

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**AD-INTERIM EX-PARTE ORDER UNDER SECTIONS 11(1), 11(4) 11A AND 11B  
OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE  
MATTER OF BHARATIYA GLOBAL INFOMEDIA LTD. AGAINST**

**1. Bharatiya Global Infomedia Ltd.** (PAN: AABCB8175B) (*hereafter referred to as BGIL*)

**2. Directors of BGIL**

- a. **Rakesh Bhatia** (also spelt as Bhhatia) (PAN: AHYPB7406Q). Also Promoter, CMD and member of the Audit Committee of BGIL.
- b. **Arti Bhatia** (PAN: AFCPB5056J ) Also Promoter of BGIL.
- c. **Sanjeev Kumar Mittal**, PAN: AIVPM0122A. Also member of the Audit Committee
- d. **Anil Kapoor**, Address: 56 Osgood street, Andover, MA 0181, United States America.
- e. **Sanjay Kapoor**, PAN: AIXPK2530Q, Also member of the Audit Committee of BGIL
- f. **Harjeet Anand**, PAN: AABPA2410K, Also member of the Audit Committee of BGIL
- g. **Jaya Mishra**, PAN: AAJPM6407E, Also member of the Audit Committee of BGIL

**3. Rajeev Kumar Agarwal**, PAN: AGGPA0436L Manager (Finance) of BGIL

**4. Almondz Global Securities (Merchant Banker, SEBI registration no. INM000000834) and its following officials**

- a. **Mr. Vinay Mehta**, Chief Executive Officer.
- b. **Mr. Sanjay Dewan**, Head of Merchant Banking.

1.0. The Securities and Exchange Board of India (*hereinafter referred to as SEBI*) had initiated investigations into the Initial Public Offer (*hereafter referred to as IPO*) of equity shares by Bharatiya Global Infomedia Ltd. and its subsequent listing and trading. The Bombay Stock Exchange Limited (*hereinafter referred to as BSE*) and the National Stock Exchange of India Limited (*hereinafter referred to as NSE*) were also advised to submit their reports. Based on their reports and investigations conducted by SEBI so far, the prima facie findings are summarised in the following paragraphs.

1.1. The registered office of BGIL is located at 623, Devika Tower, 6, Nehru Place, New Delhi, 110019. The IPO by the company was for 67,20,000 equity shares under the book building route, in the price band of ₹ 75 to ₹ 82 per equity share. The Book Running Lead Manager for the issue was Almondz Global Securities Ltd. (hereafter referred to a BRLM/Almondz). Registrars to the Issue was Karvy Computershare Private Limited.

1.1.1. BGIL is promoted by Mr. Rakesh Bhatia and his wife Mrs. Arti Bhatia both residing at A-93, Sector-26, NOIDA, 201301, Uttar Pradesh. The issue was graded by credit rating agency CARE as “CARE IPO GRADE 2”, indicating below average fundamentals. The issue opened for bidding on July 11, 2011 and closed on July 14, 2011.

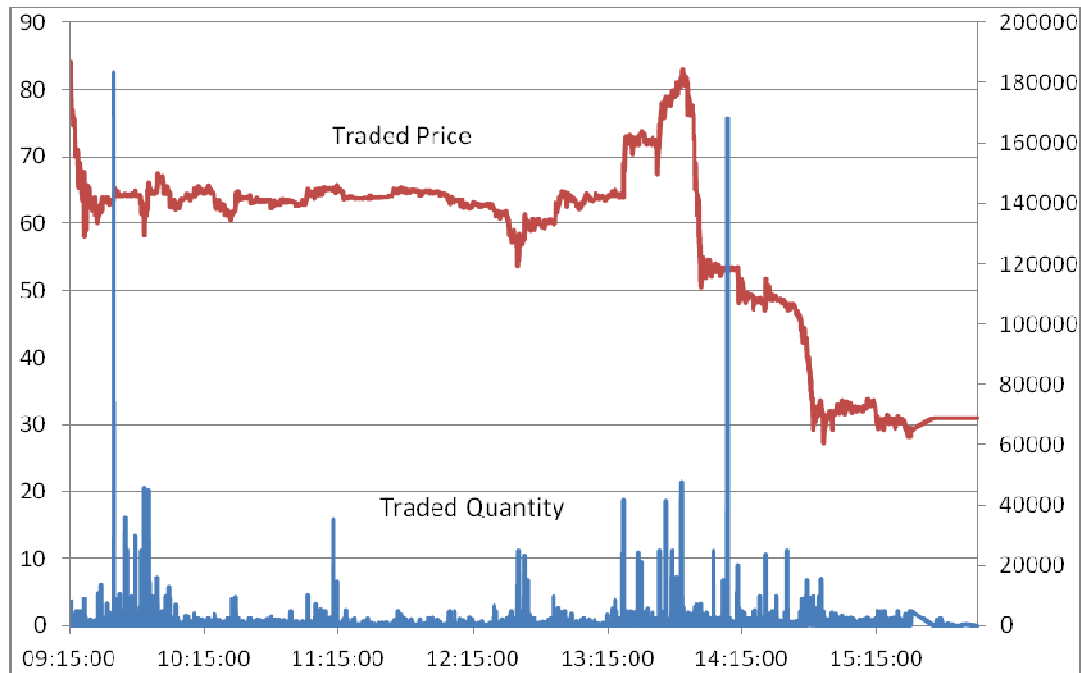
1.1.2. The IPO received 5,098 valid applications for 98,90,775 equity shares (after technical rejections including cheque returns / withdrawals), resulting in 1.47 times subscription. Category-wise details were as under

