereas gross profit ratio of approx. 1% to 3% is earned wherever JKIL has sub-contracted the work to a third party. Hence, the same cannot be compared.
- ii. That there is no fixed operative profit ration and the same depended upon who is performing the contract. These transactions pertained to the years 2008-2011 and we were growing and also got listed in the year 2008 during which the country was suffering from a recession and we had accepted work from wherever we got to finance our growth.

C. Invoices:

- i. That it was an inadvertent error in numbering the invoices and both invoices mentioned in the interim order was with JKIL and PACL and has different amount and the same was duly paid and reflected in the books and accounts.
- ii. That in the invoices issued by Trinethra, out of 12 bills, three bills were having typographical errors. All invoices were paid in accordance with the amounts raised through these invoices.
- iii. That invoices issued by Rajesh Projects (I) Pvt. Ltd. also differed and appears to be an inadvertent error and no illegality can be attributed to and no negativity can be drawn against JKIL since these invoices were not issued by them.

D. Internal Working Papers:

- i. That internal workings and vouchers may become part of book and paper but not part of books of account and therefore not required to be maintained for 8 years. Whereas the law mandates the Companies to maintain books of accounts for 8 years. So the inference that the Company did not maintain the vouchers and working papers etc. for 8 years is not justified.
- ii. That the Companies Act, 1956 and 2013 specified the time period for maintaining the books of accounts of the company and it has not specified any time period for maintaining books and papers.
- iii. The transactions with PACL pertains to the period 2008-2011, so the Companies Act, 2013 would not be applicable on the JKIL. That Books of account do not include books and papers.
- iv. That the Company sub-contracted the work and it is not supposed to go and visit the site for assessing the work given. The same will be done by the sub-contractor. Hence, I do not have vouchers/invoices for the expenses of work done through sub-contract.

E. Work Completion Certificate:

- i. That the reason why condition of submitting the work completion certificate was not imposed on the sub-contractors was that it requires cost to prepare the work completion certificate and the party has to pay fees to an independent body to do the same. As already stated the margin in this contracts were not very high and it would not be practically possible for these sub-contractors to prepare the same.
- ii. That the land was identified by executives of PACL and the work was done to the satisfaction of PACL. PACL vide several letters communicated that the work was completed as per their satisfaction and the same serves as work completion certificate. Further, the letters from PACL clearly shows that the agreements entered into by the JKIL were genuine and the work was actually done.
- iii. It is submitted that the Accounting Standard 9 is wrongly mentioned in the interim

order whereas the extracted part in the interim order forms part of Accounting Standard 7. In any way event, it is submitted that neither Accounting Standard 9 nor Accounting Standard 7 contemplates work completion certificate.

F. Reconciliation of Agreements with Invoices

- i. That the sub-contractor is not supposed to note the details of khasra no. or S. D. No. in the invoice since the land was identified by the executive of PACL and they would be present on the site where the land levelling work was required to be done and the work was done to their satisfaction.
- ii. Mr. Lele was deputed to supervise the work and an affidavit to this effect will be submitted.

G. Lack of Evidence of Actual Work Being Carried:

- i. That the work was performed by the sub-contractors and the same was supervised by the executives present at the work site and after the completion of work, PACL issued letters to JKIL that work was completed to their satisfaction.
- ii. The letters issued by PACL have already been submitted and further, the JKIL submitted that they will furnish the invoices raised against the said work and affidavit of Mr. Lele.

H. Complete information not furnished

- i. That they do not maintain any project-wise turnover at the Company. Hence the same is not furnished. That does not constitute an inference that the work is not completed.

10. In addition to the above, the authorized representatives of JKIL also submitted that JKIL is a listed company having more than 1000 shareholders, statutory auditors and books of accounts are audited after thorough verification of documents, vouchers, etc., hence there should not be any case for suspicion on the basis of a small part of our business as

mentioned in the interim order. The authorized representative also sought cross examination of entities whose statements were relied upon in the SFIO Report. However, the same was not allowed on the ground that no statement/opinion of any person is relied upon. The JKIL was given time till January 7, 2019 to file its written submissions in the matter.

11. JKIL filed its written submissions vide letter dated January 14, 2019 (“2nd Reply”). The following documents/information was submitted by JKIL along with 2nd reply:

- a. copy of work order dated January 18, 2016 entered with Kabra and Associates,
- b. copy of work order dated October 20, 2018 entered with B. G. Shirke Construction Technology Pvt. Ltd.,
- c. copy of work order dated May 28, 2009 entered with Larsen and Tourbo Limited,
- d. copy of work order dated September 14, 2016 entered with Living Stone Constructions Pvt. Ltd.,
- e. copy of work order dated February 09, 2016 entered with Vraj Realtors,
- f. copy of work order dated January 11, 2011 entered with Jaihind Road Builders,
- g. copy of work order dated November 25, 2008 entered with M. Venkata Rao Infra Projects Pvt. Ltd.,
- h. copies of invoice dated March 31, 2016 raised by VNC Infraprojects on JKIL and invoice raised by JKIL on J Kumar – KR JV dated March 31, 2016,
- i. copies of invoice dated May 22, 2011 raised by Ramesh Kumar & Co. on JKIL and invoice raised by JKIL on J Kumar – Chirag – API Consortium dated May 22, 2011,
- j. copies of invoice dated March 20, 2009 raised by A.P.I Constructions on JKIL and invoice dated March 20, 2009 raised by JKIL on J Kumar– Chirag-API Consortium
- k. copies of invoice dated March 30, 2011 raised by Ramesh Kumar & Co. on JKIL and invoice dated March 30, 2011 raised by JKIL on J. Kumar – Chirag-API Consortium

- l. copies of invoice dated October 20, 2014 raised by A.P.I. Civilcon Pvt. Ltd. on JKIL and invoice dated October 20, 2014 raised by JKIL on J. Kumar-KR JV
- m. copies of reports of Mr. Lele along with other evidences including bills and photographs,
- n. copy of the Opinion of Ramprasad Sharma and Associates dated January 12, 2019.

12. Subsequently, SEBI received another letter dated April 15, 2019 from JKIL inter-alia submitting the following: :

- Attention was drawn to an order passed by Hon'ble High Court of Gauhati in the context of Assam Company India Ltd. where Hon'ble High Court viewed regulatory directions to conduct forensic audit and branding Assam Company India Ltd. as suspected shell company having negative implications and serious consequences. Copy of the order in the said matter was also annexed
- They are a company with large operations, huge employee base, numerous investors, and significant assets. Not clearing the name of the company is causing serious civil consequences on its operations, credibility, investments etc.
- Furnished the turnover details of the company from April 2014 till December 2018 and indicated that the approximate value of ongoing projects as on December 31, 2018 is Rs. 10,465 crores.
- There are no investor complaints pending against the company.
- The company has never defaulted in repayment of any bank loan and has not been on the list of wilful defaulters as released by RBI.
- Due to SEBI's order the additional credit facilities provided by Banks have been kept on hold. The company furnished letter dated October 18, 2017 from United Bank of India evidencing that the bank will not release the credit facilities till the company gets its name removed from the list of suspected shell companies.

13. The response of JKIL (submitted vide letters dated October 27, 2018, January 14, 2019 and April 15, 2019 and/or during the course of hearing) in respect of the observations made in the *interim order* are as under:

i. **Observation in Interim Order at para 29(C):**

“Genuineness/Authenticity of Contracts and Sub-contracts

- (a) *During the course of hearing dated August 10, 2017 and vide SEBI’s letter dated August 16, 2017 JKIL was advised to submit the nature of association as per the contract with PACL and workings of the Company in estimating the value of the contracts, supported by documentary evidence. Details of the role of the Company vis-à-vis the sub-contracted parties, workings of the Company in accepting the sub-contract and supporting documentary evidence were also sought.*
- (b) *It is noted that JKIL vide letter dated August 24, 2017 and September 15, 2017 has submitted the copy of work order cum agreements/contracts entered with PACL Limited and also the copy of work order cum agreements/contracts entered with the sub-contractors. The details of the same are mentioned at paragraphs 14(c) and 17 above. Upon perusal of said work order cum agreements/contracts the following are noted*
- (i) *With respect to contract of JKIL with PACL dated May 11, 2009, JKIL vide its reply dated August 24, 2017 has attached sub-contract of M/s Trinethra Infra Ventures Ltd (‘Trinethra’) dated October 01, 2009. From the said sub-contract it is noted that work to be completed is mentioned as 531 Acres. Further, JKIL vide its reply dated September 15, 2017 had resubmitted the sub-contract of Trinethra dated October 01, 2009 in support of contract of JKIL with PACL dated May 11, 2009. From the said sub-contract it is noted that the work to be completed is mentioned as 1487 Acres. Thus, sub-contract of Trinethra dated October 01, 2009 in support of JKIL contract with PACL dated May 11, 2009 submitted by JKIL vide its reply dated August 24, 2017*

and September 15, 2017 specifies different area of work to be completed. This discrepancy has not been explained by JKIL.

(ii) With respect to contract of JKIL with PACL dated August 1, 2010, JKIL in its reply dated August 31, 2017 has attached sub-contract with Rithwik Projects Private Ltd. dated August 18, 2010. From the said sub-contract it is noted that work to be completed is mentioned as 14,00,000 cum. Further, JKIL vide its reply dated September 15, 2017 resubmitted the sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of contract with PACL dated August 1, 2010, from the said sub-contract it is noted that the work to be completed is mentioned as 13,13,888.89 cum. Thus, sub-contract of Rithwik Projects Private Ltd. dated August 18, 2010 in support of JKIL contract with PACL dated August 1, 2010 submitted by JKIL vide its reply dated August 24, 2017 and September 15, 2017 mention different area of work to be completed. This discrepancy has not been explained by JKIL.

