WTM/RKA/SRO/ 66 /2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 against Ram Kaashyap Investments Limited and its promoter, Mr. A. Venkataramani.

In the matter of alleged violations with respect to the rights issue of Ram Kaashyap Investments Limited.

Appearances
For the noticees :

1. Mr. A. Venkataramani and
2. Mr. G. Sundaresan

For SEBI :

1. Mr. Suresh B. Menon, Regional Manager-Southern Regional Office,
2. Mr. Santhosh Shukla, Joint Legal Adviser, and
3. Mr. T. Vinay Rajneesh, Assistant Legal Adviser

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1. Ram Kaashyap Investments Limited (hereinafter referred to as "the Company"), a company having its shares listed on the Bombay Stock Exchange Limited (BSE) and Madras Stock Exchange(MSE), came out with a rights issue of 3,51,60,000 equity shares of Rs.10/each for cash at par aggregating to Rs.35.16 crores. The rights issue opened on November 18, 2010 and closed on December 16, 2010. Vivro Financial Services Private Limited (hereinafter referred to as 'Vivro'), a SEBI registered merchant banker was the Lead Manager to the rights issue and Knack Corporate Services Private Limited (hereinafter referred to as 'Knack'), a SEBI registered Registrar to Issue and Share Transfer Agent, was the registrar to the rights issue (the RTI). Knack was functioning as the Share Transfer Agent (STA) for the Company even before its rights issue.

2. SEBI had undertaken a routine inspection of Knack from November 23, 2010 to November 25, 2010. Since the rights issue of the Company was open for subscription during the inspection period SEBI also examined the role of Knack in finalising the eligible shareholders list, the dispatch of the Composite Application Forms (CAFs) to the eligible shareholders of the Company and compliance with other procedural aspects relating to the rights issue.

3. SEBI noticed that there were several complaints from the investors regarding non-receipt of CAFs. It was noticed, during inspection, that the CAFs were not dispatched as mentioned in the advertisements issued by the Company. It was also observed that Knack had produced forged records/documents with regard to proof of dispatch of CAFs. Further, the Company had not

received the minimum subscription in the rights issue and the promoter of the Company, Mr. A. Venkataramani had failed to bring in his contribution before the closure of the rights issue. In view of the same, SEBI vide letter dated January 05, 2011 instructed Vivro to advise the Company to refund the application money to the shareholders. Pursuant to the same, the Company had refunded the money to the shareholders on January 08, 2011.

4. During the inspection, SEBI noticed various non-compliances of the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations") and SEBI (Depositories and Participants) Regulations, 1996 ("DP Regulations"), concealment of material information and making misleading disclosures with regard to the rights issue and thus the contravention of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") by the Company and its promoter, Mr. A. Venkataramani.

5. In view of the above, SEBI issued Show Cause Notices (SCNs) dated June 9, 2011 and June 30, 2011 to the Company and its promoter, Mr. A. Venkataramani, respectively, advising them to show cause as to why appropriate directions under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 including debarring them from accessing the capital market in any manner and also buying, selling or otherwise dealing in securities, in any manner or whatsoever, for a suitable period should not be issued. The Company and its promoter are hereinafter collectively referred to as "the noticees". The allegations and violations charged in SCNs against them are listed in the following Table :

Table: List of charges against the respective noticees:

Sl. No.	Name of the entity	Allegation	Violation
1.	*The Company*	Failed to dispatch CAFs through registered post or speed post to all the eligible shareholders atleast three days before the opening of the issue.	Regulation 54 (1) of the ICDR Regulations
		CAFs were not dispatched at all through any mode. The document submitted towards proof of dispatch was forged.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.
		Made false and misleading advertisements with respect to the dispatch of CAFs to its shareholders, intending to deceive the investors and the regulatory authorities.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.
		Concealed the fact that the refund of the application money was done on the instructions of SEBI and made a false disclosure to the stock exchange that the	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.

		refund was made voluntarily.	
		Did not publish advertisements in the newspapers informing the investors about the material developments that happened in its rights issue.	Regulation 60(4) of the ICDR Regulations
		Did not enter into a valid agreement with Knack before engaging it as its Registrar to the Issue in the rights issue.	Regulation 5(5) of the ICDR Regulations
		Failed to hand-over records of signatures, etc, to Knack	Regulation 53A of the DP Regulations") read with SEBI Circular D&CC/FITTC/CIR-15/2002 dated December 27, 2002.
2.	*Mr. A. Venkataramani (Promoter)*	Mr. A. Venkataramani neglected his responsibility as the promoter of the Company in ensuring that CAFs were properly dispatched to the shareholders within the prescribed timeframe laid down in the regulations.	Regulation 54 (1) of the ICDR Regulations
		Mr. A. Venkataramani was in the knowledge of the developments leading to the Company making misleading and false advertisements and the production of the forged/fake postal register falsely suggesting the dispatch of CAFs.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.
		Failed in his obligation to inform the investors about the factual position leading to the refund of the issue proceeds.	Regulation 60(4) of the ICDR Regulations.
		Mr. A. Venkataramani, being the main promoter of the Company, was responsible for making proper disclosures by the Company.	Regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations.

6. The Company filed its reply vide its letter dated June 23, 2011 and Mr. A. Venkatramani filed his reply vide his letter dated July 12, 2011. The noticees were afforded opportunities of personal hearing on January 04, 2012 and March 30, 2012. On January 04, 2012 Mr. A. Venkataramani, the promoter of the Company and Mr. G. Sundaresan, the Company's Advisor appeared and made submissions on behalf of the Company. On March 30, 2012 Mr. A.Venkataramani appeared and made submissions for himself and also on behalf of the Company. The submissions of the noticees, *inter alia,* are as follows:

(a) Mr. A. Venkatramani is not the Managing Director and does not hold any official position in the Company but only a promoter and , therefore, the SCN should not have been addressed to him.