Category	No. of Valid Applications	No. of Equity Shares	No. of times subscribed
Qualified Institutional Buyers (QIB's)	0	0	0
Non Institutional Investors	72	14,87,475	0.73
Retail Investors	5,026	84,03,300	1.60
<b>Total</b>	<b>5,098</b>	<b>98,90,775</b>	<b>1.47</b>

1.1.3. The company in consultation with the BRLM decided to issue the shares at a price of ₹ 82 per share. The allotment of shares took place on July 21, 2011 after which, the shares were listed and admitted to dealings on NSE and BSE.

1.1.4. On the first day of trading i.e., on July 28, 2011, on BSE, the scrip opened at ₹ 81.9, went up to ₹ 83, stayed between ₹ 60-70 for some time and then plunged to ₹ 29.90 at close. In NSE it opened at ₹ 84 (day's high), stayed around the ₹ 60-70 for some time then plunged to ₹ 30.95 at close. Currently (Dec 24, 2011), the market price of the scrip is hovering around ₹ 9.50 at BSE.

1.1.5. The price movement on the first day of listing is placed below



BGIL on BSE on July 28, 2011

1.1.6. The Red Herring Prospectus dated June 28, 2011 (*hereinafter referred to as RHP*) issued by BGIL had, in the section named as ‘Objects of the Issue’ disclosed how the proceeds from the issue of the shares were intended to be deployed and included details of various items along with the respective amounts that were to be spent on each. The main categories were purchase of offices (₹ 989.60 lakh), investments in Digital Post Production Studio & IT Division (₹ 2204.67 lakh), expansion of R&D technology Centre (₹ 656.73 lakh), repayment of bank borrowings (269.72 lakh) and meeting long term working capital requirements (₹ 505 lakh). Further, wherever applicable, the names of the specific suppliers were also identified and mentioned in the RHP and the time schedule i.e. expected month of commencement / completion for the major items specified in a separate table.

1.1.7. In the same section i.e., ‘Objects of the Issue’ , it was also *inter-alia* disclosed that, “The *fund requirements and the intended use of the*

*issue proceeds as described herein are based on management estimates and various quotations received by us from different suppliers.... We may have to revise our expenditure and fund requirements as a result of variations in the cost structure, changes in the estimates and external factors, which may not be within the control of our management. In addition, the estimated dates of completion of the expansion project as described herein are based on management's current expectations and are subject to change due to various factors, some of which may not be in our control....Further the amount that is in excess of the funds required for the objects proposed and issue expenses will be utilized for general corporate purposes, which would be in accordance with the policies of our Board made from time to time."* The RHP was dated June 28, 2011 and the final prospectus was dated July 16, 2011. The final prospectus contained the same disclosures as that of the RHP with the final figures on IPO proceeds, issue expenses etc. and as such should be read in tandem with the references to RHP.

- 1.1.8. BGIL has informed BSE the stock exchanges on November 14, 2011 alongside its quarterly financial statements that the IPO proceeds have been utilized as per the objects of the issue. One of the promoters and the CMD of BGIL, Mr. Rakesh Bhatia in his statement to the Investigating Authority on Dec 20, 2011 also confirmed that there has been no varying of the terms of any contract referred to in the prospectus and thus Section 61 of the Companies Act which lays down the requirements for such, have not been applicable, so far.
- 1.1.9. The proceeds of the IPO by BGIL totalling ₹ 55.104 crore was accumulated in the Company's account no 911020037696473 with Axis Bank and from there on various payments were made to entities. As on November 15, 2011, the account had a balance of mere ₹ 54.49 lakh as the rest of the money were already paid out or transferred to various entities including money transferred to other BGIL accounts, payments to promoters and group companies. A comparison of the objects of the

issue as stated in the RHP and utilization of the proceeds observed from the relevant bank statement of BGIL till November 15, 2011 indicate that the utilization of IPO proceeds has been substantially different from the objects of the issue / identified vendors / the timelines prescribed in the RHP. Even after making generous allowances for items where the vendor / target entity was not identified in the RHP/Prospectus or where the heading suggested certain flexibility (e.g., general corporate purposes), it is observed that only 18.4721 crore can at the most be attributed to the objects mentioned in the RHP/Prospectus as compared to ₹55.104 crore mentioned in the RHP which includes setting up of offices (₹ 4.32 crore), repayment of Bank borrowing (₹ 2.93 crore), working capital requirements (₹ 4.9 crore), meeting the Issue expenses (₹ 2.69 crore) and general corporate purposes (₹ 2.11 crore). The details of the discrepancies are placed at Annexure - A.