(iii) None of the agreements between PACL and JKIL are on stamp paper nor have been notarized. None of the agreements between JKIL and sub-contractors are on stamp paper nor have been notarized. Thus the dates of the execution cannot be verified.

(iv) The agreements between JKIL and sub-contractors are signed only on the last page by the representative of JKIL and is not signed by any representative of sub-contractors on any page.

(c) Thus, from the above there is a doubt on the authenticity/genuineness of the documents (contracts and sub-contracts) submitted by JKIL.

Company's reply:

1st Reply:

“With regard to the observations made in paragraph 29(C)(a) of the Order, it is submitted that the submission of information with regard to the nature of association as per the contract with PACL and workings of the company in estimating the value of

the contracts and accepting the sub contracts, supported by documentary evidence is a matter of record and we have duly submitted all the information sought and were available with us by your goodself at each and every point of time.

With regard to the observations made in paragraph 29(C)(b)(i) and (ii) of the Order, with regard to the discrepancy in the work area in the copy of the sub contract agreement with M/s Trinethra Infraventures Ltd. (hereinafter referred to as "Trinethra") submitted by vide Letters dated August 24, 2017 and September 15, 2017, and with regard to the discrepancy in the work area in the copy of the sub-contract agreement with Rithwik Projects Private Ltd. (hereinafter referred to as "Rithwik") submitted by us on vide Letters dated August 24, 2017 (inadvertently stated as August 31, 2017 in the Order) and September 15, 2017, it is submitted that the said discrepancy appeared because the copies of the sub contracts which were submitted on August 24, 2017 and September 15, 2017 were incomplete and after the deliberations, the contracts were revised and the work area was enhanced to 1,487 acres for agreement with Trinethra and was diminished to 13,13,888.89 cum for agreement with Rithwik. It is submitted that on September 15, 2017 the revised contract copy was submitted before your goodself and the same was clarified in our letter dated September 15, 2017 which is produced here for the ready reference of your goodself:

"With respect to the details sought by your goodself for reconciliation of the location and the khasra no. of the various invoices of the contracts as attached to our reply dated August 24, 2017, it is submitted that as pointed out by us in the instant letter that the details provided by us were too old and had been provided on best effort basis and we had also stated that we shall produce any further information/details if we come across something in due course. Accordingly, upon verification of our records during the process of making the reconciliation as required by your goodself, we have come across few bills/contracts/ details which were not provided to you in the earlier letter dated August 24, 2017. Therefore, for the sake of convenience we are once again annexing herewith as "Annexure B", the copies of contract wise details of the work

contracts executed with PACL, the sub-contracts given by us to various sub-contractors, the bills raised by sub-contractors to us and bills raised by us in turn to PACL.”

It is submitted that the submissions of an incomplete contract vide our letter dated August 24, 2017 was an inadvertent error on our part. It is important to note that during the course of hearing on November 28, 2017 we had pointed out this inadvertent error and we respectfully apologized and requested your goodself to ignore the said error as the same was inadvertent and it was submitted that it is only when we were looking at all the records we realized that incomplete copy of the sub contract has been submitted by us. It must be appreciated by your goodself that the information was provided to your goodself in haste and on best effort basis and deadline imposed to submit the information. The information sought by your goodself were bulky in nature and were very old. Considering these circumstances an inadvertent error by a person in submitting a wrong document is inevitable and must be condoned by an authority instead of questioning the veracity of these documents.

With regard to the observations made in paragraph 29(C)(b)(iii) of the Order, it is submitted that it is not the mandate of the law that an agreement between two parties shall be on the stamp paper or shall be notarized. If an agreement should be on a stamp paper or must be notarized, is a commercial decision of the parties which are entering into the agreement. If the relation between the parties is such that they don't want to make agreements on a stamp paper and get it notarized, then they can do so and it will still be a valid agreement. It is humbly submitted that no authority can infer illegality from a conduct of a party which is not illegal. JKIL has submitted various case laws in this regard.

It is humbly submitted that we are providing your goodself with some of the order cum agreements entered by us with other reputed construction and infrastructure companies

like Hindustan Constructions Company Limited (HCC) and Larsen and Tourbo Limited (L&T) during 2008 to 2010, in which the work order was neither on stamp paper nor was notarized and yet the work was executed. Some of the like work order cum agreements executed by us with HCC dated June 15, 2010, with L&T dated November 23, 2009, with IDEB Projects (P) Ltd. dated January 15, 2009, M Venkata Rao Infra Projects Pvt. Ltd. dated May 02, 2009 and with Sanskruti Nirman Pvt. Ltd. dated January 06, 2017 is hereby attached and marked as "Annexure A Colly".

With regard to the observations made in paragraph 29(C)(b)(iv) of the Order, it is submitted that the agreements in the present transactions were in the nature of work orders and it is a common industry practice that when a contractor sub-contracts its work to some other entity, then the work order is signed only by the contractor and is sent to the sub-contractor and the sub-contractor executes its work. In majority of our transactions with private parties, work orders are signed by us and are sent to the sub-contractor.

It is pertinent to note that the contract between us and the sub-contractors was a private contract made for the purpose of individual gains of the parties. It is a commercial decision of the parties whereby they decide as to whether they have to enter into such kind of contracts or not. It is humbly submitted that even though the agreement was signed by our representative only and not by the sub-contractor, the sub-contractor has acted on the same and executed the work. Even PACL has also confirmed that the work was carried out to their satisfaction and accordingly the payment was released by them. Thus, even for all practical purposes it does not matter that the agreements were not signed by the sub-contractors and it is nothing more than an academic debate regarding the manner in which the agreement has been signed off between the parties. Therefore, no illegality can be attributed to the fact that the work orders were signed only by us as and not by the sub-contractors.

It is humbly submitted that we are providing your goodself with some of the order cum agreements entered by us with other reputed construction and infrastructure companies wherein the work order was only signed by one party and not by the other party and yet the work was executed. In the work order cum agreements entered into by us with L&T dated May 28, 2009, JSW Energy (Ratnagiri) Limited dated January 07, 2008, M Venkata Rao Infra Projects Pvt. Ltd. dated November 25, 2008, Tridhaatu Constructions Pvt. Ltd. dated March 19, 2016 and Summer Radius Realty Private Limited dated May 15, 2018, the work orders were not signed by us and were only signed by the other parties, however still the work was executed. In the work order cum agreements with Shreeji Micro Pile dated February 27, 2018, M/s Asiad Infraprojects Ltd. dated August 27, 2018 and M/s Evershine Foundation dated August 30, 2018, the work orders were only signed by us and not by the other parties, however still the work was executed. These above stated work orders are hereby attached and marked as "Annexure B colly". It is pertinent to note here that even these work orders are not on stamp paper or are notarized. The same clearly shows that the contracts with PACL and/or with our sub-contractors were very much in line with the industry practice."

2nd Reply:

"During the course of the hearing, the Company was addressing the allegations in the Interim Order wherein it is alleged that there is an apprehension regarding the genuineness of the work orders entered into by the Company as the same were not notarized or stamped. In this regard, the Company had submitted that it is not an industry practice to get work orders notarized and/or stamped. The Company substantiated this contention by submitting some other work orders (these sample work orders were also annexed with the Company's reply dated October 27, 2018) entered into by the Company with various reputed companies like Larsen and Tourbo, Hindustan Constructions Company Ltd. (HCC), etc. The Ld. WTM objected to the same stating that the work orders submitted were detailed and clear, however, the work

orders entered into between the Company and PACL were brief and allegedly without any relevant detail and so they cannot be compared.

With regard to the above, it is humbly submitted that the work order which was picked up by the Ld. WTM in the course of the hearing, was the work order entered into by the Company with Hindustan Constructions Company Ltd. (HCC) on June 15, 2010, which was neither on stamp paper nor was notarized. The said work order was of 12 pages and the Ld. WTM found the same to be lengthy and detailed. In this regard, it is submitted that the work Order with HCC was for hiring of 'one No. Hydraulic Rotary Rig Aditya Aluminium Plant' at Lapanga in the state of Orissa. It contained the scope of work clause, hire charges clause, facilities from HCC clause, hire period clause, payment clause, guarantee clause, safety clause, etc. This is the reason that the level of detail in the work order of HCC was more than that of, the land-levelling work orders, entered into with PACL and other sub-contractors, which only contained the necessary and material particulars required for undertaking the land-levelling work including details of the project site and the area of work.

However, it is hereby clarified that the work orders entered into with PACL Ltd. and other sub-contractors, contrary to as stated by the Ld. WTM to be not lengthy and detailed, are detailed and lengthy. During the course of the hearing it was stated by Ld. WTM that the work orders entered into by the Company with PACL and sub-contractors were 3-page documents not consisting the details of project site as well as the area of work. It is our humble submission that the same cannot be said to be true as the annexures of the work orders attached with it adequately contains the details of the project site as well as area of work, which were to be completed.

It is humbly submitted that the work orders entered into with PACL along with the annexures were submitted by the Company to SEBI vide letter dated September 15, 2018. The work order entered into with PACL were of four pages and contained the following details relevant for the execution of the work:

- a. The date of the Work Order along with the details of the parties entering into the agreement.*

- b. The nature of the work to be undertaken was specified as the development of the land, which was clear enough for both the parties to understand that a land-levelling work has to be undertaken on the project sites.*
- c. The other necessary clauses including the provisions related to advance payment by PACL, time period for raising the bills by the Company, permission to Company by PACL to sub-contract the work, liability of payment of service tax by PACL, tenure of contract, arbitration clause etc. has been indicated in the Agreement.*

The work orders clearly state that the Company shall develop the project sites which has been described in the Schedule (annexure) attached with the work order. The work order contained the details like S. D. Number or Khasra Number, along with the name of the village, tehsil, district and total area in acre.

