IN THE SECURITIES APPELLATE TRIBUNAL
AT
MUMBAI

DATED THIS THE 24TH DAY OF JANUARY, 2025

**CORAM: Justice P. S. Dinesh Kumar, Presiding Officer**
**Ms. Meera Swarup, Technical Member**
**Dr. Dheeraj Bhatnagar, Technical Member**

**Appeal No. 687 of 2024**
**along with**
**(Misc. Application No. 1279 of 2024)**

Trafiksol ITS Technologies Ltd.
2nd Floor, B-68, Sector 63, Noida,
Gautam Buddha Nagar,
Uttar Pradesh – 201 301.

…. Appellant

By Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Agrawal, Mr. Rushin Kapadia, Mr. Kavish Garach, Ms. Aditi Sahu, Mr. Akarsh Tripathi, Ms. Mahima Jayan, Advocates i/b Regstreet Law Advisors for the Appellant.

**And**

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

2. BSE Ltd.

Floor 25, P. J. Towers,
Dalal Street, Mumbai - 400 001. …. Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Manish Chhangani, Mr. Atul Agrawal, Mr. Abhay Chauhan and Mr. Sumit Yadav, Advocates i/b The Law Point for the Respondent Nos. 1 (SEBI).

Mr. Tomu Francis, Advocate with Ms. Zarnaab Aswad, Mr. Apoorva Upadhyay and Mr. Tarun Toprani, Advocates i/b Khaitan & Co. for the Respondent Nos. 2 (BSE).

**THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED DECEMBER 3, 2024 (EX-A) PASSED BY WTM, SEBI.**

**THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON DECEMBER 17, 2024, COMING ON FOR PRONOUCEMENT OF ORDER THIS 24TH DAY OF JANUARY 2025, THE TRIBUNAL MADE THE FOLLOWING:**

## ***O R D E R***

**Per: Dr. Dheeraj Bhatnagar, Technical Member**

This appeal has been filed against the order dated December, 3, 2024 passed under Section 11(1) & (4) and Section 11B of

the SEBI Act[1] passed by the Ld. WTM[2] of SEBI[3], whereby the appellant company has been directed, *inter-alia,* to refund the subscription amounts to the successful investors and to cancel shares allotted to them pursuant to the Initial Public Offer (IPO) of the company on September, 16, 2024.

2. Brief facts of the case are as under:-

- The appellant is a public limited company engaged in providing Intelligent Transportation Systems (ITS) and automation solution for traffic management using latest technology including an Integrated Command Control Centre Software (ICCCS) for Highway segment.

- The company is one of the 4 companies eligible to bid for Government contracts for Intelligent Transport Systems (ITS) and its order book includes several projects of Government and PSU, including Advance Traffic management systems (ATMS) projects.

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1 SEBI Act - Securities & Exchange Board of India Act, 1992
2 WTM – Whole Time Member
3 SEBI – Securities & Exchange Board of India

- Based on its experience and knowledge of ICCCS, the company planned to participate in the Government's flagship Smart City Project and in the expectation of being able to serve as the core operational hub, considered procuring ICCCS application software, though it had no such order booked in this segment.

- In order to meet the procurement cost of this software (approx. Rs. 15 Cr.) and for meeting working capital requirement, etc., the company come up with Initial Public Offer (IPO) and in this regard following the due process and on obtaining the Board approval dated May 18, 2024, filed a Draft Red Herring Prospectus (DRHP) on BSE's SME Platform on May 31, 2024.

- On May 18, 2024 itself, the Board of company also separately '*took note of and approved'* the quotation no. TITPL/PL/01 dated May 16, 2024 of one M/s Oasis Corpcare Pvt. Ltd. (OCPL) for procurement of ICCC application software for possible use in the Smart city project for an amount of Rs 17.70 Cr. (inclusive of GST

of Rs 2.70 Cr). This quotation had validity of 4 months and was disclosed as part of DRHP/RHP with the disclaimer that the same was for budgetary estimate only and the said vendor has not been engaged.

- Thereafter, the Red Herring Prospectus (RHP) was filed on BSE's SME Platform on September 4, 2024. No observations were made by the Respondent No. 2 BSE qua DRHP/RHP at either stage.

- Thereafter, the IPO was in offering during September 10-12, 2024, and was highly successful with subscription of 345% and following the due process, allotment of shares was made to the eligible shareholders on September 16, 2024 in terms of approved methodology. The Listing was scheduled on the Bombay Stock exchange on September 17, 2024.

