BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 11.04.2016
Date of Decision : 13.05.2016

Appeal No. 129 of 2014

Almondz Global Securities Ltd.
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Joby Mathew, Mr. N. P. Lashkari, Mr. Ramesh Gogawat, Advocates for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 187 of 2014

Almondz Global Securities Ltd.
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Joby Mathew, Mr. N. P. Lashkari, Mr. Ramesh Gogawat, Advocates for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 211 of 2014

Mr. Sanjay Dewan
2nd Floor, 3 Scindia House,
Janpath, New Delhi – 110 001. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Joby Mathew, Advocate with Mr. Ramesh Gogawat, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 300 of 2014

Mr. Vinay Mehta ….. Appellant
B 96/2, East of Kailash,
New Delhi – 110 065.

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Ajai Achuthan, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh

1. In this bunch of four Appeals, the Appellants have raised a common question of law and fact and, hence, with the consent of the parties, these

Appeals are being disposed of by this common order taking the facts of Appeal No. 129 of 2014 as the lead case.

2. The appeals have been filed against Order dated 3rd March, 2014("Impugned Order") passed by SEBI under sections 11(1), 11(4) and 11B of the SEBI Act, 1992, holding that the Appellant had not employed reasonable skill and care while conducting its due diligence exercise in respect of the IPO of Bhartiya Global Infomedia Limited ("the Issuer Company") in its capacity as Book Running Lead Manager ("BRLM"). The Appellant was thus prohibited from taking up any new assignment in the securities market in any manner for a period of six months from the date of the order for allegedly violating provisions of Regulation 64(1) of the SEBI (Issue of Capital and Disclosure) Regulations, 2009 ("ICDR") and Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992 read with Clauses (1) to (7) and (21) of the Code of Conduct prescribed under Schedule III thereof.

3. The facts leading up to the present Appeal are such that the Appellant is a registered Category 1 Merchant Banker with the Respondent. The Appellant was appointed as BRLM for the IPO of the Issuer Company on 28th September 2010 as per a Memorandum of Understanding executed between the Appellant and the Issuer Company. Draft Red Herring Prospectus ("DRHP") was filed by the Appellant with SEBI for its approval on 10th November, 2010. SEBI issued a letter to the Appellant dated 21st January, 2011 seeking certain clarifications pertaining to the DRHP. One such clarification revolved around whether Mrs. Richa Mittal, who had received a preferential allotment of 200,000 shares, was related to the Issuer Company or its Promoters / Directors or its Promoter Group Companies. On 8th February 2011, the Appellant forwarded the clarification regarding

the same to SEBI as received from the Issuer Company. SEBI then issued its final observation letter dated 13th April, 2011 stating that there had been no material or adverse changes in the operation and status of the Company since the date of the last financial statement until the date of the filing of the prospectus with SEBI. SEBI approved the DRHP on 23rd June 2011, which was subsequently filed with the ROC on 24th June, 2011. Finally, the Red Herring Prospectus came to be filed on 28th June, 2011. The IPO opened on 11th July, 2011 and closed on 14th July, 2011. On 16th July, 2011 the Prospectus of the Issuer Company was filed with SEBI. On 19th July, 2011 the Issuer Company issued a letter stating that there had been no material or adverse change in the operation and profitability of the Issuer Company between the date of the last financial statement and the date of filing of the prospectus with SEBI. The process of allotment of shares came to an end on 21st July, 2011, additionally, the funds in the Escrow account were also discharged on this date. Subsequently, the Issuer Company's shares came to be listed and traded on the BSE and the NSE on 28th July, 2011.

4. An ad-interim ex-parte order was passed by SEBI against the Appellant on 28th December, 2011 alleging that the Appellant had failed to exercise due diligence with respect to the Issuer Company's IPO which had resulted in certain incorrect and inadequate disclosures in the RHP. The Appellant was also prohibited from indulging in new assignments till further directions. Reply dated 21st March, 2012 to this order was filed with SEBI which elucidated the process of due diligence as followed by the Appellant. The Appellant then filed Appeal No. 179 of 2012 before this tribunal. In the meanwhile, SEBI issued a confirmatory order dated 21st September, 2012. A Show Cause Notice dated 4th September, 2013 ("SCN") was finally passed by SEBI under sections 11(1), 11(4), 11A and

11B of the SEBI Act, the Merchant Banker Regulations and the ICDR. On 27th September, 2013, the Appellant filed its reply to the SCN. A personal hearing was granted to the Appellant on 21st October, 2013 at which the Appellant made its submissions. Finally, the IO came to be passed on 3rd March, 2014. Hence, the present Appeal.

5. The Appellant submit that they are being falsely accused of failing to exercise due diligence and ensuring the veracity of disclosures as is required by a BRLM under the ICDR Regulations and Merchant Banker Regulations, specifically in two matters pertaining to the IPO of the Issuer Company i.e. the disclosure of "Gadeo Electronics" ("Gadeo") as a related party and the disclosure of the additional ICD loans taken by the Issuer Company.

6. In response to the Respondent's erroneous allegation for failure on part of the BRLM to disclose the relationship between Mrs. Richa Mittal, majority partner at Gadeo and Mr. Sanjeev Kumar Mittal, Director of the Issuer Company as a related party transaction with respect to the supposed purchase of land / property, the Appellant submits that the transaction was in fact for taking over the partnership of Gadeo by the Issuer Company, and not for the purchase of land/property. It is also argued by the Appellant that it has correctly relied on multiple documents, the absence of which would have alerted the BRLM to the direct or indirect relationship between the Members of Gadeo and the Director of the Issuer Company, viz.:

a) the reports of the Auditors & Peer Review Auditors, which do not bear any mention of the aforesaid transaction as a related party transaction;

b) the Issuer Company's letter dated 7.2.2011 assuring that Mrs. Richa Mittal was not related to the Issuer Company / its promoters / directors, in response to the Respondent's query regarding the same;

c) Mr. Sanjeev Mittal's declaration cum undertaking dated 06.11.2010 confirming that no relative of his had purchased any securities of the Issuer Company, and that the Issuer Company had not purchased any property in which he had any direct or indirect interest;

d) Confirmation Letter from the Issuer Company dated 11.06.2011 confirming that the Issuer Company had not purchased any property in which its directors had any interest;

e) Non disclosure of related party transaction in the Minutes of the Board meetings dated 19.8.2010 and 25.5.2010 where the Gadeo transaction was considered and approved;

f) Presence of Mr. Sanjeev Kumar Mittal, Director of the Issuer Company in the aforesaid board meetings as evidenced by the minutes; and

g) Notices of disclosure of Interest in Form 24AA dated 31.3.2010 and 25.4.2011 as filed by Mr. Sanjeev Mittal, by which he was required to disclose his interest, did not disclose that he or his relatives had any interest in Gadeo.

7. The Appellant puts forth that the provisions of Clause (IV)(H)(18) on one hand and provisions Para B (12) of Section IX of Schedule VII on the other hand of the ICDR Regulations must not be read in isolation. The latter expressly requires the disclosures of related party transactions in accordance with AS-18, thereby, undermining the reliance of the Respondent on the Companies Act to conclude that Mrs. Richa Mittal is a related Party. The Appellant thus submits that complete verification of

financials was undertaken at the time of drafting the DRHP and several undertakings were obtained from the Issuer Company obligating the Issuer Company to promptly inform the BRLM of any material changes. However, the Issuer Company certified that there had been no material change vide its letter dated 19.7.2011. Furthermore, in the Underwriting agreement dated 16.7.2011, the Issuer Company restated that the RHP and the Prospectus did not contain any untrue statement or material omission and there was no material change in respect of the financial position or short term or long term debt since the date of the last balance sheet.

8. Based on the aforesaid facts, the Appellant submits that the BRLM is not required to operate with the assumption that its clients are dishonest.

9. Per Contra, the Respondent submits that the Appellant has failed to exercise due diligence on various counts while preparing the RHP and Prospectus and ensuring correct disclosures therein. The first allegation pertains to the non–disclosure of the relationship of the entity from which the issuer had acquired land / property and the disclosure of transactions as related party transactions in the RHP / Prospectus. It is contended that the Appellant has followed a casual and passive approach while verifying the information furnished by the Issuer Company and mechanically disclosing the same in the RHP and Prospectus. The Appellants failed to disclose the related party transactions entered into by the Issuer Company with Gadeo under the heading of 'related party transactions' in the RHP and the Prospectus with respect to Mrs. Richa Mittal (majority owner in Gadeo), who was the sister-in-law of Mr. Sanjeev Kumar Mittal (Director of the Issuer Company). It is submitted that the fact that Richa Mittal and Sanjeev Kumar Mittal had the same address was overlooked by the Appellants. It is also contended by the Respondent that the Appellant had two partnership

deeds of Gadeo, a minute perusal of which would supposedly have been sufficient to raise questions regarding the relationship between Mr. Sanjeev Kumar Mittal, Director at the Issuer Company and his sister-in-law, Mrs. Richa Mittal, partner at Gadeo, in respect of the preferential allotment of 2,00,000 shares to Mrs. Richa Mittal by the Issuer Company as part consideration for taking over Gadeo. Furthermore, specific disclosures of the nature of title or interest of a director in property / land, details of such transactions wherein the director has inter-se, his direct or indirect relation with the seller or vendor, which are also required to be made in the RHP under the head "About the Issuer", were not made. Instead, the Appellants accepted the Issuer Company's statement that no property had been purchased by the Issuer Company in relation to which any Director of the Company had any interest in the payments made thereof, seemingly without question.

10. At the time of processing of the RHP and Prospectus, Mrs. Richa Mittal and Mr. Ram Kishan Mittal (father of Sanjeev Kumar Mittal who was the Director of the Issuer Company) were the partners at Gadeo. Further, in the absence of definitions of the words 'relative' and 'relation' under the ICDR regulations, the Respondents have relied on definitions in the Companies Act, 1956, which include 'father', 'brother' and 'brother's wife'. In response to the Appellant's contention that 'related party transactions' should be disclosed in accordance with AS–18 issued by the ICAI as provided in clause IX(B)(12) of Part A of schedule VIII of the ICDR Regulations, the Respondents have cited clause 10.9 of AS-18, where although 'sister-in-law' is not mentioned in the definition of 'relative', 'father' is included. Additionally, according to clause 3(d) and (e) of AS-18, the relationships of key management personnel and their relatives, and an enterprise over which such key management personnel or

his / her relative is able to exercise significant influence, are covered for the purpose of related party disclosures.

11. The second allegation pertains to the non-disclosure of ICD loans of ₹ 7 crore prior to the date of filing of RHP and ₹ 8 crore after filing the RHP but before the date of filing of Prospectus. The Respondent brings attention to the responsibilities of the BRLM with respect to the IPO viz., *inter alia*, to exercise due diligence at each and every stage of the IPO; to confirm that it has examined various documents and other material in connection with the finalization of the RHP and Prospectus and give confirmation and certifications on the basis of the same; to certify that the disclosures made in the RHP and Prospectus are true, fair and adequate to enable investors to make a well informed decision and that the disclosures are in accordance with the requirements of the Companies Act and the ICDR regulations; to certify that applicable disclosures mandated under the ICDR regulations have been made in addition to the disclosures which, in its view, are fair and adequate to enable investors to make a well informed decision; to comply with the regulations pertaining to advertisement under the ICDR regulations. In light of the above mentioned responsibilities, the Respondent has submitted that the Appellant has simply relied upon the information with regard to financial obligations and liabilities incurred by the issuer before filing of RHP without satisfying itself about the adequacy and accuracy of the information, thereby failing to comply with regulation 57(2)(a) read with clause VII(G) of Part A of Schedule VIII and regulation 60(4)(a) of the ICDR Regulations, as per which, “the means and source of financing including details of the bridge loans or other financial arrangements, which may be repaid from the IPO proceeds must be disclosed in the RHP and Prospectus” and “any interim financing after filing of RHP and before allotment of securities must be disclosed through

public notice". In this connection, the Respondent submits that had the Appellant gone through the bank statements of the Issuer Company, the transfer of such money would not have gone unnoticed. It is a matter of record that the Appellant did not peruse the bank statements of the Issuer Company, particularly for the unaudited period.