Hence, if the work orders are read with their relevant annexures, as submitted by the Company vide letter dated September 15, 2017, cannot be said to be short documents without specifying the project site or area of work. The details stated in the work order entered into by Company with PACL contains all the relevant details which is required by a contractor to complete the project.

In any event it is submitted that the details in a work order / contract entered into with any party depends upon the comfort of the parties and they are made in such lengths with which the parties inter se are satisfied. It is submitted that the length of the work order is no measure of the genuineness of a work order.

Further, it was asked by Ld. WTM to submit some work orders entered into with other companies which are not detailed and brief. With regard to this, it is humbly submitted that we have explained above that the work orders entered into by the Company with PACL and other sub-contractors cannot be said to be short and non-detailed. However,

to substantiate the argument that different nature of work require different length of work contracts, we attach herewith certain work orders entered into by the Company. A work order dated January 18, 2016 was entered into by the Company with Kabra and Associates for some piling work at Versova, Mumbai. The work order was only of 3 pages yet covered all the necessary details for execution of the project. Further, recently a work order dated October 20, 2018 was entered into by the Company with B. G. Shirke Construction Technology Pvt. Ltd. for some boring and cast installing work in Kandiwali, Mumbai. The work order was only of 2 pages yet covering all the necessary details for completion of the project. In the same way, there are various work orders entered into by the Company with Larsen and Turbo Limited dated May 28, 2009, Living Stone Constructions Pvt. Ltd. dated September 14, 2016, Vraj Realtors dated February 09, 2016, Jaihind Road Builders dated January 11, 2011 and M. Venkata Rao Infra Projects Pvt. Ltd. dated November 25, 2008, which though short, contain all the necessary details required to complete the work order. All the aforesaid work orders are hereby attached and marked as “Annexure A colly”.”

ii. Observation in Interim Order at para 29(D):

“Normal commercial business practice:

- (a) *It is noted from the annual report of JKIL for the financial year (FY) 2008-09 that the annual total income of JKIL during FY 08-09 is Rs. 41,361.40 lakhs and operating profit is Rs. 6,754.70 lakhs i.e. the operating profit ratio of approx. 16%. From the agreement between PACL and JKIL dated 10.08.2008, it is noted that the agreement entitles JKIL to charge Rs. 70,000/- per acre. While sub-contracting the same work, amounts are charged by Proto Developers and Technologies is Rs. 69,450/- per acre and Indu Projects Limited is Rs. 69,300/- per acre. Thus, in the said instances, the gross profit ratio for JKIL is approx. 1%. However, operating profit ratio will further reduce after considering operating expenses as may have been incurred by JKIL.*

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

Company's reply:

1st Reply:

“With regard to the observations made in paragraph 29(D) of the Order, it is submitted that it is a matter of fact and record that there was low gross profit and operating margins but that was a commercial decision to accept the so called low profit as there was nothing practically which was required to be done from our end which would incur operating expenses. Merely because there was low profit the same cannot be made as a factor to question the genuineness of the sub contract agreement.

Further it is submitted that when a contract is sub-contracted then the profit margin from the same is bound to be low and when a contract is executed by the contractor itself, then the profit margin from the same is high. This is because in the former the contractor has nothing to do except inspecting the project site, finding the sub-contractors and explain them the work. However in the latter, the contractor has to

plan, collate machineries and labour, and has to undertake every task including the ground work.

It is pertinent to note here that these transactions pertain to the period from 2008 to 2011, during which the country was suffering from a recession and we were in our growing phase. At that time we were accepting and taking work from wherever possible as we wanted to finance our growth and gain knowledge and experience. It must be appreciated by your goodself that in order to survive in the industry against the giant competitors it is important to sometime undertake projects which gives less returns. A company cannot draw a line of margin below which they will not undertake a task of completing the project. Sometimes the projects with lesser returns or even losses are undertaken by the industry players in order to gain experience, make contacts with other and to remain in the competition. It is submitted that the gross profit ratio of 1% and 2% as indicated in said para was part of the average profit of that year and then it came to 16% and 17% of the operating profit ratio of the FY 2008-09 and 2009-10. This means that there were certain transactions in which the operating profit ratio were more than 16% and 17%, but negative inference cannot be drawn from the same just on the basis that they were higher from the average operating profit ratio.

It is humbly submitted that the transactions with PACL in the FY 2008-09, 2009-10 and 2010-11 constitutes very miniscule amount of the total profit and turnover of the Company during those financial years. It is submitted that your goodself in the interest of justice, equity and good conscience, your goodself must take action against us only if the transactions in the present case are material in nature. In order to find out if a transactions are material in nature it has to be seen if the wrong entry in the books of accounts of the Company would not have been there, whether the investors would have bought the shares of the company and the existing shareholders would have left and it only because of the wrong entry which has induced the investors to buy the shares of

the Company? If this question is answered in negative then the transactions cannot be said to be material in nature impacting or influencing the investor's decision.

Your goodself in Para 29(D)(c) of the Order has rightly observed that the margins availed by us on contracts assigned by PACL were very thin and had very low gross profit and operating profit. This means that the purported revenue generated from the transaction undertaken with PACL was very less and by no stretch of imagination can be considered to be as substantial making an impact on our financials and hindering the interest of the investors. In the light of the same we request your goodself to set aside the Order in the present case.”

2nd Reply:

“It is further submitted that when the explanations were being given about why the profit ratio was only 1% or 2% with regard to the transactions with PACL, it was submitted to the Ld. WTM that when the Company sub-contracts the work to others, then the Company's profit ratio is less as compared to projects wherein the Company does the entire work for itself. To this the Ld. WTM asked the Company to submit the details of some sub-contracts in which the work was sub-contracted and the profit ratio was lower than the profit ratio of projects where the Company did the work by itself.

In this regard, a reference may be made to the sample transactions where a work was given to the Company by the J Kumar – KR - JV and the work was sub-contracted by the Company to VNC Infraprojects. The invoice of Rs. 67,69,916/- was raised by VNC Infraprojects to the Company and the Company raised the invoice of Rs. 69,08,077/- to J Kumar – KR – JV. In the entire transaction, the profit margin of the Company was meagre 2%. The copy of the invoice of VNC Infraprojects raised to the Company for Rs. 67,69,916/- and the invoice of the Company raised to J Kumar – KR – JV for Rs. 69,08,077/- is hereby attached and marked as “Annexure B colly”.

Similarly, a work was given to the Company by the J Kumar – Chirag – API Consortium and the work was sub-contracted by the Company to Ramesh Kumar & Co. The invoice of Rs. 4,37,87,717/- was raised by Ramesh Kumar & Co. to the Company and the Company raised the invoice of Rs. 4,48,86,501/- to J Kumar – Chirag – API Consortium. In the entire transaction, the profit margin of the Company was meagre 2.45%. The copy of the invoice of Ramesh Kumar & Co. raised to the Company for Rs. 4,37,87,717/- and the invoice of the Company raised to J Kumar – Chirag – API Consortium for Rs. 4,48,86,501/- is hereby attached and marked as “Annexure C colly”.

iii. Observation in Interim Order at para 29(E):

“Invoices:

(a) Upon perusal of invoices submitted by JKIL in respect of contracts and sub-contracts, following are noted:

(i) On a sample check, similar/same invoice numbers for different dates are noted. The examples are as under:

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

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

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

Company's reply:

1st Reply:

“With regard to the observations made in paragraph 29(E)(i) of the Order, it is submitted as follows:

- a. *With regard to the observation that invoices dated January 27, 2010 and February 03, 2010 generated by us on PACL have same invoice number ‘PACL/024/2009-10’, it is submitted that we checked our invoice and found that the invoice number ‘PACL/023/2009-10’ is missing from our records and there are two invoices with number ‘PACL/024/2009-10’. This means that there is a possibility that out of these two invoices, one of them has to be ‘PACL/023/2009-10’ and because of the typographical error it appears as ‘PACL/024/2009-10’.*

- b. With regard to the observation that two invoices dated November 16, 2009 and December 31, 2009 generated by Trinethra on us have the same invoice number JKR/01/2009-10, it is submitted that we checked our records and to the best of our knowledge it is a typographical error. Upon perusing of all the bills issued by Trinethra it can be seen that it had issued twelve bills to us from November 16, 2009 till December 31, 2009. Further, three bills were issued by Trinethra upon us on December 31, 2009 bearing numbers '010', '011', and '01', which as per our understanding is clearly a typographical error.
- c. With regard to the observation that two invoices dated November 09, 2009 and February 03, 2010 generated by Rajesh Projects (I) Pvt. Ltd. on us have invoice numbers JKR/Pacl/004/2009-10 and Pacl/JKIL/04/2009-10, it is humbly submitted that both the invoice numbers have different series numbers as the former belongs to the series 'JKR/Pacl' and the later forms part of the series 'Pacl/JKIL'. The numbers in both the invoices is also different and in the former '004' is indicated and in the later '04' is indicated. We fail to understand as to how two different bills having two completely different bill-series have been observed to be same / similar.

In the light of the above, it is humbly submitted that no negative inference can be drawn and no suspicion can be formed on the basis of the some simple typographical errors.