- Meanwhile, on September 16, 2024, a complaint was filed by the Small Investors Welfare Association (SIREN), *inter-alia,* alleging that the said OCPL is a shell company with questionable financials, engaged in

issuing fake invoices and the last available financial statements of 2020 and 2021 showed that it did not do any business during these years; had paid up capital of Rs. 1 lakh only and there was no GST registration, etc. This complaint was forwarded by SEBI to the BSE with an advice to take action, as deemed fit.

- Following this, BSE withheld the listing scheduled on September 17, 2024.

- Thereafter the Ld. WTM, SEBI passed an ex-parte interim order on October 11, 2024, thereby *inter-alia*, directing BSE for a detailed examination of disclosure made by the appellant company in its DRHP and directing BSE not to proceed with the listing further.

- Thereafter, SCN was issued on November 14, 2024 and after conducting inquiry and allowing the appellant an opportunity to cross-examine the witnesses, the final order was passed on December 3, 2024, which is impugned in this appeal.

3. Before us, Mr. Pradeep Sancheti, learned senior Advocate with Mr. Sumit Agrawal, Mr. Rushin Kapadia, Mr. Kavish Garach, Ms. Aditi Sahu, Mr. Akarsh Tripathi, Ms. Mahima Jayan, learned advocates for the appellant and Mr. Gaurav Joshi, learned senior advocate with Mr. Manish Chhangani, Mr. Atul Agrawal, Mr. Abhay Chauhan and Mr. Sumit Yadav, learned advocates for the SEBI and Mr. Tomu Francis, learned advocate with Ms. Zarnaab Aswad, Mr. Apoorva Upadhyay and Mr. Tarun Toprani, learned advocates for the respondent BSE made detailed submissions.

4. Before us, the learned Senior Advocate for the appellant Shri Pradeep Sancheti made the detailed submissions on the following principal grounds:-

a) directions in the impugned order are beyond the action proposed in the show cause notice dated November 14, 2024;

b) the impugned order is also premised on the allegations, which are admittedly not part of the show cause notice; and

c) there is no misstatement in the prospectus.

4.1. With regard to the first ground, the learned senior advocate submitted that the impugned order *ex-facie* travels beyond the action proposed under the show cause notice dated November 14, 2024 as in the impugned order, directions to the company for effective cancellation of IPO and for refunding the money to the investors have been issued, whereas in the show cause notice, while seeking explanation, the appellant was asked as to why *"suitable directions, including the direction to provide the investors who have been allotted shares in the issue an option to withdraw, should not be issued."*

4.2. Relying on the decision of the Hon'ble Supreme Court of India in the case of ***Gorkha Security Services vs. Government (NCT of Delhi) and Ors. [(2014) 9 SCC 105],*** Mr. Sancheti submitted that there was violation of principles of natural justice, as the show cause notice was silent about the respondent likely to issue direction for cancellation of IPO. In this regard, the learned senior advocate drew our attention to Paragraph No. 27 of the said order, which reads as under :-

> *"27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."*

Our attention was also drawn to the decision of the Hon'ble Supreme Court in the case of ***UMC Technology Pvt. Ltd. [(2021) 2 SCC 551],*** wherein the same principles were reiterated.

4.3 It was submitted that the impugned order was premised on certain allegations that were not part of the show cause notice. The learned senior advocate submitted that while in the para no. 6 of the show cause notice, findings of the investigations were presented under three heads, the para no. 7 of show cause notice limits the scope of proceedings covered under the show cause notice to *"material*

*misstatement in the prospectus concerning the object of the issue identified during the investigation."*

It was submitted that the same position has been reiterated in the impugned order in para no. 7 and 8 and the following other two aspects of the investigation have not been addressed:

i. intent of diversion of funds through misleading object of the issue; and

ii. concealment of the material facts in the prospectus.

The learned senior advocate contended that these other aspects may have weighed with the learned WTM in justifying the impugned order, which is an error apparent on the face of the order since the issues which were expressly out of the scope of the show cause notice, found place in the reasoning given by learned WTM (even though not decided in the order).

4.4 With regard to merit of the issue, Mr. Sancheti pleaded that there is no misstatement in the prospectus as alleged in the impugned order, based on which refund of proceeds and cancellation of IPO has been directed. He submitted that the

directions have been issued by the learned WTM only by casting doubts on genuineness of the quotation received from M/s OCPL disclosed in the prospectus, which was explicitly mentioned to be for budgetary estimate purpose only and there was clear disclosure that the appellant was not bound to engage M/s OCPL for procuring software.

4.4.1 It was submitted that in Schedule VI of the SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, the provisions of sub-clause 7(b)(ii) of paragraph No. 9 (‘Particulars of the Issue’) provide that if one of the objects of the issue is to fund a project, in case machines are yet to be delivered, the date of quotations relied upon for the cost estimates given shall also be mentioned in the prospectus. Learned senior advocate argued that the said quotation received from M/s. OCPL was only a budgetary estimate in respect of which due disclosure was made in the prospectus in terms of the aforesaid ICDR Regulations.

4.4.2 Our attention was drawn to the Section-V of DRHP filed by the appellant, titled ‘Particulars of the Issue’, the ‘Objects of the Issue’ segment of which reads as under:-

*"2. Utilization of net proceeds*

*The Net Proceeds are proposed to be utilised in the manner set out in the following table:*

| ***Sr. No.*** | ***Particulars*** | ***Amount (Rs. in Lakhs)*** | ***% of Gross Proceeds**** | ***% of Net Proceeds**** |
|---|---|---|---|---|
| *1.* | *Purchase of Software* | *1,770.00* | *39.45%* | *42.26%* |
| *2.* | *Repayment / prepayment, in part or full, of certain of our borrowing* | *550.00* | *12.26%* | *13.13%* |
| *3.* | *To Meet Working Capital Requirements* | *1,040.00* | *23.18%* | *24.83%* |
| *4.* | *General Corporate Purposes* | *828.00* | *18.45%* | *19.77%* |
| *5.* | *To meet Issue Related Expenses* | *299.00* | *6.66%* | *7.14%* |
| | ***Total **** | ***4,487.00*** | | |

*# The amount to be utilised for general corporate purposes will not exceed 25% of the Gross Proceeds.*

*"3. All quotations mentioned in this section are valid as on the date of this Prospectus.* ***However, we have not entered into any definitive agreements with any of these vendors and there can be no assurance that the same vendor would be engaged*** *to eventually supply the software at the same costs. We are yet to place orders for the software. The Proposed Objects may be subject to the risk of unanticipated delays in implementation, cost overruns and other risks and uncertainties. If we engage someone other than the vendors from whom we have obtained quotations or if the quotations obtained expire, such vendor's estimates and actual costs for the services may differ from the current estimates.*

*……..*

*4. Details of the objects of the issue :*

***1. Purchase of Software.***

*The Company is in need of an Integrated Software Control Centre (ICCC) to function as the core operational hub for smart cities. This ICCC will act as the central nervous system, seamlessly integrating various subsystems to optimize urban operations. Offering capabilities such as real-time monitoring, data analytics, and coordinated responses, it aims to elevate governance standards and citizen services. ……..*

*Below is the estimated cost* ***towards purchase of software*** *–*

| ***Sr. No.*** | ***Particulars*** | ***Type*** | ***Quotation Details*** | ***Units*** | ***Quotation Amount (in Lakhs)*** |
|---|---|---|---|---|---|
| *1.* | ***Computer Application Software with IPR.***<br><br>*ICCC Platform for Smart Projects Including Configuration & Integration of ICCC With Various Smart City Applications Like Intelligent Traffic Management, City Surveillance, Digital Services, E-Health Services E-Gov Applications, IOT Controls and Comprehensive AI Based Analytics and Dashboard, to Provide Integrated Workflow For Smart City Functions.* | *Software* | ***Quotation Date*** *– May 16, 2024*<br><br>***Quotation from :-***<br>*OASIS CORPCARE PVT. LTD.*<br><br>***Quotation Reference No.:*** *TITPL/PL/01*<br><br>***Validity:-***<br>*4 months from the date of quotation* | *1* | *1,770.00* |
| | ***Total*** | | | | **** 1,770.00*** |

**The above amount is inclusive of GST. Quotation is subject to additional costs including installation and commissioning costs, insurance, duties and other government levies, as applicable shall be paid out of Internal Accruals.*

***Notes****:*

*a) We have considered the above quotations for the budgetary estimate purpose and have not placed orders for them.*

*The actual cost of procurement and actual supplier/dealer may vary.*

*b) Quotation received from the vendor mentioned above are valid as on the date of this Prospectus. However, company have not entered into any definitive agreements with the vendor and there can be no assurance that the same vendor would be engaged to eventually supply the machineries/equipment's or at the same costs.*

*c) The Software model as stated above to be purchased are based on the present estimates of our management. The Management shall have the flexibility to revise such estimates (including but not limited to change vendor or modification/addition/deletion of software) at the time of actual placement of the order."*

***[Emphasis supplied]***

Learned senior advocate submitted that in the notes below the table, it was clearly disclosed that the company has considered the above quotation for budgetary estimate purposes only and has not placed orders to them. Further, it was reiterated in the said note that the company had not entered any definitive agreement with the vendor and the same vendor may not be engaged.

4.5 It was submitted that even the learned WTM in the impugned order (para 40) admits that ICDR Regulations

permit company to rely on quotations for estimating the cost of contracts that have not been awarded. However, he has upheld the charges made in the show cause notice by holding that the quotation was from a company which was allegedly a Shell company. Mr. Sancheti submitted that there was no allegation that the amounts of estimate of budgetary allocation made in the prospectus were incorrect and submitted that another quotation received later, from M/s. Logiciel Solutions Pvt. Ltd. dated August 29, 2024 was also in the same price range (it was submitted by appellant to the respondent no. 2 BSE). The quote from that company is of Rs. 15.50 crore plus GST. He submitted that while in the show cause notice, there was a charge of non-disclosure of this quotation but the same does not find place in the impugned order.

The learned Senior Advocate submitted that the allegation made in the show cause notice that the disclosure made in the prospectus regarding "*acquisition*" of software from M/s. OCPL was misleading, is factually incorrect as in the prospectus, there was no disclosure regarding "*acquisition*" of software from M/s. OCPL. With regard to the allegation that

the management of appellant company may have been aware of doubtful credentials of OCPL, it was submitted that the appellant had only forwarded the same as also the credentials of the promoters of OCPL, as received from OCPL.

4.6 Mr. Sancheti submitted that no doubts were ever raised against the credentials of noticee company. Even in the impugned order, it is observed that the company has sound credentials, which is evident by the fact that it is already providing Intelligent Traffic Solutions (ITS) for a number of highway projects of the government and its order book is rich with good number of projects from government/government companies. Further, he submitted that the company's profits have been growing at an impressive growth rate, which may have seen a reason for success of IPO, which was subscribed 345 times by the investors. The learned Senior Advocate also informed that the company has well known shareholders including financial entities such as credit Axis Life Insurance Pvt. Ltd., Bupa Securities Europe SA, Citi group Global Market Mauritius Pvt. Ltd., Central Bank of India, RBL Bank, ICICI Bank, Federal Bank, AU Small Finance Bank etc. Since

the appellant has significant knowledge, skill and experience in the field of providing Independent Transport Solutions (ITS), it is hopeful of getting opportunity in the Smart City project of the Government of India, for which purpose the IPO was floated for mobilization of funds.

Under the circumstances, there is no reason to doubt the credentials of the appellant company based on inquiry of OCPL, from whom quote was obtained for the limited purpose of making budgetary estimate and no contract was awarded to it till that date.

4.7 Mr. Sancheti submitted that there was no finding in the impugned order as to how taking the quotation from OCPL was part of a scheme of diversion of IPO funds, however, the learned WTM has recorded a finding that the appellant company had deliberately entered into arrangement with a company of doubtful credentials such as OCPL, whereas considering the knowledge and expertise of software sector, the company management ought to have had knowledge about the credentials of OCPL and its capability in providing software solutions.

Learned senior advocate also submitted that quote from another entity M/s. Logiciel Pvt. Ltd. was in similar range, and hence the allegation of diversion of IPO further remains unsubstantiated. Further, there is no finding on record to suggest that the quotation from OCPL was part of a scheme to divert IPO proceeds. Learned WTM has not given any finding by stating that these questions remained unanswered due to the complaint and subsequent regulatory intervention.

4.8 Learned senior advocate also submitted that the appellant had no connection or involvement in the operations of OCPL and the allegation of violation of PFUTP Regulations fails as respondent No. 1 failed to demonstrate the element of "fraud" and the entire finding is based on conjunctures and surmises, since the quotation was taken only for budgetary estimate purpose and that the appellant was not aware that the OCPL is allegedly a shell company.

The learned senior advocate, in this regard, relied upon the decision of this Tribunal in the case of ***Arshad Warsi & Anr. vs. SEBI Appeal No. 254 of 2023 decided on March 27, 2023***

and contended that action cannot be taken on the basis of mere conjunctures and surmises. Relying upon Order 30, Rule 5 of CPC 1908, it was submitted that it is well established that such a preventive measure cannot be undertaken in routine manner and has to be taken only in extreme circumstances.

The learned senior advocate submitted that the impugned order will not be in the interest of the investors and will cause irreparable damage to the business of the appellant company. The learned Senior Advocate also pleaded that the order was passed by the same WTM, who was the author of ad-interim ex-parte order and, therefore, the impugned order cannot be considered to be free of bias.

4.9 Keeping in view the above, he urged to consider following alternative pleas as under:-

i. Allowing the investors to withdraw their bids as was directed by the NSE in coordination with SEBI, in case of the IPO of C2S Advance System Ltd., where a complaint was filed.

ii. Alternatively, since the issue was oversubscribed, the other investors, who could not be allotted shares, may be allotted shares in lieu of such successful allottees, who decide to avail the proposed option to exist. Alternatively, promoters may be allowed to fill in the gap in such case.

iii. A monitoring committee may be set up by the BSE for monitoring the use of IPO proceeds.

5. In response, the Ld. Senior advocate of Respondent No.1, Mr. Gaurav Joshi made detailed submissions. Respondent No. 2 filed a written submission stating that they would adopt the stand taken by the respondent No. 1.

5.1 With regard to the first argument of the Ld. Sr Advocate of the appellant that the **directions in the impugned order are beyond the action proposed in the show cause notice** dated November 14, 2024, Mr. Joshi submitted that the reliance on the decision of Hon'ble Supreme Court in Gorkha case (supra) is misplaced. It was submitted that in the show cause notice (in para 49), it has been categorically been proposed to issue *'suitable directions'* under Section 11(1),

11(4) and 11B ***including*** an option to the allottee to withdraw their subscription.

The learned senior advocate submitted that it is evident from the language of the show cause notice that this was not the only direction and the learned WTM was well within his powers to issue any other suitable directions and he has exercised an option by directing to refund the entire amount of subscription to the successful allottees and to cancel shares allotted to them. The learned senior advocate relied upon various authorities, in which it has been held that the power of SEBI under Section 11B are wide enough to issue a direction for refund. In this regard, reliance was placed on the following decisions:-

***1. Bank of Baroda v. Securities and Exchange Board of India [2000 SCC OnLine SAT 2],***

***2. Sahara India Real Estate Corporation Limited and Others v. SEBI (2013) 1 SCC 1,***

***3. Devendra Kumar Sharma &Anr. v. SEBI [Order dated 05.07.2023 in Appeal No. 893 of 2022],***

***4. PratibandlaVenkatla v. SEBI [2023 SCC OnLine SAT 1058].***

5.1.2 The learned senior advocate also drew our attention to the decision of this Tribunal in the matter of ***Parsoli Corporation Limited v. Securities and Exchange Board of India [2011 SCC OnLine SAT 106]***, wherein it is held thus:-

> *"14. The words* ***"which may include"*** *as mentioned in paragraph 25 leave no room for doubt that the proposed action of debarring the appellants from accessing the securities market* ***was not exhaustive and that such other directions which the Board is competent to issue under these provisions could also be issued if the allegations enumerated in paragraphs 3 to 23 of the show cause notice were established. We have already observed that the Board is competent to issue such directions as may be necessary to protect the interests of the investors."***

5.1.3 Learned senior advocate argued that disclosure is the rule without there being any exception and even a half-truth intended to deceive investors in a prospectus is no better than

complete falsehood and submitted that a Regulatory Body like SEBI is fully empowered to take both preventive and corrective actions against such misstatements. In this regard, reliance was placed on the following decisions:-

1. ***Pramatha Nath Sanyal v. Kali Kumar Dutt [1924 SCC OnLine Cal 115],***
2. ***M.K. Srinivasan &Anr. v. Emperor [1943 SCC OnLine Mad 33];***
3. ***Kismukh Krishna Sinha v. SEBI [2010 SCC OnLine Del 1448];***
4. ***Electrosteel Steels Ltd. v SEBI [2019 SCC OnLine SAT 244];***
5. ***Sandeep Baid v. SEBI [2016 SCC OnLine SAT 296];***
6. ***Sahara India Real Estate Corporation Limited and Others v. SEBI [2013 1 SCC 1];***
7. ***Brooks Laboratories Ltd. v SEBI [2018 SCC OnLine SAT 86]; and***
8. ***Tijaria Polypipes v. SEBI [2016 SCC OnLine SAT 266].***

5.2 With regard to the second line of argument of the Ld. Sr. Advocate for the appellant that the impugned order is also premised on the allegations which are admittedly not part of the show cause notice, Mr. Joshi submitted that the crux of the allegations on which the impugned order is based is mis-statement in the prospectus of taking a quotation from an

entity with doubtful credentials and since it was the responsibility of the appellant company to verify correctness of the disclosure made in the prospectus, directions were issued in the impugned order based on inquiry conducted and following the show cause notice.

5.3 Mr. Joshi contended that the core finding in the impugned order is "*material misstatement in the prospectus of the appellant,"* which has not been rebutted by the appellant in any form or manner. The learned senior advocate submitted that it is undisputed that, -

(i) the erstwhile 100% shareholder/owner of OCPL, Mr. Kishanlal Kumhar has deposed on oath that the quotation of OCPL was obtained and provided to the appellant in lieu of assurance of a commission of Rs. 50 lakh and the said statement has not been rebutted in any manner and the appellant was also given an opportunity to cross-examine but it did not avail the same. The following excerpts from Kishanlal's statement were relied upon in support of the above:

*"Vijay uncle told me that an advance of 10% of the quotation amount which will be received from Mr. Jitendra Das, from which I will get 50 lacs commission from the advance and if required, he will get the software built from other vendors".*

(ii) The said OCPL had not filed its financial statements with the Ministry of Corporate Affairs and when appellant was asked in this regard, the financial statements were generated on the same day while the enquiry was in progress.

(iii) The avowed main Object of the IPO being procurement of an integral application software for supporting ICCC software, the appellant and its Managing Director ought to have made sincere efforts to identify a genuine software provider of repute and capability. However, strangely the promoters/Managing Director of the appellant-company reached out to OCPL, a company of doubtful credentials with no background in software and in fact met the owner of OCPL only after the

respondent had initiated the action for deferring the listing.

(iv) The profile of OCPL and its Directors in no way suggests that they are in the business of software making and during the course of inquiry, the entities to which OCPL claims to have supplied software, denied having known OCPL or having any business relation with it.

5.4 The learned counsel submitted that purchase of the software was the major object of the Issue, the importance of which may be gathered by the Board Resolution of the appellant dated May 18, 2024, which states that the said software *"shall form an integral part of the object of the issue proposed to be raised through the public issue of the company"*, however the company's management reached out to an entity with no credentials in software sector, despite themselves being an established software application company in transport sector.

5.5 Regarding the credibility of OCPL, the learned Sr. Advocate drew our attention to the statement on oath of Mr.

Kishanlal Kumhar, the erstwhile 100% shareholder of OCPL, who had clearly mentioned that the said entity was not doing any business till October 2023 and with regard to the procurement of the software for the appellant-company, he was approached by a middleman, namely, Mr. Vijay Oswal on whose advice he agreed to provide a quotation of the OCPL to the appellant-company for a commission, on behalf of Mr. Jitendra Das Director of the appellant company.

5.6 Further, the learned counsel submitted that even though the Board of Directors of the Company had *'approved'* procurement of software from OCPL, the Board of Directors did not pay attention to the fact that this standalone quote was in violation of their own purchase policy and that neither the purchase committee, Board of Directors nor the Merchant Banker had noted that there was no annual report, balance sheet or profit and loss account of OCPL for the FY-2022 to FY-2024. Eventually later, when inquired during these proceedings, these were got prepared in a hurry during inquiry and got audited through Whatsapp circulation on one single day i.e. September 18, 2024.

5.7 Further, the learned Senior Advocate submitted that as stated by Mr. Kishanlal in his statement, the Managing Director of the appellant company Mr. Jitendra Das met the middleman Mr. Vijay Oswal and Mr. Kishanlal for the first time only after the IPO was put on hold following the inquiry initiated by the respondent. Shri Joshi also submitted that the financials of OCPL show that it did not have any business in FY-2020 and FY-2021 and had total capital of Rs. 1 lakh with no sales/ purchase or any expenditure recorded.

5.8 The learned senior advocate refuted the explanation of the appellant that obtaining quotation from OCPL was only for budgetary estimate purposes and was in accordance with the purchase policy of Company by submitting that the vendor identification and RFQ[4] Clause of the purchase policy provide that a minimum of three offers shall be arranged against each indent for Tecno-Commercial evaluation, which was not followed in this case.

[4] RFQ= Request For Quotation

5.9 Regarding appellant's argument that it had obtained one more quotation from Logiciel Solution Pvt. Ltd. after filing DRHP on August 29, 2024, the learned senior advocate submitted that the same was never disclosed in the RHP filed on September 04, 2024 and there was no board resolution for this quotation.

5.10 The learned senior counsel also pointed out that there was inconsistency in the reply of appellant dated October 17, 2024 with the submission of the Merchant Banker M/s Ekadrisht (ECPL) and the Board Resolution dated May 18, 2024. It was brought to our notice that the Merchant Banker in the reply dated September 18, 2024 to BSE had submitted that the decision to 'purchase ICCC Platform Software' was made collaboratively by the management and the purchase department following their purchase policy and vendor selection process, which was relied upon by the Board of Director.

Similarly, in the Resolution passed by the Board of Directors dated May 18, 2024 the Board had *'taken note and approved to purchase a highly specialized computer*

*application software ICCC platform for smart city projects from the IPO proceeds'*. However, in its reply dated October 17, 2024 the appellant had submitted that *'Trafiksol wanted to* ***outsource*** *some modules of the development work and jointly develop the ICCC software with a professional software company".* The learned senior advocate submitted that the same was also not disclosed in the prospectus.

Regarding appellant's submission vide email dated October 17, 2024 stating that 'comprehensive due diligence of OCPL was not conducted at the time as management was in the process of reaching out to additional vendors to obtain more competitive quotes', it was submitted that this was contradicted by the reply of the merchant banker dated September 18, 2024, in which it was informed that the Board of the appellant company had "*approved*" procurement of the software after considering the documents of OCPL including its brief profile, quotation received, software projects and pipeline etc.

5.11 The learned senior advocate submitted that it is evident that though the prospectus for the IPO for disclosing the

deployment of the proceeds of the issue quotations may be relied upon, where an award has not been given. However, this does not mean that such quotations can be obtained from entities of doubtful credentials with no possibility of being able to develop software, or provide or procure software from third parties. The learned senior advocate submitted that the fact that Mr. Kishan Lal, the erstwhile 100% owner of OCPL has stated on oath that he was assured of commission of Rs. 50 lakhs for his role to provide a quote, and that the detailed technical proposal was in fact provided by the appellant-company itself through Mr. Vijay Oswal, clearly shows that the quote was not genuine.

6. We have carefully considered the facts of the case in the light of the rival submissions. Taking into consideration all relevant facts gathered, we proceed to decide the core issue in the matter, i.e. 'Mis-statement in the prospectus':-

(i) We note that it is not the case of the respondent that the credentials of the appellant company were doubtful. Evidently the company has significant experience, knowledge and skill in providing intelligent transport

solutions (ITS) to several Government departments and PSUs in transport sector and has an impressive order book of such transport sector projects. The company has been consistently making high profits and has credible financial institutions as shareholders, which is evident by the fact that its Initial Public Offer (IPO) for the avowed purpose of developing an ICCC application software for the Smart city projects, was welcomed with open hands by the investors, both retail and institutional, and was over-subscribed by 345%. We find that the Ld. WTM has also not expressed any doubts about that. Therefore, reliance on the credentials of the appellant company is of no assistance in the matter. On the other hand, company's experience and knowledge of transport related software puts greater onus on it in selecting the right software provider.

(ii) As per the provisions of paragraph (9) of Schedule-VI of the ICDR Regulations, 2018, evidently disclosure of date of a quotation in the prospectus is needed, where contract has not been awarded and hence the claim by the appellant that such a quotation was for budgetary

estimate purposes is not considered as unusual. Further, the validity of such a quotation was for four months out from the date of the quotation i.e. May 16, 2024 which would have expired on September 15, 2024. The appellant claims to have an alternative quotation from M/s. Logicial dated August 29, 2024, though the same was not disclosed in the DRHP or the final prospectus filed. The appellant has vehemently argued that it is in negotiations with the said company, whose quotation of Rs. 15.50 crore (Ex-GST) was in similar vicinity to quotation by M/s. OCPL.

(iii) It appears that BSE did not make any deeper scrutiny other than ticking the boxes in respect of DRHP, whereas a specific complaint filed by SIREN brought out specific allegations against OCPL, which were later got largely confirmed on inquiry by the respondents. These allegations *inter-alia* were:

(a) Oasis is a shell company engaged in giving fake invoices;

(b) Oasis as a company booked the first ever sale on June 2, 2024 only;

(c) Company did not file Financials for last 2 Financial years and not registered withGST/EPFO; and

(d) It did not generate a single invoice for software.

(iv) The investigation by the respondent confirmed that the said Oasis did not do any business till October 2023; had no credentials for procuring or developing software; had zero income/expenses for previous two financial years for which financials were available and had a share capital of merely Rs. 1 lakh. Further, the company's small office was found locked and without any employees. The Company's erstwhile 100% shareholder Mr. Kishanlal has stated on oath that this quotation was got procured from them for a consideration of Rs. 50 lakhs through a middleman. This statement has remained uncontested as the appellant admittedly did not avail the opportunity to cross-examine.

6.2 In our considered view, safeguarding the interests of the public shareholders particularly the retailers, is of paramount importance for all stakeholders of the capital market in a large country like India with significant asymmetry in capital and financial literacy. In view of this, *adequacy and correctness* of disclosure in Public Offers cannot be compromised. The appellant Company while going for Initial Public Offer for inviting subscription from public at large, was duty bound to obtain quotation from a genuine software provider entity for the purpose of vendor selection for an important software, which in their scheme of things, was going to be integral object of the Issue. Despite being in the ITS sector, the company did not make desired professional efforts to evaluate whether the quotation by OCPL was genuine or not. We find that the quotation was received on May 16, 2024 and within two days on May 18, 2024, the Board of directors of the Company "*noted and approved*" procurement of ICCC software from the said vendor, even though in the DRHP dated May 30,

2024, in the notes to the 'Deployment of proceeds' segment, it has been qualified that no definitive agreement was signed with the said vendor and the Company may change vendor or quotation per se.

6.3 We also note that the decision of the Board of directors of the Company in '*approving'* the purchase of software without due verification of credentials of the vendor and in utter disregard to its own purchase policy, which provides for taking at least three quotes for such an indent, did not the desired corporate governance norms. Surprisingly the purchase committee of the company, which ought to have examined the credentials of the vendor in details and assessed whether the vendor had deserved capability to provide ICCC software in the given time-frame, cleared the quote merely on the basis of GST returns filed for last two months, which obviously are of no technical assistance for deciding purchase of software. The committee also ignored that there was no business of OCPL during the FY 2020 and FY 2021 for which financials were available and turned blind eye on the absence of financials for the last 2 financial years i.e. FY2022 and FY 2023. We find that even the

merchant banker has not done proper due diligence and has merely gone by the decision of the Board of directors for carrying out due diligence with regard to the Oasis.

6.4 The Company has mentioned in the prospectus and in its submissions about the rich experience, knowledge and skills in ITS sector of the Company and in particular, its Managing Director Mr. Jitendra Das. However, despite such a significant experience and success in implementation of ITS projects involving use of software, the appellant rather preferred to approach a middleman to access an entity such as Oasis with no credentials in providing software solution, for obtaining the quotation for ICCC application software, which statedly is integral to their expected Smart City Projects Pipeline.

6.3 The learned Senior Advocate for the respondent has cited the statement of erstwhile 100% shareholder of OCPL (Mr. Kishan Lal), which clearly shows that the entire process of reaching out to Oasis through Vijay Oswal to procure a quotation was a sham transaction. If an established software player follows such a methodology to

reach out to an entity with doubtful credentials, with an offer of commission of Rs. 50 lakhs for procuring quote from a Third Party, in our considered view, it cannot be treated as ‘genuine’ quotation and therefore we are not persuaded to accept the argument that the Company had made the disclaimer that such a quote was for budgetary estimate only. Therefore, we hold that the company’s claim with regard to its *adequacy* and *correctness* of disclosure in the prospectus was not bonafide and satisfactory.

6.5 The alternate explanation given by the appellant that the quote from OCPL was comparable with another quotation received by company from M/s Logiceil dated August 29, 2024 has no merit since the Board of the directors of the Company had already *approved* purchase of ICCC software from OCPL on May 18, 2024 and Logiceil quote did not have Board’s approval nor was disclosed in DRHP/RHP. We, therefore, find no merit in the argument that the quotation from Oasis was only for budgetary purposes. In our view, the manner of obtaining quote from a such a doubtful entity cannot be countenanced.

6.6 In the disclaimer section of the prospectus, it is stated that the '*Company is responsible for adequacy, correctness and accuracy of the facts disclosed*'. Considering the above, we of the view that the respondent is right in holding that the said disclosure in respect of quotation from an entity such as OCPL, was a mis-statement. A listed entity has additional responsibility to its shareholders and when it comes with an Issue for public at large, it is required to ensure that the disclosures made in the prospectus are not only adequate and correct but genuine. The appellant Company has failed to meet the said requirements.

6.7 With regard to the other arguments of the appellant Company that the impugned order has exceeded the scope of SCN, the learned Senior Advocate for the respondent is right in his submission that the language of show cause notice fully covers any suitable directions which could also **include** the directions to refund the subscription amount to the successful allottees and hold that the reliance placed by the learned Senior Advocate of the appellant on the Gorkha

(supra) and other decisions, is misplaced. We have also taken note of the various decisions cited by Shri Joshi, learned Senior Advocate with regard to powers of SEBI under Section 11B to issue directions for refund and find merit in relying upon them.

6.8 The appellant has submitted that instead of directing mandatory refund of the money and cancelling the shares, investors may be given an option to withdraw and those who want to continue with the Company may be allowed to hold the shares allotted to them, as was directed in the case of C2C Advance System Ltd. We may record that in that case, detailed enquiry was not carried out by SEBI to conclude that quotation was obtained from an entity with doubtful credentials. Moreover, we find that the appellant has scant regard to the disclosure norms of ICDR Regulations and to the concerns of public shareholders, therefore, no useful public purpose will be served by allowing the IPO to proceed further, at this stage.

6.9 Therefore, we do not find merit in the alternative plea that the IPO may be allowed to proceed further subject to

monitoring of the deployment of proceeds by an agency to be appointed by SEBI/ BSE.

7. In view of the above discussion, we find no merit in this appeal. Hence, the following:-

***ORDER***

i. The appeal is ***dismissed;***

ii. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

24.01.2025
PTM