- 1.1.10. Explanations were sought from BGIL regarding the utilization of IPO proceeds during the investigations and in its initial response the company informed SEBI vide the documents submitted by them along with their letter dated December 02, 2011 that, BGIL had taken 12.5 crore in Inter Corporate Deposits (*hereinafter referred to as ICDs*) before the IPO which were repaid from IPO proceeds. When complete details on each of the amounts debited from IPO proceeds were sought, BGIL submitted a table which indicated that ₹ 5 crore was invested in an ICD and ₹ 26.62 crore was paid towards repayment of ICDs taken thereby indicating modification of its previous response. Further queries were raised with BGIL whereby they were asked to provide the copies of the ICD agreements and highlight the inflow of these ICDs earlier into their bank accounts. Following the same, BGIL submitted another new set of information, indicating 'ICDs repaid' totalling ₹ 15 crore, investments made by them in ICDs totalling ₹12.5 crore, repayment of business loan of ₹2.77 crore and normal business transaction of ₹1.35 crore. Such varying explanations clearly indicate that the company is not sure of the facts and in its attempt to suppress

information is being forced to change from one version to another. Further, no ICD agreements have been produced except in two cases where it has invested in ICDs. For all the ICDs which has been repaid out of the IPO proceeds, they have produced only Memorandums in the form of letters. Quite surprisingly, though these memorandums mention the rate of interest applicable, all repayments have been at principal value only, without any interest component.

1.1.11. BGIL has informed that they had invested ₹ 12.5 crore in ICDs, out of IPO proceeds with 3 entities. On this aspect, the RHP had disclosed under a para on Interim use of proceeds, *“Our Company’s management, in accordance with the policies established by the Board, will have flexibility in deploying the proceeds received from the Issue. Pending utilization of the proceeds out of the Issue for the purposes described above, we intend to temporarily invest the funds in high quality interest bearing liquid instruments including money market mutual funds and deposits with banks. Such investments would be in accordance with the investment policies approved by the Board from time to time”*. BGIL has subsequently confirmed that they do not have any formal investment policy. As such, all these investments in ICDs have been in violation of the constraints imposed in the RHP.

1.1.12. Further, Mr. Rakesh Bhatia has also explained that the ICDs were taken to carry on the expansion plan and have identified the various machineries / property which were mentioned under the objects of the issue as per the RHP for which the payments have been made out of some of these ICDs. As per his statement before the Investigating Authority, after the IPO proceeds were received, these ICDs have been repaid. The details of such payments as submitted by Mr. Bhatia are placed as Annexure B.

1.1.13. It is also noted that though all these ICDs/ loans of ₹ 7 crore were raised before the date of RHP they were not disclosed in the RHP. Moreover, the RHP clearly mentioned under page 27 that *“our*

*company has not raised any bridge loan against the proceeds of the present issue".* It may be noted that these ICDs of ₹ 15 crore added around 60% to the total liabilities of the company, as compared to the position on 31/3/2011 and resulted in approximately 100% jump on current liabilities. As such, 'all the statements' in the RHP were not true and fair, as certified by the company and the Manager (Finance). There is no doubt that, the details of financial position of the issuers form the bedrock of a disclosure based regime and they influence investor decisions in myriad ways. Such underplaying of leverage cannot be wished away even it is deemed as a temporary position given the rights of the investors in this regime to receive true and correct information which has to be held as sacrosanct. It is quite apparent from the above that the statements in the RHP were not true and correct, as certified in the RHP of BGIL.

1.1.14. Regulation 57(2)(a) read with (Part A)(VII)(G) of Schedule VIII of Securities of Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter also referred as ICDR Regulations, 2009) require that the means and sources of financing including details of bridge loan or other financial arrangements, which may be repaid from the proceeds from the issue, shall be disclosed in the RHP under the heading "Sources of funds already deployed". However, no such disclosures have been made. As such, this is a prima facie violation of the referred regulation.

1.1.15. The details submitted by the company also indicate the ICDs were used to pay off / advance money to various vendors for purposes supposedly mentioned in the RHP. However, several of these payments were made before the date of RHP and to vendors other than those disclosed in the RHP. For example, payments were made to entities named Houston Technologies and Quantum Hitech (as per the table in Annexure-B) before the RHP, Mr. Rakesh Bhatia in his statement before the Investigation Authority explained that these payments were made for various machinery identified in the RHP.

However, the RHP did not carry these names as the respective vendors.

1.1.16. Six ICDs for ₹ 8 crore in total were raised after the date of RHP but before the date of allotment of the IPO shares. As per Regulation 60(4)(a), the issuer is required to make prompt, true and correct disclosure of all material developments which take place in this period by issuing public notices in the newspapers. It may be noted here that, this 8 crore would have meant around 50% higher figure on current liabilities of the company as compared to their balance sheet as on March 31, 2011, disclosed in the RHP. Thus there can be no doubt that these were material developments relating to the company's business and the issue of securities through the IPO. However, BGIL did not make any such disclosure and as such had prima facie violated the referred regulation.