(b) Out of the total 9500 shareholders, only 75 shareholders had complained about non- receipt of CAFs and this is not abnormal. The shareholders may have not updated the change of their addresses to the RTI and in some cases there could have been lapses in the postal delivery system, which is not uncommon. On receipt of information about such complaints, the Company took immediate steps to send the CAFs afresh to those shareholders. Subsequently, there were no complaints and many shareholders had applied to subscribe in the rights issue.

(c) The allegation that the RTI was not able to produce any proof of dispatch of CAFs or the claim of the RTI that the Company made the dispatch is not admitted. Only Knack made the dispatch and the proof of the same could only be with Knack or Vivro and not with the Company.

(d) Though the advertisement in name of the Company was issued on November 15, 2010 in the *"Financial Express"* and *"Dhinaboomi",* it is to be noted that the said advertisement was drafted, released and published by Vivro, the Lead Manager. Vivro had sent the draft advertisement on October 28, 2010 for the Company's acceptance and indicated that the details therein would be filled in later. On that date, the CAFs had not yet been dispatched by the RTI and therefore, the particulars of dispatch were not filled up in that draft. Subsequently, Vivro vide another letter dated November 12, 2010, sent the final draft of the advertisement proposed to be released and in that also, the particulars of dispatch remained blank since the dispatch seems to have been made, subsequently. The Company never made nor could have made the representation that the CAFs were dispatched by the RTI on November 13, 2010 since the final draft of the advertisement sent by Vivro on November 12, 2010 was accepted by it before the dispatch was made.

(e) The Company did not know that on what basis Vivro had stated in the advertisement that CAFs had been dispatched by registered post/speed post, without specifying under which of the two modes. It also did not know on what basis Vivro had stated that CAFs were dispatched on November 13, 2010 when the records of the RTI shows that the dispatches were made on November 12, 2010.

(f) There was an arrangement between Knack and the Company and subsequent to the agreement between Knack and itself, Knack should mobilize all the funds required in the rights issue and the same would be reimbursed after the rights issue went through. The Company did not know how Knack mobilized the funds.

(g) The Company is not a party to the transactions referred to in the SEBI letter dated December 15, 2010 and the reply dated December 24, 2010 from the Head Post Office, T. Nagar (Chennai) and therefore, is not concerned with the allegations based on such

transactions. The Company failed to understand how the Senior Post Master, T. Nagar Post Office Branch has come to a conclusion in his reply that the dispatch of 9363 articles by Knack was never made. The conclusion was based on the reasoning that under certificate of posting, the amount collected would have been written in words and figures by the Mails PA and since it was not done, the articles could not have been posted. The failure of a postal department employee to mention the amount collected in words and figures cannot logically lead to the conclusion that the articles were not dispatched at all, especially when it appears to be vouched by a receipt containing the postal seal of the postal department.

(h) The conclusion that CAFs were not dispatched at all to the shareholders by any mode and the further conclusion that the Company colluded with Knack in producing a forged, fake postal record are fallacious and untenable. Based on such illicit conclusions, SEBI has imputed criminal intent which is highly defamatory and scandalous apart from being groundless.

(i) The advertisement dated December 16, 2010 published in Financial Express was also drafted and sent to the Company by Vivro. The statement contained therein that CAFs were dispatched under '*certificate of posting'* on November 12, 2010 seems to be true and supported by record.

(j) Since the minimum subscription was not met, the promoter, Mr. A. Venkataramani attempted to bring in the shortfall as he is permitted to do so as per law. In the process, he issued cheques relying on the promises made to him by certain financiers but could not honour the cheques due to the delay in getting money. He eventually managed to put in the money after the closure of the rights issue. He was informed by Vivro that normally within a week from the closure date such reimbursements are accepted and there is nothing illegal in the process. This aspect of the matter cannot be mixed up with the issue relating to dispatch of CAFs as sought to be done in the SCN. Despite such best efforts by him, the rights issue was recalled and the same resulted in huge loss to the Company.

(k) Though the dishonoured cheques were immediately made good within a week and the minimum subscription requirement was met, the issue proceeds were duly refunded forthwith in deference to SEBI's instruction and to avoid confrontation. The Company was put to undue loss and hardship in this process and could have resisted such instruction legally which it did not do so only in order to be non-contentious and amiable to statutory authorities.

(l) The allegation of violating regulations 3(c) & (d) and 4(2) (f) & (k) of the PFUTP Regulations is, therefore, unwarranted.

(m) The Company has taken further steps to file fresh documents for a rights issue in order to infuse more funds into the Company and make prospects brighter to the shareholders.

(n) Regulation 54(1) of the ICDR Regulations does not cast an obligation on the issuer and such obligation vests on the RTI chosen by the merchant banker in consultation with the issuer.

Regulation 54(1) of the ICDR Regulations is open to challenge on the ground that it militates against section 53 of the Companies Act, 1956, which permits a Company to serve all documents on its members by post, except where any member has made a specific request that such dispatch should be made *under certificate of posting* or registered post and deposits in advance the expenses for such postage. The delegated authority, making regulations under section 11A of the SEBI Act, cannot frame a regulation abridging the rights and permission statutorily granted under the Companies Act, 1956 and imposing additional monetary burden on the Company.

(o) Regulation 60(4) of the ICDR Regulations speaks of material developments that take place during the period between the filing of the letter of offer in the designated stock exchange and the date of allotment of securities and the said provision is inapplicable to a case where the rights issue is dropped without leading to allotment of securities. In this case, the application money was refunded only on the ground that the Company had undertaken to do so in case the minimum subscription level was not reached. Hence, the Company was obliged to state only this in the BSE website on January 06, 2011. Therefore, the allegation that the Company ought to have referred to SEBI's advice in the disclosures made in the BSE website is untenable in law. The Company never received any instructions from SEBI to refund the subscription money. On the other hand, SEBI had advised Vivro to instruct the Company to do so. Hence, the disclosures by it on BSE website were in order.

(p) The Company had entered into a valid legal agreement dated January 21, 2010 with the RTI and that there is no law which requires that the issuer must enter into such prior agreement with RTI/STA. Regulation 5(5) of the ICDR Regulations, without any further stipulation in that regard, does not lead to such a conclusion.