With regard to the observations made in paragraph 29(E)(ii) of the Order, it is submitted that the fact that that invoice raised to PACL was on the same day the invoices were raised to us by the sub-contractors, may substantiate our efficiency but no illegality whatsoever can be attributed and no negative inference can be drawn from the same. It is humbly submitted that as the officials of PACL were satisfied with the work carried out by the sub-contractors, there cannot be said to be anything suspicious with the raising of invoices to PACL on the same day the invoices were raised to us by the sub-contractors."

2nd Reply:

“In replying to the issue stated in Para 29(E)(a)(i), it was submitted by the authorized representative of the Company that discrepancy in the invoices generated by the Company (unnumbered point 1) were on account of typographical error by the Company, and discrepancy in the invoices generated by Trinethra (unnumbered point 2) was possibly on account of typographical error by Trinethra, not owing to the Company at all. To this it was pointed out by the Ld. WTM that there are too many typographical errors in the records and this is the reason that the forensic audit has been ordered against the Company. In this regard, it was submitted by the Company that it is unreasonable to order a complete forensic audit of a listed company in order to some typographical errors which pertains specifically to some transactions only. To this it was clarified by the Ld. WTM that the complete forensic audit has not been ordered in the matter and the same is specifically in regard to the transactions related with PACL.”

Further, it is humbly submitted that on the issue that the bills were raised by the Company to PACL was on the same day the bills were raised to the Company by the sub-contractors, it was submitted by the authorized representatives of the Company that no negative inference can be drawn from this fact as the same can be considered to be a normal practice. In this regard, it was asked by the Ld. WTM to submit the details of some of the contracts entered into by the Company with other companies, which were sub-contracted by the Company to other companies and the bills were issued by the Company to the client on the same day the bills were raised on the Company by the sub-contractor.

With regard to the above, a reference may be made to the sample transactions where the work was given to the Company by J Kumar – Chirag – API Consortium and the work was sub-contracted to A.P.I. Constructions. Here, the invoice was raised to the Company by A.P.I. Constructions on March 20, 2009 and on the same day i.e. March 20, 2009, the invoice was raised by the Company to J Kumar – Chirag – API

Consortium. Similarly, an invoice dated March 30, 2011 was raised to the Company for a work sub-contracted to Ramesh Kumar & Co., and on the same day i.e. March 30, 2011, the invoice was raised by the Company to J Kumar – Chirag – API Consortium. In the same way, in a transaction where the work was sub-contracted by the Company, an invoice dated October 20, 2014 was raised by A.P.I. Civilcon Pvt. Ltd. and on the same day, the invoice dated October 20, 2014 was raised by the Company to J Kumar – KR JV. The copy of all the invoices referred above is hereby attached and marked as “Annexure D colly”.

iv. Observation in Interim Order at para 29(F):

“Internal Working Papers:

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

2(12) “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

2(13) “books of account” includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

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

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

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

non-compliance of aforesaid provisions of Companies Act, 1956 and Companies Act 2013. “

Company’s reply:

1st Reply:

“With regard to the observations made in paragraph 29(F) of the Order, it is submitted that your goodself has noted in the said para that:

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

It is humbly submitted that we never stated that the ‘internal notings and workings of sub-contracts’ does not form part of the ‘books and papers’ or ‘books of accounts’. We submitted that the ‘internal notings and workings of the sub-contracts’ may form part of the ‘books and papers’ but does not form part of the ‘books of account’ and hence is not liable to be maintained by us for 8 years.

The provisions of the Companies Act, 1956 and the Companies Act, 2013 only states that ‘books of account’ of every company has to be maintained for 8 years and does not specify the time limit of maintaining the ‘books and papers’. It is humbly submitted that our transactions with PACL and the sub-contractors pertains to the period 2008 – 2011 and hence the provisions of the Companies Act, 2013 will not be applicable to us.

Section 2(8) of the Companies Act 1956, states that “book and paper” and “book or paper” include accounts, deeds, vouchers, writings, and documents”. This means that “books of account” does not include all “book and paper” and “book or paper”.

Section 209 (1) of the Companies Act, 1956 states that:

“209. BOOKS OF ACCOUNT TO BE KEPT BY COMPANY

(1) Every company shall keep at its registered office proper books of account with respect to –

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company ; and

(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account :

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.”

Section 209 (4A) of the Companies Act, 1956 provides that:

“The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books, of account] shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account shall be so preserved”

Sub-section (1) of Section 209 of the Companies Act, 1956 provides the information relating to the 'Books of Accounts' which has to be maintained by the company and Sub-section (4A) of Section 209 of the Companies Act, 1956 prescribes that the same has to be maintained for 8 years. It is submitted that 'internal notings and workings of the sub-contracts' does not form part of the information stated in Section 209 (1) of the Companies Act, 1956 and hence is not liable to be maintained by us for 8 years.

Without prejudice and assuming without accepting that the provisions of the Companies Act, 2013 will be applicable to the transactions entered into by us in the present case, it is submitted that the 'internal notings and workings of the sub-contracts' is not liable to be maintained by us for 8 years.

Section 2(12) of the Companies Act, 2013 states that 2(12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;". This means that "books of account" does not include all "book and paper" and "book or paper".

Section 2(13) of the Companies Act, 2013, provides the definition of 'books of account' and it states that:

"2(13) "books of account" includes records maintained in respect of—

- i. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;*
- ii. all sales and purchases of goods and services by the company;*
- iii. the assets and liabilities of the company; and*
- iv. the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;"*

Section 128(5)(a) of the Companies Act, 2013 states that "The books of account of every company relating to a period of not less than eight years immediately preceding

the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order.”

It is submitted that ‘internal notings and workings of the sub-contracts’ does not fall within the ambit of the definition of ‘books of account’ as per Section 2(13) of the Companies Act, 2013 but may fall within the definition of ‘books and paper’ and ‘books or paper’. However, Section 128(5)(a) of the Companies Act, 2013 only provides that the ‘books of account’ has to maintained for 8 years and states nothing about the ‘books and paper’ and ‘books or paper’.

Hence it is humbly submitted that the observation made by your goodself in the said para is wrong. It must be appreciated by your goodself that ‘internal notings and workings of the sub-contracts’ are the documents which are cardinal to a potential contract and provides an insight to the expense and income from the contract. They are not statutory documents and are prepared by the top-level management in consultation with their employees / expert in determining the possible income and expenses of a potential contract to calculate the margin of profit. They are the documents which are prepared before entering into a contract in order to help in bargaining with the other party. The documents are kept in secret as otherwise the same can reveal the mind of the company and its trade secrets which may adversely impact its bargaining power in the contract. Once the contract is finalized and is entered into by the parties, then these documents have no relevance or importance at all and the only guiding force is the contract itself. Since these working papers do not hold importance anymore and contains trade secrets, these documents are to be destroyed. It is humbly submitted that as a matter of policy, we keep the ‘internal notings and workings of the sub-contracts’ for a period of three years and once the period is completed, we destroy the same.”

2nd Reply:

No specific comments have been furnished by JKIL.

v. Observation in Interim Order at para 29(G):

“Work Completion Certificate:

- (a) SEBI vide letter dated August 29, 2017 had advised JKIL to submit the details of completion of contracts along with the work completion certificate for the same. JKIL vide reply dated September 15, 2017 submitted that “..... since PACL was a Non-government organization, no strict procedures as those followed in government organizations were there. We had obtained the contract from PACL and had sub-contracted the same to various other entities. **There was no requirement of providing a work completion certificate on the part of either of the parties. However, at the end of completion of each of the work contract, PACL had issued letters to us stating the quantity of work found to be satisfactorily completed by us....**”
- (b) It is noted that JKIL has not submitted work completion certificate issued by JKIL to PACL or by the sub-contractors to JKIL. JKIL has provided acknowledgement from PACL for completion of work for work orders cum agreements dated August 10, 2008, April 05, 2009, May 11, 2009 and August 01, 2010 and stated that there was no requirement of providing a work completion certificate on the part of either of the parties. But, it is noted that, one of the clause of submitted copies of work orders cum agreements, state that "The parties have mutually agreed that the Second Party shall raise bills on the basis of stage wise completion of the work containing complete details of work completed duly agreed upon between the parties". Thus the reply is inconsistent with agreements.

Company’s reply:

1st Reply:

“With regard to the observations made in paragraph 29(G) of the Order, it is submitted that the clause in the work order cum agreement has been wrongly interpreted by your goodself. It states that:

“the parties have mutually agreed that the Second Party shall raise bills on the basis of stage wise completion of the work containing complete details of work completed duly agreed upon between the parties”

It is submitted that the said clause states that the sub-contractor on the basis of the stage-wise completion of the project will raise the bills and it is the bills which must contain the details of the work completed. The sub-contractors only had to send the bills in which the details of the stage-wise work completed by them had to be indicated and in turn, we would accordingly raise our bills to PACL. There is no mention of issuance of any work-completion certificate in the contract. It is humbly submitted that it is a settled position that the terms of the contract have to be interpreted as per the intention of the contracting parties.

For the sake of clarity it is stated that in a contract given by a particular party, which is sub-contracted to a sub-contractor, a work completion certificate is issued by the contracting party in favour of the main contractor and the main contractor in turn issues work-completion certificate to sub-contractors. However, there was never any requirement on PACL to issue any work completion certificate either to us or to any sub-contractor.

It is humbly submitted that there is no benefit for taking a ‘work completion certificate’ in a private contract as it is neither useful as an experience certificate for acquiring new contracts. If there is a construction contract with a government body, then the ‘work completion certificate’ is of some use and may benefit the company to undertake more projects of government as the copies of the same can be attached in the proposal for tender to show experience in the field. However, in none of the contracts by government, the work completion certificate for a private party is recognised as experience in a particular field.

In the present case, since the land was identified by the executives of PACL, the work was done to the satisfaction of PACL and the bills were raised accordingly. Even PACL vide its various letters stated that the work has been completed as per their satisfaction, which clearly shows that agreements entered into by us were genuine and the work was actually done. It is humbly submitted that your goodself has never questioned about the authenticity of those letters which shows that your goodself is satisfied that the completion of the work.

Further it is submitted that absence of a formal work completion certificate cannot be the sole factor to decide that there was in-genuineness in the submissions made by us and whether the work was completed by us or not. It is humbly submitted that drawing adverse inference of such non availability of documents while passing the Order is severely prejudicing our interest and our stakeholders.”

2nd Reply:

When the discussion regarding the Accounting Standard was going on during the course of the hearing, a query was raised by the Ld. WTM as on what basis the accounting is done for our company. With regard to this, it is humbly submitted that the accounting of our company is done on accrual basis (and not cash basis).

Additionally, it is humbly submitted that the applicable Accounting Standards do not provide that a formal work completion certificate is mandatory to comply with the guidelines mentioned in AS 7, and the invoices received from the sub-contractors by the Company, would be sufficient to comply with the guidelines laid down in AS 7 from an accounting perspective.

In order to substantiate the same, we are providing the opinion of Ramprasad Sharma and Associates dated January 12, 2019, in which it has been opined that:

- a. *While Para 29(b) of AS 7 mentions “survey of the work performed”, as one of the possible methods, it is not the only method at the same time is not mandatory to use this method to reliably measure the work performed.*
- b. *AS 7 - “Construction Contracts” does not explicitly state the requirement of mandatorily obtaining a “Work Completion Certificate”.*
- c. *The Company may produce any document including the invoices issued by the sub-contractors, which establishes that a physical measurement / verification was performed.*

The copy of the Opinion of Ramprasad Sharma and Associates dated January 12, 2019, is hereby attached and marked as “Annexure F”.

Hence, in the light of the above, it is humbly submitted that it cannot be said that because ‘work completion certificate’ is a sine qua non to comply with the guidelines of the AS 7, and when the entire work to be undertaken has been sub-contracted to various sub-contractors, then the guidelines of the AS 7 can be complied on the basis of the invoices raised by the sub-contractors in the matter.

vi. Observation in Interim Order at para 29(H):

“Reconciliation of Agreements with Invoices

- (a) *With respect to agreements and invoices of the contracts attached vide JKIL reply dated August 24, 2017, SEBI vide letter dated August 29, 2017 had advised JKIL to provide the reconciliation of location and khasra no. of various agreements and invoices of the contracts. JKIL vide reply dated September 15, 2017 submitted that “..... as pointed out by us in the instant letter that the details provided by us were too old and had been provided on best effort basis and we had also stated that we shall produce any further information/details if we come across something in due course. Accordingly, upon verification of our records during the process of making the reconciliation as required by your goodself, we have come across few bills /*

contracts / details which were not provided to you in the earlier letter dated August 24, 2017. Therefore, for the sake of convenience we are once again annexing the copies of contract wise details of the work contracts executed with PACL, the sub-contracts given by us to various sub-contractors, the bills raised by sub-contractors to us and bills raised by us in turn to PACL....”

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

Company’s reply:

1st Reply:

“With regard to the observations made in paragraph 29(H) of the Order, it is submitted that it is not possible for a contractor to mention the details of Khasra no or S.D. No. in the invoice. The reason for the same is that a contractor does not complete the work as per the Khasra no or S.D. No. but as per the specifications of the project site. It may be possible that in a single stage of the completion of work, there may be more than one Khasra no or S.D. No. It may even be possible that a work completed on the land may not cover a full Khasra no or S.D. No. and only covers it partly. In this case it will not be practically possible for the contractor to indicate the details of Khasra no or S.D. No. in its stage-wise work completion bill.

It must be appreciated by your goodself that just giving the Khasra no or S.D. No. could be of no use in a commercial contract and what matters is the quantity (area) of the land on which the work was done, and the same were duly incorporated in the invoices. Further we have already submitted the contract-wise reconciliation of the contracted area of land with the total area of land and the bills issued along with the payments received.”

2nd Reply:

No specific comments have been furnished by JKIL.

vii. Observation in Interim Order at para 29(J):

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

Para 21 of Accounting Standard 9 – Construction contracts for Recognition of Contract Revenue and Expenses, states that “When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.” Further as per para 2 of Guidance Note on Turnover in case of Contractors, the recognition of revenue is attributed to the proportion of work completed (referred to as percentage of completion method). The revenue from contracts are recognized as revenue in the statement of profit and loss in the accounting period in which the work is performed.

The income and the expense of the contracts/sub-contracts are recognized on the basis of percentage of completion method. As stated in the previous paragraph the Company has entered into contracts/sub contracts the subject matter of which was not identifiable

for execution of the contract. Also, the Company in its reply submitted that there was no requirement of providing a work completion certificate on part of either of the parties. From the annual report of JKIL for FY 2008-09, 2009-10 and 2010-11, it is noted that JKIL follows the percentage completion method as mentioned in Accounting Standard. In the absence of work completion certificates or percentage of completion of contracts / sub-contracts and non-identifiable nature of the subject matter of contract for execution, it raises a prima facie suspicion on how such income can be recognized in the books of accounts of JKIL. However, it is observed that JKIL booked income on such contracts in the F.Y. 2008-09, 2009-10 and 2010-11.”

Company’s reply:

1st Reply:

“With regard to the observations made in paragraph 29(J) of the Order, it is humbly submitted that the reference in which the Accounting Standard 9 has been quoted in the Order is misplaced as neither there is any provision in Accounting Standard 9 which states about the Construction nor Accounting Standard 9 in general deals with the construction contracts.”

2nd Reply:

“When the discussion regarding the Accounting Standard was going on during the course of the hearing, a query was raised by the Ld. WTM as on what basis the accounting is done for our company. With regard to this, it is humbly submitted that the accounting of our company is done on accrual basis (and not cash basis).

Additionally, it is humbly submitted that the applicable Accounting Standards do not provide that a formal work completion certificate is mandatory to comply with the guidelines mentioned in AS 7, and the invoices received from the sub-contractors by the Company, would be sufficient to comply with the guidelines laid down in AS 7 from an accounting perspective.

In order to substantiate the same, we are providing the opinion of Ramprasad Sharma and Associates dated January 12, 2019, in which it has been opined that:

- a. While Para 29(b) of AS 7 mentions “survey of the work performed”, as one of the possible methods, it is not the only method at the same time is not mandatory to use this method to reliably measure the work performed.*
- b. AS 7 - “Construction Contracts” does not explicitly state the requirement of mandatorily obtaining a “Work Completion Certificate”.*
- c. The Company may produce any document including the invoices issued by the sub-contractors, which establishes that a physical measurement / verification was performed.*
- d. Hence, in the light of the above, it is humbly submitted that it cannot be said that because ‘work completion certificate’ is a sine qua non to comply with the guidelines of the AS 7, and when the entire work to be undertaken has been sub-contracted to various sub-contractors, then the guidelines of the AS 7 can be complied on the basis of the invoices raised by the sub-contractors in the matter.”*

viii. Observation in Interim Order at para 29(K):

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

Company's reply:

1st Reply:

“With regard to the observations made in paragraph 29(K) of the Order, it is submitted that it is completely incorrect to observe that the nature of the subject matter of the contract for execution was non identifiable. It is only in the hindsight when we are not able to submit the working papers and the other documents due to the fact that these transactions pertain to the financial year 2008-2011, the allegation of non- identifiable nature has been made regarding the subject matter of contracts/subcontracts.

Further in this regard it is submitted that the prima facie suspicion made by your goodself is completely unfounded as the total profits from these contracts/sub contracts was around Rs. 4.45 crores whereas the total profit during these financial year 2008-2011 was approx. Rs. 261 crores which was too insignificant for us to do anything manipulative in order to misuse our books of accounts and misrepresent our stakeholders.”

2nd Reply:

“The Ld. WTM also asked the Company to submit the table in which the amount and percentage of the profits generated from the year-wise transactions with PACL. With regard to this, the table indicating the details of the profit generated from the transactions with PACL is provided below:

Comparison of the PBT of contracts with PACL with the PBT of Company

<i>Financial Year</i>	<i>Total PBT of the Company (Rs.in lakh)</i>	<i>Total PBT from PACL's transactions (Rs.in lakh)</i>	<i>Percentage of PBT of PACL to Company 's PBT</i>
<i>2008-09</i>	<i>4,889.36</i>	<i>10.23</i>	<i>0.21%</i>
<i>2009-10</i>	<i>10,509.53</i>	<i>125.54</i>	<i>1.19%</i>

<i>Financial Year</i>	<i>Total PBT of the Company (Rs.in lakh)</i>	<i>Total PBT from PACL's transactions (Rs.in lakh)</i>	<i>Percentage of PBT of PACL to Company 's PBT</i>
2010-11	10,696.34	310.14	2.90%
TOTAL	26,095.23	445.90	

Comparison of the PAT of contracts with PACL with the PAT of Company

<i>Financial Year</i>	<i>Total PAT of the Company (Rs.in lakh)</i>	<i>Total PAT from PACL's Transactions (Rs.in lakh)</i>	<i>Percentage of PAT of PACL to Company's PAT</i>
2008-09	3,292.77	6.75	0.21%
2009-10	6,996.78	82.87	1.18%
2010-11	7,391.58	207.12	2.80%
TOTAL	17,681.12	296.74	

In the light of the same, it is humbly submitted that the profits generated by the Company from transactions entered into with PACL were miniscule and did not have any effect on the Company's profitability. Therefore it is submitted that as the transaction entered into with PACL were not material in nature, the present proceedings must be dropped against the Company considering the reputational loss being caused to the Company due to the continuation of the present proceedings."

ix. Observation in Interim Order at para 29(L):

"Normal commercial business practice:

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

bank statements highlighting payment made to Lele S S Consulting Engineer towards invoices generated by them.

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

Mr. Lele S S vide email dated April 18, 2018 inter alia stated as under:

“

- (a) I am a consultant providing consultancy services of technical evaluation of any contract, advising on technical specific areas for tenders etc. In order to provide these services, I works as temporary consulting staff working on retainer basis for the company. It is to be noted that my work involves me working with the staff of the company and adding technical details by way of small descriptive notes so that the company is able to tender for the contract. I was also associated with other Clients as M/s Mahavir Infra Projects, M/s DORSCH consult, M/s Bramputra associates etc.*
- (b) In relation to the details of the contracts, it is submitted that I have provided my services for various contracts during the financial year 2008-09, 2009-10 and 2010-11. Some of the major contracts during my services period where I have provided my services are (a) Sion Panvel BOT work (b) Wada BOT work (c) Entry Exit on State border check post (d) Sky walks in Mumbai etc.*
- (c) It is prudent to state that I do not receive my retainership fee on the basis of any specific contract/project. Since I am working as a retainer, I do not maintain records of the work done by me for any contract/ project undertaken by JKIL. I merely charges my services on a monthly basis.*

- (d) *With regards to the copy of the invoices raised by me on JKIL for the said period, it is submitted that I raise monthly invoice to JKIL for the said period and it is submitted I raise monthly invoice to JKIL for the work undertaken by me and the payment for the same is done by JKIL on a monthly basis.*
- (e) *As stated earlier I have provided my services to JKIL for various contracts/ projects undertaken by them on an ongoing basis and since these reports/ notes are only for the internal consumption of the company, I do not maintain a record of reports/ notes provided by me to the company. So I am unable to provide any report from my end as desired by you in your mail.*
- (f) *For the purpose of my advising, I interacts with many employees of JKIL from time to time and there are no specific employees who are particularly engaged with me for the work undertaken by me.*
- (g) *With regards to total revenue received by me from JKIL as (1) FY 2008-09 – Rs. 5,60,000/- (2) FY 2009-10- Rs.12,00,000/- and (3) FY 2010-11 - Rs. 12,00,000/- .*
- (h) *I do confirm that I am not related / connected to JKIL in any manner whatsoever. I work as an individual independent consultant and do not employ any staff.*
-”

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

Company’s reply:

1st Reply:

“With regard to the observations made in paragraph 29(L) of the Order, it is submitted that your goodself has referred and made inference from the email of Mr. S S Lele dated April 18, 2018 in parts and pieces and failed to consider the same in its entirety. Mr. S S Lele in para (e) of the said email has stated that:

“As stated earlier I have provided my services to JKIL for various contracts/ projects undertaken by them on an ongoing basis and since these reports/ notes are only for the internal consumption of the company, I do not maintain a record of reports/ notes provided by me to the company. So I am unable to provide any report from my end as desired by you in your mail.”

This clearly shows that Mr. S S Lele was also used to prepare reports for us and therefore there is no inconsistency between the submission of Mr. S S Lele and our submission with regard to the pre-tender evaluation report prepared by Mr. S S Lele.

In any manner it is submitted that the report was submitted to us by Mr. S S Lele with regard to the projects undertaken by us in Rajasthan in 2008 and 2009, Madhya Pradesh in 2009 and Tamil Nadu in 2010. In this regard we hereby enclose the sworn affidavit of Mr. S S Lele wherein he affirms that the pre-tender evaluation report was prepared by him and was duly signed by him which is marked as “Annexure C”.

2nd Reply:

“It is humbly submitted that during the course of the hearing, upon the advice of the Ld. WTM, it was agreed by the Company that we will again submit all the details regarding the report of Mr. Lele along with other evidences including his reports and photographs (which has already been submitted vide letter dated February 15, 2018) in our written submission. In this regard it is submitted that all the evidences, including the report of Mr. S. S. Lele, are once again hereby attached and marked as “Annexure E”.

x. Observation in Interim Order at para 29(M):

“Complete information not furnished:

- (a) *During the course of hearing dated August 10, 2017 and SEBI’s letter dated August 16, 2017 JKIL was advised to submit the details of project-wise Turnover of the*

Company, since 2007. It is noted that JKIL has provided names of major clients comprising of the turnover for last three year 2014-15, 2015-16 and 2016-17. JKIL has not provided any details of year wise turnover since 2007 to 2014. JKIL further submitted that this information is bulk in nature and requires time to collect and the personnel of the company are putting best efforts in collecting and arranging the same, and the same would be submitted in a proper manner in due course. However, it is noted that till date JKIL has not provided the said details.”

Company’s reply:

1st Reply and 2nd Reply:

No specific submissions/documents have been furnished by JKIL with respect to aforesaid observation.

14. Upon perusal of the above replies / submissions of JKIL, the documents / information submitted by JKIL were found to be incomplete on certain counts. Thus, additional clarifications/information/documents were sought from JKIL vide email dated July 19, 2019. JKIL was advised to provide the said information/documents within one week and the said timeline was extended by further 21 days upon the request of JKIL. JKIL submitted its reply vide letter dated August 14, 2019. The query-wise response of JKIL is summarized as under:

(i) SEBI’s query:

During the personal hearing held on December 19, 2018, JKIL’s authorized representatives were asked to submit the actual sub contracts entered into with other parties wherein profit margin earned by JKIL was between 1% to 3%. In this regard, vide letter dated January 14, 2019, JKIL submitted copies of invoices raised by JKIL on “J Kumar – KR JV” and “J Kumar–Chirag-API Consortium”. Since as per annual report for FY 2016-17 of JKIL, these companies are subsidiaries / associate companies of JKIL, JKIL

was advised to provide sub contracts and invoices of entities which are not related parties of JKIL.

JKIL's reply:

- a) Depending on the case to case, subject to its technical capabilities, work awarded to JKIL was sub-contracted either entirely or partly. The work order, sub contract and copies of invoices pertaining to the contract awarded by Municipal Corporation of Greater Mumbai where in one instance the entire work was sub contracted to Mukesh Brothers and in the other, entire work was sub contracted to Pinakee Engineers & Developers. The said parties are not related to JKIL.

(ii) SEBI's query:

Vide JKIL's reply dated January 14, 2019, JKIL had submitted that PACL vide its various letters stated that the work has been completed as per their satisfaction. In this regard, JKIL was advised to provide copies of similar type of letters from other entities which are not related parties of JKIL, and in respect of whom, work completion certificates were not issued.

JKIL's reply:

With regard to said query, few other work completion letters from entities namely Kabra and Associates, Zee Infra Projects Private Limited and Aditya Developers are provided.

(iii) SEBI's queries:

- a) *With regard to reconciliation of invoices with the work contracts/agreements entered into by JKIL with sub-contractors for contracts received from PACL, JKIL is advised to provide documents to explain the identifying criteria to ascertain which invoice has been*

raised against which land development project or which area of land is covered under that invoice:

b) In some of the invoices for FY 2009-10 and in most of the invoices for FY 2010-11 submitted by JKIL, the head "item" mentions - "earth work for development of agriculture land including As per Annexure Attached". However, no annexures were provided by JKIL for such invoices for said years. In this regard, JKIL is advised to provide the referred annexures.

JKIL's reply:

It is submitted that the invoices raised by the sub-contractors and the invoices raised by JKIL to PACL had annexures attached with them specifying the land details which were also mentioned in the schedule to the contract as well as subcontracts entered by JKIL. A sheet has been prepared containing the reconciliation of work executed as mentioned in the invoices raised with the details available with us in the work order/contract/sub-contract/agreement. Accordingly, the invoices raised by JKIL to PACL along with their relevant annexures containing the details of work executed by the sub-contractor for the financial years 2009-10 and 2010-2011 is attached with the reply.

15. In addition to the above, JKIL also provided a copy of SFIO's letter dated August 08, 2019 which *inter-alia* states that the name of JKIL has been removed from "*Suspect List/Confirmed List of Database of Shell Companies*". In view thereof, JKIL requested to conclude the proceedings and quash the directions issued by SEBI vide its letter dated August 07, 2017 and interim order dated September 28, 2018.
16. Thereafter, JKIL submitted another letter dated September 17, 2019, whereby it informed that based on its capabilities and successful track record of completion of projects, it has been awarded various projects from Government Authorities for a total of Rs. 4289 crore in value. Further, during the present financial year, it has also declared a dividend of 45%

(subject to shareholders' approval). In view of the above, JKIL prayed for revocation of the interim order dated September 28, 2018.

CONSIDERATION OF ISSUE:

17. In light of the findings of the interim order and the written/ oral submissions of JKIL made vide its various replies and during the hearing, the issue that arises for consideration in the matter is as under:

“Whether the directions issued by SEBI vide the interim order dated September 28, 2018 need to be confirmed, revoked or modified in any manner”

18. The consideration of the above issue in light of the submissions made by JKIL along with the supporting documents is contained in the subsequent paragraphs.

19. At the outset, I find it relevant to refer to JKIL's submission whereby it has placed reliance on the order dated March 7, 2019 passed by Hon'ble High Court of Gauhati in the matter of *Assam Company India Ltd.*, and has submitted that the Hon'ble High Court in the said matter viewed regulatory directions to conduct forensic audit and branding Assam Company India Ltd. as suspected shell company having negative implications and serious consequences. In this regard, I note that the Hon'ble High Court in the matter of Assam Company was considering (with respect to SEBI) the action taken by it vide letter dated August 7, 2017. In the present case, the operation of SEBI's letter dated August 7, 2017 [paragraph 1(a) and (b)] had already been stayed by Hon'ble SAT *qua* JKIL. Further, the Hon'ble High Court in its aforesaid order has not made any specific observation with respect to the power of SEBI to direct a forensic audit to be conducted on account of *prima facie* findings in relation to misuse of funds or misrepresentation of financials. In fact, the interim order passed by SEBI in respect of Assam Company India Limited dated December

8, 2017 was not even challenged by the Company before the Hon'ble High Court. The Hon'ble High court while considering the case in the writ petition observed "*Since the entire lis centers around declaration of petitioner No.1 as a shell company and thereafter initiating proceeding against petitioner No.1 as a shell company, it would be apposite to discuss what is a shell company or its legal connotation at the outset..*" It raised the question at para 27 of the judgment as follows: "*27. In the face of the above, question for consideration is whether it was justified on the part of the SFIO to brand petitioner No.1 as a shell company? Further, was the SEBI justified in investigating petitioner No.1 as a shell company.* The following observations of Hon'ble High Court in the said order make it quite clear that the said order does not deal with the question of power of SEBI to issue appropriate directions in cases of potential/possible violations of securities laws:

"29. Objective of the SEBI Act is to promote orderly and healthy growth of securities market on the one hand and on the other hand to protect the interest of investors. It has power to issue directions if it is satisfied upon enquiry that such direction is necessary in the interest of investors etc. Thus, the power of SEBI to enquire into any infraction of law by corporate entities or to conduct enquiry or to issue direction in exercise of its powers under the SEBI Act is not in dispute. Such a power SEBI undoubtedly has but that is not the question here..."

20. In the same context, I find it important to mention that vide the letter dated August 7, 2017, SEBI had taken certain pre-emptive measures against certain listed companies. These companies were not identified as "shell companies" by SEBI. The said pre-emptive action on part of SEBI was triggered by a letter received from the Ministry of Corporate Affairs, which in turn drew inputs from observations made by Serious Fraud Investigation Office.

21. In the backdrop of the aforesaid trigger, SEBI started its own independent examination with respect to the companies including JKIL with a view to ascertain if the companies had violated provisions of securities laws by way of misuse of books of accounts and/or

misrepresentation of financials/business. As a part of the said process, SEBI considered the representation made by the company (JKIL) in the present case and also provided it an opportunity of hearing to offer its objections/submission in relation to the matter. Thereafter, SEBI passed the interim order dated September 28, 2018 directing the stock exchange to appoint an independent forensic auditor to verify misrepresentation including of financials and/or business by JKIL and misuse of the books of accounts / funds in relation to certain specific transactions of JKIL. At no point of time, the action initiated by SEBI against JKIL was to label JKIL as a shell company as has been apprehended by JKIL.

22. In view of the above findings, I find that the aforesaid order of Hon'ble High Court of Gauhati cannot be read to mean that SEBI does not have power to issue a direction of appointment of forensic auditor, when the prima facie findings that led to the direction to conduct forensic audit was an outcome of the prima facie findings/suspicion of violation of securities laws and not on the basis that JKIL was a "shell company". I am therefore not inclined to accept the submission of JKIL in this regard.

23. I also note that JKIL has recently submitted a copy of SFIO's letter dated August 08, 2019 which *inter-alia* states that the name of JKIL has been removed from "*Suspect List/Confirmed List of Database of Shell Companies*". Placing reliance upon the said communication from SFIO, JKIL has requested to conclude the proceedings and quash the directions issued by SEBI vide its letter dated August 07, 2017 and interim order dated September 28, 2018. In this regard, I find it pertinent to reiterate that vide the letter dated August 7, 2017 (which has already been stayed by Hon'ble Securities Appellate Tribunal), SEBI had only taken certain pre-emptive measures and had conducted an independent examination with respect to the companies including JKIL with a view to ascertain if the companies had violated provisions of securities laws by way of misuse of books of accounts and/or misrepresentation of financials/business. The fact that the name of JKIL appeared in the list of SFIO as *a suspected shell company* merely acted as a trigger for SEBI to conduct its own independent examination and did not form the basis of any observation

contained in the interim order. Thus, the fact that the name of JKIL has been removed from “*Suspect List/Confirmed List of Database of Shell Companies*” by SFIO has no bearing on the proceedings initiated by SEBI vide the interim order dated September 28, 2018. I, therefore, do not find any merit in the above submission of JKIL.

24. JKIL also submitted that the enquiry in this matter is over. JKIL has already submitted all the documents available with us and there was nothing left for SEBI for further to enquire. I note that the interim order in the matter was passed, pending enquiry and not on completion of enquiry as contented by JKIL. The fact that prima facie findings were given in the interim order and no final directions have been issued in the interim order indicate the pending nature of enquiry. Further the adequacy of materials submitted by JKIL are yet to be assessed and a determination on this need to be rendered. Coupled with this fact, the further direction to appoint the forensic auditor and the consideration of materials envisaged to be gathered by the forensic auditor indicates the nature of pending enquiry in the matter.

25. Coming to the merits of the matter, considering the above mentioned responses of JKIL to the Interim order, some of the important documents that shareholders rely on for the financial data relating to the affairs of the company are the quarterly financial results and the annual financial results. The interim order had proceeded on the basis that there were reasonable grounds to believe that there is misrepresentation of financials/mis-utilisation of the books of account in respect of the agreements between PACL and JKIL which are dated August 10, 2008, April 5, 2009, May 11, 2009 and August 1, 2010 (*subject contracts*). Interim order dated September 28, 2018 had brought out several circumstances with respect to invoices, internal workings, work completion certificate and reconciliation of agreements and invoices, the absence of any acceptable evidence on the work done, which on preponderance of probability basis, led to the prima facie finding that there was misrepresentation of financials and misuse of books of account. Therefore, the question that arises for consideration pursuant to the hearing and submission of explanations and

documents by JKIL, is, given the evidences submitted by JKIL, whether still there are reasonable grounds to believe that there is possible misrepresentation of financials and misuse of books of account, which warrants forensic audit in the matter.

26. As discussed above, the interim order proceeds on the basis of existence of various circumstances, the existence of which gave rise to a reasonable ground to believe that the financials of JKIL are prima facie suspected to be misrepresented. Therefore, it needs to be considered, at first, whether the circumstances considered by the interim order still hold good or the explanations and evidences given by JKIL takes away the incriminating nature of some of the circumstances or materially alter the existence of the circumstances considered in the interim order as its basis. It is noted that in order to test whether there is reasonable ground to believe, the circumstances taken together have to be considered in totality. In the facts and circumstances of the case, one or a few of the circumstances may have higher strength in view of their degree of probability impact on the inference to a relevant fact than others. The degree of the strength of inference from any circumstance is further dependent on the existence of other circumstances which may have the effect of nullifying the inference altogether or may lessen the degree of inference or strengthen the same. Therefore, what matters in assessment of what inference can be taken out of several circumstances, is not independent assessment of circumstances but joint assessment of various circumstances and their joint product on the relevant fact that all of them are capable of leading to. In this context, the various circumstances mentioned in the interim order are discussed at first and thereafter, the collective analysis of those circumstances and the cumulative finding is rendered thereon.

27. As far the Genuineness/Authenticity of Contracts and Sub-contracts is concerned, the interim order recorded that there were discrepancies with respect to the areas of work in the sub-contracts submitted by JKIL vide separate letters.

27.1 With regard to the discrepancy in the work areas provided in the copies of the sub contract agreements with *Trinethra* submitted by JKIL vide letters dated August 24, 2017 and September 15, 2017, and with regard to the discrepancy in the work areas in the copies of

the sub-contract agreements with *Rithwik* submitted by JKIL vide letters dated August 24, 2017 and September 15, 2017, it is submitted by JKIL that “*the said discrepancy appeared because the copies of the sub contracts which were submitted on August 24, 2017 and September 15, 2017 were incomplete and after the deliberations, the contracts were revised and the work area was enhanced to 1,487 acres for agreement with Trinethra and was diminished to 13,13,888.89 cum for agreement with Rithwik. It is submitted that on September 15, 2017 the revised contract copy was submitted before your goodself and the same was clarified in our letter dated September 15, 2017...*” I note that these explanations will be considered in conjunction with other circumstances.

27.2 The interim order also contained an observation that none of the contracts of JKIL with PACL or the sub-contractors were on stamp paper or were notarized. In this regard, JKIL submitted that law does not mandate that agreements between 2 parties should be on stamp paper or should be notarized. Further, vide 1st reply and 2nd reply, JKIL has submitted copies of various agreements/work orders entered into with various entities namely Hindustan Constructions Company Limited dated June 15, 2010, with Larsen and Tourbo Limited dated November 23, 2009, with IDEB Projects (P) Ltd. dated January 15, 2009, with M Venkata Rao Infra Projects Pvt. Ltd. dated May 02, 2009 and with Sanskruti Nirman Pvt. Ltd. dated January 06, 2017; these were furnished by the company as samples for work orders which were neither on stamp paper nor were notarized. It is noted that this explanation with evidences is acceptable.

28 As far as the circumstances mentioned in the interim order which were not in the normal commercial business practice, are concerned, it was observed in the interim order that the margins availed by JKIL on contracts assigned by PACL are very thin (such as 1% / 2%) and having such low gross profit and operating profit margins does not appear to be in line with JKIL’s own normal commercial business practice. In this regard, it has been submitted by JKIL that these transactions pertain to the period from 2008 to 2011, during which the country was suffering from recession and JKIL was in the growing phase. At

that time JKIL was accepting and taking work from wherever possible as it wanted to finance its growth and gain knowledge and experience.

28.1 I find that JKIL submitted other similar sub contracts where JKIL has worked with thin profit margin. I also note that it explained the reason for thin profit margin when compared to the profit margin for contracts for which work was performed by them, as such contracts were subcontracted and subcontract profit margins would be lower than the contracts for which work was performed by them as illustrated by other subcontracts as well. As it has submitted other materials showing that it was working on thin margin, I find that the given the materials, I find that JKIL has adequately explained this circumstance.

29 JKIL has submitted that the transactions with PACL in the FY 2008-09, 2009-10 and 2010-11 constitutes very miniscule amount of the total profit and turnover of the Company during these financial years. Further, as per annual reports of JKIL for the relevant years, the growth in sales and profit after tax of JKIL is as under:

(figures in INR lacs)

Particulars	Sales	YoY growth	Profit after tax	YoY growth	Turnover with PACL	Turnover with PACL as a % of total sales
2007-08	21,702	----	1,950	----	----	----
2008-09	41,361	91%	3,293	69%	1,032	2.5
2009-10	77,011	86%	6,997	112%	5,536	7.1
2010-11	95,627	24%	7,392	6%	7,650	8

29.1 JKIL has further submitted that the prima facie suspicion made by SEBI is unfounded as the total profits from these contracts/sub contracts was around Rs. 4.45 crores whereas the total profit during these financial year 2008-2011 was approx. Rs. 261 crores which was

too insignificant for JKIL to do anything manipulative in order to misuse its books of accounts and misrepresent its stakeholders.

29.2 It has been submitted by JKIL that the profit yielded from its transactions with PACL constituted a minuscule percentage of its total profit. In this regard, it is important to note that while the profit earned from transactions with PACL may be less, but the turnover with PACL as a percentage of the total turnover was not at all miniscule growing from 2.5% of sales in 2008-09 to 7% in 2009-10 to 8% in 2010-11. Thus, JKIL's submission that these contracts were not material in nature cannot be accepted. However, in view of this finding in para 28, the incriminating nature of this finding stands reduced.

30 Regarding the circumstances of invoices and reconciliation of invoices with subject agreements, Interim order has an observation regarding the invoices generated by JKIL on different dates having same invoice numbers, and also about invoices being raised by PACL on the very same day when it received invoices from its sub-contractors. The interim order, in respect of reconciliation of invoices with subject agreements, observed that the details of Khasra nos. were not mentioned in the invoices submitted by JKIL. Therefore, it is not possible to identify which invoices were raised against which particular land development project mentioned in the list attached with the contracts / sub-contracts / work-order-cum-agreement.

(i) In its submissions, JKIL stated that the common numbers of invoices were on account of typographical errors. It is noted that the common number of invoices go to the context of the extent of reliability of invoices. JKIL has submitted that having same invoice numbers is a typographical error. I note that this explanation will be reviewed in the context of other circumstances.

(ii) JKIL has further submitted that the fact that invoice raised to PACL was on the same day the invoices were raised to it by the sub-contractors, may substantiate its efficiency but no illegality whatsoever can be attributed and no negative inference can be drawn from the same. Interim order in effect has considered the fact that invoice was raised to PACL on the same day the invoices were

raised to it by the sub-contractors, as one of the circumstantial evidence of the fact for absence of evidence of work done in view of the several other circumstances which were not adequately explained by JKIL.

- (iii) JKIL further submitted that it is not always possible for a contractor to mention the details of Khasra no or S.D. No. in the invoice. It further stated that the reason for the same is that a contractor does not complete the work as per the Khasra no or S.D. No. but as per the specifications of the project site. According to JKIL, it may be possible that in a single stage of the completion of work, there may be more than one Khasra no or S.D. No. It may even be possible that a work completed on the land may not cover a full Khasra no or S.D. No. and only covers it partly. In this case it will not be practically possible for the contractor to indicate the details of Khasra no. Standalone this explanation may be acceptable. SEBI vide letter dated August 29, 2017 had earlier advised JKIL to provide the reconciliation of location and khasra no. of various agreements and invoices of the contracts. Even though the reconciliation with Khasra Numbers was not given by JKIL, it provided the reconciliation of the agreements with invoices with the details of village, Tehshil, District and Area covered in the invoice.

31 As observed earlier, in the facts and circumstances of the case, one or a few of the circumstances may have higher strength in view of their degree of probability impact on the inference to a relevant fact than others. The degree of the strength of inference from any circumstance is further dependent on the existence of other circumstances which may have the effect of nullifying the inference altogether or may lessen the degree of inference or strengthen the same. In this context, the absence of details of the Khasra Numbers have to be analysed. Before such an analysis is made, it is important to assess the strength of inference from the materials submitted by JKIL on the aspect of actual work done.

31.1 JKIL submitted that the work was performed by the sub-contractors and the same was supervised by the executives present at the work site. JKIL further submitted that PACL issued letters to JKIL that work was completed to their satisfaction. Copy of the letters of

PACL dated October 8, 2008, March 17, 2010 and February 9, 2011 were submitted by JKIL. JKIL also submitted that pre tender site visit was made by Mr. S S Lele and it was further submitted that an affidavit to that effect would be submitted by it before SEBI.

- 31.1.1 I have perused the Affidavit of S.S. Lele dated October 26, 2018 filed by JKIL. On perusal of the said affidavit, I find that S.S. Lele states on oath that he has visited the project sites in Rajasthan, Madhya Pradesh and Tamil Nadu before preparing the pre-tender evaluation report.
- 31.1.2 I note from the letters of PACL dated October 8, 2008, March 17, 2010 and February 9, 2011 submitted by JKIL stating that it has done the inspection of the work and that work has been satisfactorily completed by JKIL. There is reference in those letters to the subject agreements.
- 31.1.3 It is noted that PACL itself which is the beneficiary of the land development and through these letters given its satisfaction of the work done. The letters record the fact that some of the portion of the work was not done. The letter dated March 17, 2010 records that some portion of the work was done not to the satisfaction of PACL.
- 31.1.4 It is noted that in case the report of work completion has been prepared by a third party, the details necessary for verifiability of the work done would have been essential in order to accept the reliability of the report of work completion. However, here the letters are sent by PACL itself to JKIL. In the facts and circumstances of the case, it is difficult to reject the letters of PACL altogether especially when the letter emanates from the entity which is interested in performance of the work for which it had given subject contracts and there are no circumstances on record to discredit the same, such as collusion.
- 31.2 As observed earlier, the interim order proceeds on the main premise that there were various circumstances which were not explained then, which lead to the reasonable belief that work was not done. As far as the circumstance of the authenticity of the contracts is concerned, the premise in the interim order was there was discrepancy in some contracts and the contracts were not on stamp paper and not notarized. The reason why authenticity of the contracts was considered as one of the circumstances is because if the contract itself is not

genuine, the question of further actions pursuant to such contract does not arise, which ultimately will have strong inference on the misrepresentation of the financials. However, JKIL gave copies of similar such contracts entered with various other entities indicating that there is a practice of entering into contracts without stamping and notarization. Therefore, the inference rendered in the interim order may not have the same inferential effect considering the explanations and other evidences given by JKIL.

- 31.3 Similarly, the factum of raising of invoices may be a circumstance in itself that could lead one to infer that the invoices are raised pursuant to the work completion of the subject contracts. However, such an inference would be dependent on the reliability of the invoices. In case the reliability of the invoice itself is in question, it goes without saying that the inference also gets its weakness. JKIL explained regarding the invoices which were questioned because of the common numbers in some of them. Further at the time of interim order the questionability of invoices were also on one more basis as the entire data of reconciliation of invoices with the contracts for which the same were raised, was not present. This is also one of the circumstances necessary for any meaningful inference that the invoices were raised in respect of the subject contracts. JKIL provided later the reconciliation details indicating the village, Tehsil, District and the Area for which subject contracts were entered into and the invoices raised for the same, including some additional documents which were not submitted prior to the interim order. In view of the reconciliation, I further observe that the factum of raising of invoices in consideration with other circumstances, acts as one of the circumstantial evidences that the invoices were raised subsequent to the subcontractor completing its sub-contractual obligation.
- 31.4 In effect, there are some evidences with large degree of acceptance, in respect of the existence of the sub-contracts, availability of pretender reports which records site visit, JKIL was working within thin profit margin as in the case of other sub contracts, the invoices are raised pursuant to the work completion of the subject contracts, the said invoices pertain to the subject contracts from the reconciliation details indicating the village, Tehsil, District and the Area for which subject contracts were entered into, PACL was satisfied with the performance of the work done in the form of the letters of PACL

dated October 8, 2008, March 17, 2010 and February 9, 2011. In view of the circumstances above mentioned, the absence of khasra numbers or the absence of details of work done in the invoices raised by JKIL to PACL cannot have determining effect to nullify the rest of the circumstances which contradict the grounds for forming a reasonable belief that the work was not done at all in respect of subject contracts.

- 32 On the overall examination of various circumstances, I find that, in view of the materials adduced by JKIL, there are not adequate circumstances forming the reasonable grounds to believe that there is misrepresentation of financials.
- 33 In view of the above discussion, in the light of evidence and the facts and circumstances of this case, the directions issued by SEBI vide the interim order dated September 28, 2018 are liable to be revoked.
- 34 Thus, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 hereby revoke the directions in the interim order dated September 28, 2018.
- 35 Copy of this Order shall be forwarded to the recognized stock exchanges for information and necessary action.
- 36 A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

DATE: October 7, 2019

MADHABI PURI BUCH

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA