BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4), 11A and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	Resurgere Mines and Minerals India Ltd.	AAACE0111B
2.	Mr. Subhash Sharma	AXCPS8189D
3.	Mr. Amit Sharma	AVRPS2826C
4.	Mr. I. D. Agarwal	AAAPA9527G
5.	Mr. Burzin Somandy	AIEPS6910P
6.	Mr. Harish Khetan	AAHPK3325R

In the matter of IPO of *Resurgere* Mines and Minerals India Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation into the Initial Public Offer (hereinafter referred to as **"IPO"**) of Resurgere Mines and Minerals India Ltd (hereinafter referred to as **"*Resurgere* / *Company* / *Noticee no. 1*").** *Resurgere* is reportedly engaged in extraction, processing and sale of mineral products and exploration and development of mining assets. It came out with an IPO during August 11-13, 2008.

2. *Resurgere* filed a Red Herring Prospectus dated August 1, 2008 (hereinafter referred to as **"RHP/Offer Document"**) and subsequently, filed a Prospectus dated August 22, 2008 for the public issue of 44,50,000 equity shares of face value of INR 10/- each at a price of INR 270/- per share (including premium of INR 260/-) aggregating to INR 120.15/- Crores. The IPO also comprised reservation of 2,50,000 equity shares aggregating to INR 6.75/- Crores for eligible employees of the *Company*. The equity shares of *Resurgere* got listed on Bombay Stock Exchange (hereinafter referred to as **"BSE"**) and National Stock Exchange (hereinafter referred to as **"NSE")** on September 1, 2008.

3. The investigation conducted by SEBI revealed that the entities who had applied for the IPO under the employees category were indirectly funded by the *Company* for making application in the *Company's* IPO. It was also observed that funds raised through IPO were subsequently not used as per the objects stated in the Offer Document/Prospectus and were siphoned off from the *Company*. Further, it was revealed that the *Company* had not disclosed in the Prospectus about the ICD taken by it during the IPO.

4. Accordingly, based on the factual findings as unearthed in the course of investigation a common Show Cause Notice dated March 22, 2017 (hereinafter referred to as **"SCN"**) was issued to the *Company* (*Noticee no. 1*), its Directors (*Noticees no. 2* to *5*) and Chief Financial Officer-*Noticee no. 6* (hereinafter referred to as **"CFO"**) for the alleged violation of provisions of SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) and SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**"). The SCN alleged that the *Noticees* were responsible for siphoning off the IPO proceeds and have made wrong and misleading disclosures in the Prospectus by disclosing that all statements in the Prospectus are true and thereby called upon them to show cause as to why suitable directions not be issued against them under Sections 11(4), 11A and 11B of the SEBI Act. A supplementary SCN dated January 9, 2019 was subsequently issued to all the *Noticees*, alleging further violation of provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as **"DIP Guidelines"**) read with ICDR Regulations.

5. I note that pursuant to receipt of the SCN, *Noticee no. 4* has submitted a written reply, dated April 20, 2017. *Noticee no. 5* had requested for Inspection of documents relied upon in the SCN. Accordingly, inspection of all relevant documents relied upon in the SCN was duly provided to him on September 12, 2017, pursuant to which he has submitted his written replies vide letters dated November 17, 2017 and May 14, 2019. In the interest of principles of natural justice, an opportunity of Personal Hearing was provided to all the *Noticees* on June 6, 2019. *Noticee no. 4* attended the Personal Hearing and presented arguments on the lines of his written reply. *Noticees no. 1* and *5* requested for adjournment of the hearing, therefore, another opportunity of Personal Hearing was accorded to all the *Noticees* on November 13, 2019. *Noticee no. 5* appeared for the Personal Hearing on November 13, 2019 and presented submissions on the lines of his replies. None of other *Noticees* attended the Personal Hearing on November 13, 2019.

6. Subsequently, *Noticee no. 6* vide email dated February 11, 2020 has informed that he has come to know of the present proceedings only through SEBI letter dated February 5, 2020 and has not received prior correspondences from SEBI including the SCN due to change in his address. Therefore, he requested for a copy of SCN. In response to this, the SCN along with annexures were provided to the *Noticee* and in the interest of principles of natural justice, another opportunity of Personal Hearing was also provided to him on May 5, 2020. After that *Noticee no. 6* has submitted his written reply vide email dated May 1, 2020 and subsequently has appeared for Personal Hearing through video conference during which he advanced his explanations on the lines of his written reply submitted earlier. On account of COVID-19, the aforesaid hearing so scheduled was conducted with the consent of the *Noticees* through video conference. Based on the submissions made by him, certain queries were raised during the Personal Hearing to which, the *Noticee* has responded vide his email dated June 8, 2020.

7. It is also observed that *Noticees no. 1, 2* and *3* vide separate letters dated April 13, 2017 had sought time to file written replies and have further requested for Inspection of documents relied upon in the SCN vide their letters dated May 12, 2017 and January 18, 2019. *Noticee no. 1* had also reiterated its request for Inspection vide letter dated June 5, 2019 and had requested for adjournment of Personal Hearing scheduled on June 6, 2019. I note that these *Noticees* have not availed the opportunities granted to them for Inspection of documents vide email/letter dated November 7, 2019 and January 20, 2020. Further, these *Noticees* have

neither attended the Personal Hearing held either on June 6, 2019 or November 13, 2019 nor have they submitted any reply on merits despite being given several opportunities/reminders vide SEBI letters dated October 22, 2019, January 20, 2020 and February 5, 2020. The *Company* in its response to the aforesaid SEBI letters has merely informed vide letters dated October 30, 2019, January 30, 2020 and February 10, 2020 that a moratorium is in operation because of an order passed by Hon'ble National Company Law Tribunal (hereinafter referred to as **"NCLT"**) vide its order dated September 11, 2019. The *Company* has enclosed its earlier letters informing about the said moratorium and seeking Inspection of documents but has till date, avoided submitting any explanation on merits of the case in its defences against the allegations made in the SCN and its replies have been misleading and evasive in nature. Considering that despite several opportunities, these *Noticees* have chosen not to appear for the Personal Hearing or to submit any reply on merits of their case, I find that principles of natural justice in the matter of granting opportunities to these *Noticees* have adequately been complied with, hence I decide to proceed with the matter on merit and on the basis of available records in the case.

ISSUES FOR CONSIDERATION AND FINDINGS:

8. I have perused the SCN including all the annexures as referred to in the SCN, replies received from *Noticees no. 4, 5* and *6* to the aforesaid SCNs and all other relevant material available on record, and find that the pertinent issues that require consideration in this matter are captured in the following queries:

(I) Whether acts of Noticee no. 1(Company) are in violation of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations?

(II) Whether acts of Noticees no. 2 to 6 are in violation of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations?

ISSUE NO. I: ***Whether the acts of Noticee no. 1 (Company) are in violation of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations?***

9. As the allegations made in the SCN are three fold, it would be appropriate that before I proceed to examine the afore-stated issues and decide as to whether based on materials available on record, the aforesaid violations as alleged in SCN stand established or not, it

would be proper to reproduce hereunder, the relevant provisions of law alleged to have been violated in the instant matter and the same are reproduced below:

SEBI Act, 1992

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices-

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

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

(a) ……

(b) ……..

……….

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

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.

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

<u>DIP Guidelines, 2000</u>

6.1In addition to the disclosures specified in Schedule II of the Companies Act, 1956, the prospectus shall contain the following:

6.2 The Prospectus shall contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue.

6.3 The Prospectus shall also contain the information and statements specified in this chapter and shall as far as possible follow the order in which the requirements are listed in this chapter and summarized in ***Schedule VIIA***.

……

6.8.4.7 ***Sources of Financing of Funds Already Deployed***

a) Means and source of financing, including details of "bridge loan" or other financial arrangement, which may be repaid from the proceeds of the issue.

6.15.2

(a) The draft Prospectus (in case of issue other than fast track issues), red herring Prospectus and Prospectus shall be approved by the Board of Directors of the issuer and shall be signed by all Directors, the Chief Executive Officer, i.e. the Managing Director or Manager within the meaning of the Companies Act, 1956 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.

b) The signatories shall further certify that all disclosures made in the Prospectus are true and correct.

10. I further note that the violation of the aforementioned provisions of law are largely based on the following three allegations levelled in the SCN which require consideration on merit:

A. The *Company* has funded its employees for making application in the *Company's* IPO.

B. Funds raised through IPO have not been used as per the objects stated in the Offer Document/Prospectus.

C. The *Company* has not disclosed about the ICD taken by it during the IPO in the Prospectus and thereby has misled the investors at large.

A. <u>The *Company* has funded its employees for making application in the *Company's* IPO</u>

11. The investigation conducted by SEBI revealed that the following 17 employees had submitted applications for subscription to the IPO of *Resurgere* against the 2,50,000 shares

reserved for employee category in the said IPO. It has been noted that there were credit entries in the Bank Accounts of 12 employees indicating the receipt of money on August 18, 2008 from Yes Bank A/c no. 001083800000540 of Runwell Steel Private Ltd., which was a Promoter of *Resurgere* as mentioned in the Prospectus (hereinafter referred to as **"Runwell"**). Further, 4 more employees received money from another connected/Promoter group company viz: - Trueline Multitrade Pvt. Ltd. (hereinafter referred to as **"Trueline")** from its bank account no. 000320110000341 with Bank of India and out of these 4 employees, 2 employees received money by way of RTGS transfer (credit) on August 14, 2008 while the other 2 entities received money by way of cheque deposits on August 13, 2008 from Trueline. The 17th entity i.e., the *Noticee no. 6* who was the CFO of the *Company* however, has paid the application money from his own source. Details of shares applied vis-à-vis allotted and the source of money for making application for the shares of the *Company* pertaining to the aforesaid employees are furnished below**:**

Table – 1-Share subscription details of employees of Resurgere

S. no.	**Name of employee**	**No. of Shares applied**	**Application money**	**No. of Shares allotted**	**Demat A/c Opening date**	**Status of Demat A/c**	**Source of Appl. Money**
1	Rajesh M Sharma	50000	INR 1.36 Crore	49980	01/08/2003	Active	Fund transfer from Runwell Steel Pvt. Ltd. (INR 5.44 Crore)
2	Rakesh Gupta	15000	INR 40.80 Lakh	14994	06/12/2007	Active	
3	Rakesh Devendra Powale	15000	INR 40.80 Lakh	14994	22/11/2007	Closed on 14/09/2009	
4	Balkishan Kalia	15000	INR 40.80 Lakh	14994	17/01/2008	Closed on 19/04/2011	
5	Brijeshkumar Ravindra Dwivedi	15000	INR 40.80 Lakh	14994	26/11/2007	Closed on 24/03/2011	
6	Mukesh M Keni	15000	INR 40.80 Lakh	14994	27/11/2007	Closed on 13/04/2011	

7	Anita Linda Dsouza	12500	INR 34.00 Lakh	12495	27/11/2007	Closed on 13/04/2011	
8	Namrata V Shinde (Birmole)	12500	INR 34.00 Lakh	12495	17/01/2008	Closed on 09/05/2011	
9	Chandrashekhar Madhukar Kahurke	12500	INR 34.00 Lakh	12495	22/11/2007	Closed on 13/04/2011	
10	Sandesh Padmakar Potdar	12500	INR 34.00 Lakh	12495	22/11/2007	Closed on 11/05/2010	
11	Shilpa Shah	12500	INR 34.00 Lakh	12495	06/12/2007	Active	
12	Bhiwaji Laxman Dawbhat	12500	INR 34.00 Lakh	12495	22/11/2007	Active	
13	Swapnali K Mhatre (name changed to Pallavi Bhushan Pitale)	12500	INR 34.00 Lakh	12495	22/11/2007	Closed on 19/04/2011	Fund transfer from Trueline Multitrade Pvt. Ltd. (INR 0.68 Crore)
14	Pratibha S Mohite	12500	INR 34.00 Lakh	12495	04/03/2008	Closed on 09/05/2011	
15	Kalyani D Acharekar	12500	INR 34.00 Lakh	12495	27/11/2007	Closed on 07/04/2011	Cheque Deposit from Trueline Multitrade Pvt. Ltd. (INR 0.68 Crore)
16	Shweta Ratnakar Nakashe	12500	INR 34.00 Lakh	12495	17/01/2008	Closed on 17/04/2011	
17	Harish Khetan	100	INR 27200/-	100	11/08/1999	Active	Own Source (INR 27,200)
Total		**2,50,100**	**INR 6,80,27,200**	**2,50,000**			

12. The investigation has further revealed that the bank account of Runwell maintained with Yes Bank received amounts aggregating to INR 3.97 Crore from Mr. Amit Sharma, Mr. Subhash Sharma, Trueline and Mayfair Management Services Pvt. Ltd., while INR 62 Lakh was received from *Resurgere* on August 18, 2008. The above funds so received by *Runwell* in turn have been utilized to transfer funds to the tune of INR 5.44 Crore on the same day (i.e. August 18, 2008) to the above named 12 employees of *Resurgere* who have used the said money so received from Runwell to make payment to the *Company* on August 18, 2008 against their respective IPO subscription as described above. It has further been revealed that Runwell has subsequently received INR 4.00 Crore on September 11, 2008 from *Resurgere* which was used to return the funds received earlier from Mr. Amit Sharma, Mr. Subhash Sharma, Trueline, Mayfair Management Services Pvt. Ltd. (INR 3.97 Crore) on the same day itself. Details of these transactions are given below:

Table-2- Details of transactions in Runwell's bank account

Date	**Description**	**Debits (INR)**	**Credits (INR)**
18/08/08	Amit Sharma (Whole time Director of *Resurgere*)		10,00,000
18/08/08	Trueline Multitrade Pvt. Ltd.		6,50,000
18/08/08	Subhash Sharma		5,50,000
18/08/08	Mayfair Management Services Pvt. Ltd.		3,75,00,000
18/08/08	*Resurgere* Mines and Minerals India Ltd.		40,00,000
18/08/08	*Resurgere* Mines and Minerals India Ltd.		22,00,000
	Total		**4,59,00,000**
18/08/08	Amount transferred to 12 (twelve) employees of RMMIL	5,44,00,000	
11/09/08	*Resurgere* Mines and Minerals India Ltd.		4,00,00,000
11/09/08	Trueline Multitrade Pvt. Ltd.	6,50,000	

11/09/08	Amit Sharma (Whole time Director of *Resurgere*)	10,00,000	
11/09/08	Mayfair Management services Pvt. Ltd.	3,75,00,000	
11/09/08	Subhash Sharma	5,50,000	

13. It has been observed that Mr. Rakesh Powale, one of the Directors of Runwell also got allotment of 14,994 shares in employee category of *Resurgere*. As per the information available on MCA website (enclosed with the SCN as Annexure-B) Trueline was incorporated on January 05, 2008 i.e. in the year of IPO of *Resurgere* and Mr. Ganesh Sonbhau Atkari and Mr. Baban Waman Bhosale were the Directors of Trueline. Investigation revealed that as per the bank account opening form as received from Bank of India in respect of Bank a/c no. 000320110000341 of Trueline, the said bank account was opened on August 09, 2008 i.e. 2 days prior to opening of bids for IPO of *Resurgere* (Bids were opened from August 11 to 13 of 2008) and the account opening form was signed by one Mr. Rakesh Powale and Mr. Mukesh Keni (who also got shares in employee category of *Resurgere*) as authorized signatory in addition to above mentioned 2 Directors of Trueline. Besides, Mr. Rakesh Powale and Mr. Mukesh Keni were also Directors in two other Promoter group companies of *Resurgere* viz: - Victory Sponge Private Ltd. and Eminent Steel Private Ltd and were holding 0.01% each in these Companies' shareholding, in which Ms. Neelam Subhash Sharma (Promoter of *Resurgere*) held 98% shareholding. As per the Prospectus of the *Company*, Mr. Rakesh Powale was also named as key management personnel who was holding 5625 shares in *Resurgere*.

14. Investigation further revealed that on perusal of ICICI bank account no. 623505376151 of *Resurgere*, it was noted that INR 2,00,000/- was paid to Mr. Ganesh Atkari (Director of Trueline) vide cheque no. 821720 on April 24, 2008 and on perusal of bank account no. 000320110000341 with Bank of India of Trueline, it was noted that INR 1.00 Crore was deposited in said account vide cheque no. 321032 drawn on the City Co-Operative Bank Ltd. (CCBL) on August 11, 2008. CCBL vide its letter dated September 23, 2011 informed that said cheque of INR1.00 Crore was issued from the account of M/s Deepak Minerals (A/c no. CD2938) and also has informed that proprietor of M/s Deepak Minerals is Mr. Mukesh Keni. From the said CCBL Bank A/c statement of M/s Deepak Minerals, it was noted that the

address of M/s Deepak Minerals was mentioned as *15, Morvi House, 28/30, Goa Street, Ballard Estate, Mumbai-400038* which turned out to be the same address as that of *Resurgere* and other subsidiary/Promoter related group companies of *Resurgere* viz. Runwell, Eminent Steel Private Ltd. and Victory Sponge Private Ltd. *Resurgere* also held bank account with CCBL bearing account no. CD/2827 which showed the same address. As per the information available on MCA website, email ids of these subsidiary/Promoter group companies of *Resurgere* are rspl@live.com, espl@live.com and vspl@live.com and email id for Trueline is tmpl@live.com. The aforesaid similarity in the construction/pattern of email IDs between *Resurgere* group companies and Trueline is also worth mentioning to highlight the close proximity between *Resurgere g*roup companies and the Trueline.

15. As mentioned earlier the *Company* has not submitted any reply on merits rebutting the allegations made in the SCN, however, during the course of investigation the *Company* vide email dated November 27, 2014 has merely denied funding its employees' subscriptions to the IPO. However, no explanations have been furnished to support its submissions. Similarly, Runwell has claimed during the course of investigation that it had transferred funds to the employees of *Resurgere* as loans, however, the said claim of advancing loan to the employees of *Resurgere* has not been supported by any independent verifiable documents. I have already noted above that although the *Company* sought time to inspect the documents, it has not availed the same despite getting opportunities, for reasons best known to it. It is also noted that *Noticee Company* has chosen not to file any reply to the SCN rebutting the allegations with supportive documents and has rather preferred to remain absent from attending Personal Hearing thereby grossly failing to advance any justifiable explanations relating to the transfer of funds to the employees as alleged in the SCN. Therefore, based on the material available on record and analysis of the fund transfers between *Resurgere*, its connected companies and the employees of *Resurgere* as summarised in table-1 and 2 above, and the close *inter se* connections between *Resurgere* and its Promoter group companies, I have to make following observations:

a) I note that 16 out of 17 employees of *Resurgere* who had subscribed to the IPO of the *Company* in the employees category (as per table-1 above) have made their payments against their subscription to the shares of the *Company* only after receiving funds from *Resurgere*'s Promoter group/connected companies (Runwell and Trueline). Runwell

has been mentioned as Promoter of *Resurgere* in the IPO Prospectus and in view of the elaborate connections between *Resurgere* and Trueline as mentioned in preceding paragraphs, Trueline can as well be safely stated as a connected/Promoter group company of *Resurgere*.

b) It is noted from the bank statements of the aforesaid employees (enclosed with the SCN as Annexure-A) that none of the 16 employees had enough balances in their bank accounts to pay for their subscription money until the funds were transferred to them from *Resurgere*'s Promoter group/connected companies. There is also no document to substantiate the paying capacity of these employees so that one can claim that even without receiving the alleged funding, these *Noticees* had sufficient independent source to subscribe to the shares under the IPO of *Resurgere*.

c) Strangely, it is noted that the said 16 employees have received the exact amount of money from Runwell and Trueline that was required by them to pay for the share subscription and after receipt of those funds from the said two connected companies of *Resurgere*, the amounts have immediately been transferred onwards (mostly on same day) from the bank accounts of these 16 employees to the Company's accounts for fulfilling their payment obligation against their subscription to the IPO of the *Company*. For example – Ms. Anita Linda Dsouza (employee of *Resurgere* as per table-1) has received INR 34 lakh from Runwell on August 18, 2008 and a cheque has been cleared from her account against her subscription under the IPO for an equal amount of INR 34 lakh in favour of *Resurgere* on August 18, 2008.

d) It is pertinent to note from the table-2 above that the Managing Director/*Noticee no. 2* (Mr. Subhash Sharma), Whole Time Director / *Noticee no. 3* (Mr. Amit Sharma), Trueline and Mayfair Management Services Pvt. Ltd. have transferred INR 5,50,000, INR 10,00,000, INR 6,50,000 and INR 3,75,00,000 respectively (total of INR 3.97 Crore) to Runwell on August 18, 2008 which was used by the employees of *Resurgere* for meeting their share subscription payment obligation (also on same day). Further, Runwell has indeed been subsequently repaid by *Resurgere* (out of the IPO proceeds) a sum of INR 4.00 Crore on September 11, 2008 which has been used immediately to repay the aforesaid entities (Mr. Amit Sharma, Mr. Subhash Sharma, Trueline, Mayfair

Management Services Pvt. Ltd. on the very same day) as per the amounts these entities had earlier transferred to the account of Runwell.

16. The fund transfers between the *Company*, its Promoter group companies and employees as well as the close *inter se* connections that existed between the *Company* and its Promoter group/connected companies are not disputed and the explanation furnished by the *Company* during the investigation denying the allegation of funding the IPO subscriptions made by the employees of *Resurgere*, was not supported by any evidence to lay credence on its denial. There is no justifiable explanation available on record for transfer of such huge amounts of money from the connected companies of *Resurgere* to the employees of the *Company*, just in time for enabling the employees of the *Company* to make payment for their subscription to the IPO. It also remains unexplainable by the *Company* as to why *Resurgere* had transferred INR 4.00 Crore from the IPO proceeds to Runwell which was apparently for enabling Runwell to repay the other entities who had earlier transferred money to Runwell so as to fund the employees of *Resurgere* for paying their share subscription amounts. The close *inter se* nexus between the *Company* and its group companies based on common addresses, common Directors, similar emails (as described in detail in the preceding paragraphs) along with the funds flows between them in a concerted and precise manner that clearly indicates a one-to-one nexus between funds flow from companies connected to *Resurgere* to the employees' accounts and funds utilised by the employees for subscription to IPO, as well as subsequent transfer of funds by *Resurgere* out of the IPO proceeds to its connected company to reimburse the funds obtained from various entities as discussed above. These transactions and fund flows leave no *iota* of doubt for me to conclude that the entities who were allotted shares in the employees category in the *Company's* IPO have indirectly been funded/financed by *Resurgere* to pay their subscription amounts against the shares allotted to them under the said employee category. This is further reinforced by the fact that the *Company* has used its IPO proceeds to pay its group companies who had earlier funded its employees for fulfilling their payment obligation for the IPO shares in the employees' category.

B. <u>Funds raised through IPO have not been used as per the objects stated in the Offer Document/Prospectus</u>

17. The SCN alleges that the *Company* has not used the IPO proceeds in accordance with the objects stated in the Offer Document/Prospectus. At this juncture it is appropriate to refer to the major objects of the IPO as recorded in the RHP dated August 1, 2008/Prospectus dated August 22, 2008 (hereinafter referred to as **"Offer Document"**) and the same are stated below:

- Purchase of plant and machinery for setting up of own extraction and crushing facilities at the mines.
- Purchase of railway rakes to set up own logistics infrastructure facilities.
- Margin money for working capital.

18. The following table summarizes the total estimated fund requirements for fulfilling the above stated objects of IPO and their source of finances as per the disclosure made in the Prospectus (page no. 34):

Table-3 -Objects of IPO and source of finance

Sr. No.	Particulars	Amount (in millions)
1	Purchase of Plant and Machineries at:	
	Nuagoan Mine	236.57
	Maharajpur Mine	452.73
	Jharkhand Mine	460.57
	Yelwan Jugai bauxite Mine	135.77
	Sub Total	**1,285.64**
2	Purchase of 6 railway rakes	1,163.60
3	Working Capital Margin	182.48
4	Provision for Contingencies and Pre-Operative Expenses	82.42
5	General Corporate Purposes	100.00
	Sub Total	**2,814.14**
6	Issue expenses	98.00
	Grand Total	**2,912.14**
	Means of Finance:	

Particulars	Amount (in millions)
Term Loans	860.00
Preferential allotment to Merrill Lynch International	430.00
Pre-IPO allotment	137.50
Net Proceeds of the public Issue	1,201.50
Internal Accruals	283.14
Total	**2,912.14**

19. Investigation revealed that the objects were further amended by way of postal ballot dated March 14, 2009. The following table summarizes the revised objects and the estimated fund requirement:

Table-4- Amended objects of IPO

Sr. No.	Particulars	Revised Amount (in millions)
1	**Purchase of Plant and Machineries at:**	
	Nuagoan Mine	325.28
	Maharajpur Mine	565.91
	Jharkhand Mine	460.57
	Yelwan Jugai bauxite Mine	135.77
	Dhelana	52.50
	Pen Mine	131.01
	Sub Total	**1,671.05**
2	Working Capital Margin (Nuagoan, Maharajpur & Jharkhand)	214.41
	Working Capital Margin (Dhelana & Pen Mine)	16.95
3	Provision for Contingencies and Pre-Operative Expenses	76.73
4	Issue expenses	98.00
5	General Corporate Purposes	100.00

6	Acquire Mining Assets in order to enhance the product portfolio as well as to increase mining reserve of the company in existing minerals. To develop Mining Assets, Set-up plant & Machinery for extraction & processing minerals at new mining assets, to procure long term raising & Purchase contracts for new mining locations.	735.00
	Grand Total	**2,912.14**

20. In terms of the Offer Documents, the total amount mobilized by *Resurgere* through IPO was INR 120.15 Crore. The major funds movement made by the *Company* pursuant to receipt of IPO proceeds into its various escrow accounts and the onward transfer of funds from those escrow accounts was analyzed during investigation and the same are tabulated below:

Table-5- Details of IPO funds movement of Resurgere

IPO Escrow proceeds (bank account)	**Amount INR (Cr.)**	**Onward utilisation of IPO proceeds by the Company**	**Amount INR (Cr.)**
ICICI Escrow A/c	**76.03**		
		Transferred to P R Vyapaar Pvt. Ltd. on August 29, 2008.	**18.22**
		Transferred to LIC Mutual Fund on September 1, 2008 and subsequently received back INR 20.04 Cr. on September 10, 2008.	**20.00**
		Transferred to HDFC Mutual Fund on September 11, 2008.	**10.00**
		Transferred for FD with Union Bank of India (UBI) on August 29, 2008 and realised subsequently as INR 15.09 Cr. on October 16, 2008.	**15.00**
		Transferred to Runwell Steel Pvt Ltd. on September 11, 2008.	**4.00**
		Transferred to Laxmi Minerals on September 6, 2008 and subsequently received back same amount on September 12, 2008.	**2.80**
		Transferred to Jai Minerals on September 4, 2008 & subsequently received back same amount same day.	**1.50**

		Paid to different Intermediaries, etc.	**5.70**
BNP Paribas Escrow A/c	**39.49**	**Transferred INR 25 Crore** to Grewal Mines on August 29, 2008 which has been transferred onward to Laxmi Minerals and Pacific Corporate Services Ltd. Further, transferred **INR 6.95 Crore** to Jai Minerals during August 30, 2008 to September 5, 2008	**31.95**
HDFC Escrow A/c	**4.05**		
UTI AXIS Escrow A/c	**0.35**		
Standard Chartered Escrow A/c	**0.23**	Transferred to LIC Mutual Fund on September 2, 2008 and realised subsequently on September 29, 2008.	**10.00**
		Balance amounts	**0.98**
Total	**120.15**		**120.15**

21. Considering that the funds realised through IPO have been apparently invested for various purposes that were explicitly found to be in variance with the objects as stated in the Offer Document/Prospectus, details and supporting documents pertaining to the end use of funds raised in the IPO were sought from the *Company* during investigation conducted by SEBI. In this respect, the responses / replies received from the *Company* are summarised in the table below: -

Table-6 – Response of the Company during Investigation

S. No	**Date of reply of the Company**	**Major submissions of the Company**
1.	December 2, 2013, December 13, 2013 and November 17, 2014	a) Company has submitted IPO fund utilization statement (during July 1, 2007 to July 31, 2010) along with lists containing the details/nature of expenses made for each object, without any supporting documentary evidence. b) Further, Company has submitted extracts of Audit Committee Meeting minutes relating to IPO utilization, copies of agreements executed by the Company giving ICDs from IPO proceeds to different entities (during 2008-2010).

2.	November 27, 2014	a) ICD was issued to PR Vyapaar for raising INR 18 Crore which was documented through agreement dated August 13, 2008. b) Company has not funded its employees for subscribing to the IPO and IPO proceeds have not been utilised for repayment of the alleged funding to the employees.
3.	March 10, 2015	Jai Minerals, Laxmi Minerals and Grewal Mines are its customers, with whom *Resurgere* carries out routine business transactions.
4.	May 10, 2015	a) The transfer of amount of INR 4 Crore to Runwell on September 11, 2008 was for acquisition of mines. b) INR 2.80 Crore transferred to Laxmi Minerals on September 6, 2008 was given as advance/token money for acquisition of mines. However due to certain adverse findings by the Company, the deal was cancelled, and the respective amount was received back on September 12, 2008 which is reflected in the bank statements. c) As regards INR 1.5 Crore transferred to Jai Minerals on September 4, 2008, the same was wrongly transferred and was recalled immediately on the same day as reflected in the bank accounts. d) All IPO funds have been used for the objects as stated in Prospectus and amended by Postal Ballot dated March 14, 2009.
5.	June 15, 2015	a) INR 4.75 Crore (out of INR 6.95 Crore) paid to Jai Minerals during August 30, 2008 to September 5, 2008 was on behalf of Moon Engineering and Entite Engineering Works for the purpose of acquisition of mines. However, these deals got cancelled in 2010 as parties could not acquire the mines and funds were recalled and these funds have been used for the working capital of the Company and the balance INR 2.20 Crore (out of INR 6.95 Crore) paid to Jai Minerals is stated to be not paid out of IPO proceeds. b) INR 25.00 Crore worth of funds transferred to Grewal Mines on August 29, 2008 was for

		supply of minerals, however, Grewal Mines could not deliver as per the terms of the contract. Hence, it has subsequently refunded INR 20.00 Cr. in tranches and remaining INR 5.00 Cr. has been repaid by National Engineering Machinery Company on its behalf. The refunded amounts have been used in terms of the objects of the IPO.
6.	July 20, 2015	As regards INR 15.00 Crore transferred for FD with UBI on August 29, 2008 and realised subsequently as INR 15.09 Crore on October 16, 2008, the same was utilised as follows: - a) INR 5.00 Crore have been subsequently used by the Company for working capital and INR 2.00 Crore has been paid to Minerals and Metals for acquisition of mining assets. b) INR 5.05 Crore has been transferred to Birla Sunlife on October 16, 2008 for investment in liquid fund and after realisation (from November 18, 2008 to March 12, 2009) has been subsequently utilised for working capital and general corporate purposes. c) INR 2.20 Crore has been transferred to Runwell on October 16, 2008 for acquisition of mining assets d) INR 45.00 Lakh has been paid to Ramdev Enterprises on behalf of Thriveni Earthmovers Pvt Ltd. for mine development expenses and INR 50.00 Lakh has been transferred to Ramdev Enterprises for purchase of calibrated ore and also for utilisation for working capital (during October 16 - 20, 2008). e) INR 8.00 Lakh transferred to Exfin Shipping India on October 17, 2008 towards utilisation for working capital. (Total Amount = INR15.28 Crores) With regard to INR 30.00 Crore invested in LIC mutual fund, the same have been realised on September 10, 2008 and September 29, 2008 and used for the objects of the issue.

22. The information furnished by the *Company* during investigation along with the lists of expenses incurred towards utilisation of the objects of IPO have been segregated under different heads of objects as stated in the Prospectus, however, it was noticed that the information furnished were not duly supported with documents like quotations, bills/invoices,

receipts, cheques, agreements, etc. to substantiate and justify the incurring of those expenses as claimed by the *Company*. Since the Company had repeatedly failed in providing the requisite documents in support of end use of funds raised in IPO so as to justify that the same were actually utilized for the objects stated in the Prospectus or in compliance with amended objects, it was thought proper to seek information from other sources and accordingly, information was sought from entities who had apparently received major portions of the issue proceeds from the *Company* purportedly to meet/execute various objects of the said IPO for the *Company*. Interestingly from the responses/information received from some of these entities/companies, it was observed that the entities who were engaged by the *Company* for meeting different objects of the IPO and to whom the *Noticee Company* had transferred huge sums of money from the IPO proceeds for various purposes such as acquisition of Mines, supply of Minerals, meeting working capital needs of the Company etc, were found to be having no base or standing/expertise in the relevant fields hence, these entities/companies were incapable of providing any service to *Resurgere* for which funds out of the IPO proceeds were transferred to them as disclosed by the *Company* in its afore mentioned letters addressed to SEBI. In several instances, summons issued to such payee entities could not be delivered as these entities were not traceable in their disclosed addresses. Notwithstanding the same, a summary of the information received from some entities who responded to the summons issued by SEBI in the course of investigation, are worth mentioning herein under: -

Table-7- Response of major recipients of IPO proceeds

S. No	Name of Entity (date of response)	Amount Received (INR) [As per claim of Company]	Reply of Entity/remarks
1	Runwell Steel Pvt. Ltd. vide letter dated December 14, 2015	10,32,00,000	The funds were received from *Resurgere* for acquisition of mines. No evidence of any Mines acquisition furnished.
2	Jai Minerals vide letter dated December 16, 2015	6,95,00,000	No supplies have been made by them to *Resurgere* and no funds have been received from *Resurgere*.
3	Vyagreshwar Minerals Producers Co-op. Soc.	2,47,30,000	A sum of INR 2,08,50,000 was received from *Resurgere* for supply of bauxite ore for which supporting documents have been provided.

4	Prikar Financial Consultants Pvt. Ltd.	4,10,00,000	Took money pursuant to ICD agreement dated 8/10/2008 and repaid the same in March 2009.
5	KJS Alhuwalia vide letter dated December 22, 2015	85,00,000	No such funds have been received from *Resurgere*. However, they informed that they had received INR 10.00 Crores dated December 4, 2007 as mine deposit which was refunded during FY 2011-13.
6	Thriveni Earthmovers Pvt. Ltd. vide letter dated December 14, 2015	2,98,80,000	No funds have been received from *Resurgere*.

23. As stated in the beginning, even after receipt of the SCN and despite opportunities of hearing given to the *Company*, the *Company* has failed to submit any reply on merits and has preferred not to appear for the Personal Hearing. The *Company* has merely reiterated that it had sought Inspection of documents, however, it is observed from the records that despite being given the opportunity for inspection, the *Company* choose not to avail the same for reason best known to them. Amongst the limited explanations furnished by the *Company*, it has stated that the *Company* is under a moratorium due to an order dated September 11, 2019 passed by the Hon'ble NCLT, Mumbai Bench. The *Company* had preferred to abstain from submitting any reply on merits despite the SCN carried all relevant facts supported by the documents relied upon therein, which are also enclosed to it as annexures. Therefore, in the absence of any submissions or supporting documents offered by the *Company* to explain item-wise utilisation of IPO proceeds in compliance with the objects proclaimed in the Offer Documents, I find myself constrained to record that the *Company* has knowingly chosen to remain non-compliant and has preferred not to advance any explanation and documents in support thereof, to rebut the allegations levelled against it in the SCN. Based on the materials available on record it is noted that the major objects of the IPO as declared in the Prospectus were buying plant and machinery for different mines, purchase of mining assets and also to meet some working capital requirements. Since the *Company* has not replied to the allegations made in the SCN explaining as to how each of the fund transfers made by it out of the IPO proceeds can be ascribed as appropriate utilization of the IPO proceeds as per the aforesaid objects of the IPO, I proceed to analyse each of the above noted fund transactions on the basis of materials available on record in order to determine whether the IPO funds have been utilized as per the end-user objects of the IPO.

a) Fund transfer of INR 18.22 Crore to P R Vyapaar Pvt. Ltd.

It is observed that INR 18.22 Crore from the IPO proceeds have been transferred to P R Vyapaar Pvt. Ltd. **(P R Vyapaar)** on August 29, 2008. From the funds flow chart given in Annexure-C to the SCN, it is noted that out of the said funds received from *Resurgere*, P R Vyapaar has made onward transfer of INR 12.04 Crore to Ashika Stock Broking Ltd., INR 4.00 Crore to Sarswati Vincom Ltd. (for onward transfer to Ivory Consultants Pvt. Ltd. and therefrom to Pacific Corporate Services Ltd.), INR 1.77 Crore to Pushkar Banijya Ltd. and INR 23.00 Lakh to Yashman Vyapaar Pvt Ltd. between August 29, 2008 and September 4, 2008.

The *Company* had submitted during the course of investigation that the amount transferred to P R Vyapaar was towards repayment of the ICD taken by the *Company* on August 13, 2008 from P R Vyapaar in support of which it had also enclosed the agreement executed between P R Vyapaar and *Resurgere*. Since repayment of ICD was not declared as an object of the IPO, the *Company* ought to have explained the nature & purpose of the ICD taken by it from P R Vyapaar and the actual utilization of the said ICD in connection with the any of the stated objects of the IPO. It is however observed that no explanation is available on record as to whether the ICD taken from P R Vyapaar was indeed utilised towards the objects of the IPO, since the repayment of ICD has not been listed as an object of IPO in the Prospectus. On the contrary, the investigation noticed that P R Vyapaar had traded through Ashika Stock broking Ltd. in the shares of *Resurgere* on the first day of listing. Similarly, Pacific Corporate Services Ltd., had also traded in the shares of *Resurgere* on the day of listing. These actions suggest that the IPO funds have been routed by *Resurgere* through P R Vyapaar to utilize the same for dealing in its own shares on the day of listing, presumably to augment trading volume in the shares of the *Company* on the day of listing with a view to showcase artificial demand for the shares of the *Company*. The apparent use of IPO funds transferred by *Resurgere* to P R Vyapaar and further use of the said transferred money by P R Vyapaar for trading in shares of *Resurgere* makes it extremely difficult to accept the bona fide of the transactions between *Resurgere* and P R Vyapaar. In view of the above, I have no hesitation in holding that the transfer of funds to P R

Vyapaar was not in compliance with the objects stated and disclosed in the Offer Documents.

b) Fund transfer of INR 30.00 Crore to LIC MF

It has been noticed in the investigation that INR 30.00 Crore was transferred to LIC Mutual Fund (MF) on September 1, 2008/September 2, 2008 and subsequently the principal amount with interest (INR 30.10 Crore) were received back by the *Company* on September 10, 2008 and September 29, 2008. It has also been noticed that the *Company* had transferred another sum of INR 10.00 Crore to HDFC MF on September 11, 2008. Though, the *Company* has not replied to the allegations in the SCN, it has informed during the course of investigation vide letter dated July 20, 2015 that the amounts realised from LIC MF was used towards the objects of the issue in support of which, it has enclosed a list of various expenses purportedly incurred by it towards general corporate purposes, mining development expenses, acquisition of plant and machinery and mining assets and income tax payment etc. The *Company* has attempted to furnish explanation of the utilisation of the money realised from LIC MF towards a number of objects, however has conveniently preferred not to submit any supporting documentary evidence in form of agreement, receipts, bills, TDS certificate, etc., to substantiate/explain those expenses. Therefore, in the absence of any verifiable evidence, the list of expenses claimed to have been incurred by it, can be stated to be a mere bare list per se, having no credibility to rely upon. In the absence of any efforts made by the *Company* to substantiate those expenses aggregating to such a huge amount (of approx. Rs.30 Crore) claimed to have been incurred by it, the submission made by the *Company* during the investigation along with the so called list of expenditure under different heads has to be viewed as a specious, bald and baseless claim.

It may be noted that the *Company* has not provided any justifications as to how to begin with, the funds transfers made by it to LIC MF qualified towards utilisation for objects of the IPO. Based on the disclosures made in page no. 46 of the Offer Document, I note that pending utilisation of IPO proceeds for the purposes described in the Offer Document, the *Company* was authorised to temporarily invest the IPO

funds in high quality interest/dividend bearing liquid instruments including money market mutual funds, deposits with banks for short durations so as to temporarily reduce their working capital borrowings from banks. However, there is no explanation available on record as to how the amount invested in the mutual funds has been subsequently utilised for the fulfilment of the objects of IPO. It is very strange to note that the *Company* on the one hand was in dire need of money for which, it approached Banks to avail term loans (for example, a loan of INR 20.00 Crore was sanctioned to the *Company* by Barclays Bank on July 26, 2008 for meeting working capital needs) whereas on the other hand, the funds raised through IPO were immediately used for investment in mutual funds and after realising the said amount from the LICs, MFs, it was spent for various other purposes which were not listed out as the stated objects in the object clause in the Offer Documents. Further, no explanation has been furnished to justify the immediate parking of the IPO proceeds in LIC mutual fund. There is no explanation as to what constrained the *Company* from utilising the IPO funds for the objects of the IPO and what prompted the *Company* to park the funds in mutual funds instead, as soon as the subscription money was received. Be it as it may, even assuming that the *Company* decided to park its funds in mutual funds for a short period before it deployed its IPO proceeds towards the objects of IPO, the *Company* has not produced a single shred of supporting evidence with any justification whatsoever, to testify that the money so received out of its investment in the LIC MF was actually spent for the declared purposes as per the objects stated in the Offer Documents without which the list of expenses claimed to have been incurred by it would remain only a list on paper without any substance. Under the circumstances, I am of firm view that the *Noticee Company,* by utilising the money raised under IPO towards objects other than what were disclosed in Offer Documents, has definitely mis-utilised and diverted the IPO proceeds towards unexplained objectives under the pretexts of various expense heads as claimed by it during investigation.

Incidentally, there was another transfer of INR 10 Crore to HDFC Mutual Fund. The records show that said transfer was effected on September 11, 2008 and the same was received back in the books of the *Company* on September 29, 2008. In this respect also, the *Company* and its two Whole Time Directors have furnished no explanation

as to why the said transfer of INR 10 Crore was made to HDFC. Further, there is also no explanation furnished about the utilisation of the fund post receipt from HDFC detailing and justifying as to how the said amount was utilised towards fulfilment of the objects stated in the Prospectus.

c) Fund transfer of INR 15 Crore for FD with Union Bank of India

It was revealed in the investigation that the *Company* had transferred INR 15 Crore to Union Bank of India towards opening a fixed deposit (FD) on August 29, 2008 and had subsequently realised INR 15.09 Crore (with interest) from the FD on October 16, 2008. Out of the above amounts realised from FD, the *Company* was found to have transferred INR 5.05 Crore to Birla Sun life, INR 2.20 Crore to Runwell, INR 95.00 Lakh to Ramdev Enterprises, and INR 8.00 Lakh to Exfin Shipping India (Promoter group company) during the period of October 16, 2008 to October 20, 2008, while the balance funds of INR 7.00 Crore remained in *Company's* bank accounts. As stated earlier, there is no reply from the *Company* on the merits of the allegations made against it in the SCN. However, from the details furnished by the *Company* during the investigation vide letter dated July 20, 2015, the *Company* had claimed to have used the amount so realised from the aforesaid FD for acquisition of mining assets, meeting mining development expenses and working capital needs etc. However, no documentary evidence in form of bills, receipts, agreements, MOU etc., substantiating the said claim has been furnished by the *Company*.

The *Company* has merely enclosed a list of expenses made under various heads such as working capital, general corporate purposes and income tax payment etc. to support its claim that the INR 5.05 Crore transferred to Birla Sunlife on October 16, 2008 for investment in liquid fund, has been subsequently utilised for the objects stated in the Prospectus. However, these claims remain merely hollow statements in the absence of any supporting documents, hence is not at all maintainable. Thus, the *Noticee* has failed miserably to prove that the realised amount from the Bank FD was indeed utilised to accomplish the objects of the IPO as listed in the Prospectus. Moreover, the subsequent transfer of funds by the *Company* out of the realised FD amount, in favour of its Promoter group companies viz: Runwell and Exfin Shipping India further raises

strong apprehensions about the genuineness of the aforesaid transactions and their ultimate utilization towards the objects of the IPO notwithstanding the unsubstantiated assertions made by the *Company*. Under the circumstances, I find that the claim of the *Company* pertaining to utilisation of IPO proceeds towards the stated objects of IPO turns out to be a sham and baseless claim and therefore, I have no other option but to conclude that the above noted fund transfers were not aimed at utilizing the IPO proceeds for the objects of the IPO as laid down in the Prospectus of the *Company*.

d) Fund transfer of INR 4.00 Crore to Runwell Steel Pvt. Ltd.

It has already been pointed out earlier that the *Company* has transferred INR 4.00 Crore out of IPO proceeds to Runwell (Promoter of *Resurgere*) on September 11, 2008 and Runwell has in turn used the said funds to repay Mr. Subhash Sharma / *Noticee no. 2* (INR 5.50 Lakh), Mr. Amit Sharma / *Noticee no. 3* (INR 10.00 lakhs), Trueline (INR 6.50 Lakh) and Mayfair Management Services (INR 3.75 Crores) as already elaborated earlier. It is further noted that Trueline has further transferred INR 6.50 Lakhs to *Noticee no. 2* (Mr. Subhash Sharma). During the course of investigation, the *Company* vide letter dated May 10, 2015 has claimed that the fund transferred by *Resurgere* to Runwell was towards acquisition of mines, but the *Company* did not submit any documentary evidence to substantiate that the amount so transferred to Runwell was actually used for the acquisition of mines.

Assuming that the 'acquisition of mines' is considered as listed object of IPO by way of amendment to the objects of IPO through Postal Ballot dated March 14, 2009, I have already pointed out above that the amount of INR 4.00 Crore transferred by *Resurgere* to Runwell was actually used to return the funds taken by Runwell from various entities for funding the employees of *Resurgere* to pay for their subscription to the shares of the *Company* and not for acquisition of any mines. The *Company* has neither mentioned the specific details of the mine(s) that was intended for acquisition by the *Company* nor has been able to demonstrate that the proceeds of IPO were indeed utilised in compliance of the said objects stated in the Offer Documents. Since the *Company* has preferred not to file any reply rebutting the allegations made in the SCN and has chosen to remain absent from attending the Personal Hearing, I have to hold

that the aforesaid fund transfer from the *Company* to its Promoter company is not in accordance with the objects of IPO and instead represents illicit diversion of the money collected from the shareholders to its own benefit.

e) Fund transfer of INR 2.80 Crore and INR 1.50 Crore to Laxmi Minerals and Jai Minerals

I note that amounts worth of INR 2.80 Crore and INR 1.50 Crore out of IPO proceeds have been transferred by the *Company* to Laxmi Minerals on September 6, 2008 and to Jai Minerals on September 04, 2008 and the said amounts have also been subsequently received back by the *Company* from these entities on September 12, 2008 and September 4, 2008 respectively (also affirmed in the annexure C to the SCN). The *Company* vide its letter dated May 10, 2015 furnished during the investigation stated that the amount transferred to Laxmi Minerals was given as an advance/token money for acquisition of mines, however due to certain adverse findings by the *Company*, the deal was cancelled and the said amount was received back which is reflected in the bank statements. Similarly, in respect of the amount transferred to Jai Minerals, it has been affirmed that the amount was wrongly transferred and hence was recalled in the accounts immediately. In this regard, although the *Company* has claimed that it has retrieved the aforesaid funds from the respective entities, it cannot be ignored that subsequent to the receipt of the funds from the above mentioned two companies, *Noticee Company* has not furnished any explanation with any supporting documents to suggest as to how the funds so received back by the *Company* were ultimately utilised in terms of the stated objects of the IPO. Therefore, the ultimate end use of the aforesaid amounts also remains unexplained and un-substantiated by the *Company* till date.

f) Fund transfer of INR 25.00 Crore to Grewal Mines and onward transfer to Laxmi Minerals and Pacific Corporate Services

It was noticed that a sum of INR 25.00 Crore was transferred to Grewal Mines on August 29, 2008 which was onward transferred (by Grewal Mines) to Laxmi Minerals and thereafter transferred (by Laxmi Minerals) to Pacific Corporate Services on the same day and subsequently the entire funds have been withdrawn and appropriated by

Pacific Corporate Services on August 29, 2008 and August 30, 2008 from their bank account.

As per the explanation furnished during investigation, the *Company* vide its letter dated March 10, 2015 has claimed that Grewal Mines, Laxmi Minerals and Jai Minerals are its customers, with whom it carries out routine business transactions. It was also claimed by the *Company* vide letter dated June 15, 2015 that the fund transferred to Grewal Mines was for supply of minerals, however, Grewal Mines could not deliver as per the terms of the contract. Hence the amount has been refunded subsequently by them and the refunded amounts so received were used in terms of the objects of the IPO. In this regard, the *Company* has merely enclosed a list of expenses showing that amounts so refunded by Grewal Mines were used towards public issue expenses, general corporate purposes, acquiring mining assets, income tax payments, term loan instalment and interest payment and ICDs given to New Planet Trading Co. Pvt., Ltd., etc. but has not enclosed any supporting evidences to substantiate their claim. Further, there is no evidence on record to substantiate the *Company's* submissions that funds transferred to Grewal Mines was actually intended for supply of minerals and the *Company* has also not produced any verifiable piece of evidence to prove that the amounts refunded by Grewal Mines was actually used for working capital or for any other object of the IPO as stated in the Prospectus.

g) <u>Fund transfer of INR 6.95 Crore to Jai Minerals.</u>

It is noted that INR 6.95 Crore out of IPO proceeds was transferred by *Resurgere* to Jai Minerals between August 30, 2008 to September 5, 2008.

It has been submitted by the Company that INR 4.75 Crore (out of INR 6.95 crore) paid to Jai Minerals was on behalf of M/s Moon Engineering and Entite Engineering Works for the purpose of acquisition of mines, however these deals got cancelled in 2010 as the parties could not acquire the mines and the funds so recalled back from the above entities were then used for the working capital requirements of the *Company*. The balance amount of INR 2.20 Crore (out of INR 6.95 Crore) paid to Jai Minerals has been claimed to be not out of IPO proceeds. The *Company* has yet again failed to furnish any documentary evidence to substantiate that such a huge fund transfers to Jai

Minerals was actually intended for acquisition of mines or for any other purposes. The *Company* has not produced any agreement or evidence in support of cancellation of contracts, invoices/bills or any other documents to prove that the funds originally transferred to Jai Minerals was in fact deployed for acquisition of mines. Similarly, no evidence whatsoever, has been put forth to support the claim that the money so recalled from Jai Minerals was actually put to difference uses as envisaged in the Offer Documents. In the absence of any supporting documents/evidence, I find the aforesaid explanations and claims made by the *Company* during the investigation are merely afterthought exercise to cover up its acts of mis-utilisation/siphoning off of IPO proceeds, especially when it was discovered during the course of investigation that Jai Minerals has denied having received any funds from *Resurgere* or even having provided any supplies to *Resurgere* (as noted from Annexure -E to the SCN).

Apart from the above noted contradictions observed between the submissions made by the *Company* and Jai Minerals pertaining to the fund transfers between them, it has also come to light that while the bank statement of Jai Minerals as available on record carries the corresponding entries of fund transfers from *Resurgere* and also the address of Jai Minerals as per its Bank statement is the same as that of the *Company (Resurgere*, Mumbai), from the reply received from Jai Minerals in response to summons sent to the address of Jai Minerals as submitted by the *Company* during investigation, it is observed to be a different address of Jai Minerals located at Bhopal, Madhya Pradesh. Similarly, I have come to notice that the bank statements of Laxmi Minerals as well as Grewal Mines also bear the address of the *Company* as the address of these entities while the addresses of these two entities given by the *Company* during investigation show them located at Keonjhar/Orissa. These discrepancies noted in the address of these entities further highlight the evident mala fide on part of the *Company*, forcing me to disbelieve any of the contentions put forth by the *Company* during investigation in respect of IPO fund utilisation, specifically in the absence of any supporting evidence or any explanations to justify and substantiate those expenditure claimed to have been incurred towards the objects of the IPO. In view of the above, the aforesaid fund transfers are bereft of any credibility and cannot be accepted as utilisation of the IPO proceeds for the stated objects of IPO.

h) Fund transfer of INR 5.70 Crore to intermediaries

An amount of INR 5.70 Crore out of IPO proceeds was found to have been transferred by the *Company* to certain intermediaries viz: - Motilal Oswal Investment Advisors Pvt. Ltd. and Orient Press Ltd., etc. Considering that Motilal Oswal Investment Advisors Pvt. Ltd. was the Book Running Lead Manager of the IPO of the *Company* and since no specific allegation of mis-utilisation as such has been attributed to the fund transfers to them in the SCN, in my view, the same does not call for any adverse inferences with respect to the utilisation of funds by the *Company* in compliance with the objects mentioned in the Offer Document.

24. To sum up the aforesaid financial observations, I note from the Offer Documents that the major objects behind raising capital through the IPO were to acquire plant and machinery for the mines and mining assets and to contribute towards working capital needs of the *Company*. It was therefore an onerous duty and responsibility of the *Company* to furnish details with supporting documents on item-wise/object-wise utilisation of IPO funds to convince me that the IPO proceeds have indeed been utilised for the purpose for which the *Company* went for IPO. However, the *Company* has miserably failed to discharge its primary duties to substantiate the utilization of IPO funds as per the objects listed in the Offer Document/ Prospectus. As discussed in the foregoing paragraphs, a substantial part of the IPO funds was immediately used to invest in Bank FDs or in mutual funds (approx. INR 55 Cr.). Although most of these invested amounts have been subsequently realized by the *Company* from the said MF, the ultimate end utilisation of the said realised amounts remained under clouds in the absence of any explanation with supporting evidence from the end of the *Company*. Further, although the amounts transferred to Jai Minerals and Laxmi Minerals have been received back by the *Company* subsequently, however, no evidence has been adduced to substantiate that after receipt of the said funds from the above noted two entities, the *Company* has actually utilised the said amount/fund towards the objects for which the capital was raised**.**

25. Another major chunk of IPO proceeds was also found to have been transferred to different group of entities viz: - P R Vyapaar Pvt. Ltd. (INR 18.22 Cr.), Runwell (INR 4.00 Cr.), Jai Minerals (INR 6.95 Cr.) and also to Grewal Mines which was transferred onward to Laxmi Minerals and transferred onwards to Pacific Corporate Services (from Laxmi

Minerals) (aggregating to INR 25.00 Cr.) for which also there is no tangible explanation offered by the *Company*. The fund transfers made to PR Vyapaar purportedly towards repayment of the ICDs taken from it, is glaringly not in accordance with the objects of IPO more so when, the end use of the ICD obtained from PR Vyapaar is not ascertainable. Similarly, I have held in the previous paragraphs that the amounts transferred by *Resurgere* to Runwell was actually intended to reimburse Runwell against the funding, it had done for the subscription to IPO shares by the employees of the *Company* and not for the acquisition of any mines as has been claimed by the *Company* to justify the said transfer of funds. *Noticee Company* claimed to have relationship with Jai Minerals, Laxmi Minerals and Grewal Mines as being its customers, however, no documents have been furnished to support its claim of having a long association with these so called customers. Admittedly, INR 25.00 Crore out of IPO proceeds was transferred to Grewal Mines purportedly towards supply of minerals. It is claimed by the *Company* that Grewal Mines failed to deliver the goods in terms of the contract, hence the said amount transferred to Grewal Mines was called back and transferred onwards to Laxmi Minerals. Such a bald and unfounded assertion made by the *Company* fails to instil any credence in the absence of any document in support thereof as the *Company* has not even furnished a copy of the contract as claimed to have been entered with Grewal Mines for delivery of minerals. It also remains unexplained as to why the said sum of INR 25.00 Crore was again transferred from the account of Laxmi Minerals to the account of Pacific Corporate Services. Further, in light of my observation made earlier about the gross discrepancies noted in the addresses of Jai Minerals, Laxmi Minerals and Grewal Mines as mentioned on their respective bank statements (carrying the corresponding entries of fund transfer from *Resurgere*) vis-à-vis the addresses of these entities reported by the *Company* during the investigation, I am constrained to hold that the Bank account of the aforesaid three entities which bear their addresses to be same as the address of *Resurgere*, were practically managed and controlled by the *Company*, hence, any of the contentions asserted by the *Company* in favour of utilisation of IPO funds as per the objects mentioned in the Prospectus through the transfer of funds to the accounts of the above noted three entities cannot be accepted on their face value for want of credibility and reliability. Further, in most of the instances of transfer of funds purportedly for acquisition of mines it is seen that invariably the deals have subsequently been cancelled, raising further doubts about the genuineness of those

transactions as the *Company* has neither furnished any evidence either in support of execution of those deals or in support of cancellation of those deals. Moreover, the *Company* has not bothered to submit any documentary evidence to substantiate that the funds so recalled back after cancellation of the deals have been actually utilised in compliance with objects listed in the Prospectus.

26. I understand that the Board of *Resurgere* was authorised to invest surplus IPO proceeds in FD and MF, pending utilisation towards the objects as per the Offer Document, however, there is no explanation offered as to why the *Company* would in the first place invest the funds in FD or MF, when the *Company* was simultaneously availing term loans to accomplish the objects declared in the Offer Document. There is no doubt that the proceeds of any IPO ought to be used strictly for the objects stated in the RHP. Any deviation in utilisation of the IPO proceeds for purposes other than what has been disclosed in the Offer Document would require stricter compliance and disclosure, otherwise there would be no meaning left for the objects of the issue in the Offer Document issued by a *Company* while raising money from the public at large. Since the IPO money was not apparently utilized for the objects declared in the Prospectus and the information provided so far by the *Company* was found grossly deficient and misleading, during the investigation, information was also called from the banks from whom the *Company* had availed term loans, to verify as to whether the loan funds obtained from them by the *Company* were actually used for the purpose for which they were availed or whether there was any non-compliance on the part of the *Company* of the terms and conditions of those loan agreements. In this respect, information received from the concerned banks (relevant extracts enclosed as Annexure-F to the SCN) are as follows:

a) Bank of India vide its letter dated August 14, 2015 has stated that the *Company*/Directors have been declared as wilful defaulters. The *Company* did not use the funds for the purpose for which it had availed the loan facility and a complaint have been filed with CBI for the same. A case has also been filed with DRT III Mumbai for recovery of the dues by the bank.

b) Union Bank vide its letter dated August 13, 2015 has stated that the account of the *Company* has turned NPA on June 30, 2011 and a complaint of fraud has been reported

alleging diversion of funds. Subsequently a case has also been filed by the bank with DRT III Mumbai for recovery of its dues.

c) Barclays Bank vide its letter dated August 20, 2015 has stated that that the account of the *Company* has turned NPA on July 11, 2011 and the bank has recalled the loans and invoked personal guarantees of the guarantors. The bank has also initiated recovery proceedings against the *Company* by way of filing DRT suit, SARFAESI action for repossession of security and also filed criminal case against the *Company* for dishonour of cheques.

27. As noted earlier, the *Company* has admittedly used the IPO proceeds towards extending ICDs which was not listed as a stated object in the Prospectus. Therefore, the ICDs extended by the *Company* was without authorization against the stated objects of the IPO. I have perused Annexure-D to the SCN containing the details of fund utilization submitted by the *Company* as on July 31, 2010 and note that the *Company* has claimed to have utilized INR 36.55 Crore towards giving ICDs out of the consolidated funds raised from different sources including funds raised from IPO. The *Company* has utilised INR 4.00 Crore from the IPO proceeds alone to give ICDs to New Planet Trading Co. Pvt. Ltd. and Shanta Marketing. I have also observed several agreements claimed to have been executed by the *Company* for giving ICDs to different entities during the year 2008 to 2010 for amounts ranging from INR 4.00 Crore to INR 28.00 Crore. In my view, it makes no commercial sense that a *Company* which was already starving for funds and had started defaulting on bank loans, was using its funds to extend ICDs to different entities. The *Company* on the one hand had borrowed money from the Banks on commercial rates whereas on other hand lent money as ICDs to various entities out of the funds raised from different sources including IPO at the risk of committing default on its own loans taken from the Banks. I find that the *Company* has also executed an agreement on October 23, 2008 to extend an ICD of INR 2.00 Crore to its Promoter. Runwell, which further raises apprehensions about the dubious intentions behind these transactions. In any case, even for a moment one was to assume that the *Company* was authorised to give ICDs from IPO funds as an *interim* measure, there is no plausible explanation available to justify as to why the IPO funds were locked in ICDs till July 2010 (for two years from the time of IPO).

I have perused Annexure -D to the SCN and note that the *Company* has merely provided extracts of self-made ledger/lists showing different expenses purportedly incurred under various heads of objects for which IPO was raised viz: - Plant and machinery for mines, etc., but has failed to support even a single item of expenditure from those list of expenditure with any verifiable documentary evidence. In the absence of any reliable evidence to support the transactions claimed by the *Company*, I find that the submissions and claims of having utilised the IPO Proceeds for the stated objects of IPO do not advance the case of the *Company* at all and considering the fact that the name of Runwell, a Promoter of the *Company* also finds mention in such lists of transferee entities who have received IPO funds in the form of ICD, etc., it raises serious suspicions about the actual utilization of IPO funds in terms of the objects of the issue. It is interesting to note from the statement of IPO fund utilisation details submitted by the *Company* during investigation as on July 31, 2010 that while Runwell has been shown to have received over INR 10.00 Crore from the IPO proceeds supposedly for acquisition of mining assets, its name does not find a mention in the consolidated list of names of the different entities (submitted by the *Company* during investigation) to whom payments were made for acquisition of mining assets. Further, the *Company* has claimed to have incurred INR 31.84 Crore (1/3$^{rd\ of}$ the IPO proceeds) towards income tax expenses and only INR 6.17 Crore towards Plant and machinery which also includes term loan interest and instalment payment, such a break-up of expenditure not only appears to be in drastic variance from the amounts stated in the Prospectus but also raises grave suspicions over the authenticity of the *Company's* claim of having paid such a huge amount of Income-tax which has not been backed by any supporting documents, Income Tax challan or bank statement, etc. to substantiate the said claim.

28. The SCN has alleged that out of the total capital of INR 120.15 Crore raised by the *Company* from the IPO, proceeds worth of INR 113.77 Crore (after deducting INR 2.47 Crore given to Vyagreshwar Minerals Producers Co-op Society towards objects of IPO and INR 3.70 Crore given to Merchant Banker towards IPO expenses) have been diverted and not used as per the objects of the IPO. After having done the foregoing analysis and discussion on each of the item of expenditure and transfer of funds out of the IPO proceeds as per the claims made by the *Company* during the investigation, I find that the *Company* has indeed mis-utilised at least INR 111.00 Crore of IPO Proceeds (after deducting INR 5.70 Crore spent for IPO

expenses, INR 2.47 Crore given to Vyagreshwar Minerals Producers Co-op Soc. who have produced evidence supporting supply of bauxite ore to *Resurgere* and balance of INR 0.98 Crore in respect of which no mis-utilisation has been alleged in the SCN). To sum up, a table containing the gist of my findings regarding the mis-utilization of IPO proceeds worth of INR 111.00 Crore by the *Company* is presented below:

Table-8 – Gist of findings regarding mis-utilization of IPO proceeds

IPO proceeds movement as per SCN	**Amount INR (Cr.)**	**Submissions made by the Company during the course of investigation**	**Actual IPO proceeds mis-utilised-Amount INR (Cr.)**	**Remarks**
Transferred to P R Vyapaar Pvt. Ltd.	**18.22**	ICD taken from PR Vyapaar for INR 18 Crores which was documented through agreement dated August 13, 2008.	**18.22**	Repayment of ICDs was not an object of IPO as per the Prospectus and further, there is also no explanation available about the end use of the ICD taken from PR Vyapaar.
Transferred to LIC MF and subsequently received back INR 30.10 Cr.	**30.00**	The amount received from the mutual funds were subsequently utilized as per the objects of the issue.	**30.00**	No documentary evidence available on record that the amounts have been subsequently utilized as per the objects of the issue.
Transferred to HDFC Mutual Fund	**10.00**	The amount received from the mutual funds were subsequently utilized as per the objects of the issue.	**10.00**	No documentary evidence available on record that the amounts have been subsequently utilized as per the objects of the issue.
Transferred for FD with Union Bank of India and realised subsequently as INR 15.09 Cr.	**15.00**	The amount realized from fixed deposit was utilized for the purpose of acquisition of mining assets and mine development expenses.	**15.00**	No documentary evidence available on record that the amounts have been subsequently utilized as per the objects of the issue.

Transferred to Runwell Steel Pvt Ltd.	**4.00**	The transfer of amount of INR 4.00 Crore to Runwell was for acquisition of mines.	**4.00**	No documentary evidence is available on record to substantiate that the amount was actually used for acquisition of mine. Further, considering that INR 4.00 Crore transferred by *Resurgere* to Runwell was actually used with respect to financing the subscription of IPO shares by the employees of the Company definitely amounts to mis-utilization of IPO proceeds.
Transferred to Laxmi Minerals and subsequently received back same amount	**2.80**	Amounts given as advance/token money for acquisition of mines. However due to certain adverse findings by the Company, the deal was cancelled and the respective amount was received back which is reflected in the bank statements.	**2.80**	No documentary evidence is available on record to support that the amounts received back from Laxmi Minerals have been subsequently utilized as per the objects of the issue.
Transferred to Jai Minerals & subsequently received back same amount	**1.50**	Amount wrongly transferred to Jai Minerals has been recalled.	**1.50**	There is no documentary evidence available on record to support that the amounts have been subsequently utilized as per the objects of the issue.
INR 25.00 Crore have been transferred to Grewal Mines and onward to Laxmi Minerals and Pacific Corporate Services and **INR 6.95 Crore** have been transferred to Jai Minerals.	**31.95**	Jai Minerals, Laxmi Minerals and Grewal Mines are its customers, with whom it carries out routine business transactions and the amounts transferred to them was for purpose of acquisition of mines and supply of minerals. However, the amounts have been subsequently recalled and used for the objects of the IPO.	**31.95**	No documentary evidence is available on record that the amounts have been actually been utilized as per the objects of the issue.
Amount transferred to Intermediaries	**5.70**		**0**	Material available on record does not suggest misutilisation of the amount from IPO proceeds. Therefore, the amount transferred to Intermediaries cannot be termed as misutilisation.
Balance amount	**0.98**		**0**	No material available on record to show misutilisation.

Total	**120.15**		**111.00***	

***** After deducting INR 2.47 Cr. transferred to Vyagreshwar Minerals Producers Co-op Soc., who have submitted evidence in support of supply of bauxite ore to *Resurgere*.

C. The *Company* has not disclosed about the ICD taken during the IPO in the Prospectus.

29. As stated above, the SCN alleges about the non - disclosure in the Offer Document relating to the ICD taken by the *Company*. From the perusal of the relevant records, it is noticed that the *Company* had admittedly taken ICD worth of INR 18.00 Crore from P R Vyapaar on August 13, 2008. It is also noticed that pursuant to the receipt of the IPO Proceeds, there was a transfer of funds of INR 18.22 Cr. in favour of P R Vyapaar on August 29, 2008. The explanation submitted by the *Company* in the course of investigation was that the said transfer on August 29, 2008 was towards repayment of the ICD taken on August 13, 2008. In these circumstances, it remains undisputed that the *Company* had availed ICD during the IPO and the repayment of the said ICD was made from the proceeds of IPO. However, this fact of availing of ICD had not been disclosed in the Offer Documents, and in the Prospectus no disclosure with respect to the said obligation to repay the ICD out of the IPO proceeds was made. The *Company* was required statutorily to disclose all true, correct and material information in the Offer document/Prospectus so as to enable the shareholders and the general investors to take an informed decision before making any investment in the *Company*. It is worth referring to the clause 6.8.4.7 of the DIP Guidelines at this place, which specifically mandates that the Prospectus must contain the sources of finances/loans already availed and deployed by the *Company* including details of "bridge loan" taken if any, or other financial arrangement entered into by the *Company*, which might have to be repaid from the proceeds of the IPO. Undeniably, the *Company* had availed the ICD during the IPO which was repaid out of the proceeds of IPO but the *Company* had not disclosed such an important material information in the Prospectus. In fact, the *Company* had mentioned on page no. 32 of the Prospectus that *they have not raised any bridge loans against the proceeds of this Issue*. It leaves no doubt that the *Company* by not divulging the information about the ICD availed by it during the period between the filing of RHP and before filing of the Prospectus, and by not stating in the Prospectus that the same shall be repaid out of IPO proceeds, has acted in violation of the DIP Guidelines. Such an act of the *Noticee Company* was not only quite

misleading in nature but at the same time tantamount to committing a fraud upon the innocent investors and its shareholders.

30. I note that a similar issue pertaining to bridge loan and its disclosure had come up for consideration before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in *Corporate Strategic Allianz Ltd v. SEBI* (Appeal No 224/2017-DoD-March 29, 2019) in which the relevant observations of Hon'ble SAT are as under;

> *"7. From a perusal of the Regulation 57 it is apparently clear that the offer document is required to contain all material disclosures so as to enable the applicant to take an informed investment decision. Schedule VIII clearly indicates that the means and sources of financing including details of bridge loan or other financial arrangement are specifically required to be indicated in the prospectus.*
>
> *8. In the present case, admittedly a loan of Rs.5.94 crores was taken immediately before the issuance of the IPO which admittedly was not disclosed in the prospectus. The means and sources of this loan was not disclosed to the public in the prospectus. In the absence of this material fact the investors were unaware of this financial liability as well as the fact that this loan would be paid from the IPO proceeds. Such information was required to be disclosed in the prospectus. Non-disclosure was in violation of Regulation 60(4) of the ICDR Regulations which requires disclosure of all material developments. Loans taken prior to the issuance of the IPO has a bearing in as much as the said loan was eventually paid from the IPO proceeds. In our opinion, this was a material fact which was required to be disclosed in the prospectus. Thus, the Adjudicating was justified in holding that there was a violation of Regulation 57 of the ICDR Regulations."*

31. Keeping in view the discussions at length and my elaborate findings and observations therefrom about the way the *Noticee Company* has conducted its IPO issue as elucidated in the preceding paragraphs, I can now hold with conviction that:

a) The *Company* through its Promoter group companies, had surreptitiously funded the entities/its employees enabling them to apply for subscribing to the IPO of the *Company* in employees' category.

b) The IPO proceeds at least to the extent of INR 111.00 Crore have been mis-utilised and not been used for objects of the issue, as stated in the Offer Document/Prospectus. Such proceeds therefore can be assumed to have been diverted by the *Company* out of its accounts to the accounts of a no. of entities for unexplained purposes having no bearing with the stated objects of the IPO.

c) The *Company* has not disclosed details of ICD taken from PR Vyapaar on August 13, 2008 in the Prospectus dated August 22, 2008 thereby concealing an important material information from public knowledge to mislead the shareholders and investors.

32. All the afore-stated breaches and violations committed by the *Company* certainly constitute fraud on shareholders and investors who have been deprived of material information. I find that the *Company* by acting contrary to investors' interest has manipulated and defrauded its shareholders as well all the investors in Securities Market in violation of provisions of SEBI Act and PFUTP Regulations as well as the provisions of DIP Guidelines read with ICDR Regulations as pointed out in the SCN.

ISSUE NO. II: ***Whether acts of Noticees no.2 to 6 are in violation of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations?***

33. As stated above, the *Noticees no. 2* and *3*, Mr. Subhash Sharma and Mr. Amit Sharma have not submitted any reply on merits to the allegations made in the SCN. Despite being given opportunities of Inspection and hearing and to make additional written submissions, these two *Noticees* have not submitted any reply to the allegations levelled against them.

34. Admittedly, *Noticee no. 2* was the Promoter/Chairman and Managing Director of the *Noticee Company* and was in-charge of the day to day management of the affairs of the *Company*. Being the Whole Time Director, he was responsible for the day to day affairs of the *Company* and it was certainly his primary duty to keep the Board well informed about the actual status of utilisation of IPO proceeds and in general, about the affairs of the *Company*. He was not only expected to be aware of the working of *Company* but is mandated by law to be accountable for the mis management in the affairs of *Company*. The records clearly suggest that he was aware of the fund transfers indirectly made to employees out of the IPO funds and also about the ICD taken from PR Vyapaar (as he has signed the ICD agreement with P R Vyapaar). *Noticee no. 2* being in complete command and control of the *Company*, is

answerable to the Board as well as to the shareholders. He has knowingly perpetrated fraud on the shareholders by concealing material facts from them and by acting contrary to their interest behind their back.

35. In so far as *Noticee no. 3* is concerned, I note that he was the Whole Time Executive Director of the *Company* during the relevant period of IPO of *Resurgere* and while holding the post, he was actively involved in running the day to day affairs of the *Company*. Therefore, in the absence of anything contrary to the above, there can't be two opinions that he had full knowledge of the affairs of the *Company* including IPO funds utilisation. The *Noticee no. 3* has also not produced any evidence to prove that he had no knowledge of the affairs of the *Company* pertaining to the mis-utilisation of IPO proceeds or the fund transfers made to the employees and that he had exercised due diligence pertaining to matters relating to IPO of the *Company*. It is not even his case that he has been duped by the *Company* or the Managing Director. It is noted from the Prospectus that *Noticee no. 3* was the Executive Director of the *Company* and Director, Finance. From the above, I find that Noticee *no. 3* was actively involved in managing the affairs of the *Company* including the IPO matters. Considering that *Noticee no. 3* was the Whole Time Director, that too in charge of finance, during the relevant time of IPO as well as during the subsequent period of irregular utilisation of IPO proceeds, his subsequent resignation in August 2011 would not have any relevance to the liability fastened on him under the SCN issued and served on him in the instant proceedings. Further, both the aforesaid *Noticees* have not only signed the Prospectus despite being aware of the ICD taken from P R Vyapaar on August 13, 2008 which was deliberately not disclosed in the said Prospectus, but have also transferred funds to Runwell on August 18, 2008 so as to refund them the amounts sent by Runwell to fund the employees of *Resurgere* for participating in the IPO. My attention was also drawn to various ICDs given by the *Company* and bank documents carrying the signatures of *Noticee no. 3*. In view of all the above and in the absence of any justifiable explanations from the *Noticee* and lack of any verifiable documents to rely upon, I am constrained to hold that *Noticee no. 3* is equally involved in the fraud perpetrated on the shareholders and investors of the *Company* in the matter of IPO utilisation by the *Company* and for the same reasons and on the same grounds on which I have held *Noticee no. 2* responsible, I find that the acts and conduct of *Noticee no. 3* are also sufficient to hold him

guilty of the violations of provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations, as alleged in the SCN.

36. Persons or entities who are associated with the Securities Market especially persons like *Noticees no. 2* and *3* who are at the helm of business affairs of a listed company are not only required to be diligent and to adhere to the rules and regulations but also to desist from adopting any unfair means. Herein, I find it appropriate to refer to the observations made by the Hon'ble Supreme Court of India in the matter of *N. Narayanan v. Adjudicating Officer, SEBI*, (2013) 12 SCC 152 wherein, while considering the liability of a Whole Time Director of a Listed Company, the Hon'ble Supreme Court has observed the following;

> *"Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. ……*
>
> *……. The facts in this case clearly reveal that the Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person…….*
>
> *……the subsequent conduct of pledging their shares at artificially created prices, based on inflated financial results and raising loan on them would indicate* ***that they had deliberately and with full knowledge committed the illegality****……."*

37. I have already held earlier that major portion of the IPO proceeds have not been utilized in terms of the objects of IPO mentioned in the Offer Document and that the proceeds have been utilized for purposes other than what have been disclosed to the investors. This casts a *bona fide* suspicion on the intention of the *Noticees* about the utilisation of the IPO proceeds for the projects and purposes as stated in the Offer Document. The submissions made during investigation that although the proceeds were not put to use for the stated objects of IPO immediately, the same was deferred/delayed and the proceeds have been finally utilized for the stated objects etc. are without any supporting evidence, hence, deserve to be rejected as mere bald assertions. The *Noticees* have not placed any documents or furnished any details to show as to how the proceeds of IPO have been ultimately utilized. Considering the fact that

not a shred of evidence has been furnished to support that the proceeds of IPO have been finally utilized as per the objects of the IPO, I have to hold that the end use of the proceeds of IPO has not been in terms of the statements and material disclosure made in the Offer Document/Prospectus. Therefore, it is but natural for me to hold that the investors have been induced by the misleading and specious statements disclosed in the Offer Document and the end-use of the IPO proceeds for purposes other than the stated objects was unfair, misleading and a fraud committed upon the investors of Securities Market more particularly upon the subscribers to the IPO of *Resurgere*.

38. The ICDs taken by the *Company* constituted material information, but, there was no disclosure about them. Thus, the investors were kept in dark about the actual utilisation of IPO proceeds and were also unaware of the fact that the aforesaid borrowing through ICDs was to be repaid out of IPO proceeds. Further the employees of the *Company* were also funded out of IPO proceeds to pay their subscription money for the IPO of the *Company* so as to make the IPO a successful one, behind the back of the investors. The *Noticees no. 2* and *3* have also not disputed their role in the management of the *Company* and the transfer of IPO funds to various entities by the *Company*. Therefore, they are liable for the mis-utilisation and diversion of IPO proceeds as well as for the wrong, misleading and distorted information given in the Offer Document/Prospectus including the information about the IPO funds utilisations as disseminated by the *Company* to the rest of the Board of Directors as well as to the shareholders. These two *Noticees* were Managing Director and Whole Time Director of the *Company* during the relevant period when the funds were raised by issuance of securities and were transferred out of the *Company's* accounts to various entities for purposes other than the stated objects of IPO. They have signed the declaration made in the Prospectus despite being aware of the actual intentions of the *Company* and have actively participated in the IPO Committee and have not displayed any due diligence having been exercised by them. In view thereof, I am left with no doubt but to hold them accountable for the misleading disclosures and fraud committed on their shareholders and investors in the Securities Market.

39. Moving on to the Non-Executive Independent Director *Noticees*, I find that *Noticee no. 4* and *5* have made several overlapping submissions. They have submitted that that both of them were Non-Executive Directors of the *Company* from August 14, 2007 to August 10, 2010 and were not involved in the day to day management of the *Company* and have

discharged their responsibilities in good faith and with due-diligence. It is their contention that none of the actions taken by the Whole-Time Directors was with the knowledge, consent or approval of the Board of Directors and no specific adverse facts attributing their conduct or knowledge in the violations committed by the *Company* have been alleged in the SCN. It has been further submitted that as diligent Directors, they have resigned immediately after coming to know of the nefarious design of the *Company*. In this regard, when confronted during their Personal hearing regarding the fraudulent scheme allegedly designed by the *Company*, the *Noticees* have submitted that they offered their resignation pursuant to a Board Meeting held on August 5, 2010, after coming to know that a wholly owned subsidiary was already incorporated by the *Company* in Dubai in June 2010 without there being any approval of the Board of Directors. The *Noticees* have stated that they were shocked to know that such a material issue involving creation of an overseas subsidiary was brought to the Board for discussion only after the incorporation of the subsidiary. Therefore, they raised concerns about how it could be done without prior discussion and approval by the Board. It has been submitted that the *Noticee no. 3*, (Mr. Amit Sharma) informed the Board that the subsidiary has been incorporated pursuant to an old Board Resolution dated January 20, 2006 which was passed long before the *Company* got listed.

40. *Noticee no. 4* has additionally submitted that he was not in Mumbai and was working in Bhopal with Price Water House Coopers (PWC) during August 10, 2008 to September 16, 2008 (except August 26, 2008) and has enclosed a letter from PWC dated April 10, 2017 to support his contention. He has also submitted that he was not privy to the transactions pertaining to funding of employees' subscription to the IPO by the *Company* and even transactions involving mis-utilisation of IPO funds were not brought to his notice. It was submitted that the status of utilisation of funds raised in the IPO was presented by the CFO [*Noticee no. 6*, Mr. Harish Khetan] in almost every Board Meeting and Audit Committee Meeting and the Statutory Auditors and Internal Auditors have also certified about the utilisation of IPO proceeds as per the objects in the Prospectus. He has relied upon the extracts of Board Meeting dated October 31, 2008 wherein the CFO has presented the status of utilisation of IPO proceeds in terms of the objects of the IPO. Further, *Noticee no. 4* has also enclosed a certificate from the Statutory Auditors dated June 28, 2009 certifying the utilisation of IPO proceeds to support his contentions. Therefore, in the absence of any of the irregularity

brought to his notice, *Noticee no. 4* did not have any reason to disbelieve the Company officials or Statutory Auditors. Further, the ICD was issued to PR Vyapaar on August 13, 2008 when *Noticee no. 4* was not even in Mumbai and the same was not issued after consultation or with his consent/approval. Even the Prospectus was not approved by him as the same was approved by the 'IPO and Allotment Committee' on August 22, 2008 and he was not even member of that committee. Further, the declaration in the Prospectus was not signed by him as he was not in Mumbai on that date and an additional/separate page annexed to the declaration in the RHP carried the undated signature of the *Noticees* which has been attached to the Prospectus in which, the date has been subsequently inserted in ink by hand. In substance, *Noticee no. 4* has submitted that none of the specific and material decisions for the utilisation of proceeds of IPO was taken through board process even though the Board Meetings were held regularly and he was not a party to any decision making or approval process for the utilisation of proceeds of IPO.

41. I have perused the enclosures to the reply submitted by *Noticee no. 4* and take note of the PWC letter informing that *Noticee no. 4* was indeed in Bhopal during August 10, 2008 to September 16, 2008. I have also seen the CA certificate certifying the utilisation of IPO proceeds in terms of the objects of the issue.

42. *Noticee no. 5* has additionally stated that it was not brought to the notice of the Board or the Audit Committee that any amount from the IPO proceeds was placed or was to be placed in ICDs and even during the Board Meeting held on August 26, 2008, it was decided to invest the surplus IPO proceeds lying in various mutual fund schemes but no agenda about ICDs pertaining to IPO proceeds was discussed therein, therefore there was no reason to suspect any irregularity. It was only in the Board Meeting dated October 31, 2008 (wherein *Noticee no. 5* was absent) that for the first time, it was brought to the notice of the Board that pending utilisation of IPO proceeds, the funds have been already temporarily invested in bank fixed deposits, ICDs and mutual funds. The Annual Report of the *Company* for 2008-09 contains the Auditors' certificate confirming corporate governance compliance and confirming the end use of IPO proceeds. It was only during the Audit Committee meeting on January 30, 2009 that *Noticee no. 5* was informed for the first time regarding investing the balance of IPO proceeds in ICDs and he immediately demanded a full blown report on the matter. Further, during the Audit Committee Meetings on June 28, 2009/July 28, 2009 he objected to

utilisation of IPO proceeds for extending ICDs and asked for recalling the ICDs. Subsequently, concern has also been expressed on non-submission of the action taken reports on the implementation of the decisions taken by the Audit Committee. He resigned ultimately on August 10, 2010 after coming to know of the mis-conduct of the *Company* in opening a subsidiary company in UAE without permission of/or intimation to the Board.

43. I have perused the minutes of Audit Committee Meeting dated January 30, 2009 wherein the Committee advised the management to have the IPO accounts audited by the internal auditor and the Board Meeting minutes and the Auditors Report (enclosed with the reply of *Noticee no. 5*) confirming the utilisation of IPO proceeds in terms of the objects of IPO as declared in the Prospectus. It is also seen from the Audit Committee Meetings held on June 28, 2009/July 28, 2009 wherein the committee comprising *Noticee no. 4* and *5* as members, had advised for recalling of ICDs to which the Management had assured the committee that the amounts locked in ICDs will be re-invested in AAA rated instruments by December 2009. Thereafter, the Audit Committee in subsequent meetings dated May 28, 2010 and August 5, 2010 expressed its concern on non-submissions of action taken report. *Noticee no. 5* has also relied upon judicial orders of the Hon'ble Supreme Court and SAT to buttress his contentions that as an Independent Director, he had limited role to play as he was not involved in the day to day functioning or managing the affairs of the *Company*, hence, was not aware of the alleged wrongdoings by the *Company*. Further, he has exercised his diligence immediately after becoming aware of the facts and ultimately has tendered his resignation from the Company's Board hence, can't be held liable, for the wrongdoings of the *Company*, which has been committed against the wish and consent of the *Noticee. Noticee no. 5* has also relied upon a MCA Circular dated July 29, 2011 to support his contention that Independent Directors shall not be made liable for a violation which occurred without their knowledge and without their consent or connivance or where they have acted diligently in the Board process. I have perused the judgement of the Hon'ble Supreme Court in the case of *Chintalapati Srinivasa Raju and ors. v. SEBI*, (2018) 7 SCC 443 relied upon by the *Noticee*, wherein Court has observed that *"Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company……"*

44. I have also taken note of the reliance placed by the *Noticee* on Regulation 25 (5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to contend that an Independent Director should only be made liable in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. I note that the allegation in the present proceedings is not that the Non-Executive Independent Directors had actively participated in the day to day affairs of the *Company*. In the absence of any direct participation, it has to be seen as to whether they have actually had knowledge of the fraudulent conduct of the *Company* and whether they were party to the said fraudulent conduct or whether they have displayed due diligence that is expected of an Independent Director of a listed company which has raised public funds through IPO. I note that the two *Noticees* i.e. *Noticees no. 4* & *5* were definitely holding the post of Directors during the relevant period, although *Noticee no. 4* has disputed his signing of the Prospectus. I also find that the two Directors were members of the Audit Committee and *Noticee no. 5* was additionally a member of the IPO and Allotment Committee. However, after perusing the submissions of the *Noticees* along with the materials available on record, I am of the view that the submissions advanced by them with supporting documents can't be ignored. The two *Noticees* have vociferously attempted to demonstrate that considerable due diligence has been demonstrated by them while acting in the capacity of Independent Directors, and they have always raised pertinent questions in the Board Meetings and have never acted as mute or silent spectator to the activities of the C*ompany*.

45. I also note that both the *Noticees*, as part of the Audit Committee have raised valid questions regarding the usage of IPO funds to extend as ICDs to other parties and have repeatedly demanded for recall of the ICDs as well as followed up with the *Company* on the matter. I have perused the minutes of Board Meeting dated August 26, 2008 wherein it was proposed to take INR 3.00 Crore ICD from Pam Glatt Pharma Tech. Pvt. Ltd. and find that in the next Board Meeting dated October 31, 2008, the *Noticee no. 4* has suggested for repaying back the ICD to the said entity. The *Noticees* have also pointed out their reliance on the Statutory Auditors and CFO's statements in respect of confirmation of IPO funds utilisation in terms of the Prospectus. I further note that after coming to know that the *Company* was not observing transparency in its affairs, the *Noticees no. 4* and *5* have immediately taken a

decision to step down from the position of directorship. The two *Noticees* have shown their limited liability as an Independent Director and have further highlighted before me as to how they were diligent in performing their duties in the capacity of Independent Directors. Based on their explanations, I observe that they have endeavoured to act with due diligence to bring transparency in the working of the *Company*. Considering the submissions made by the *Noticees* and the manner in which these two *Noticees* have carried themselves as Independent Directors with due vigil and alertness and have raised objections to the management whenever needed, I find that the charges made against *Noticees no. 4* and *5* would not sustain in the facts of the matter and accordingly, the proceedings against them deserve to be dropped.

46. Now, I proceed to examine the role of *Noticee no. 6*. In this respect, I take note of submissions made by *Noticee no. 6*, vide email dated May 1, 2020. He has submitted that he was the CFO of the *Company* from September 2007 to August 2012, and was supported by a Manager (Accounts) and a Manager (Finance) in his functioning and once the final documents were presented before him or accounting system reflected certain transactions, it was presumed that those were complete transactions. He was functioning under the instructions of Whole Time Director (WTD) who was also designated as Director, Finance and was also taking directions from CMD. The *Noticee* has stated that all the accounts related decisions were being taken by the WTD, Finance. He has claimed to be not a signatory to any of the bank accounts of *Resurgere* or its Promoter group companies. He has submitted that his reply is based on recollection of his memory after a gap of 12 years of actual transaction and that he has not reaped any undue benefits from the *Company* or its group companies. Further, while responding to allegations of IPO funds mis-utilizations, he has made the following submissions:

a) With regard to the funds transfer of INR 18.22 Crore to P R Vyapaar- , the said advances were made based on the inter corporate agreement and it was discussed in the Audit Committee meeting that *interim* surplus funds can be given as short term advance only to companies with good credit rating, and probably Promoters have not adhered to it and proceeded unilaterally.

b) Funds transferred to Laxmi Minerals, Jai Minerals and Grewal Mines were paid as advances for acquiring mining rights and acquisition of mines, which may also be

interpreted as one of the object of Prospectus *(to acquire and develop mining assets, etc.)* and was probably noted in the minutes.

c) Funds transfer to Runwell was also an advance for mining rights. He is not aware of the subsequent utilization of funds given to Runwell.

d) He does not possess supporting documents to the financial transactions of the *Company* and is not aware of the irregularities as alleged in the SCN.

47. It is further observed that *Noticee no. 6* has responded to the queries raised during the Personal Hearing before me (on May 5, 2020) vide his email dated June 8, 2020 by making the following submissions:

a) He does not have Board Resolution or other *Company* documents pertaining to his powers and functions. However, he has enclosed his letter of appointment and submitted that the Whole Time Director of the *Company* was responsible for the entire functions of accounts, treasury apart from many others. He was functioning under the instructions of Whole Time Director, Finance - Mr. Amit Sharma.

b) The powers and functions of CFO mainly comprised of ensuring the accounts comply with accounting standards and disclosure requirements, providing comments on commercial contracts when asked for and present the accounts before the Audit Committee, supervise the aspects related to income tax, etc.

c) He was an invitee to Audit Committee/Board Meeting and as for presentation of accounts in Audit Committee, he reiterated that he was supported by Managers and the accounting system and was also referring to the agreements in case of any discrepancy.

d) The bank defaults happened in 2011 and not in 2008 at the time of IPO.

48. From the perusal of submissions made by *Noticee no. 6*, it is noted that his main contentions are that he is not aware of any wrongdoings in the *Company* pertaining to the IPO. He has relied on the inputs provided by his subordinates and has acted under instructions of the WTD, Finance (Mr. Amit Sharma / *Noticee no. 3*) and CMD (*Noticee no. 2*). The submissions advanced by *Noticee no. 6* may appear to be appealing at first glance, however on a close scrutiny, it is observed that being the CFO of a listed Company, he cannot take such

frivolous pleas of ignorance and more so when the contentions of the *Noticee no. 6* are not verifiable and not convincing. It is further noted that not only clause 6.15.2 of the DIP Guidelines mandated the *Noticee* as the CFO to sign the Prospectus and certify that all disclosures made in the Prospectus are true and correct, but also warranted him to ensure that the funds so mobilised should be utilised on the lines of the disclosure made to the shareholders. Being the CFO of the *Company*, he cannot be allowed to feign ignorance about the financials of the *Company* which is primarily his main domain area of functioning. Generally, a person who leads the finance and treasury functions of a business enterprise is designated as "CFO" and clearly, he has time and again submitted to the Audit Committee and Board of Directors the Financial results of the *Company* as well as apprised them with the status of utilisation of IPO proceeds in conformity with the objects mentioned in the Offer Document. The Directors of the *Company* have also stated to have relied on submissions made by the *Company* including by the CFO about the actual utilisation of the IPO proceeds.

49. It is not the case of the *Noticee no. 6* that he was absent in the Board Meetings/Audit Committee Meetings held subsequent to the IPO. It is natural to assume that the *Noticee* being the CFO of the *Noticee Company*, had presented the status of utilisation of IPO proceeds in Board Meetings held subsequent to the completion of IPO including the Board Meeting that was held on October 31, 2008, and in the Audit Committee Meetings of January 30, 2009, June 28, 2009, July 28, 2009, January 30, 2010 and May 28, 2010. In such a case, the CFO of the *Company* whose main work is to take stock of the financial affairs of the *Company* including all its investments and financial transactions and also to present on behalf of the *Company*, true and correct status of the IPO funds utilisation to the Board, cannot be allowed to evade his responsibility about the correctness of the financial statements under various pretexts such as, the financial statements were audited or that he was working under instructions of Whole Time Director, hence cannot be held responsible for the irregularities noticed in the fund management of the *Company* etc. As the CFO, the *Noticee* was a Key Managerial Person of the *Company* enjoying significant powers and responsibilities under the applicable law, hence, if his plea of innocence is accepted on its face value by relying upon certain unsubstantiated statements made by him, it could lead to a vacuum whereby none of the Key Managerial Persons of a listed company can be held responsible and accountable for the role specifically entrusted to him by the *Company*. I this regard, on a conjoint reading of

clause 49 of the Listing Agreement with DIP guidelines, it is viewed that the MD or CFO (Whole Time Director, Finance or any other person heading the finance function) are mandated to certify to the Board that they have reviewed the financial statements to the best of their knowledge and that they do not carry materially untrue statements. It is incumbent to present true and fair view of the Company's affairs and to inform the Auditors and Audit Committee if there is any fraud or involvement of management in any irregular financial act as far as the accounts of the *Company* are concerned. This has been mandated to place responsibility on the management of the *Company* to have effective internal controls and to make all relevant disclosures to the Board for effective decision making and to give comfort to the Directors who are not actively involved in the day to day affairs of the *Company* that the interest of the investors is well protected. With respect to his submissions that his reply is based on recollection of his memory after 12 years of actual transaction and that he has not reaped any undue benefits from the *Company* or its group companies, I find it proper to observe that reaping personal benefit is not a charge in the SCN, hence, does not require any consideration.

50. It is also noted that in response to the allegation of transfer of funds of INR 18.22 Crore to P R Vyapaar, *Noticee no. 6* has merely submitted that it was discussed in the Audit Committee Meeting that *interim* surplus funds can be given as short term advance only to companies with good credit rating, and probably Promoters have not adhered to it and have proceeded unilaterally. Further, the *Noticee* vide email dated June 8, 2020 while responding to the queries raised during the Personal hearing has stated that the overall supervision of funds was vested with Mr. Amit Sharma (*Noticee no. 3*) and he does not remember of any ICD taken from P R Vyapaar but does recall an ICD was given to P R Vyapaar based on the agreement in terms of *interim* deployment of IPO funds. There was no specific restriction as per SEBI guidelines prevailing then, and on the credit rating part, he remembers having raised the matter in the Audit Committee and probably that was recorded. He has stated that he has not interacted either with the ICD giver or ICD taker. Further, the *Company* was permitted for *interim* use of funds as mentioned at page no. 46 of the Prospectus. In any case, it was the decision of the management and he did not have any role to play and it is Mr. Amit Sharma who was responsible for the dealing in IPO related matters with the Merchant Banker.

51. I find no merit in these submissions of the *Noticee* for the following reasons:

a) He has not been able to substantiate as to whether ICD from P R Vyapaar was even disclosed in the Prospectus and why IPO proceeds were used to repay the said ICD which was not even listed as an object in the Offer Document.

b) Admittedly, the *Noticee* is responsible for the veracity of the facts disclosed in the Prospectus being signatory to the same and that too, in the capacity of a CFO of the *Company*. The submission of the *Noticee* is self-contradictory as on the one hand, he has submitted that a decision was taken to lend the surplus fund to companies having good rating, whereas on the other hand no supporting documents have been furnished to justify that lending to those companies was based on checking the credentials of those companies.

c) It is also not the case of the *Noticee* that those decisions to advance ICDs were taken against his resistance or that he had presented a fair picture to the Board that lending should be made only to entities having good credit rating as decided in the Meeting of Audit Committee. It is not his submission that despite having presented the correct and true facts, the lending was done in terms of the subsequent decisions of the Board overruling the previous decision to advance ICDs only to companies having good ratings.

d) The *Noticee* has failed to show that he has raised red flags in the *Company* or taken due diligence to ensure that the IPO proceeds are indeed utilised for the objects mentioned in the Prospectus, especially when the *Company* was in such a bad state financially, and yet IPO proceeds were being used to give ICDs for which the management was clearly not authorised to do so as per the Prospectus to the IPO.

e) The *Noticee* appears to be merely trying to wash off his hands by heaping all the blame on the MD and WTD, which is not acceptable considering that he was the CFO of the *Company* having a lot of statutory responsibilities to discharge and the *Noticee* has not been able to demonstrate his due diligence or sincerity in his functioning as a CFO.

52. Further, the *Noticee* has relied on the following clause mentioned in the Prospectus to emphasise that the *Company* was permitted to give ICDs:

"The management, in accordance with the policies set up by the Board shall have the discretion to deploy the net proceeds received by us from this issue. Pending utilisation

for the purposes described above we intend to temporarily invest the funds in high quality interest/dividend bearing liquid instruments including money market mutual funds, deposits with banks for necessary durations. We may also use a part of the Net Proceeds, pending utilisation for the purposes described above, to temporarily reduce our working capital borrowing from banks."

53. I find the above reliance to be bereft of merit for the following reasons; -

a) Applying the principle of *ejusdem generis*, the *Company* was authorised to invest the IPO funds pending utilisation only in high quality liquid money market instruments such as mutual funds and deposits with banks and ICDs do not fall in this category.

b) Further, a perusal of ICD agreement viz: between the *Company* and National Engineering Machinery Co. dated October 8, 2008 for INR 25.00 Crore @ 13 percent interest p.a. (part of annexure D of the SCN) shows that the argument provides for the latest repayment after six months, rendering it to be treated as a non-liquid instrument.

c) I also note that the *Noticee's* submission that the ICD to P R Vyapaar fetching 3% p.m. interest was a high quality interest bearing deposit and was a liquid deposit considering that the agreement permitted for repayment in one month is also erroneous and misplaced as he is relying on the ICD agreement dated August 13, 2008 (also part of annexure D) wherein *Resurgere* was the borrower and was borrowing an ICD from P R Vyapaar and not vice versa.

d) Interestingly, the Internal Audit Report for quarter ending September 2009 enclosed by *Noticee no. 5* with his reply mentions that in majority of cases, the interest charged by the *Company* on ICDs had not been received for the entire period of ICD till then. Further the ICDs that had been recently taken by the *Company* was @ 17.5% interest which was very high in view of the fact that the *Company* had advanced ICDs only @12 -13% p.a. and the Audit Report recommended that the *Company* should try to liquidate the ICDs given and use the funds for its working capital so to avoid such high cost of fund.

e) It is also seen from the minutes of the Audit Committee Meetings held on June 28, 2009/July 28, 2009 (wherein the *Noticee* was also present) that the Committee had shared the aforesaid opinion and has repeatedly taken an aversion to investment in

ICDs and had advised for recall of ICDs. The Management had also assured the committee that amounts invested in ICDs will be re-invested in AAA rated instruments by December 2009.

f) Further, Clause 6.8.4.9 of the DIP Guidelines as well the contents of the Prospectus did not give unfettered powers to the management to deploy the IPO funds pending final utilisation. The DIP guidelines have mandated that the *Company* should disclose the details of the specific avenues proposed for *interim* deployment of IPO funds.

g) In view of the aforesaid, the *Company* was required to make *interim* use of funds strictly within the contours mentioned in the Prospectus read with stipulations in DIP guidelines and for the aforesaid reasons, I do not find merit in the arguments of *Noticee no. 6* that the *Company* has utilised the IPO proceeds in terms of the objects stated in the Prospectus by giving ICDs.

54. As noted above, charges against the *Noticee* in the SCN are manifold and the *Noticee*, being CFO of the *Company*, instead of confronting the charges on merit, is seeking refuge under the plea of lapse of time. The submissions of CFO don't inspire confidence when the same are analysed keeping in view of the admitted facts that he was following the instruction of the WTD or the CMD. He also admits that the Board had decided to make investment in AAA rated companies, however, the Directors have acted to the contrary. The above submissions clearly suggest the involvement of the *Noticee* and his active role in assisting the *Company* and presumably has acted as a team with *Noticees no. 2* and *3* in mis utilisation of the IPO proceeds. Even assuming that he was following the instruction of the WTD or the CMD, the fact remains that his acts in handling the financial transactions, either by acting actively or by passively following the unauthorized instructions of the above *Noticees* i.e. *Noticees* no. *2* & *3*, has led to mis-utilisation and diversion of *Company*'s funds.

55. The *Noticee* has contended that the *Company* has utilised the IPO proceeds as per the objects in the Offer Document, but he has not been able to substantiate the same with documentary evidence. For instance, even if the fund transfers to Laxmi Minerals, Jai Minerals and Grewal Mines which were termed as advances for mining rights and acquisition of mines are accepted under the object of Prospectus *(*i.e.*to acquire and develop mining assets, etc.)* as contended by the *Noticee*, it is *Company's* own submission that most of these contracts were

subsequently cancelled and the amounts so advanced have been received back from the above parties. However, the *Noticees* have not been able to substantiate that the funds so received back have been later on put to use as per the objects disclosed in the Prospectus. Similarly, it's hard to rely on the submissions of the *Noticee no. 6* who was the CFO of the company, that funds transferred to Runwell were also an advance for mining rights and that he is not aware of the subsequent onward utilization of those funds given to Runwell. As stated above, documents on record clearly suggest that utilisation of proceeds of IPO was presented by the *Noticee no. 6* in the Board Meeting and Audit Committee meeting along with Auditors certificate about the utilisation of IPO proceeds as per the objects disclosed to the public. Therefore, in the absence of anything to the contrary available to prove the innocence of *Noticee no. 6*, it is self-evident from the records that *Noticee no. 6* was equally responsible along with *Noticee no. 2* & *3* for not utilising the proceeds of IPO in terms of the disclosures made in the Prospectus.

56. Needless to emphasise that being in full time employment and occupying the post of CFO of the *Company* and having signed the Prospectus certifying that all the statements therein are true and correct, the *Noticee* is expected to have taken utmost care to ensure that public funds are utilised as per the objects enshrined in the Offer Documents. More particularly as a CFO, extra care ought to have been observed by the *Noticee* at the time of effecting funds transfers to the Promoter group companies as cited above.

57. Directors, CFO, CEO etc., being full time Key Managerial Persons are expected to be more diligent and accountable for the affairs of a Company and are under statutory obligations to take steps for the betterment of the shareholders. They should abhor such action which are contrary to the interest of the shareholders. In my considered view, *Noticee no. 6* cannot be permitted to shirk his responsibility and deserve exoneration merely on the ground that though he was admittedly holding the post of CFO on full time basis and signed the Prospectus in that capacity as per his claim, he did the same only under the dictate of other *Noticees* hence his actions are to be taken for granted as without any responsibility and accountability. He can't also seek shelter under the plea that while holding the post of CFO, he has acted based on the information that was made available to him by his subordinates or has acted under the instruction of Directors, thereby exposing himself to the fact that he was even willing to do all those acts under the instruction of the Directors which were against the interest of the

shareholders. I do not find that the *Noticee* has exhibited the due diligence that is expected of a CFO of a listed company while dealing with the IPO. Even if the records do not show his direct involvement in the fraud played by the *Company*, he could not have been a mute spectator while the IPO funds were being mis utilised and diverted out of *Company's* accounts flagrantly for the purposes other than the objects of the IPO. It will be an incredulous argument to claim that the CFO will remain blissfully unaware about the mis-utilisation of IPO proceeds or the funding of share subscriptions by the employees out of the IPO proceeds or even about the ICD being taken by the *Company* that was not disclosed in the Prospectus, but was to be repaid from the proceeds of IPO and also about the ICDs advanced to some companies having no credentials. The *Noticee* has offered no explanation as to why the *Company* is in financial doldrums if all the objects of IPO were met and the IPO proceeds were efficiently deployed for the stated purposes. In view of the aforesaid, I am constrained to hold that *Noticee no. 6* is also liable for the violations as alleged in the SCN.

58. From the facts narrated and observations made above, it is clear that the *Company* and *Noticee* Directors and CFO are responsible for utilisation of the issue proceeds for various end uses other than for the stated objects disclosed in the Offer Document. Further, they have not only failed to disclose the fact that the proceeds of IPO would be substantially utilized for various other purposes such as repayment of ICDs, investments in mutual funds, payments to various entities in deviation from the objects of IPO including for financing the subscription to the IPO by its own employees but also have made wrong, misleading disclosure in the Prospectus. The Whole-Time Directors i.e. *Noticees no. 2* and *3* have failed grossly to perform their duties while occupying the position of CMD and WTD (Finance) and have failed to come clean and apprise the investors with all the material facts in the Prospectus as required under law. *Noticee no. 6* being the CFO has also played along with Directors in the commission of the said fraud and apparently has closed his eyes while the fraud was being perpetrated. The conduct of above stated *Noticees* shows that they have actively concealed crucial material information from the investors, hence have violated the DIP Guidelines which mandated them for making all material and adequate disclosures in the Offer Document, that are true and adequate enough to enable the share applicants to take an informed investment decision. The Offer Document ought to contain information, which is truthful, fair and should not have any information that can be termed as manipulative or deceptive or distorted as has happened in

this case. The Offer Document should not contain any statement, promise or forecast which is untrue or misleading. However, going by factual analysis in the preceding paragraphs, the *Noticees*, by concealing material information and by providing information in a distorted manner in the Offer Document especially the information with respect to the proposed utilisation of IPO proceeds, have clearly acted in breach of the provisions as alleged in the SCN.

59. The above acts of *Noticees* have resulted in creating a misleading appearance to the public, about the business prospect and future projects of the *Company* and consequently about the prospect of its scrip in the Securities Market. This was done to mislead and induce the investors to subscribe to the securities of the *Company* hence, the *Noticees* are certainly liable for violation of the relevant provisions of SEBI Act and PFUTP Regulations alleged in the SCN. Had the prospective investors been aware of the exact intended utilization of the IPO proceeds that was weighing in the minds of the *Noticees* at the time of issuing the offer documents, the investors certainly would have taken their investment decisions differently in a more informed manner. Further, by not utilizing the IPO proceeds in terms of the objects stated in the Offer Document knowingly, the *Noticees* have deliberately committed an act of fraud on their shareholders and on the investors in the Securities Market at large. The fraudulent manner in which the *Noticees* have handled the IPO proceeds reflect the opaqueness with which the entire IPO has been carried out by the *Noticees* and exhibits a kind of conspiracy against the innocent investors, who got misled about the true intentions regarding the actual utilization of the IPO proceeds.

60. In this context it will be relevant to refer to the views held by the Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd. v. SEBI,* SAT Appeal No. 99 of 2007, wherein the Hon'ble SAT has observed that *"an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator"*.

61. It is also relevant here to refer to the judgment of the Hon'ble SAT in the matter of *V. Natarajan vs. SEBI,* SAT Appeal No.104 of 2011, wherein it was held that: -

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or Issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities…."

62. Further, it would be also appropriate here to refer to the following observations made by the Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI* (Civil Appeal Nos.4112-4113 of 2013) wherein the Hon'ble Apex court, while observing on the power and function of SEBI, have held that *"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto."*

63. In the present case, *Noticees* have acted in a manner highly detrimental to the interests of investors in Securities Market. The rulings discussed and cited above in the preceding

paragraphs squarely apply to the facts of the instant case. The violations of law on the part of the *Noticees*, if not dealt with sternly, could give rise to a situation of mistrust where, raising of capital would become extremely difficult even for honest companies. Such acts, if not checked, would not only violate the provisions of Securities Law but also would erode the confidence of investors.

64. For the reasons detailed in the preceding paragraphs, it is clear that the *Company* and its Chairman-Managing Director/Whole-Time Director *Noticees no. 2* and *3* and CFO i.e. *Noticee no. 6* have not utilized the IPO proceeds for the objects stated in the Prospectus and have siphoned of the IPO proceeds towards other un-disclosed purposes. Thus, these *Noticees*, by resorting to unfair means behind the back of innocent investors have concealed material information from them and have deliberately published misleading information in the Offer Document. Under the circumstances, these *Noticees* are found to have grossly violated the provisions of SEBI Act, PFUTP Regulations and DIP Guidelines read with ICDR Regulations.

65. I note that DIP Guidelines and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 have been rescinded and SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (hereinafter referred to as **"ICDR, 2018"**) as notified on September 11, 2018 has been brought into force from sixtieth day from September 11, 2018. Regulation 301 of ICDR, 2018 provides as under:

Repeal and Savings

301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the

Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

Thus, the present proceeding is saved by above mentioned regulation of ICDR, 2018.

66. From the limited submissions made by the *Company*, it is noticed that an Insolvency proceeding bearing CP no. 1362/I&BP/2019 under Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **"IBC"**) has been initiated before the NCLT at Mumbai Bench against the *Company*, wherein the Hon'ble NCLT was pleased to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**) and have directed a moratorium to be in operation vide order dated September 11, 2019. As per the website of Hon'ble NCLT, the proceeding is showing as pending for orders. I have noted above that there was no co-operation from the *Company* and its Directors (*Noticees no. 2* and *3*) and they have failed to produce evidence to substantiate the end use of the IPO proceeds in terms of the objects of the IPO, therefore, considering the fact that the proceedings are still pending before the NCLT, in my view it would be interest of *Company* as well as stake holders that this proceeding be disposed of without any further delay. Further, the observations recorded in the preceding paras demonstrating the scheme and artifice employed by the *Company* and its two *Noticee* Directors in mis- utilising the proceeds of IPO, could be helpful to IRP, hence, a copy of this order shall be made available to the IRP for necessary action, if any.

DIRECTION:

67. Keeping in view the foregoing discussions and findings and after taking into account the facts of the present case and role of the *Noticee*s and my observations, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 read with PFUTP Regulations, 2003 and DIP Guidelines read with ICDR Regulations, 2009 read with Regulation 301(2)(a) of SEBI (ICDR) Regulations, 2018 hereby issue the following directions:

a) The *Noticee no. 1* is hereby debarred from accessing the securities market, directly or indirectly, by issuing prospectus, offer document or advertisement soliciting money from the public for a period of three years and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of three years.

b) It is clarified that the above directions shall commence from the cessation of moratorium declared by NCLT in the pending CIRP proceedings against *Resurgere*.

c) It is also clarified that the above directions shall be subject to orders / directions if any, passed by the NCLT with respect to the resolution plan pertaining to the *Company* under section 31 of the Insolvency and Bankruptcy Code, 2016.

d) *Noticees no. 2* and *3* are restrained from accessing the Securities Market and are further prohibited from buying, selling or otherwise dealing in Securities Market, directly or indirectly in any manner, and are further restrained from holding or occupying position as Director or any Key Managerial Personnel or associating themselves directly or indirectly with any public listed company and/or any public company or any intermediary registered with SEBI for a period of 3 years, from the date of this order.

e) The Proceedings *qua Noticees no. 4* and *5* are disposed off in light of the observations made at para 45 of this Order.

f) *Noticee no. 6* is restrained from accessing the Securities Market and is further prohibited from buying, selling or otherwise dealing in Securities Market, directly or indirectly in any manner, and is further restrained from holding or occupying position as Director or any Key Managerial Personnel or associating himself directly or indirectly with any public listed company and/or any public company or any intermediary registered with SEBI for a period of 6 months from the date of this order.

g) *Noticee no. 2* and *3* are further directed to inform and update SEBI within seven days of cessation/ lifting/revocation of moratorium by NCLT.

68. It is clarified that during the period of restraint, the existing holding of securities of the *Noticees* including units of mutual funds, shall remain frozen.

69. The Order shall come into force with the immediate effect qua *Noticees no. 2,3* and *6*.

70. Obligation of the aforesaid *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if

any, of the aforesaid *Noticees* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

71. A copy of this Order shall be forwarded to the IRP in terms of paragraph no. 66 of this Order. n

72. A copy of this Order shall be forwarded to the *Noticees*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

S.K. MOHANTY

DATE: SEPTEMBER 25, 2020 **WHOLE TIME MEMBER**

PLACE: MUMBAI **SECURITIES AND EXCHANGE BOARD OF INDIA**