(q) The SCN failed to mention what was not maintained at a single point and therefore the alleged violation of regulation 53A of the DP Regulations is vague.

(r) The Company did what the Lead Manager (Vivro) asked it to do and had also refunded the money subscribed to in the rights issue.

(s) The Company has requested to pardon it and absolve of the allegations.

7. Mr. A. Venkatramani, while adopting the submissions made by the Company in its reply dated June 23, 2011, has submitted that he is not its Managing Director and does not hold any official position in the Company and therefore, the SCN should not have been addressed to him. Further, he lent his name as the promoter of the Company and he is not in any way managing the day-to-day affairs of the Company.

8. I have considered the SCNs and the submissions made by the noticees and the relevant material available on record. For considering the issues involved in the mater, I deem it necessary to refer to the provisions of the regulations the contravention of which has been alleged against the noticees. These provisions are reproduced as under:-

ICDR Regulations

"Appointment of Merchant Banker and other Intermediaries.

5.(5) *The issuer shall enter into an agreement with the lead merchant banker in the format specified in schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned :*

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:"

"Letter of offer, abridged letter of offer, pricing and period of subscription.

54. *(1) The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue: "*

"Public communications, publicity materials, advertisements and research reports.

60. *(4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:*

(a)…..

(b)in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities. "

PFUTP Regulations

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) …..

(b) …..

(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

……

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

….....

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

….....

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

……....."

DP Regulations.

"Manner of handling share registry work.

53A. All matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board."

9. Before dealing with the charges and allegation against the noticees, I proceed to deal with the preliminary objections raised by them that the SCN can not be issued to Mr. Mr. A. Venkatramani since he was not the Managing Director and does not hold any official position in the Company. I note that the prohibitions contained in regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations apply to any 'person" and are not limited with respect to their scope and application to a Managing Director as contended by the noticees. I am, therefore, of the view that for holding a person guilty of the contraventions of the provisions of regulations 3(c), 3(d), 4(2)(f) and 4(2)(k) of the PFUTP Regulations as alleged in the instant case, he need not be proved to be the Managing Director or a person holding an official position in the Company.

10. As regards allegation of contravention of the provisions of regulations 54(1) and 60(4) of the ICDR Regulations, I note that the scope of sections 11 and 11B is wide and not limited to the Managing Director or a person who holds any official position in the Company. I further note that regulation 107 of the ICDR Regulations clarifies, for the purpose of violations thereof, as to whom the directions under sections 11, 11A, 11B and 11D of the SEBI Act can be issued by the Board. Regulation 107 reads as under:-

*"**107.** Without prejudice to the power under sections 11, 11A, 11B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following:*

(a) directing the persons concerned not to access the securities market for a specified period;

(b) directing the person concerned to sell or divest the securities;

(c) any other direction which Board may deem fit and proper in the circumstances of the case:

Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned:

Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned."

11. In my view, the words *'persons concerned'* used in clause (a) of regulation 107 have specific purpose. It does not limit the scope and ambit of sections 11, 11A, 11B, 11D of the SEBI Act to a Managing Director or a person holding an official position in the Company. Rather, it clarifies that the directions under section 11 and 11B can be used against the *'persons concerned'*. Under the ICDR Regulations, for public issues and rights issues, Managing Director or a person holding an official position in the Company are not the only *'persons concerned'* . The promoters of the issuer are also *'persons concerned' f*or the issue. I note that for the purposes of ICDR Regulations the word *'promoter'* as defined in regulation 2(1)(za) includes;

(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered;

(iii) to the person of persons named in the offer document as promoter.

12. I also note that in respect of pubic issue, right issue, etc., the ICDR Regulations has further imposed various specific obligations and duties on the promoters since their commitments, undertakings, investments, etc. are likely to influence the investment decisions of the investors in the issuer. The persons who are in control of the issuer or who are involved in the plan or program of the issue and hold themselves out as promoter in the offer document are thus the '*persons concerned*' with the issue. Having made commitments, undertakings to investors in the offer document, the promoters cannot claim that they cannot be held responsible for any fraudulent plan, scheme or device of the issuer. In my view, therefore, for defaults of the Company the directions under sections 11 and 11B of the SEBI Act as clarified by regulation 107 of the ICDR Regulations can be issued to its promoter, Mr. A. Venkatramani also.

13. I note, from the disclosures made by the Company in its Letter of Offer and on BSE website, that Mr. A. Venkatramani is the promoter of the Company. In the Letter of Offer, Mr. A. Venkatramani had given undertaking on behalf of the entire promoter group to bring in the additional subscription so as to cover the unsubscribed portion if the minimum subscription amount is not received in the rights issue. Even though Mr. A. Venkatramani, Mr. Jude Jeyaprakash and other persons belonging to the promoter group were disclosed as such in the Letter of Offer, it was only Mr. A.Venkatramani who had intended and given undertaking to bring in the shortfall, if minimum subscription was not received. He had represented the Company before SEBI in the matter. I note that Mr. A. Venkatramani has been instrumental in the formulation of the plans and programme of the

Company with respect to and in connection of its rights issue and he had been actively involved in all acts and omissions of the Company in that regard. In the facts and circumstances of this case, it can also be reasonably inferred that on his directions or instructions, the Company is accustomed to function and operate. I find that he is the promoter within the definition of the term under regulation 2(1)(za) of the ICDR Regulations and was vitally active in the process of the rights issue and the activities thereafter. From these facts and circumstances, I find that Mr. A. Venkatramani had not merely lent his name as claimed by him. I, therefore, do not find any infirmity in the SCN issued to Mr. A. Venkatramani and reject the contention of the noticees in this regard.