1.1.17. The quotations received from the vendors for various machineries who have been paid out of ICDs were also examined and it is observed that, in five cases out of a total of six, the quotations pre-date the RHP. Even in the other cases, given the alacrity with which BGIL had acted in securing ICDs to pay these vendors, it is obvious that they had made up their mind to transact with these vendors. This adds another perspective in addition to the fact that the RHP did not reflect the true and correct vendors identified by the company. Apparently BGIL was surreptitiously executing its parallel plan to transact with the other vendors about whom it did not want to make disclosures in the RHP.

1.1.18. The credentials of these vendors remain a concern and investigation is still under progress. For instance, the details revealed in relation to payment of ₹ 1 crore on July 02, 2011 and again ₹ 1.5 crore on July 05, 2011 to one Dhanmangal Developers Private Ltd. towards setting up office as follows;



- 1.1.18.1. Dhanmangal Developers Pvt. Ltd. is a company incorporated on Jan 08, 2010 having Rana Pratap Singh and Navin Kumar Sharma as directors and its registered office at 255, Canal Street (VIP Road), Sribhumi, Kolkata, West Bengal. 700 048. Form 23AC submitted to MCA on Sep 02, 2011 revealed that the company did not have any fixed assets, capital work in progress, investments, inventories or sundry debtors for both the financial years 2009-10 & 2010-11. The company had only cash & Bank balances of 3.43 lakh and loans & advances of ₹ 77.72 lakh.
- 1.1.18.2. BGIL has submitted vide letter dated Dec 17, 2011 that they have made payment to *“Dhanmangal Developers who are coming up with a few new commercial projects. We have made an advance to acquire commercial space in their upcoming projects keeping in mind the future growth and expansion of the company in the important business regions of India i.e. Eastern & Southern Regions, thereby creating PAN-India presence.”*
- 1.1.18.3. The copy of the agreement dated July 1, 2011 submitted by the BGIL does not contain even the construction/plot address/location of the relevant property.
- 1.1.18.4. The minutes and agenda of all Board meeting held by BGIL in the last 6 months also did not include any reference to such a transaction despite the fact that the transaction was quite material in value terms.
- 1.1.18.5. The transaction in the property was done within 3 days of the RHP. The CMD of BGIL in his statement could not identify the exact location/address of the property beyond it being somewhere in Kolkata. As per explanation, his

employee had visited the location. As per the agreement, the total consideration was 5 crore out of which ₹ 2.5 crore was paid advance and as such quite material in terms of the company's business and the issue of securities through the IPO. However, no disclosures were made by BGIL as required under 60(4)(a) of ICDR Regulations, 2009. It is pertinent to mention that subsequently ₹1.41 crore was paid to First Blue Home Finance Ltd. and Raj Kanwar for setting up office at Mumbai.

1.1.18.6. BGIL has also stated that they entered into an agreement with Jupiter Infraenergy on July 1, 2011 for various critical services as per which, BGIL was to pay ₹ 5 crore to them. No disclosure in this regard was made as required under 60(4)(a) of ICDR Regulations, 2009. Moreover, when asked whether Jupiter Infraenergy was connected to BGIL in any manner, the CMD denied any connection in clear terms in his statement of December 21, 2011. However, it is noted that, Jupiter Infraenergy has been holding a stake in BGIL even before the IPO. Further, Jupiter Infraenergy also holds substantial stakes in the other companies owned by the promoter and is prima facie, a related party of BGIL and as such, disclosures conforming to the standards of 57(2)(a) of ICDR Regulations, 2009 should also have been made.

1.1.19. It is also observed that while making the disclosures to the stock exchanges on the utilization of IPO proceeds, BGIL had indicated that it had inter-alia spent 250 lakh for purchase of office. Subsequently, when further details were sought on the same during the course of investigation, BGIL informed SEBI vide the documents submitted along with their letter dated December 2, 2011 that the break-up of the amount was ₹ 250 lakh for purchase of office in Mumbai and ₹ 41.70

for purchase of office in Noida. However, details and copies of the agreements submitted thereafter have revealed that the payment of ₹ 250 lakh was an advance for purchase of a property in Kolkata from Dhanmangal Developers, details of which have been discussed above. It may be noted that there was no mention of buying any property in Kolkata in the RHP and that too where construction has not even started. This apparently is a deviation from the objects of the issue as mentioned in the RHP. In contrast, little progress has been made to complete the setting up of offices at Mumbai and Noida as envisaged in the RHP.

- 1.1.20. It is also observed that several payments/cash withdrawals have been made in favour of promoter Rakesh Bhatia(1.16 crore) and his son Gaurav Bhatia (4.5 lakh), Rakesh Bhatia-HUF (10.5 lakh) which are being explained by the company as R&D/project expenses.

## 1.2. Other misleading disclosures in the RHP

1.2.1.The RHP/Prospectus contained the disclosures on the relatives of directors. However, at a closer look one finds that only the relatives of two directors Mr. Rakesh Bhatia and Mrs. Arti Bhatia have been mentioned and the relatives of none of the other five directors including Mr. Sanjeev Kumar Mittal are mentioned. This is further confirmed by the list of relatives subsequently obtained from BGIL during investigations which includes approx. 25 other names (relatives of directors) which were not disclosed in the RHP. The purpose of non-disclosure appears to be suppress the related party transaction, for example dealings with Mrs. Richa Mittal, as discussed below.

1.2.2.It is noted that the list of 25 relatives(approx.) mentioned in BGIL's response to investigation did not include the name of Richa Mittal, wife of Rajeev Mittal. Mr. Rajeev Mittal is the brother of Mr. Sanjeev Kr. Mittal (director of BGIL) and hence, Richa Mittal is a relative of Sanjeev Kumar Mittal. As per the RHP, BGIL was to purchase a property from Gadeo

Electronics which is a partnership firm of which 95% is owned by Richa Mittal and 5% by Shri R. K. Mittal (father of Sanjeev Kumar Mittal). However, BGIL has made a clear misleading statement in the RHP/Prospectus that *“\* Mrs. Richa Mittal is wife of Mr. Rajeev Mittal and a resident of A-147-148, Sector 55, Noida, Uttar Pradesh, and not related to our Company, our Promoters / Directors or Promoter Group Companies . It is indeed shocking to observe such a grave act, as it appears prima facie. Apparently, the issuer has also violated the provisions of Clause 2(IV)(H)18 of Part A of Schedule VIII read with Regulation 57(2)(a) of ICDR Regulations, 2009 which required disclosure of the relationship of the entities from whom the issuer has proposed to acquire the land, with any of the promoters or directors of the issuer, along with the relevant details.*

1.2.3. The RHP/Prospectus has included disclosures on Mr. Rakesh Bhatia's past associations with SRG Infotech Ltd., Visesh Infotechnics Ltd. and Shubh Finsec Private Ltd. under the heading “Details of companies/firms from which Promoters have disassociated”. However, no mention has been made of the fact that, the right issues of fully convertible debentures by SRG Infotech (India) Limited in Nov 1995 was not listed. Further, no mention has been made of SRG Financial & Management Consultants Ltd. (subsequently renamed to Proline Software and Finance Ltd.) which had come out with a public issue at a premium of ₹ 10/- in June 1996 of which Mr. Rakesh Bhatia (then spelt as Raakesh Bhatia) was the Chairman of the board and had the management of the company in his hands alongwith Mr. S. K. Agarwal. As of now, no information is available on the company Proline Software and Finance Ltd. as no filings are seen from the ROC website and BSE has suspended the trading in the scrip due to penal reasons (non payment of listing fees) since Sep 10, 2001. The company is neither mentioned as one of the group companies nor disclosed as related / associated to Mr. Bhatia.

1.2.4. In addition to the specific violations observed in the previous paragraphs, I feel that, the issuer, its directors and its Manager (Finance) who had signed the RHP to be true and correct have violated the provisions of Regulation

3(b), 3(c) and 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

1.2.5. Here a special mention of the track record of the promoter and CMD of BGIL, Mr. Rakesh Bhatia would be relevant. Mr. Bhatia was earlier the promoter and Managing Director of SRG (Infotech) when it came out with an IPO in June 1994 and a convertible debenture issue in 1995. SRG Infotech (now Pan India Corporation) is a loss making company now and its shares are trading around ₹ 0.40. The convertible debentures were denied listing permission by the Delhi Stock Exchange. Mr. Bhatia was also the Promoter and Chairman of SRG Financial & Management when it came out with an IPO in June 1996. Today, there is no trace of the company. Mr. Bhatia has claimed to have disassociated himself from the SRG group in 1996. Subsequently, Mr. Bhatia was also associated with Visesh Infosystems Ltd. The company came out with an IPO in November 1999 and at that point entities substantially controlled by Mr. Rakesh Bhatia or his family members had majority control of Visesh Infosystems Ltd. Mr. Rakesh Bhatia himself was the Chairman of the company till 3 months before the IPO, when he made way for his brother Mr. J. K. Bhatia to become the Chairman. Subsequently, Shri. Rakesh Bhatia again became the CMD of the company and later disassociated himself again from the company in 2004. The company is now known as Visesh Infotechnics and is trading around ₹ 3. There appears to be a pattern to these disassociations in multiple instances, especially after observing that in Visesh Infotechnics, Mr. Rakesh Bhatia again became 'associated' within a few months of disassociation.

### 1.3. Non exercise of due diligence by the Merchant Banker

1.3.1. The BRLM was asked to clarify why the disclosures on SRG Financial & Management Consultants Ltd. was not included in the RHP/Prospectus to which they have replied that, *as per Schedule VIII Part A (IX)(C)(3), disclosure is required where promoters have disassociated themselves from any of the companies or firms during the three year preceding the*

*date of filing the Draft Offer Document. In the particular case, Mr. Rakesh Bhatia disassociated himself from SRG Group in the year 1996.* However, it is noted that disclosures have been made in respect of SRG Infotech, Vishesh Infotechnics and Shubh Finsec Pvt. Ltd even though disassociations had been more than 3 years ago. Thus the company has chosen to selectively disclose some of the disassociations and suppressing others. Further, the heading of the paragraph did not mention that only last three years' data was being disclosed. Selectively, the disclosure required on the SRG Financial and Management Consultants Limited. / Proline Software and Financials was suppressed. From the reply of the BRLM, it is also apparent that, they knew about the facts but decided not to disclose it. This is, in my view, is a clear case of fraudulent suppression of material facts.

1.3.2. In view of the various inadequate / wrong disclosures in the RHP as pointed out above viz.,

1.3.2.1. Even before the RHP was signed on June 28, 2011, BGIL had raised various ICDs that were also in the nature of financial arrangements which were to be repaid out of IPO proceeds, it had finalized a different set of vendors and had paid advances to some of the, none of which were disclosed in the RHP alternate vendors to the ones mentioned in RHP were finalised and paid advances but these facts were not mentioned in the RHP. The list of relatives of the directors mentioned in the RHP was also not complete leading to suppression of about 25 names. Had it been verified properly, it would have been also identified that the property being purchased by BGIL from Gadeo Electronics was a related party transaction, connected to one of the directors.

1.3.2.2. Between the date of the RHP and allotment of shares, some more ICDs were raised further affecting the gearing of the company, Substantial advances (₹ 2.5 crore) were paid for a property in Kolkata about which there was no indication in the RHP. BGIL also entered into

with one of its pre-IPO shareholders for certain services for which ₹ 2.5 crore was paid as advance but despite these material developments, none of them were disclosed through public notices as required under ICDR Regulations, 2009.

1.3.3. The Delhi Stock Exchange has confirmed to SEBI that the rights issue of fully convertible debentures by SRG (Infotech) Ltd. in Nov 1995 was not listed. However, when this issue was being pursued earlier with the BRLM, they had provided a false confirmation to SEBI vide their letter dated July 18, 2011 that the rights issue of fully convertible debentures by SRG (Infotech) Ltd. in Nov 1995 was subsequently listed on DSE. In 1995, Shri Rakesh Bhatia the current promoter of BGIL was then associated with SRG (Infotech) Ltd. and as such this misrepresentation was a critical.

1.3.4. During the visit by a SEBI official, Associate Director of Almondz, Shri Sanjay Dewan on behalf of and assisted by the officials of the BRLM, have inter alia admitted in their statement that,

1.3.4.1. They have not done any independent valuation of the software which were shown as assets of BGIL. They also did not obtain bifurcation of hardware and software items and also did not retain the invoices of hardware purchased by the company. The BRLM could not even identify some asset items shown in the fixed asset register of BGIL shown to them during the questioning.

1.3.4.2. In respect of debtors, the BRLM had only verified the invoices of top 10 debtors from the records submitted by the company and did not carry out any independent verification on any of the debtors. Similarly, sundry creditors were not independently verified by the BRLM nor the BRLM could not produce any document for the documentary verification carried out by them.

1.3.4.3. BRLM also did not independently verify the ownership documents of transferor and also did not independently verify the

changes in the terms of original MOU for purchase of factory site by BGIL at B-60, Sector 57, Noida from M/s Gadeo Electronics. This is a prima facie violation of Regulation 64(1) of ICDR Regulations, 2009.

1.3.4.4. Shri Sanjay Dewan, during his statement could not clarify whether the price band for the issue was based on financial strength of the company or the demand and supply factor prevailing in the market at the time of issue. This is in complete contrast with the disclosures made on the Prospectus which inter-alia states that, "The BRLM believes that the issue price of ₹ 82 is justified in view of the qualitative and quantitative factors."

1.3.5. It is also observed that an amount of ₹ 2.65 crore paid as an advance to Avance Technologies before the IPO has also been shown as an utilization of IPO proceeds. It is also noted that, the objects of the IPO includes only ₹ 42 lakh as internal accrual and thus this amount cannot be adjusted towards internal accrual and appears to be case of double counting. The BRLM should have been able to identify such discrepancies and correct the same before the IPO.

1.3.6. Regulation 64(1) of ICDR Regulations 2009 require that the lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the RHP. The above findings on non disclosures / incorrect disclosures by the company made in the RHP point towards an extremely poor standard of due-diligence by Almondz on the above requirement. The BRLM had also certified to SEBI inter-alia on the adequacy, fairness and accuracy of the disclosures contained in the RHP and that they have independently verified the statements concerning the objects of the issue, price justification etc. The above instances indicate entirely to the contrary.

1.3.7. In view of the above, the BRLM has also violated Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 read with Clause (1), (2), (3), (4),



(6), (7) (20) of the Code of Conduct prescribed under Schedule III of the same.

## **2.0. PRIMA FACIE FINDINGS**

2.1. BGIL suppressed the names of the relatives of some of its directors and thereby suppressing the fact that the property that was being bought from Gadeo Electronics (which was incidentally one of the major objects of the issue), actually belonged to the wife and father of one of its directors. Further, misleading disclosures were made in the RHP/Prospectus stating that these persons were not related to the directors of the company.

2.2. The company did not make a true and correct disclosure of its financial indebtedness by hiding large amount of ICDs which altered the gearing of the company substantially. Many of these were also in the nature of 'bridge financing to be paid out of IPO proceeds' and which were required specifically to be disclosed. The money was used to pay off / advance to other vendors for various items / machineries mentioned in the RHP rendering the details mentioned in the RHP as false and misleading, ab-initio. Further, some of these payments involving substantial amounts were made for purposes for which there was no hint in the RHP nor the procedures followed appear reasonable or as stated in the RHP. For example, payments have been made for a property whose address is not even mentioned in the agreement, one the pre-IPO shareholders of the company has been paid an hefty amount for some services for which there was no mention in the RHP or the board minutes. Investments have been made in ICDs in the absence of any investment policy whereas the RHP had clearly disclosed that any such investments shall be subject to the same etc. Many of these developments also fell between the opening of the IPO and the allotment date and hence were required to be disclosed through public notices, which were not done.

2.3. The company also made apparently wrong disclosures on the utilization of IPO proceeds to the stock exchanges and their Audit

Committee also has failed to carry out its duty in this regard. This is also a prima facie violation of the Clause 49 (IV)(D) of the Listing Agreements.

2.4. The RHP also 'selectively' suppressed disclosures on past association of promoters with SRG Financial & Management which had come out with a public issue earlier and there is no trace of the company today or the fact that the issue of Fully Convertible Debentures by SRG Infotech of which Mr. Bhatia was the CMD was denied listing by the Delhi Stock Exchange.

2.5. The violations by BGIL and its directors/official are prima facie violations of SEBI (ICDR) Regulations, 2009 and also Regulation 3(b), 3(c) and 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

2.6. Almondz being the BRLM has also prima facie failed to exercise the required due diligence and have aided and abetted the fraud committed by BGIL and its directors/official and thereby violated 3(b), 3(c) and 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. Further, the BRLM has also prima facie violated the provision of SEBI (ICDR) Regulations, 2009 and SEBI (Merchant Bankers) Regulations, 1992.

2.7. The decision as to the quantum of funds to be raised and the price at which the shares are to be issued is left to the issuer company. The issuer company is considered to be the best judge to decide the same as such decisions pertain to its functioning. But once it is decided to raise funds from the public then the public interest comes into the picture and the matter is not left exclusively to the discretion of the issuer. The Issuer Company is required to maintain certain standards of disclosure relating to various matters having a bearing on the investment decision of the investors.

2.8. SEBI has adopted disclosure based regulatory regime. Under this framework, issuers and intermediaries disclose relevant details about

themselves, the products, the market and the regulations so that the investor can take informed investment decisions based on such disclosures. SEBI has prescribed and monitors various initial and continuous disclosures. In the case of an IPO by a company, the information about the company is made available to the public/investors in the form of offer document. The public/investors make its decision based on the information provided to them in the form of disclosures in the offer document.

2.9. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure-based regulatory regime is the need for the issuers of securities to provide the potential investors with full, accurate and timely disclosure of all relevant information in respect of the issuer and the security being issued to enable the potential investors to make their own informed investment decisions. It is on this premise that securities regulation is based. The access to the securities market for issuers is conditional upon such disclosures. The disclosure-based regime imposes a heavier responsibility on the issuers of securities and their Merchant Banker in respect of the accuracy and completeness of the information disclosed by them.

2.10. By virtue of the failure to make the necessary disclosures on time in this case, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Company and its Directors had not provided the vital information which is detrimental to the interest of investors in securities market.

2.11. Reference is drawn to the interpretation made by Supreme Court in the matter of Chander Kanta Bansal V. Rajinder Singh Anand MANU/SC/7310/2008 : (2008) 5 SCC 117 as under :

*“The words “due diligence” have not been defined in the Code of Civil Procedure, 1908. According to Oxford Dictionary (Edn. 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one’s work and duties, showing care and effort. As per Black’s law Dictionary (18<sup>th</sup> Edn), “Due Diligence” means the diligence reasonably expected from , and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) “due diligence”, in law, means doing everything reasonable, not everything possible. “Due Diligence” means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”*

2.12. The role of a merchant banker in the securities market is very important in the process of issue management. The merchant banker plays a vital role in channelling the financial surplus of the society into productive investment avenues. A Merchant Banker is appointed for the purpose of managing the issue of an IPO of a Company and it plays a fiduciary role by coordinating the activities of the Company, the Regulatory Bodies, and the Investors. It is evident that the Merchant Banker is the focal point in a public issue, without him acting diligently and complying strictly with the letter and spirit of the rules and regulations framed there under, the issue cannot be properly regulated and investors are put to grave danger, which is not in the interest of the securities market. The purpose of filing the offer document through the Merchant Banker with SEBI is not a mere ritual or formality. I am of the view that the due diligence on the part of the merchant banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. The due diligence process is directed towards ensuring that the offer document does not contain any statement or information that is false or misleading, or contain any material omission. It is also directed towards ensuring that the information furnished in the offer document is not in any way exaggerated or deficient and that the material facts are not suppressed to the disadvantage of the investors. Further, the due diligence is about making

an active effort to find out material developments that would affect the interest of investors. It is on the faith that the Merchant Banker has conducted due diligence that an investor invests in the company. The importance of a due diligence process expected from Merchant Bankers in a disclosure regime cannot be over-emphasised. If the Merchant Banker fails to act diligently and comply strictly with the letter and spirit of the regulations, the investors are put to grave danger. Hence it is very important that the various responsibilities associated with the due diligence are discharged with care and caution. Hence only persons who follow the rules and regulations scrupulously can be entrusted with such responsibilities.

2.13. As a regulator, it is SEBI's duty to take immediate steps to prevent such persons from further misleading investors and impairing the integrity of the market. SEBI as a regulator cannot allow such entities to continue with any activity in respect of the issuing. Accordingly, in this case I feel that immediate action is called for in the interest of the investing public.

2.14. I am of the view that this is without doubt a fit case, where I need to effectively and expeditiously use the powers given to SEBI to prevent any further harm to investors. In order to protect the investors and safeguard the integrity of the securities market, it is necessary for SEBI to exercise these powers firmly, effectively and immediately to insulate the market and its investors from the actions of persons who potentially perpetrated fraud and/or mislead investors in the securities market.

2.15. In the light of what has been prima facie unearthed in this examination so far, allowing the BGIL and the other entities conniving with BGIL in the fraudulent activities and others involved therein to continue to deal in the securities market, would severely compromise the integrity of the market and continue to expose unsuspecting investors to a significant and material possibility of being misled. In the light of the preliminary findings against the entities mentioned above, it would be difficult to conclude that these entities conformed to the prescriptions even remotely.

### **3.0. ORDER**

3.1. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act 1992 read with Sections 11(1), 11(4), 11A and 11B thereof, pending investigation, by way of this ad interim ex-parte order, hereby issue the following directions:

3.1.1. The company Bharatiya Global Infomedia Ltd. is prohibited from raising any further capital from the securities market, in any manner whatsoever, till further directions.

3.1.2. The company BGIL (PAN: AABCB8175B), its directors Rakesh Bhatia, Chairman and Managing Director, PAN: AHYPB7406Q, Arti Bhatia, Director, PAN: AFCPB5056J, Sanjeev Kumar Mittal, PAN: AIVPM0122A Anil Kapoor Passport No. P USA 448486811, Sanjay Kapoor, PAN: AIXPK2530Q, Harjeet Anand, PAN: AABPA2410K, Jaya Mishra, PAN: AAJPM6407E and its Manager (Finance) Rajeev Kumar Agarwal (PAN: AGGPA0436L) are prohibited from buying, selling or dealing in the securities market in any manner whatsoever, till further directions.

3.1.3. Almondz Global Securities Ltd., its Chief Executive Officer, Mr. Vinay Mehta and its Head of Merchant Banking Division who has also signed the due diligence certificate provided to SEBI, Mr. Sanjay Dewan, are also prohibited from taking up any new assignment or involvement in any new issue of capital including IPO, follow-on issue etc. from the securities market in any manner whatsoever, from the date of this order till further directions.

- 3.1.4. The Company shall call back the ICDs of ₹ 12.5 crore invested by it with Nihita Financials Ltd., Sanjukta Vanijya Pvt. Ltd and Darshan Tradelink Pvt. Ltd. and all amounts transferred / paid out of IPO proceeds to its directors or relatives of its directors or HUFs belonging to any of its directors or associate or subsidiaries or group companies. These amounts together with all of the IPO proceeds that are still lying unutilized with the company across all its bank / deposit accounts or any investments including in mutual funds, shall be deposited in an interest bearing escrow account with a scheduled commercial bank, till further orders. A confirmation on compliance of this direction shall be sent by the promoters of BGIL to the stock exchanges where it is listed, within 7 days from the date of this order.
- 3.1.5. The above order is without prejudice to any other action that may be initiated against the above entities for the said violations.
- 3.1.6. The stock exchanges are advised to enable squaring off, at the earliest, existing open positions in the Futures and Options Segment, if any, for the persons / entities mentioned above at para 3.1.2. Further, the concerned stock exchanges should also ensure that said persons / entities do not take fresh positions or increase their open positions in any manner.
- 3.1.7. All stock exchanges and depositories are directed to ensure that all the above directions are strictly enforced within the powers available to them.
- 3.1.8. The persons/entities against whom this order is passed may file their objections, if any, within twenty one days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing before the Securities and

Exchange Board of India, on a date and time to be fixed on a specific request, received from the said persons/entities.

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

**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI**

**DATE: DECEMBER 28, 2011**