12. The third allegation levelled by the Respondent is the Appellant's failure to carry out an independent valuation of assets, being software and fixed assets. However, owing to the expertise of Chartered Accountants in matters relating to valuation of assets, the Appellant's reliance on the valuation reports provided by statutory auditors of the Issuer Company and the lack of any specific allegation in the SCN regarding the valuation of assets of the Issuer Company disclosed in the RHP, the benefit of the doubt has been given to the Appellant by the Respondent itself and, as such, this charge stands dropped against the Appellant. We shall, therefore, not be dealing with this issue in our judgment.

13. To sum up, the learned Senior Counsel for the Respondent has urged that the degree of due diligence which was required to be adhered to by the Appellant, was not maintained by the Appellants in certain aspects of the process of floating the Issuer Company's IPO. The Appellant was unable to responsibly oversee the observance of regulatory compliances by the Issuer Company, which as put forth by the Respondent is one of its principal duties owed to the securities market at large. The Respondent has, however, fairly brought to our notice that the Issuer Company tried to hoodwink the Appellant time and again and did not make true disclosures and in fact took active measures to keep the Appellant in dark as is evidenced by a number of actions on part of the Issuer Company. In particular, letter dated 21st January, 2011 issued to the Appellant by the

Issuer Company which specifically stated that Mrs. Richa Mittal was not related to the Promoters or Directors of the Issuer Company.

14. We have heard the learned senior counsels for both the parties and analysed the appeal, the written submissions and other documents put forth during the course of the hearing before us.

15. Before we delve into an analysis of the submissions made before us, it may not be out of place for us to mention here that every offer document, including the DRHP in the present case, is required to be presented to SEBI for its vetting, approval and concurrence before it is filed before the ROC. Every draft document is to be filed by an MB on behalf of the Issuer Company for public consumption, however, this is done only after SEBI issued exhaustive comments, after duly vetting the draft document and requiring the MB to incorporate or delete or clarify information provided in the document. Needless to say that SEBI being an expert body and the highest Regulator, SEBI's comments have to be adhered to by the Issuer Company and given utmost importance, albeit through the MB hired by the Issuer Company for the purpose of a public issue. As per provisions of the ICDR Regulations, specifically, Schedule IV, SEBI charges a fee for undertaking such an exercise involving the verification of offer documents filed with it as per Schedule IV of the ICDR Regulations.

16. This process of settling and vetting these documents by SEBI before they are aired for the public's benefit, on behalf of the Issuer Company by the MB, acts as a double check with respect to the Offer Documents so that every possible material information is incorporated in the Prospectus. Therefore, in order to decide the primary issue as to whether the Appellant has carried out reasonable Due Diligence in the case in hand we must analyse the entire scheme of the filing of Offer Documents in terms of the

Companies Act read with the ICDR Regulations issued by SEBI under Section 30 of the SEBI Act, 1992.

17. SEBI (Issue of Capital Disclosure and Requirements) Regulations, 2009 consist of 11 Chapters and 20 Schedules. Chapter 1 deals with Preliminary issues and provides for definitions etc. Some of the definitions provided in Regulation 2 are relevant for the present purpose and are dealt with hereinafter. Regulation 2(1)(f) explains book building as the process whereby the demand and price of certain securities is assessed and determined. Regulation 2(1)(g) defines a book runner as an appointed by the issuing company to undertake the book building process. Regulation 2(1)(r) defines issuer as any person, meaning any judicial entity, making an offer of securities. Regulation 2(1)(x) defines the term 'offer document' as red herring prospectus, prospectus, shelf prospectus and information memorandum in case of a public issue and letter of offer in case of a rights issue. Regulation 2(1)(zc) defines "public issue" as initial public offer and further public offer. Regulation 2(2) states that all words and expression not defined in the ICDR Regulations shall be the ascribed meaning as per the Companies Act, the SCRA and the Depositaries act, and rules and regulations made thereunder.

18. Chapter 2 deals with Common Conditions for Public Issues and Rights Issues. Regulation 4 contained in this chapter provides for initial steps to be taken and conditions to be fulfilled by an issuing company before the filing of the draft offer document. This regulation needs to be read with regulations 25 and 26. Regulation 25 states that on the day of filing the draft offer document with SEBI and with the ROC, all conditions prescribed in Chapter 3 should be met with Regulation 26. Regulation 26

puts forth certain conditions which need to be satisfied by the IC before an IPO can be made. Regulation 5 enshrined in Chapter 2 provides for the Appointment of Merchant Bankers and other intermediaries which lays down that the Issuer Company shall appoint merchant bankers, one of whom shall be a lead merchant banker. The Issuer Company shall also appoint other intermediaries registered with SEBI in consultation with the lead merchant banker. It shall be the duty of the MB to independently evaluate the intermediaries and, accordingly, advise the IC regarding their appointment. Regulation 6 deals with the Filing of Offer Documents and puts forth that an IC shall be eligible to make a public issue or a rights issue only after a draft offer document has been filed with SEBI for its comments through the MB 30 days prior to filing it with the ROC or filing the letter of offer with the designated stock exchange in question. Once the changes as proposed by SEBI have necessarily been incorporated in the offer document by the IC and the MB, it is registered with the ROC, while simultaneously filing it with SEBI. As per Regulation 7, in-principle approval should be obtained from all stock exchanges in which certain specified securities are proposed to be listed.

19. Regulation 8 stipulates that along with the draft offer document the MB shall also provide SEBI with other documents such as, *inter alia*, a copy of the agreement entered into between the issuer and the lead merchant bankers; a due diligence certificate as per **Form A of Schedule VI;** a certificate in the format specified in **Part D of Schedule VII**, confirming compliance with the conditions mentioned therein. Further, once SEBI has issued its comments, or the time period within which SEBI ought to have issued comments as per Regulation 6(2) has expired, the MB shall submit the following documents to SEBI: a statement certifying that all changes, suggestions and observations made by the Board have been

incorporated in the offer document; a due diligence certificate as per **Form C of Schedule VI**, at the time of registering the prospectus with the Registrar of Companies; a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue; a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution; a due diligence certificate as per **Form D of Schedule VI**, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken; a due diligence certificate as per **Form E of Schedule VI**, after the issue has opened but before it closes for subscription. Once the offer document has been displayed on the websites of SEBI and the stock exchanges for a period of 21 days as per Regulation 9 for the public's comments, the merchant bankers shall file with SEBI a statement giving information of the comments received by them or the IC on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.

20. Regulation 12 puts the responsibility of dispatching the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance on the MB. Regulation 13 provides for underwriting obligations to be imposed upon merchant bankers and book running lead managers. It lays down that if the book building process is adopted, such issue shall be underwritten by book runners or syndicate members. The issuer shall enter

into underwriting agreement with the book runner, who, in turn, shall enter into underwriting agreement with syndicate members. If the syndicate members fail to fulfill their underwriting obligations, the lead book runner shall fulfill the underwriting obligations.

21. Chapter 3 deals with Provisions as to Public Issues. Part II of this chapter makes provisions for Pricing in Public Issue. Regulation 28 states that an issuer may determine the price of securities either in consultation with the lead MB or through the book building process as per schedule XI. As per Regulation 30, the IC may cite a price or price band in the prospectus of red herring prospectus and then determine the price later before filing it with the ROC. Regulation 31 lays down the method to be followed by an IC to fix the face value of equity shares for the purposes of an IPO. Regulation 32 of Part III of Chapter 3 deals with Minimum promoters' contribution and lays down, among other things, that in case of an initial public offer the promoters' contribution should not be less than 20% of the post issue capital. Further, Regulation 35 enshrined in Part IV of Chapter 3 states that the securities shall not be transferable for certain periods beginning from the date of allotment in the proposed public issues. This period shall be known as the "lock-in" period. Regulation 41 of Part V of Chapter 3 lays down that the minimum offer to the public in an IPO should be either 10% or 25% of the post issue capital. Regulation 44 puts forth the concept of a safety net arrangement wherein the IC provides such an arrangement under which a person offers to purchase specified securities from the original allottees at the issue price. Regulation 45 delineates the green-shoe option and lays down the conditions and parameters within which such an option can be made available in an effort to stabilize the post-listing price of the securities offered in a public issue. Regulation 46 prescribes the minimum and maximum period for which a public issue

must be kept open for subscription, viz., 3 days and 10 days respectively. Regulation 49 stipulates that the IC shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees. Regulation 50 lays down that the allotment procedure shall be spelt out by the managing director along with the lead post-issue MBs in a fair and proper manner in accordance with Schedule XV of the ICDR Regulations. Regulation 51 stipulates that the post-issue lead merchant banker shall ensure that the amount received in respect of the issue is released to the IC as per section 73 of the Companies Act, 1956. Finally, Regulation 51A provides that the information provided in the offer document shall be updated annually by the IC in accordance with the manner prescribed by SEBI.

22. Chapter 5 deals with Manner of Disclosures in the Offer Documents. Regulation 57 thereof deals with the manner of disclosures in the offer document and lays down that the offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

23. Chapter 6 deals with General Obligations of Issuer and Intermediaries with respect to Public Issue and Rights Issue. As per Regulation 63, the IC shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances. In accordance with Regulation 64, the lead merchant banker shall exercise due diligence and assure himself about all the aspects of the issue including the accuracy and satisfactoriness of disclosure in the offer documents. The MB shall further call upon the issuer, its promoters or directors to fulfill their obligations as disclosed by

them in the offer document. Regulation 65 provides for the submission of post-issue reports to SEBI in the following manner: (a) initial post issue report as specified in **Parts A and B of Schedule XVI,** within three days of closure of the issue; (b) final post issue report as specified in **Parts C and D of Schedule XVI,** within fifteen days of the date of finalisation of basis of allotment or within fifteen days of refund of money in case of failure of issue. Also, the lead merchant banker shall submit a due diligence certificate as per the format specified in **Form G of Schedule VI**, along with the final post issue report. Regulation 68 stipulates that the merchant banker shall be responsible for ensuring that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than six months old from the date on which the issue opened.

24. Further, the rest of the chapters deal with the following topics. Chapter 4 deals with Rights Issue. Chapter 7 deals with Preferential Issue. Chapter 8 makes provisions with respect to Qualified Institutional Placement. Chapter 9 deals with Bonus Issue. Chapter 10 deals with the Issue of Indian Depositary Receipts. Chapter 11 deals with certain Miscellaneous provisions.

25. We shall now turn our attention to the first and primary leg of the Respondent's submission in the present matter, viz., the non-disclosure as a related party transaction of the transaction with Gadeo to take over the partnership firm, which possessed certain immoveable property, being property situated at B-60, Sector 57, Noida. This was done in consideration of a part-payment of 2,00,000 shares priced at ₹ 100 each in favour of Mrs. Richa Mittal, who owned 97.5% of Gadeo and was hence the majority

owner. Let us now recapitulate certain undisputed facts pertaining to this issue:

a) Gadeo was originally formed with three partners, namely, Mr. Sanjeev Mittal, Mrs. Richa Mittal and Mr. R. K Mittal, Mr. Sanjeev Mittal's father. Vide partnership deed dated April 1, 2008, Mr. Sanjeev Mittal retired and Richa Mittal, along with Mr. R. K Mittal remained as Gadeo's partners. This fact was duly disclosed in the RHP.

b) The Issuer Company entered into an Memorandum of Understanding with Gadeo dated September 1, 2009 for the purposes of taking over the partnership firm, Gadeo. We have perused the Memorandum of Understanding and it appears that the Issuer Company was purchasing the property in possession of the firm, i.e., immovable property situated at B-60, Sector 57, Noida by taking over Gadeo for a total consideration of ₹ 5.6 Crore.

c) Out of the ₹ 5.6 Crores, part payment was made to Mrs. Richa Mittal through the transfer of 2,00,000 shares in her favour.

d) Further, the Memorandum of Understanding dated September 1, 2009 was only a Memorandum of Understanding and not a fully executed agreement. In fact, as evidenced by Clause 3(e) of the Memorandum of Understanding, the parties agreed to execute a final agreement giving effect to the intention of selling the property in question, as envisioned in the Memorandum of Understanding. For all intents and purposes, this was an understanding to execute an agreement, and not itself a transaction transferring the said property.

e) It is a matter of fact that Memorandum of Understanding dated September 28, 2010 executed between the Appellant and the Issuer Company whereby the Appellant was appointed as Lead Manager. As per the Memorandum of Understanding, the Issuing Company, ie, the Issuer Company had the following explicit undertakings relevant to this issue:

- Clause 4.2 – The Company undertakes to furnish such relevant information and particulars regarding the Issue as may be required by BRLM to enable them to cause filing of such reports as may be required by SEBI, the relevant Stock Exchanges, the Registrar of Companies and any other regulatory authorities in respect of the Issue.
- Clause 4.4 – The Company undertakes to provide the BRLM with all information and documents to enable the BRLM to prepare the Offer Documents in compliance with the legal requirements connected with the Issue as also the regulations, guidelines, instructions, etc. issued by SEBI, the Government of India and any other competent authority in this behalf, and customary disclosure norms to enable the investors to make a well informed decision as to investment in the Issue.
- Clause 4.5 – The Company undertakes and declares that any information made available to the BRLM or any statement made in the Offer Documents shall be complete in all respects and shall be true and correct and that under no circumstances would it give or

withhold any information or statement which is likely to mislead the investors in the Issue.

- Clause 4.9 – The Company shall update the information provided to the BRLM and duly communicate to the BRLM in case of any material change of the same subsequent to the submission of the Draft Red Herring Prospectus to SEBI and upto the listing of Equity Shares of the Company. Also, until the listing of the Equity Shares of the Company on all the stock exchange where listing is contemplated, the Company undertake to promptly notify the BRLM of any information, corporate event or any decision whatsoever, which would or is likely to have material bearing on the ability of the investor or prospective investor to take an investment decision to participate in the Issue.

f) An exhaustive Due Diligence Checklist was provided to the Issuer Company seeking detailed and verbose information regarding the operation and financial status of the company which included queries pertaining to details of bridge loans and related party transactions entered into between the parties.

g) An Undertaking-cum-Indemnity dated November 6, 2010 was obtained by the Appellants from Mr. Sanjeev Mittal stating that the Issuer Company had not purchased any property in the foregoing two years and did not intend to purchase any property in which Mr. Sanjeev Mittal had or will have a direct or indirect interest or in respect of any payment made thereof.

h) Undertaking dated June 11, 2011 given to the Appellant by the Issuer Company that the Appellant would be apprised of any changes in the functioning or status of the company.

i) An Underwriting Agreement dated July 16, 2011 was entered into between the Appellant and the Issuer Company as per provisions of the ICDR Regulations which contains the following unequivocal undertakings:

- Clause 9.1(a)(i) – There shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business, management, properties or operations of the Company, that, in the judgment of the Underwriter, are material and adverse and that makes it, in the judgment of the Underwriter, impracticable to market the Shares or to enforce contracts for the sale of the Shares on the terms and in the manner contemplated in the Red Herring Prospectus, the Prospectus; and
- Clause 9.1(b) – The representations and warranties of the Company contained in this Agreement shall be true and correct on and as of the Closing Date and the Company shall have complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.
- Clause 9.1(c) – The Underwriter shall have received on the Closing Date a certificate, dated as of the Closing Date and signed by an authorized officer of

the Company, substantially in the form attached hereto as **Schedule B**, certifying (i) that since the date of this Agreement or since the date as of which any information is provided in the Red Herring Prospectus, there has not occurred any material adverse change, or any development involving a prospective material adverse change in the condition, financial or otherwise, or in the earnings, business or operations of the Company, (ii) that the representations and warranties of the Company contained in this Agreement are true and correct on and as of the Closing Date, (iii) that the Company has complied with all of the agreements in relation to the Issue and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date, and (iv) that since the date of the last balance sheet included in the Prospectus to be filed with the RoC, there has not been any change in the capital stock, or increase in short-term debt or long-term debt of the Company, except in all instances for changes, increases or decreases that the Prospectus to be filed with the RoC disclose have occurred or may occur.

- Clause 11.1(a) – The Red Herring Prospectus and the Prospectus as of their respective dates did not / will not contain any untrue statement of material fact or did not / will not omit to state a material fact necessary to make the statements therein, in the light of the

circumstances under which they were made, not misleading.

- Clause 11.1(i) – There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business, management or operations of the Company from that set forth in the Red Herring Prospectus.
- Clause 11.1(u) – The financial statements of the Company included in the Red Herring Prospectus and the Prospectus to be filed with the RoC have been prepared, and will be prepared, in accordance with the applicable provisions of the Companies Act and applicable provisions of the SEBI (ICDR) Regulations. The Auditors who have certified such financial statements are independent chartered accountants within the rules of the code of professional ethics of the Institute of Chartered Accountants of India. The summary of and selected financial data of the Company contained in Red Herring Prospectus, and the Prospectus to be filed with the RoC, have been derived from such financial statements.
- Clause 11.1(z) – The representations and warranties made by the Company in this Agreement are true and correct.

j) Letter dated January 21, 2011 from SEBI seeking clarification from the Appellant regarding certain information provided in the DRHP, of which item no. 5 enquired about the status of

Mrs. Richa Mittal and her connection with, if any, to any Directors / Promoters of the Issuer Company.

k) The Issuer Company's response dated February 7, 2011 was issued to the Appellants stating categorically that Mrs. Richa Mittal was not related to any Director / Promoter.

l) Vide letter dated February 8, 2011 the aforesaid information was forwarded to the SEBI.

m) Letter dated June 11, 2011 issued by the Issuer Company to the Appellants stating that they had not purchased any property in which any of its directors had any direct or indirect interest in any payment made thereof.

n) As is evident from a perusal of the records, the transaction with Gadeo was approved at the meetings of the Board of the Issuer Company held on August 19, 2009 and May 25, 2010.

o) Now, Section 299 of the Companies Act, 1956 requires every director who is in any way, directly or indirectly, concerned or interested in a contract or arrangement, to disclose the nature of his interest at the meeting of the Board. It is a fact that Mr. Sanjeev Mittal was present at both these Board meetings and failed to disclose his interest in the transaction with Gadeo.

p) The RHP was filed on June 28, 2011 in which, as per our examination, on pages 72 and 73 the following words have been employed to describe Gadeo – "*a partnership formed on September 1, 2001 between Mrs. Richa Mittal, Mr. Sanjeev Mittal and Mr. R.K. Mittal. Mr. Sanjeev Mittal took retirement w.e.f. March 31, 2008 and Mrs. Richa Mittal and Mr. R.K. Mittal entered into a fresh partnership deed on April*

1, 2008 and agreed to start and run the business of manufacturing…..with profit sharing ratio of 97.5:2.5 between Mrs. Richa Mittal and Mr. R. K. Mittal."

26. It is a matter of record that the following actions were undertaken by the Appellants to verify the status of Mrs. Richa Mittal vis-à-vis the Issuer Company:

a) The Appellants examined the financial statements for the preceding five financial years which were also audited by the statutory auditor and found no mention of Mrs. Richa Mittal or Gadeo as a related party transaction.

b) The Appellants scrutinized audited and restated statements provided by the peer review auditor which did not bear any reference to any transaction with Mrs. Richa Mittal or Gadeo as a related party transaction.

c) Similarly, on an examination of the Register of Contracts of the Issuer Company, no information was found regarding any director's / promoter's interest in the transaction with Gadeo.

d) Copies of Form 24AA, viz., General Notice for Disclosure of Interest of Directors were examined by the Appellants, specifically including the ones submitted by Mr. Sanjeev Mittal for the financial years ending March 31, 2010 and March 31, 2011 and even this were conspicuously silent regarding Mr. Sanjeev Mittal's relationship with Mrs. Richa Mittal or for that matter, regarding any interest in Gadeo.

e) The Appellants even inspected the minutes of the Board meetings of the Issuer Company held on August 19, 2009 and May 25, 2010, in which there was nothing to suggest that

Mr. Sanjeev Mittal had any interest in the transaction with Gadeo.

27. Having, thus, recapitulated the facts as are borne out from the records, we now turn our attention to the legal provisions dealing with the disclosure of related party transactions in offer documents. Section IX of Part A of Schedule VIII of ICDR provides for the guidelines regarding disclosures on financial statements. It is stipulated therein that all the financial information sought as per these provisions must be certified by auditors who hold a valid certificate issued by the Peer Review Board of the ICAI. Para (B)(12) of Section IX deals specifically with disclosures with respect to related party transactions. Further, this para lays down that disclosures on related party transactions must be made in accordance with the requirements of Accounting Standards issued by the ICAI. Certain portions of AS 18 being relevant to the issue at hand have been reproduced hereinafter for the sake of convenience :

*"**Para 3 of AS 18**:*

"3. This Standard deals only with related party relationships described in (a) to (e) below:

(a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);
(b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;
(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
(d) key management personnel and relatives of such personnel; and
(e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a

member of key management in common with the reporting enterprise."

"Para 10.1 of AS 18 defines "Related Party":

"10.1. Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions."

*"**Para 10.3 of AS 18 defines "Control":***

"10.3. Control – (a) ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or
(b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or
(c) a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise."

*"**Para 10.9 of AS 18 defines "Relative" as under**:*

10.9. Relative – in relation to an individual, means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting enterprise."

"Para 12 of AS 18":

"12. An enterprise is considered to have a substantial interest in another enterprise if that enterprise owns, directly or indirectly, 20 per cent or more interest in the voting power of the other enterprise. Similarly, an individual is considered to have a substantial interest in an enterprise, if that individual owns, directly or indirectly, 20 per cent or more interest in the voting power of the enterprise."

***"Para 14 defines "Key Management Personnel as under**":*

"14. Key management personnel are those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. For example, in the case of a company, the managing director(s), whole time director(s), manager and any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act, are usually considered key management personnel.

Explanation:

> *A non-executive director of a company is not considered as a key management person under this Standard by virtue of merely his being a director unless he has the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. The requirements of this Standard are not applied in respect of a non-executive director even enterprise, unless he falls in any of the categories in paragraph 3 of this Standard."*

28. From a reading of the foregoing sections it becomes clear that in accordance with the provisions of the ICDR, the disclosure on Related Party Transactions is to be submitted as a part of the overall financial information to be certified by the auditors. Once the information is so certified, and this certified financial information is reproduced in the offer document, the ICDR's requirements of Due Diligence are considered to be met. As noted above, disclosures on related party transactions need to be made as per para (B)(12) of section IX of the ICDR Regulations which, in turn, states that they must be made in accordance with AS 18. It, therefore, falls to us to consider and decide whether Gadeo or Richa Mittal qualify as related parties in accordance with AS 18.

29. As per the provisions of AS 18, related party relationships apply only to those individuals who either own a controlling interest or significant influence over the enterprise, in this case the Issuer Company, and relatives of directors / promoters of such enterprise, or to key management personnel of the Issuer Company and relatives of such personnel. In particular, Clause 10.1 defines 'related party' in somewhat uncompromising terms, stating that for the purposes of disclosures as per AS 18, parties shall be construed as being related only if one has the ability to control or significantly influence the other, being the reporting entity. Moreover, clause 10.3 defines "control" in a manner which includes control over the

Board of Directors or owning more than half the voting power of the reporting enterprise or the power to direct the policies of such an enterprise.

30. Now, in Gadeo, Mrs. Richa Mittal possesses the overwhelming majority of 97.5% in the partnership with Mr. R. K. Mittal owning a measly 2.5%. The Respondent has relied upon clause 3(d) of AS 18 while arguing that even R. K. Mittal's interest in Gadeo would bring the transaction with Gadeo within "related party relationships". However, it is pertinently noted, as argued by the Appellants, that clause 3(e) of AS 18 attempts to explicate the import of clause 3(d) by putting forth that the persons covered by 3(d) must exert significant influence over the Issuer Company. R.K. Mittal with a 2.5% ownership at Gadeo cannot be said to exert such influence. This conclusion is buttressed by clause 12 of AS 18 which states that a person would be seen as having substantial interest in another only if its voting power amounts to 20% or more. It follows, therefore, that it is Richa Mittal's relationship with the persons who hold a controlling interest in the Issuer Company or with the key management personnel at the Issuer Company that would legally determine the status of Gadeo as a related party to the Issuer Company. Applying the law to the facts at hand, we notice that in terms of para 14 of AS 18, Mr. Sanjeev Mittal, owing to his position at as a whole time director at the Issuer Company, falls under the category of Key Management Personnel of the reporting enterprise being the Issuer Company and the relatives of such personnel are, accordingly, construed as related persons and hence relevant for disclosures with respect to related party transactions. Mrs. Richa Mittal is the wife of Rajiv Mittal who is Mr. Sanjeev Mittal's brother, the whole time director at the Issuer Company. But viewed in totality and not in isolation Mr. R.K. Mittal, being the minority partner, cannot be deemed to have the power to direct and control the operation of Gadeo, or to affect its policies on his own.

31. It is evident from a plain reading of the definition of 'relative' as provided under para 10.9 of AS 18 that the relatives covered under the definition are, quite categorically put, the spouse, son, daughter, brother, sister, father and mother who may be expected to influence the key management personnel of the reporting enterprise, in this case, the Issuer Company. This definition is exhaustive in nature. It does not leave scope for the inclusion of relatives by extending the list of relatives to other people. The intention of the law maker in this regard is crystal clear viz., only those relatives particularly mentioned in para 10.9 will be relevant for determining related party transactions. Mrs. Richa Mittal being the sister-in-law of Mr. Sanjeev Mittal is not covered under AS 18. In keeping with AS 18, as per the records, even the peer review auditors have not treated the transaction with Gadeo as a related party transaction.

32. It is argued by the Learned Senior Counsel for the Appellant that the Due Diligence Manual of the Association of Investment Bankers of India, we note that in relation to determining related party transactions, a BRLM must inspect the Minutes of various committees of the Board of the last five years; Form 24AA for the other directorships of the current directors; Related Party Transactions Statement in financial statements and Register of Contracts under section 301 of the Companies Act; and Minutes of the Board Meetings for the last two years to identify interest of directors in any property acquired by the reporting entity within the last 2 years. As noted above, all these documents were duly analysed by the Appellants and there was no information in any of these indicating that the transaction with Gadeo was a related party transaction.

33. It may also be pertinently mentioned that information regarding vested interests vis-à-vis relatives is not available anywhere in the public

domain and necessarily needs to be supplied by the company. The modus operandi adopted by the Appellant in this case therefore is acceptable insofar as there is no source in the public domain that provides independent information to establish such an interest and the information provided to the Appellant by the Issuer Company was indeed the primary source of information regarding related party transactions. Furthermore, we have already listed the independent actions undertaken by the Appellants regarding the transaction with Gadeo and we are satisfied that even though the Issuer Company was the primary source as far as the relationship of Mrs. Richa Mittal and Mr. Sanjeev Mittal is concerned, the Appellants did conduct their own due diligence to satisfy themselves regarding the same.

34. Be that as it may, we have noted hereinabove that it has been disclosed in the RHP that Mrs. Richa Mittal and Mr. R. K. Mittal were partners at Gadeo with a profit sharing ratio of 97.5:2.5 respectively. This information, coupled with the fact that both Mr. Sanjeev Mittal, the erstwhile partner at Gadeo, and Mrs. Richa Mittal had the same address at Noida should have raised the Appellant's suspicion vis-à-vis the relationship of Mrs. Richa Mittal and that of Mr. Sanjeev Mittal, particularly considering the fact that a sister-in-law having owning 97.5% of Gadeo which transacts with the Issuer Company, ie, the Issuer Company cannot be dismissed lightly. Furthermore, the Respondent is correct in asserting that even though as per AS 18, a sister-in-law is not covered as a relative, Mr. R. K. Mittal, the father of Mr. Saneejv Mittal, would indisputably be covered within the ambit of AS 18. Consequently, the transaction with Gadeo would ultimately be construed as a transaction between the Issuer Company and a relative (i.e. Mr. R. K. Mittal) of a person qualifying as key management personnel (i.e. Mr. Sanjeev Mittal). Nowhere, in AS 18 does it say that the relative would be disclosed in terms

of a related party transaction only if the relative is the majority owner / shareholder.

35. It appears that the factum of Mrs. Richa being the sister-in-law of Mr. Sanjeev Mittal was not properly conveyed to the appellant. This is evidenced from the fact that on receiving SEBI's query regarding Richa Mittal's stature with respect to the Issuer Company, the Appellant pointedly asked the Issuer Company whether Mrs. Richa Mittal was connected with the Issuer Company in any manner, and the Issuer Company replied in the negative vide letter dated February 7, 2011. Even after getting this unequivocal response from the Issuer Company, the Appellant reviewed the outcome of their own extensive diligence, as described hereinabove in the preceding paragraphs, to cover Mrs. Richa Mittal relationship to the Issuer Company. However, despite the presence of certain pointers in the information that the Appellants possessed with themselves, it is a matter of fact that nothing was contained in the partnership deed that explicitly pointed towards a relationship between Mr. Sanjeev Mittal and Mrs. Richa Mittal or indicated that she was married to Mr. Sanjeev Mittal's brother. This combined with the fact that AS 18 does not mention a sister-in-law as a relative and that Mrs. Richa Mittal did after all own 97.5% of Gadeo, dwarfing the 2.5% owned by Mr. R.K. Mittal, must be construed as a mitigating factor.

36. We now turn to the issue of the non-disclosure of the taking of ICDs by the Issuer Company. From a perusal of the documents on record, we note that there are no minutes of board meetings which make a note of any decision of the Board of the Issuer Company to take ICDs. Further, as is clear from Annexure C of the Written Submissions of the Appellants, in an effort to do justice to the exercise of due diligence undertaken by the

Appellant, it held around 30-35 meetings with representatives of the Issuer Company between August 6, 2010 and July 19, 2011. This was done in addition to the analysis of several other documents received from the Issuer Company, along with undertakings received from the directors of the same as has been noted above while dealing with the first submission of the Respondent, viz., the one with respect to related party transactions. In relation to this it has been submitted by the Appellant that once the Appellant had concluded its due diligence before the filing of the RHP with SEBI on June 14, 2011, it would have been impossible for the Appellant to conduct yet another extensive exercise of due diligence purely to effect the modifications suggested by the ROC. In this context, after analyzing the concept of due diligence in detail in Appeal No. 275 of 2014, we have already held that an MB should also examine bank statement of the issuer company though mandatorily not required. Relying upon the same reasoning we note that had the Appellant looked at the bank statements of the relevant period, the ICDs would have come to light and the Appellant would have been able to reflect the same in the RHP and the Prospectus.

37. The issue that we must now put our minds to is therefore a limited one – whether this infraction of the Appellant in not being able to identify the Gadeo transaction as a related party transaction and the oversight in not analyzing the banks statements is so grave that the Appellant deserves such a severe punishment as has been sought to be imposed on the appellant in the case in hand. The answer must be no. In order to bolster this finding, we now proceed to examine other cases of transgressions committed by intermediaries in general and how they have been dealt with by the market regulator.

38. We first turn to one of the most recent matters heard and decided by SEBI on March 31, 2016 in the matter of **Axis Capital Limited (Axis), SBI Capital Limited (SBI), Edelweiss Financial Services Limited (Edelweiss)** in relation to an IPO of Electrosteel Steels Limited (ESL). The controversy involved pertained to the non-disclosure in the RHP of the fact that the Ministry of Environment and Forest had rejected a proposal for iron ore mines of Electrosteel Castings Ltd. (ECL), the promoter company of ESL. Axis, SBI and Edelweiss were BRLMs for the IPO. It was held that they had failed to disclose material information regarding rejection of the proposal for forest clearance of Kodolibad Iron ore mine in the RHP and also to the Stock Exchanges for dissemination of the information by them to the shareholders in violation of Clause 36 of the Listing Agreement. In fact SEBI went to the extent of categorically holding that the BRLMs **knowingly suppressed** the issue of rejection of the proposal regarding the mines in Kodolibad and misled investors by concealing information from them. The BRLMs accordingly were said to have failed in their duty to exercise proper due diligence in violation of the ICDR Regulations and the MB Regulations by keeping investors "***in the dark about the factual aspect regarding the forest diversion proposal of the Iron Ore Mine of ECL".*** Even after recording such a grave finding against the BRLMs, none of the entities faced suspension / cancellation of their certificates of registration. On the contrary, only a monetary penalty of ₹ 1 crore in total was levied on them.

39. Further, on April 6, 2016 an order was passed by SEBI against **Keynote Corporate Services Limited (Keynote) and Keynote Capital Ltd.** (Keynote capital) in relation to an IPO floated by Emmbi Polyarns Ltd. Keynote was the BRLM for the issue and Keynote Capital was the stock broker and syndicate member and they were both underwriters to the

issue. The issue in the matter was regarding allegations made against Keynote and Keynote Capital to the effect that the two noticees had been aiding other known entities such as Concept and Team India to subscribe to the IPO in sizeable quantities. In the absence of this help, the WTM reasoned, the IPO would have most likely remained undersubscribed leading to the triggering of the underwriting obligation of the two noticees or it would have failed resulting in Emmbi having to make refunds to investors. The WTM, therefore, held that **unfair and manipulative devices** had been used by the noticees to ensure subscription to Emmbi's IPO and for adopting such **unfair means** posing a threat to the financial integrity of the securities market, Keynote was prohibited from taking up new assignments as MB for a cursory period of one month and Keynote Capital was prohibited from taking up any new assignment as an underwriter for a period of one month again. In this case as well, the accused's certificates of registration were once again not suspended even in light of an adversarial finding of the noticees having adopted unscrupulous maneuvers.

40. In another matter decided by the regulator on May 13, 2015, RDB Rasayans Ltd. came out with an IPO which was managed by **Chartered Capital and Investment Limited** ("Chartered Capital") as the BRLM. It was held inter alia that the BRLM **had failed to act diligently by not identifying ICDs** and hence being unable to disclose them in the RHP and the Prospectus. The DA in the matter had suggested that Chartered Capital be restrained from taking up any new assignment for a period of three months only. The WTM therefore realized that since the BRLM had already undergone a sentence of nine months, no further action was required in the matter as the balance of convenience was in favour of Chartered Capital.

41. Albeit, it is not necessary for a BRLM to look into the bank statements it would have been prudent for the Appellant to peruse the bank statements instead of merely relying on the Statutory Auditor's Report and the statement of the Issuer Company. Although, there is some merit in the charges leveled against the Appellants, as far as non-perusal of Bank statements of the Issuer Company and disclosure of related party transactions is concerned, in view of the fact that the punishment already undergone is far in excess of the punishment which the Appellants deserved against the charges in question, we quash the remnant punishment imposed vide the Impugned Order and partly allow the Appeal.

42. All the appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

13.05.2016
Prepared & Compared by
PTM