14. The noticees have further contended that regulation 54 (1) of the ICDR Regulations does not cast obligation on the issuer and the obligation vests on the RTI. I note that as per regulation 54(1), the abridged Letter of Offer along with CAFs should be dispatched through '*registered post or speed post'* to all the existing shareholders at least 3 days prior to the opening of the issue. In my view, this provision does not operate in isolation and has to be looked at taking into account its purpose and objective and the whole regulatory scheme with regard to role of the issuer and intermediaries involved in the processes of dispatch of the CAFs along with abridged Letter of Offer. I am of the view that the purpose of this provision is to ensure that all the shareholders should receive the CAFs alongwith the abridged Letter of Offer so that they can exercise their investment decision with regard to their entitlement and subscribe in the rights issue and that the benefit of rights issue is not limited to a handful of shareholders, who are in charge of the affairs of the company or instrumental in formulation of plans of the issue and having inside information, and the persons associated/connected to them. To ensure the same, regulation 55(1) further obligates the issuer to issue the pre-issue advertisement disclosing therein the following:-

(a) the date of completion of dispatch of abridged letter of offer and the application form;

(b) the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;

(c) a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;

(d) a format to enable the shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;

(e) a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;

(f) a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.

15. Regulation 5 of the ICDR Regulations obligates the issuer to appoint SEBI registered intermediaries. As per this regulation, the issuer should appoint a Lead Merchant Banker and with his consultation it should appoint other intermediaries such as RTI. In terms of regulation 2(f) the RTI is appointed by an issuer to carry on the following activities on its behalf :

(i) collecting applications from investors in respect of an issue;

(ii) keeping a proper record of applications and monies received from investors or paid to the seller of the securities; and

(iii) assisting the issuer in:

(a) determining the basis of allotment of securities in consultation with stock exchange;

(b) finalising list of persons entitled to allotment;

(c) processing and dispatching allotment letters, refund orders or certificates and other related documents in respect of an issue;

16. I also note that regulation 60(6) of the ICDR Regulations obligates the issuer to obtain approval of the Lead Manager in respect of all public communications, issue advertisements and publicity materials and to make copies of all issue related materials available with him at least till the allotment is completed. As per regulation 67 of the ICDR Regulations, the post-issue merchant banker is required to maintain close co-ordination with the registrars to the issue. In this case, Vivro was to fulfill these requirements.

17. In view of the above provisions, I note that while assisting the issuer in dispatch of CAFs, etc., the RTI acts as its agent. Thus, primarily the issuer is under obligation to comply with regulation 54(1) of the ICDR Regulations. This compliance obligation is further reinforced by regulation 55 which obligates the issuer to issue the pre-issue advertisement to disclose the date of completion of dispatch of application forms alongwith abridged Letter of Offer and other measures to enable those shareholders to apply in the rights issue who did not receive the CAFs. In terms of regulation 60(6) of the ICDR Regulations, such advertisement is issued with approval of the Lead Manager who does so, on the basis of issue related material provided to it by the issuer and RTI. I am, therefore, of the opinion that all the three entities, i.e. the issuer, Lead Manager and RTI, have obligation to ensure the dispatch of the CAFs along with abridged Letter of Offer in terms of regulation 54(1) and one can not escape or avoid its obligation by passing the blame on the other.

18. The noticees have further contended that regulation 54(1) of the ICDR Regulations is open to challenge on the ground that it militates against section 53 of the Companies Act, 1956, and that the regulations framed in exercise of powers conferred under section 11A cannot frame a regulation abridging the rights and permission statutorily granted under the Companies Act, 1956 and imposing additional monetary burden on the Company. I note that in terms of section 53 of the Companies Act, a document may be served by a company on any member thereof either personally or by sending it by post to him to his registered address. However, the Central Government, has vide Circular No. 6 of 1992, dated September 03, 1992 clarified that "……*with a view to protect the interests of investors, the letters of offer for rights issue be also issued to the shareholders by registered post, in future*." Section 32 of the SEBI Act provides that the provisions of the said Act are in addition to the provisions of the Companies Act. I also note that, section 11A of the SEBI Act, empowers SEBI to specify, by regulations, the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies.Therefore, the provisions of the ICDR Regulations, that is framed in exercise of the statutory power conferred under sections 11A and 30 of the SEBI Act, are also in addition to the provisions of the Companies Act. I note that the provisions of regulation 54(1) of ICDR Regulations are not inconsistent with the provisions of section 53 of the Companies Act. Further, this regulation only reiterates the mode prescribed by the abovementioned Central Government circular and specifies additional alternative mode without diluting the requirements prescribed in section 53 and Central Government circular dated September 03,1992 and does not create any extra monetary burden as contended by the noticees. Further, the SEBI Act and the ICDR Regulations are special enactments intended also for the protection of interests of investors. Hence, in the matters of issue of capital, the issuer and other intermediaries associated with the issue of capital should also comply with the SEBI Act and the Regulations framed thereunder. I, therefore, do not agree with the aforesaid contentions of the noticees and hold that the Company was under a statutory obligation to ensure that the CAFs along with abridged Letter of Offer were sent to its eligible shareholders in terms of regulation 54(1) of the ICDR Regulations.

19. I note that many shareholders of the Company had complained that they have not received the CAFs for applying in the rights issue of the Company and were, therefore, not able to exercise their rights/entitlements. It is an admitted fact that there were total 9500 shareholders in the Company at the relevant time. There is no dispute as to the fact that only 439 shareholders including Mr. A. Venkatramani had subscribed in the rights issue of the Company and he had applied for substantially more shares than his entitlement as on the date of closure of the issue on December 16, 2010.

20. I note that during inspection, Knack was not able to produce any proof of dispatch of the CAFs to the Company's eligible shareholders and claimed that the CAFs were dispatched by the Company

itself. However, the Company, vide a newspaper advertisement dated November 15, 2010 published in the *"Financial Express "* and *"Dhinabhoomi"*, had stated that Knack had dispatched the CAFs to the equity shareholders of the Company whose names appeared in the Register of Members/ Beneficial owners of the Company on the Record date i.e. November 08, 2010, through *"Registered Post/Speed Post"* by November 13, 2010. On further inquiry about such contradictory statements, Knack had submitted that it had dispatched the CAFs to 9363 shareholders along with the abridged Letter of Offer on November 12, 2010 under *'certificate of posting'* and not through '*Registered Post or Speed Post*.' When such inquiries were being made by SEBI, the Company issued another advertisement on the date of closure of the rights issue on December 16, 2010 and announced that the CAFs were in fact dispatched through '*certificate of posting'* on November 12, 2010 and that the shareholders were inadvertently informed through the earlier advertisement that the Knack had dispatched the CAFs and the abridged Letter of Offer through '*registered post and speed post'*.

21. In support of its claim, Knack had submitted a copy of proof of the purported dispatch through '*certificate of posting*.' However, on confirmation being sought by SEBI on the said proof of dispatch, the Department of Post (T. Nagar Post Office, Chennai) had confirmed that the 9363 articles (*CAFs along with the abridged Letter of Offer*), claimed to be dispatched on November 12, 2010, was not at all booked under *speed post, registered post, unregistered mail or even under certificate of posting*. The Department of Post had given reasons for such confirmation as under :-

> *"If the article is booked under Speed Post, the postage charges for 336 grams is Rs.78/- and if it is registered post the postage charges are Rs.102/- and if it is unregd. Mails the postage is Rs.87/-. Receipt would be tendered in respect of speed post article and registered mail. If the articles are posted under certificate of Posting, the amount collected would be written in words and figures by the Mails PA for having received the articles."*

22. I note that in the case of *Akbarali A. Kalveri V Kinkan Chemicals P. Ltd. (1997) 88 Com Cases 245(CLB),* the Company Law Board (CLB) had expressed that service of documents *under certificate of posting* creates a very weak presumption of service *(under section 53 of the Companies Act)* because a certificate can be managed without actually putting the letters in the course of post. I further note that in the proof of dispatch submitted by Knack to SEBI, the amount of Rs.107/ was shown to have been incurred to dispatch one article. If the dispatch was made *under certificate of posting,* such amount is much higher than the amount payable (Rs.87/) as per the information on postage charges provided by the Department of Post. Since the above confirmation has been given by the Department of Post on the basis of its records, I do not agree with the contentions of the noticees and find that the CAFs were not dispatched even under *certificate of posting* as claimed by them. The noticees had initially represented that the CAFs were dispatched through *'registered post/ speed post'* by Knack and later on changed their stand and claimed that CAFs were dispatched under '*certificate of posting'* by Knack.

23. According to the noticees pursuant to an arrangement between Knack and the Company, Knack was to mobilize all the funds required in the rights issue and the same was to be reimbursed after the rights issue went through. The Company did not know how Knack mobilized the funds. During inspection, Knack had submitted that it did not receive any consideration from the Company for dispatch of CAFs. It had taken a loan of Rs. 10/ lakh in cash around November 5, 2010 for the said purpose from Mr. Kannan and Mr. Mani from Kumbakonam . Knack had also stated that it paid Rs. 10 Lakh in cash to one Mr Nilagandan , an agent whose address and contact details it did not know. This money was paid to him through a third person, whose identity Knack had refused to disclose. From, these vague and evasive statements of Knack also the reasonable inference would be that Knack did not dispatch the CAFs alongwith abridged Letter of Offer to all eligible shareholders.

24. In the above facts and circumstances of this case, I find that CAFs alongwith abridged Letter of Offer were not dispatched at all by Knack much less through the prescribed mode (i.e. *registered post or speed post*). I further find that since CAFs were not dispatched as claimed by Knack, the veracity of evidence produced by it is doubtful and they seem to be non-genuine and even forged. In the facts and circumstances it can not be ruled out that Knack was involved in forging the proof of dispatch. However, no material has been brought on record to establish the allegation that the noticees colluded with Knack in forging the proof of dispatch. Therefore, I give benefit of doubt to the noticees with regard to that allegation.

25. I note that during inspection Knack had informed that as on December 16, 2010 total 10 applications were received from public shareholders on plain paper. However, the inspection team has not examined as to how remaining 428 public shareholders had applied in the rights issue. I note that the Company has claimed that it had itself not dispatched the CAFs but it was Knack who had sent the CAFs to the shareholders. It has been established that Knack had not dispatched any CAFs alongwith abridged Letter of Offer to eligible shareholders of the Company. The Company has submitted that on receipt of complaints from few shareholders it had dispatched the CAFs to them. I find that the CAFs were thus provided to very few of the eligible public shareholders and a large number of the eligible public shareholders were deliberately deprived of the opportunity to exercise their legal entitlement to subscribe in the rights issue of the Company due to non-dispatch of CAFs to them.

26. I also note as on the date of closure of the rights issue on December 16, 2010, total 439 applications (*out of 9500 shareholders of the Company*) for value of Rs.31.92 crores were received in the rights issue from the shareholders of the Company out of which Mr. A. Venkatramani had subscribed to the tune of Rs.28.25 crores by way of four Cheques. The HDFC Bank, the Banker to the rights issue had reported that the cheques worth Rs.23.90 crores including the three cheques worth Rs.23.75 crores issued by Mr. A. Venkatramani towards subscription in the rights issue had bounced. As on the date

of closure on December 16, 2010 the rights issue appeared to be fully subscribed. However, as on December 24, 2010 the subscription amount in the rights issue was only Rs.8.12 crores as against the required minimum subscription amount of Rs.31.64 crores.

27. I note that in terms of regulation 14(2) of the ICDR Regulations in case of non-receipt of minimum subscription (90%), the application monies received in the rights issue should be refunded to the shareholders within 15 days of the closures of the issue. I also note that at page 36 of the Letter of Offer under the head 'minimum subscription" it was disclosed that-

"If our Company does not receive minimum subscription of 90% of the issue, the entire subscription shall be refunded to the applicants within 15 days of the closure of the issue, or if the subscription level falls below 90% after the closure of the issue on account of cheques having being returned unpaid or withdrawal of applications, our Company shall forthwith refund the entire subscription amount received."

28. I find that only 438 applications were received from the public shareholders of the Company and Mr. A. Venkatramani himself had applied to subscribe to the tune of Rs.28.25 crores (89% of the required minimum subscription amount of Rs.31.64 crores) without having sufficient funds in his account as on the date of the closure of the rights issue. Three out of four cheques issued by him for an amount of Rs. Rs.23.75 crores were dishonoured by the bank for want of sufficient funds in his account. In the facts and circumstances of the case, it can be safely inferred that Mr. A. Venkatramani was aware beforehand that the majority of the public shareholders will not be able to subscribe to the rights issue and the rights issue would not receive the minimum subscription on the issue closure date. The noticees have not been able to substantiate, through any evidence, their claim of having arrangement with financiers. Even if it is so, it further establishes that Mr. A. Venkatramani did not have money for subscribing shares to the tune of Rs.23.75 crores when he subscribed to 89% of the minimum subscription amount before the issue closure date knowing that very few public shareholders would be applying in the rights issue and the rights issue would not get the minimum subscription. In my view, Mr. A. Venkataramani, had subscribed to substantial portion of the rights issue without having sufficient funds in his account to show a misleading picture of rights issue having received the minimum subscription on the issue closure date.

29. I note that Mr. A. Venkatramani had brought in funds to the tune of Rs. 23.67 crores later on December 28, 2010 i.e. much after closure of the rights issue. Since the rights issue had failed to receive minimum subscription, the application monies had to be refunded within stipulated time in terms of the ICDR Regulations and disclosures made in the Letter of Offer. However, the application monies were not refunded till SEBI intervened on January 5, 2011 and instructed Vivro to instruct the Company to refund the subscription monies to the shareholders. Pursuant thereto, the Company refunded the subscription monies to the shareholders on January 08, 2011.

30. I note that Managing Director of Knack was employed in 2009 with Kaashyap Technologies wherein Mr. A. Venkatramani is Chairman and Managing Director and the premises from which Knack operates belong to Mr. A. Venkatramani.

31. I also note in the rights issue of the Company, shares were offered at par (Rs.10/per share). During the period when the rights issue was open for subscription and upto the first quarter of 2011, the share price of the Company at BSE was above the rights issue price. During the last quarter of 2011, the share price touched a high of Rs.34.45/. Thus, in my view, the subscription in the rights issue by public shareholders would have been advantageous to them. However, they were deliberately deprived of the opportunity to subscribe in the rights issue since the CAFs were not sent to them. I further note that as per regulation 3(1)(b)(ii) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (Takeover Regulations, 1997) *(since repealed*), substantial acquisition of shares and voting rights in the rights issue pursuant to subscription to unsubscribed portion by promoters is exempt from obligation to make open offer under those Regulations, if disclosures in that regard is made in the Letter of Offer. In this case, the disclosures about intent of Mr.A.Venkatramani that he would be subscribing to unsubscribed portion and that such subscription would be exempt under the Takeover Regulations were made in the draft Letter of Offer. Thus, the acquisition of equity shares shares/voting rights by Mr. A.Venkatramani in this case would have been exempt from making open offer under the Takeover Regulations, 1997. Therefore, apparently, by depriving the public shareholders from exercising their rights entitlement and subscribing in the rights issue, the immediate benefit could be to Mr. A.Venkatramani.

32. I find that in the facts and circumstances of this case, there is a strong preponderance of probability that a plan , scheme and device was orchestrated between the Company, Mr. A. Venkataramani and Knack to deliberately deprive the eligible public shareholders to subscribe and to enable Mr. A. Venkataramani to increase and consolidate his shareholding in the Company, by subscribing to shares beyond his entitlement under the guise of subscribing to unsubscribed portion of rights issue , at low cost and without attracting the obligation to make an open offer under the Takeover Regulations, 1997.

33. In view of the above, I find that in this case non- dispatch of CAFs, apart from being in violation of regulation 54(1) of the ICDR Regulations, was also used as device or artifice in the whole plan or scheme arranged by the noticees which operated as a fraud or deceit upon the investors in connection with subscription to the shares in the rights issue of the Company and is thus contravention of provisions of regulations 3(c) and (d) of the PFUTP Regulations by the noticees.

34. I note that in the advertisement issued by the Company on November 15, 2010, it declared that : *"…..: Members of the Company are hereby informed that the Abridged Letter of Offer (ALOF) dated October 26, 2010 along with CAFs for the issue has been dispatched by the Registrar to the Issue, viz. Knack Corporate Services*

Pvt. Ltd. Through Registered Post/Speed Post by November 13, 2010 to the Equity Shareholders of the Company whose names appeared in the Register of Members / Beneficial Owners of the Company on the Record Date i.e. November 8, 2010." In my view, the words '*Registered Post/Speed Post'* would connote either through *Registered Post* or *Speed Post* or both. However, admittedly, CAFs were not dispatched through *Registered Post or Speed Post* to the eligible shareholders. Admittedly, CAFs were not dispatched on November 13, 2010 and it is proved that they were not dispatched at all. Thus, this advertisement contained untrue, false and distorted statement. I have, hereinabove, already examined the scope and purpose of obligation of the Company under regulation 55 of the ICDR Regulations pursuant to which this pre-issue advertisement was issued by it. I note that as per sub-regulations (1) and (7) of regulation 60 of the ICDR Regulations such advertisement should contain only factual information and should be truthful, fair and should not be manipulative or deceptive or distorted. It should not contain any statement which is untrue or misleading. I further, note that as per clause (7) of the Model Agreement specified in Schedule II read with regulation 5(5) of the ICDR Regulations, it was obligation of the Company to ensure that the advertisement conformed to ICDR Regulations and the instructions of the Lead Manager and that it did not make any misleading or incorrect statement. In view of these provisions, the Company had to ensure that the pre-issue advertisement did not contain false, untrue and misleading statements.

35. The noticees have submitted that this advertisement was drafted by Vivro and sent to the Company on November 12, 2010 and that the particulars of dispatch remained blank since the CAFs had been dispatched subsequently. Further, the Company had accepted this draft advertisement before CAFs were dispatched. Hence, it could not have represented that CAFs were dispatched by RTI on November 13, 2010. In this case, it is established that the CAFs were not dispatched at all. I note that the advertisement was issued on November 15, 2010 and it was not impossible to mention November 13, 2010 as false date of dispatch, even if the draft advertisement was accepted by the Company on November 12, 2010. I further, note that in terms of regulation 60(6), the Company had to obtain approval of the Lead Manager, Vivro in respect of this pre- issue advertisement and to make copies of all issue related materials available with Vivro. Thus, Vivro was required to approve the same. While Vivro had to approve the advertisement on the basis of the information provided by the Company and Knack, the information regarding dispatch of CAFs had to be provided by the Company and Knack, Vivro was also expected to exercise due care while approving the content of the same. However, since conduct of Vivro is not part of these proceedings, I am not examining the same in this order. In my view, if Vivro had provided the draft of the advertisement on November 12, 2010, the true and correct facts about dispatch should have been furnished by the Company and Knack at least by November 15, 2010 when the advertisement was made by the Company. In this case, the Company had issued the advertisement that contained false, incorrect and misleading statements and therefore, it cannot escape the liability for those statements because the advertisement was drafted by the Lead Manager, Vivro. The intermediaries e.g. the Lead Manager

and RTI engaged by the issuer in rights issue act as agent of the issuer especially with regard to the dispatch of CFAs and as such the issuer is also liable for their acts/omissions.

36. In this case, the pre-issue advertisement was made by the Company on November 15, 2010. The rights issue opened on November 18, 2010 and closed on December 16, 2010. I find that if at all the CAFs were dispatched as claimed by the noticees, they should have taken corrective steps to disclose correct facts immediately after the advertisement was published. In this case, certain shareholders had also complained regarding non -receipt of CAFs. This should have also alerted the Company if something was amiss and it should have taken corrective steps during the period when the rights issue was open. However, no corrective steps were taken by the Company to make true disclosures about dispatch of CAFs. This shows that the noticees concealed the true fact that CAFs were not dispatched and misrepresented that CAFs were dispatched to shareholders through Registered Post/Speed Post on November 13, 2010.

37. I note that after completion of inspection of the books and records of Knack, SEBI, on December 03, 2010, inquired about the contradictory stands taken by Knack and the Company about dispatch of CAFs and insisted for evidence in that regard. Knack has changed its earlier stand and stated that the CAFs were despatched to the shareholders through certificate of posting on November 12, 2010. On December 16, 2010 i.e. the date of closure of the rights issue the Company issued another advertisement and announced that the CAFs were in fact dispatched through *certificate of posting* on November 12, 2010 and that they were inadvertently informed through the earlier advertisement that the Knack had dispatched the CAFs and the abridged Letter of Offer through '*registered post and speed post'*. I find that this advertisement was apparently as cover-up exercise of the noticees and Knack. If at all the noticees were to rectify any inadvertent mistake as claimed they should have issued such advertisement at an early date during period when the issue was open. I note that the advertisement issued by the Company on December 16, 2010 was also a false one as the CAFs were not dispatched at all to the shareholders even under *certificate of posting* which fact is evident from the confirmation given by the Department of Posts as already brought out above.

38. I note that being of the *prima facie* view that CAFs were not dispatched to the eligible shareholders and the Company had made false and misleading disclosures in the pre-issue advertisements and also taking note that on the date of closure of the right issue, the required minimum subscription was not received, SEBI as urgent measure ,vide letter dated January 05, 2011 advised Vivro to instruct the Company to refund the subscription monies to the shareholders in terms of the provisions of the ICDR Regulations and the Letter of Offer. However, on January 06, 2011, the Company disclosed to BSE that it decided to refund the application money received as the rights issue did not meet with the minimum subscription requirement. The actual refund was made on January 08, 2011. The Company has contended that the subscription monies were refunded only on the ground that it had undertaken and disclosed in the Letter of Offer to do so in case the minimum subscription was not

received. Hence, it was obliged to disclose only this in the BSE website on January 06, 2011. In the facts and circumstances discussed herein above, I find that the noticees were aware since inception that the minimum subscription would not be received in the rights issue. In any case, on the date of its closure on December 16, 2010, the rights issue was under subscribed and the Company had to refund the subscription monies within 15 days from that date in terms of regulation 14(2) of the ICDR Regulations and the disclosure made in the Letter of Offer. In the instant case, in my view, the refund should have been made immediately after December 16, 2010. However, this was not done till SEBI intervened in the matter for the reasons mentioned in its letter dated January 05, 2011. If non receipt of minimum subscription money was only ground for the Company to refund the subscription monies as contended by it, it should not have waited to make refund till January 08, 2011.

39. The noticees have, on one hand, stated that the refund was made in deference to SEBI's instruction and at other place they have contended that the Company did not receive any instruction from SEBI to refund the subscription money and SEBI had advised Vivro to instruct the Company to do so. In this regard, I note that in terms of the ICDR Regulations, the Lead Manager to the issue interacts with SEBI in the issue process. He represents the issuer as its agent. Accordingly, the letter dated January 05, 2011 was sent to it with advice to instruct the Company to refund the subscription monies because of the facts and circumstances and reasons mentioned therein. I find that the Vivro had forwarded a copy of the said letter to the Company and thus, the Company was fully aware of the facts and circumstances and reasons that had compelled SEBI to direct the refund of the subscription monies.

40. I note that regulation 60(4) of the ICDR Regulations, requires the issuer to make prompt, true and fair disclosure, by issuing public notices in all the newspapers in which pre-issue advertisement was issued, of all material developments which take place during the period between the date of filing the Letter of Offer with the designated stock exchange and the date of allotment of securities, which may have a material effect on the issuer company. In my view, the facts and circumstances as discussed above and also mentioned in SEBI letter dated January 05, 2011 were material developments under regulation 60(4) of the ICDR Regulations. Hence, in terms of regulation 60 (4) they were required to be disclosed by the Company by issuing public notice in all the newspapers in which the pre issue advertisement was issued by the Company on November 15, 2010. The noticees have also contended that regulation 60(4) is inapplicable to a case where the rights issue is dropped without leading to allotment of securities. In my view, the provision of regulation 60(4) has no ambiguity about the reference time for making disclosure required therein. As per this regulation the material development should happen between *"the date of filing of letter of offer with the designated stock exchange and the date of allotment of the securities"*. The material development occurring on any date during this period is covered under regulation 60(4). In this case, the rights issue was not dropped. It had failed and the subscription monies had to be refunded on account of material developments that had

happened within the specified period. I, therefore, reject this contention of the noticee. I also find that the public notice as required under regulation 60(4) was not issued at all. I find that by not disclosing those material developments and instruction of SEBI, in terms of regulation 60(4), the Company has undoubtedly withheld material information and contravened the said regulation 60(4). In the facts and circumstance of this case, I am of the view that the Company deliberately concealed the said material developments and represented to public and the stock exchange as if the refund were normal consequence of merely non-receipt of minimum subscription and everything else was fine with the right issue. I find that the Company had concealed the material facts from the investors and stock exchange and made misleading disclosure.

41. I, therefore, find that by not sending the CAFs to the shareholders, making false, untrue and misleading statements in the pre-issue advertisement and subsequent advertisements the noticees have engaged in a plan, scheme, artifice or device which operated as a fraud or deceit upon the shareholders in connection with subscription to shares of the Company in its rights issue. In this regard, I note that the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") in matter of *V. Natarajan vs. SEBI* (*Order dated June 29, 2011 in Appeal No.104 of 2011)* has held that *fraudulent or unfair trade practice in securities includes publishing any information which is not true or any advertisement that is misleading or contains information in a distorted manner*. The following observations made by the Hon'ble SAT in that case are worth mentioning:

> *"… 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. ……"*

42. Another allegation against the Company is that it did not enter into a valid agreement with Knack before engaging it as its registrar in the rights issue. The Company, while contending that there is no law which requires the issuer to enter into an agreement with RTI/STA, submitted that it had entered into a *Memorandum of Understanding* (*MoU*) dated January 21, 2010 with Knack. Since regulation 5(5) prescribes that the issuer company has to enter into an agreement as required under the respective regulations applicable to a registrar to an issue, I note that regulation 5(5) of the ICDR Regulations requires the issuer to enter into an agreement with the Lead Merchant Banker in the format specified in Schedule II thereof and with other intermediaries as required under the respective regulations applicable to the intermediary concerned. I note that while regulation 5(5) specified Model Agreement for lead merchant banker (Lead Manager) in Schedule II for the other

intermediaries it has incorporated by reference the requirements of applicable regulation. Thus, the agreement between the issuer and with RTI should satisfy the conditions mentioned in that regard under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 ("RTI Regulations"). In terms of regulation 9A(b) of the RTI Regulations, such agreement should be a *'legally binding agreement'* . I also note that SEBI Circular dated October 11, 1994 requires a registrar to an issue to enter into a '*legally valid agreement'* with the issuer and the said agreement should be stamped according to the local stamp laws for the time being in force at the place of execution. The words *'legally binding agreement'* and '*legally valid agreement'* are of much significance since the agreement contemplated in regulation 9A read with the aforesaid circular determines not only the *inter se* responsibilities and obligations of the issuer and RTI but also has a bearing on the rights and interests of the investors. Such agreement cannot be in the nature of informal arrangements like an MoU. Such agreements must be enforceable and binding written agreements as per applicable laws including stamp laws. I, therefore, find that the Company has failed to comply with the provisions of regulation 5(5) of the ICDR Regulations.

43. The SCN has also alleged that the Company did not hand over the signature records to Knack and thus it contravened the provisions of regulation 53A of the DP Regulations read with the SEBI Circular dated December 27, 2002. In note that regulation 53A of the DP Regulations requires that , all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by a STA. The afore-mentioned SEBI Circular SEBI Circular dated December 27, 2002 also mandates that all the work related to share registry in terms of both physical and electronic should be maintained at a single point i.e. either in-house by the company or by RTI/STA. The Company has not produced any proof to show that it has handed over the signature records to Knack. I note that records of signatures are very important in order to verify/cross check the signatures in the share transfer forms. Further, in the rights issue, signatures affixed in the CAFs have to be verified with the "*specimen Signature Cards*" in order to establish genuineness of shareholders. Therefore, by not handing over such records, the Company has failed to handle matters relating to transfer of securities, maintenance of records of shareholders, handling of physical securities etc, in one point, i.e., by its STA (Knack). I, therefore find the Company had contravened provisions of regulation 53A of the DP Regulations read with the SEBI Circular dated December 27, 2002.

44. In view of the above, I find that the noticees have contravened the provisions of regulations 3(c), 3(d), 4(2) (f) and 4(2) (k) of the PFUTP Regulations. In addition, the Company has also contravened the provisions of regulations 5(5) 54(1) and 60(4) of the ICDR Regulations and regulation 53A of the DP Regulations read with SEBI Circular dated December 27, 2002.

45. I note that the subscription monies received in the rights issue have been refunded by the Company and its promoter Mr. A. Venkatramani has not been able to subscribe to shares to his advantage over other shareholders. Further, Knack has also not acted in professional manner and has committed failures in fulfilling its obligations as RTI for which separate action has already been taken against it. Considering the facts and circumstances of the case restraining the noticees from buying, selling and dealing in securities and prohibiting them from accessing the securities market for a period of two years from the date of this order would be appropriate for the violations committed by them.

46. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of section 19 read with sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I, hereby restrain Ram Kaashyap Investments Limited and its promoter, Mr. A. Venkatramani from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of two years from the date of this order.

47. Show Cause Notices dated June 09, 2011 and June 30, 2011 issued to the noticees are accordingly disposed of.

48. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the direction given in para 46 above are complied with.

49. This order shall come into force with immediate effect.

Date : December 31st , 2012
Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA