

## CG Power and Industrial Solutions Limited

Registered Office:  
CG House, 6th Floor, Dr Annie Besant Road, Worli, Mumbai 400 030, India  
T: +91 22 2423 7777 F: +91 22 2423 7733 W: www.cgglobal.com  
Corporate Identity Number: L99999MH1937PLC002641



Smart solutions.  
Strong relationships.

Our Ref: COSEC/254/2019-20

March 5, 2020

**By portal**

### **The Corporate Relationship Department**

BSE Limited  
1<sup>st</sup> Floor, New Trading Ring  
Rotunda Building,  
Phiroze Jeejeebhoy Towers,  
Dalal Street, Mumbai 400 001  
**Scrip Code : 500093**

### **The Assistant Manager – Listing**

National Stock Exchange of India Ltd.  
Exchange Plaza, Bandra-Kurla Complex,  
Bandra (East),  
Mumbai 400 051

**Scrip Id : CGPOWER**

Dear Sir/Madam,

**Subject: Intimation/ Disclosure pursuant to Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015**

**Ref: Our letter no. COSEC/159/2019-20 dated November 22, 2019 in relation to Intimation of application filed by the Ministry of Corporate Affairs under Section 130 of the Companies Act, 2013 before the Hon'ble National Company Law Tribunal, Mumbai for re-opening of accounts of the Company.**

In furtherance to our captioned letter, please find enclosed herewith a copy of the order dated March 5, 2020 passed by the Hon'ble National Company Law Tribunal, Mumbai bench under Section 130 of the Companies Act, 2013 allowing re-opening of books of accounts of the Company for the past five years till March 31, 2019 on an application filed by Ministry of Corporate Affairs.

We would appreciate if you could take the same on record.

Thanking you

Yours faithfully,  
For **CG Power and Industrial Solutions Limited**

  
**Ravi Rajagopal**  
Compliance Officer

**Encl. as above**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. 4127 of 2019**

(Under Section 130 of the Companies Act, 2013)

In the matter of:

**Union of India, Ministry of Corporate Affairs,**  
Through Regional Director (Western Region),  
Everest 5<sup>th</sup> Floor, 100, Marine Drive,  
Mumbai – 400 002

**... Petitioner**

**Versus**

**1. CG Power and Industrial Solutions Limited**

6<sup>th</sup> Floor, CG House, AB Road, Worli,  
Mumbai – 400 051

**2. Gautam Thapar**

Apartment No.605, 6<sup>th</sup> Floor, Tower C Grand Hyatt  
Residence, PO Box 7167 Dubai

**3. V. R. Venkatesh**

Rotselaerlaan 8 Tervuren Tervuren, 3080 Belgium

**4. Omkar Goswami**

E-121, Masjid Moth, Greater Kailash - 3,  
Delhi - 110048

**5. Ashish Kumar Guha**

House No. 23, Poorvi Marg, First Floor,  
Vasant Vihar, New Delhi 110 057

**6. Ramni Nirula**

A-14, Anand Niketan, Chanakyapuri S.O.,  
Delhi – 110 021

**7. Jitender Balkrishnan**

208, Tower - 2, Casa Grande, Senapati Bapat Marg,  
Lower Parel, Mumbai – 400 013

**8. Narayan Keelveedhi Seshadri**

Flat No.51, 2<sup>nd</sup> floor, Hill Park CHS Ltd.,  
Plot No. 04, A.G. Bell Marg, Malabar Hill,  
Mumbai – 400 006

**9. Sudhir Mathur**

B-1/8, Vasant Vihar, New Delhi 110 057

**10. Neelkant Kollengode Narayanan**

1602, Tower 4, Close South, Nirvana Country,  
Gurgaon, 122018, Haryana, India

**11. Shikha Kapadia**

A-302, New Mohan Terrace, Kastur Park,  
Borivali (West), Mumbai – 400 092

**12. Madhav Acharya**

C-1706, Oberoi Woods, Off Western Express,  
Highway Goregaon East, Mumbai – 400 063

**13. B. Hariharan**

Flat No. 602-B, The Magnoliasdlf Golf Links,  
DLF City, DLF Phase – V,  
Gurgaon, 122 009, Haryana

**14. M/s. K.K. Mankeshwar & Co.**

101, Shrika Residency, 243, Canal Road,  
Dharampeth, Nagpur – 440 010

**15. Ashwin Mankeshwar**

101, Shrika Residency, 243, Canal Road,  
Dharampeth, Nagpur – 440 010

**16. M/s. S.R.B.C. & Co. LLP**

12<sup>th</sup> Floor, The Ruby 29, Senapati Bapat Marg,  
Dadar (West), Mumbai – 400 028

**17. The Principal Chief Commissioner of Income Tax**

Aayakar Bhavan, M. K. Road, Mumbai – 400 020

**18. Securities & Exchange Board of India (SEBI)**

SEBI Bhavan BKC, Plot No. C4-A, 'G' Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai – 400 051

**... Respondents**

**Order delivered on 5<sup>th</sup> March 2020**

**Coram:** Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan  
Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Mr Manmohan Juneja, RD (WR); Mr Sanjay Shorey, Director (L&P); Mr Rakesh Tiwari, Joint Director (RD), Mr Parvez Naikwadi, Assistant Director and Ms Megha Gupta, Company Prosecutor, MCA

**For the Respondents:** Mr. Piyush Raheja, a/w. Mr Pratik Pawar and Ms Shanaya Cyrus i/b. J. Sagar Associates, **[For Respondent No.1]**

Senior Counsel Mr J.J. Bhatt, Counsel Mr Nihar Mody, Mr M.P. Bharucha, Ms Sneha Jaisingh, Mr Anniruddha Banerjee i/b. Bharucha & Partners **[For Respondent No.2]**

Mr Vikram Nankani Senior Advocate a/w. KRCV Sesha Chalam, P. R. Ramesh, Pankaj Uttaradhi, Aayush Kothari i/b. Vishesha Law Services **[For Respondent No. 4]**

Senior Counsel Mr Soli Cooper, Mr M.P. Bharucha, Ms Sneha Jaisingh, Mr Anniruddha Banerjee i/b. Bharucha & Partners **[For Respondent No.13]**

Advocate Rohit Rathi a/w. Advocate Ashwin Poojari **[For Respondent Nos. 14 & 15]**

Advocate A. Misra i/b. K. Ashar & Co. **[For Respondent No.18]**

*Per: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan*

*Hon'ble Member (Technical): Mr Rajesh Sharma*

### **ORDER**

1. Company Petition No. 4127 of 2019 has been filed under Section 130 of the Companies Act, 2013, seeking re-opening of the books of account and recasting of financial statements of **CG Power and Industrial Solutions Limited** (Respondent No. 1 Company) and its subsidiary companies for the past 5 (Five) Financial Years viz. from Financial Year 2014-2015 and also to permit the Central Government to appoint such person / firm of Chartered Accountants for the said purpose.
2. That the Petition is filed by Union of India (UOI), Ministry of Corporate Affairs (MCA), through Mr Rakesh Tiwari, Joint Director in the office of the Regional Director (RD) (Western Region), Ministry of Corporate Affairs, who is duly authorized by the Central Government to file this present application vide Ministry Order dated 20.11.2019. Copy of the said Order is annexed to the Petition.

3. The **Respondent No.1** is CG Power and Industrial Solutions Limited (hereinafter referred to as “CG Power or the Respondent No. 1 Company”) having CIN L99999MH1937PLC002641, a company incorporated under the Companies Act, 1956 and having its Registered Office at 6<sup>th</sup> Floor CG House, AB Road, Worli, Mumbai – 400051. The main object of the CG Power as per the Memorandum of Association is — *“To carry on the business of electrical manufacturers electric engineers and contractors suppliers of electricity and manufacturers of an dealers in railway, tramway, electric magnetic, galvanic and other electrical apparatus, and in connection therewith to wok electric railways or tram ways and construct the locomotives or other sources of power and all other necessary works therefore and do all other things necessary or proper for the working thereof or otherwise in connection therewith.”*
  
4. The **Respondent Nos. 2 to 11** are/were the Directors on the Board of CG Power. The **Respondent No. 2** – Mr Gautam Thapar, has been removed as Chairman of the Board of Directors of the CP Power vide circular resolution dated 29.08.2019 to Stock Exchanges. However, Mr Gautam Thapar continues to remain a Director on the Board of CG Power. The **Respondent No. 3** — Mr V. R. Venkatesh, CFO of CG Power, had resigned on 08.03.2019, however he was asked to continue till finalization of financial results for the year ended 31.03.2019. The Board finally terminated the services of Respondent No. 3 Mr V. R. Venkatesh on 30.08.2019. **Respondent No. 10** — Mr. Neelkant Kollengode Narayanan, is the Managing Director of CG Power. **Respondent No. 9** — Sudhir Mathur, previously an Independent Director on the Board of CG Power, has been re-designated as Whole-time Executive Director w.e.f. 10.05.2019. The **Respondent No. 12** — Madhav Acharya, is the ex-CFO and Executive Director – Finance of the CG Power. The **Respondent No. 13** — Mr B. Hariharan, was the Director of CG Power from November 1, 2012 to March 8, 2019. At present, he is Director on the Board of Ballarpur Industries Limited, a listed sister concern of CG Power. The **Respondent No. 14** — M/s. K. K. Mankeshwar & Co., a firm of Chartered Accountants, are the Joint Statutory Auditors of Respondent No. 1 Company along with **Respondent No. 16** - M/s. S.R.B.C. and Co. LLP, Chartered Accountants. The **Respondent No. 15** — Mr Ashwin Mankeshwar is

the signing partner of Respondent No.14. **Respondent No. 17** is the Principal Chief Commissioner of Income Tax situated at Aayakar Bhavan, M.K. Road, Mumbai – 400020 and **Respondent No. 18** is the Securities and Exchange Board of India (SEBI).

5. The Petitioner submitted that the allegations against C G Power initially came to light when the auditors of CG Power, M/s. Chaturvedi & Shah, Chartered Accountant resigned before the expiry of their tenure on 27.04.2018, thereby causing a casual vacancy and therefore the said Company appointed Respondent No. 14 — M/s. K.K. Mankeshwar & Co., as statutory auditor on 29.05.2018.
6. The Petitioner further submitted that after the abovementioned event of premature resignation of auditors of CG Power, the Regional Directorate, Western Region, Ministry of Corporate Affairs issued instructions to the Registrar of Companies (ROC) under its jurisdiction to initiate inquiry under Section 206(1) of the Companies Act, 2013 against the Respondent No. 1 Company.
7. The Petitioner submitted that the **ROC** after completion of the inquiry, submitted its report dated **05.11.2018** under section 208 of the Companies Act, 2013 for CG Power on the issue of premature resignation by the statutory auditors, M/s. Chaturvedi & Shah, and further the ROC proposed the following course of action in the matter:
  - (a) *Company has violated the provisions of section 118 r/w Rule 25(10)(b)(i) of the Companies (Management and Administration) Rules, 2014.*
  - (b) *Particulars of Income-Tax, Sales Tax, Service Tax, Customs Duty, Excise Duty and VAT were not been deposited on account of dispute pending, therefore, the Company may be directed to furnish the present status of the cases pending before the Court.*
  - (c) *That the matter may be referred to ICAI as there is a significant gap between the remuneration agreed to be paid to the resigning auditor (122.50 lacs) and the remuneration paid to the new auditor (112.50 lacs).*

*(d) A detailed inspection u/s 206(5) of the Companies Act is recommended into the books of account and records which indicate Financial and Accounting abnormalities.*

*(e) Role of the resigning as well as the incoming Auditor shall further be examine in inspection.*

Copy of the ROC Report dated 02.11.2018 is annexed to the petition.

8. The Petitioner further submitted that, in reply to the queries raised by ROC, Mumbai the Respondent No. 1 Company informed that M/s. Chaturvedi & Shah, Chartered Accountants had to resign as statutory auditors of the company, in order to fulfill a pre-condition for sanction of loan under consortium lending, which further required that the company has to engage a “Big Four” Auditor as Statutory Auditor. However, on 29.05.2019, CG Power appointed Respondent No. 14 M/s. K.K. Mankeshwar & Co. which is not a ‘Big Four’ Firm.
9. The Petitioner submitted that in view of the ROC’s inquiry report, an inspection under section 206(5) read with Section 207 of the Companies Act, 2013 of the Books of Account and other records of CG Power was ordered by the Petitioner vide letter No.03/196/2019-CL-II(WR) dated 03.05.2019. A copy of the said letter of the Petitioner is annexed to the Petition.
10. The Petitioner further submitted that, the Respondent No. 1 Company in a **self-disclosure letter dated 19.08.2019** filed information with the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) under the subject the **‘Outcome of the Board Meeting dated August 19, 2019’**, as under:
  - (a) That the company had constituted an Operations Committee (Ops Committee) in March, 2019.
  - (b) That the Committee found some unauthorized transactions by certain employees of the company.
  - (c) That the Committee came to know certain interest payment failure, but the committee was unable to trace the said transactions from the financials of the company.
  - (d) That the MD of the Company received a request from a Bank to replace a cheque but the obligation was not found from the record of the company.

- (e) That the company appointed an independent Law firm to conduct an investigation. However, in the meantime, Respondent No. 16 – M/s. S.R.B.C. & Co. LLP, Chartered Accountants, Joint Statutory Auditors of the company, sought information and explanation from the company under section 143(12) of the companies act, 2013.
- (f) That the Law Firm submitted its Phase I report dated 05.08.2019 to the Risk and Audit Committee (RAC) and an analysis of the report has also been submitted by Ops Committee.
- (g) That unauthorized and undisclosed transactions and entries identified during further verifications, have been brought to the knowledge of RAC.
- (h) That the RAC has received from the management, the compilation of unaudited standalone and consolidated financial position and profit and loss of the company for the year ended 31.03.2019 and restated financial information and profit and loss for the year ended 31.03.2018 and statement of financial position as on 01.04.2017. Copy of the self-disclosure letter dated 19.08.2019 by CG Power is annexed to the petition.

11. The Petitioner submitted that, the Board of the Respondent No. 1 Company further noted and disclosed as follows:
- I. The total liabilities of the company and the Group may have been potentially understated by approximately INR 1053.54 crores and INR 1,608.17 crores respectively as at 31.03.2018; and by INR 601.83 crores and INR 401.83 crores respectively as at 01.04.2017.
  - II. Advances to related and unrelated parties of the company and the Group may have been potentially understated by INR 1,990.36 crores and INR 2,806.63 crores respectively as at 31.03.2018; and by INR 1,479.34 crores and INR 1,331.47 crores respectively as at April 1, 2017.
  - III. That the assets of the company that were purportedly provided as collateral without due authority; and the company was made a co-borrower and/or guarantor for enabling ostensibly unrelated third parties to obtain loans without due authorization. The moneys so obtained were immediately and without due authorization routed out of the company.
  - IV. The net worth of the company was potentially understated due to unauthorized and inappropriate write offs and charges debited to



the profit and loss statement of the company during the year ended March 31, 2018 and April 1, 2017.

- V. The transactions were purportedly carried out by identified company personnel (both current and past) including certain non-executive Directors, certain KMPs and other identified employees in breach of the rules of procedure of the company and/or without proper information to or authorization of either the RAC or the board, and/or in breach of the companies act, 2013, SEBI Regulations and other applicable laws. The transactions appear to have been carried out by various means including inappropriate netting off, using ostensibly unrelated third parties, routing transactions through subsidiaries, promoter affiliate companies and other connected parties. These transactions have resulted in misstatement of past financial statements and appear to be undertaken in a seemingly fraudulent manner.
- VI. The financial results of the various quarters reported for the years ended March 2019, March 2018 and March 2017 could be impacted as a consequence of these adjustments.
- VII. As a result of the above findings the opening balances of financial year ended March 31, 2018 and earlier years have to be restated.
12. The petitioner submitted that the Board of CG Power also proposed in the said disclosure to undertake the following steps:
- i. That the company to conduct a detailed forensic investigation to establish wrong doing accountability and any other residual implications.
  - ii. That the Board be fully committed to and will cooperate with the relevant regulatory authorities to ensure compliance with law
  - iii. That the company to undertake requisite legal actions to protect its interests vis-a-vis each of the specified suspect transactions and entries.
  - iv. That all identified failures in the system, misuse of authority granted and any other weaknesses to be swiftly address and appropriate rectification measures to be put in place and the company to initiate legal proceedings against the employees and other persons involved in the transactions under investigation.

13. The Petitioner submitted that the **Joint Auditors** of the Respondent No. 1 Company, M/s. S.R.B.C. & Co. LLP, have also submitted their **report** under section 143(12) of the Companies Act, 2013 on the suspected offence involving fraud being committed. The said report records as follows:
- a. *That there were outstanding loans/advances given by the company to a wholly owned subsidiary (WOS) which further extended such loans/advances to an affiliate and these were not recovered by the company/Group as per schedule agreed.*
  - b. *The Audit Committee and the management was informed about the non-compliance in relation to section 185 and section 186 of the Companies Act, 2013 relating to such loans /advances extended to WOS/affiliate.*
  - c. *That the Company had further extended loans/advances to the WOS aggregating ₹229 crores. Hence such transaction appears as prejudicial to the interest of the shareholders of the company.*
  - d. *That the Company had recorded provisions for certain receivable balances outstanding since April 1, 2018 and that the group had recorded partial provisions for advance paid to vendors by two of its wholly own subsidiaries based in Dubai and Singapore. These transactions required a detailed investigation as these did not appear to be in the normal course of business.*

Copy of the report under section 143 (12) submitted by the Joint Statutory Auditors is annexed to the petition.

14. The Petitioner further submitted that, the **Regional Directorate** (Western Region) Ministry of Corporate Affairs, has also submitted its **inspection report** under section 208 of Companies Act, 2013 vide letter dated **23.09.2019**. The RD in the aforementioned report has recorded about the premature resignation of M/s. Chaturvedi and Shah and also about the self-declaration letter filed by the company with BSE & NSE specifying suspicious and unauthorized transactions based on investigation conducted by the company through Vaish Associates, Law Firm. The said report further records that SEBI vide its order dated 17.09.2019 has restrained few directors, (including Ex-Chairman and Ex-CFO) from accessing the securities market.

15. Further, the said RD Report has at length, examined and analyzed 9 (nine) transactions highlighted in the Vaish Associates Phase-I investigation report, which was submitted to the company and thereafter disclosed by the company to the Stock Exchanges. The RD inspectors have also examined the Directors and KMPs of CG Power and have included their statements in their inspection report. The summary of nine specified transactions and the roles played by the Respondents as to the specified transactions vis-à-vis the Vaish Associates Phase-I report has been reproduced below:

**I. Sale of Nashik Property to Blue Garden Estates Private Limited (BGEPL).**

This transaction was in relation to the sale of Nashik Property of the CG Power to Blue Garden Estates Private Limited (“BGEPL”) (which was incorporated and owned by employees of the CG Power without any Board approval of CG Power) and execution of certain documents on behalf of CG Power in relation to the loan facilities availed by BGEPL from Aditya Birla Finance Limited (“ABFL”). Also, the money received from BGEPL by CG Power was in turn advanced to Avantha Holdings Limited (“AHL”) (Gautam Thapar’s company and previous parent company of CG Power) and Acton Global Private Limited (“Acton”) (which was incorporated and owned by employees of the CG Power without any Board approval of CG Power).

The said advance received by CG Power was subject to interest at the rate of 15% per annum. However, the monies made available by CG Power to AHL and Acton was without any interest. The arrangement for which remittance was made by the CG Power to AHL is not clear. The amounts relating to aforesaid transactions have not been disclosed in the audited financial statements of CG Power.

**II. Sale of Kanjurmarg Property to BGEPL.**

In February 2017 a MoU was entered into between CG Power and BGEPL for transfer of the Kanjurmarg Property for the total consideration of INR 498 crores. For this purpose, a term loan was taken by BGEPL from ABFL in terms of a sanction letter and term loan agreement in January/February 2017 and pursuant

thereto INR 190 crores was disbursed in February 2017. At the time of taking the term loan, Acton and BGEPL were not companies of substance and had already taken a huge liability of INR 200 Crores from ABFL in 2016. Further, the transaction of sale of Kanjurmarg Property to BGEPL took place even though the earlier transaction of sale of Kanjurmarg Property to Evie had not terminated.

When the term loan of INR 190 crores was received by BGEPL in February 2017, it was immediately paid as an advance by BGEPL to CG Power in terms of the MoU. CG Power in turn remitted the said advance to Acton (INR 192 crores). The advance received by CG Power was subject to interest at the rate of 15% per annum. However, the monies made available to Acton was without any interest. The arrangement for which remittance was made by CG Power to Acton is not clear. The amounts relating to aforesaid transactions have not been disclosed in the audited financial statements of CG Power. Further, there are no approvals of the Board in respect of the MoU dated 01.02.2017.

**III. Cheques issued by CG Power in favour of Yes Bank Limited (YBL).**

Yes Bank had sanctioned Credit facility amounting to Rs. 500 crores to AHL vide a Sanction letter dated 25.10.2015. CG Power had issued a comfort letter dated 04.11.2015 and had furnished a cheque for Rs. 210 crores along with a declaration for submission of cheque in favor of Yes Bank for the aforementioned Credit facility.

The board of CG Power only became aware of the Comfort letter when a request was made by Yes Bank in April 2019, for renewal of the above-mentioned cheque. CG Power received a legal notice dated 30<sup>th</sup> April 2019 (“Notice”) from YBL under Section 138 of the Negotiable Instruments Act, 1881 for dishonor of cheque bearing No. 903547 dated 15.01.2019 (signed by VR Venkatesh and B Hariharan) and for recovery of amount payable to YBL. Mr Gautam Thapar (Respondent No. 2) personally represented to YBL that he was the person in charge of CG Power and responsible for conducting the day to day affairs of CG Power along with Mr B. Hariharan (Respondent No. 13), Mr V. R.

Venkatesh (Respondent No. 3), Mr Neelkant Kollengode Narayanan (Respondent No. 10) and Mr Omkar Goswami (Respondent No. 4).

**IV. Euro 44 Million borrowing by CG Power Singapore from Standard Chartered Bank, United Kingdom and guaranteed by Corporate Guarantee from CG.**

CG Singapore, a wholly owned Subsidiary of CG Power, entered into a Facility Agreement with Standard Chartered Bank (“SCB”) in 2017 for availing a term loan of EUR 44 Million, the guarantee for which was provided by CG Power. The term loan was availed to finance the general corporate purposes, including working capital, of the Borrower Group and any other member of the Group Companies of CG Power (including by way of inter-company loan). The entire facility was drawn by CG Singapore on 14.02.2018. On that same day, there was remittance instruction provided by CG Singapore for remittance of EUR 44 Million to an overseas entity by the name of Avantha International Assets B.V. (private investment entity of Gautam Thapar) (“Avantha International”).

The board of CG power was not aware of the aforementioned borrowing. Further, the remittance was contrary to the provisions of the Facility Agreement, which required the term loan to be used only to finance the general corporate purposes, etc. of CG Power. Further, the Board of CG Power was also not informed of the aforementioned deviation. In addition, while the facility from SCB was availed at an interest rate of 2.25% + EURIBOR per annum, by CG Singapore, the advance/remittance to Avantha International was interest free.

**V. USD 40 Million Foreign Currency term loan by CG Middle East India and Guaranteed by a Corporate Guarantee from CG International B.V.**

CG Middle East FZE (“CG Middle-East”), an indirect wholly owned subsidiary of CG Power, availed of a Term Loan borrowing from IndusInd Bank, India on the basis of a Sanction Letter dated 25.10.2017. There is a corporate guarantee from CG International BV (“CG IBV”), the parent company of CG Middle-

East. The entire facility was drawn down in October 2017 by CG Middle-East but the monies were received by CG IBV. Once drawn, substantially the whole sum is paid by CG IBV to the Company (CG Power), which in turn remitted the said monies to CG Power Solutions Limited ("**PSOL**") and which in turn further remitted the said monies to Solaris Industrial Chemicals Limited ("Solaris").

The Board of CG Power was not aware of the aforementioned borrowing. No Board resolution was passed by CG Power for the corporate guarantee furnished to IndusInd Bank. Further, CG Middle-East (V.R. Venkatesh is its sole Director) is mainly a sales office and does not have any significant business operations or employees. CG Middle-East had availed of the credit facility at an interest rate of 4.5% + 3 months LIBOR. However, the amounts were advanced/remitted to Solaris on an interest free basis.

The borrowing of \$40 million was not reflected in the financial statements of CG Middle-East and the provision of guarantee was not reflected in the financial statements of CG IBV.

**VI. Outstanding Trade Receivables aggregating to ₹108 Crores from identified customers.**

The CG Power had entered into Tripartite Agreement on 1<sup>st</sup> January 2017, with Identified Suppliers and PSOL (subsidiary of CG Power) for purchase of commodities. The liability of CG Power towards the Identified Suppliers owing to purchase of commodities shall be discharged by PSOL as PSOL owed certain monies to CG Power pursuant to a Loan Agreement dated 02.05.2016. The inventory appeared to have been sold to the Identified Customers for an aggregate amount of Rs. 120 crores. Necessary documentation to support the purchase from the Identified Suppliers were not made available and many such suppliers did not appear to exist at their addresses as noted from the records of CG Power. The format of the P.O. issued by the Identified Customers and the description of goods mentioned in the P.O. for each of the Identified Customer is identical. The Identified Customers did not pay the amounts due as on the applicable due date(s). The purchases and sales appear dubious and seemed to have been made with the objective of reducing the

outstanding loan availed by PSOL from CG Power. Further, the PSOL Loan Agreement (Loan agreement between CG and PSOL) was executed without the authorizations by the respective board of directors of the CG Power or PSOL.

**VII. Outstanding Advances to vendors in CG Power, Singapore.**

In accordance with a Services Agreement executed in January 2013 (“Mirabelle Agreement”), CG Singapore had made certain advances to Mirabelle Trading Pte. Limited (“Mirabelle”) during the period March 2018 - July 2018.

The Mirabelle Agreement was executed on behalf of CG Singapore by Madhav Acharya (Respondent No.12), a Director of CG Power but not CG Singapore. No Board Resolution, etc. authorizing Madhav Acharya to enter into the said Agreement was available. At the relevant time of executing the Mirabelle Agreement, Mirabelle was a ‘related party’ of CG Singapore. Mirabelle (an associate company of Avantha Holdings) had only one Director and did not possess the requisite expertise or domain knowledge for rendering services contemplated under the Mirabelle Agreement.

**VIII. Outstanding Advances to vendors in CG Power, Middle East.**

Several advances amounting to approximately EUR 34 million have been identified by M/s. SRBCC & Co. LLP (Auditors of CG Power appointed in September 2018) (“SRBCC”) in the books of CG Middle-East between the financial Years FY 2017-18 and 2018-19, which are outstanding as on date of the Preliminary Investigation Report.

CG Middle-East appointed various Service Agents in relation to the certain Customer Contracts (sale/purchase of transformers, etc.) in order to mitigate the risk of any potential claims. The aggregate value of such Contracts made with Service Agents is approximately EUR 35 million. Further, such Service Agents did not appear to have any expertise in the service proposed to be provided by them.

Further, EUR 0.62 million was advanced as an interest free loan by CG Middle-East to Ballarpur International Holdings BV (wholly owned subsidiary of Ballarpur Industries Limited, an

associate company of Avantha Holdings) (“Ballarpur International”); EUR 1.2 million was towards interest costs incurred in relation to the Term loan facility availed by CG Middle-East from IndusInd Bank; EUR 5.6 million represented balances from debtors which have been written off as CG Middle-East has not been able to realize the same.

No Board resolution was passed by CG Middle-East for the execution of contracts with Service Agents. Further, no Board approvals were granted in respect of loan facility.

**IX. INR 229 Crores Paid to CG Power Solutions Limited (hereinafter referred to as “PSOL”).**

PSOL had taken loans from CG Power and had in turn had made certain advances to AHL, which stood at Rs.778 Crore as on 13<sup>th</sup> November 2018. The amounts were however, not repaid by AHL to PSOL.

Towards repayment of these advances, AHL addressed a letter dated 28.09.2018 to CG Power (“Avantha Holdings Letter”) wherein AHL proposed to make a deposit of Rs.229 crore (“Deposit Amount”) with CG Power subject to the following:

- CG Power placing the Deposit Amount in a fixed deposit.
- Royalty being paid by CG Power to AHL on or before 20.03.2019;
- The amount of royalty to be paid by CG Power to AHL shall be appropriated out of the Deposit Amount towards part repayment of earlier advances by CG Power / PSOL to AHL;
- Royalty being paid to a specific bank account of Solaris maintained with IndusInd bank, Barakhamba Road Branch, New Delhi;
- If royalty is not paid on before 20.03.2019, the Deposit Amount to be refunded by CG Power.

PSOL received a payment of Rs.294 crore from AHL on 29.09.2018 and transferred the entire sum to CG Power on the same day. Subsequently, CG Power created 5 fixed deposits with IndusInd Bank aggregating to Rs.229 crore and the balance Rs.65 crore out of Rs.294 crore was utilized by CG Power.

AHL and CG Power entered into Avantha Brand Usage Agreement dated 31.02.2019 (“New Royalty Agreement), while the New



Royalty Agreement was executed between AHL and CG Power, it is understood that AHL and CG Power were still in talks to revise the terms pertaining to consideration payable by CG Power to AHL. Since, AHL and CG Power could not reach a consensus on the payment terms prior to 20<sup>th</sup> March 2019, CG Power did not pay royalty to AHL as contemplated under the AHL Letter.

On account of non-compliance of the agreed terms of the AGL letter, CG Power transferred Rs.235.83 crore (Deposit Amount + interest) to PSOL on 28.03.2019 which in turn was transferred by PSOL to AHL the same day.

- X.** In addition to the above, Vaish Associates have reported certain non-compliances of certain provisions of Companies Act, 2013 by CG Power and Officers/Directors of the CG Power. Vaish Associates have also reported violation of relevant provisions of the Rules of Procedures (ROPs) of CG Power and certain provisions of the SEBI related regulations.

16. The RD report has also summarized the amount of undisclosed loan / advances given by CG Power to related and connected parties and the consequent undisclosed receivable of the Respondent No. 1 Company which is admitted by CG Power in its disclosure letter dated 19.08.2019. The said inspection also states that, CG Power in its filing made to the Stock Exchanges on 20.08.2019 has inter alia stated in its notes to consolidated management complied financial information that an amount of ₹2,935.84 crores is receivable balances for the CG Power group from various promoters affiliated companies and connected parties and ₹326.30 crores is the advances/loan payable by the CG Power group to its related/connected parties. The inspection report further states that the disclosure dated 19.08.2019 has identified various companies, wherein undisclosed transactions have taken place, which belong to Mr Gautam Thapar group, being the Respondent No. 2 herein. Copy of the RDs inspection report dated 23.09.2019 is annexed to the Petition.
17. The petitioner submitted that SEBI too has taken cognizance of disclosure made by CG Power vide their letter dated 19.08.2019 to the Stock Exchanges, news items published on 20.08.2019, meetings with

the officials of CG Power on 22.08.2019, the Vaish Report and other correspondence exchanged with the company and after considering the matter, SEBI has passed an order dated 17.09.2019 concluding that said transactions are prima facie designed to divert/siphon off money from the listed company, which rightfully belongs to its shareholders. Further, some of the outgoing funds transfers do not appear to be supported by any comprehensible underlying transactions raising doubts on the bona fides and leaving gap between various transactions. These acts have resulted in the shareholders of the CG Power losing the value of their shareholding which amounts to fraud on its public investors.

18. The Petitioner further submitted that pursuant to the inspection carried out by the Regional Directorate, the RD has submitted its finding with regard to the specified transaction vis-a-vis the VAISH Phase-I Report. The said findings have been extracted from the inspection report dated 23.09.2019 which are re-produced herein below:

- (a) The basic trigger for conducting this inspection was the resignation of the statutory auditors of the company before expiry of their tenure. This aspect has been reported in detail in the relevant paras in this Inspection Report with recommendations that the Ministry may consider referring the matter to NFRA/ICAI and other recommendations.*
- (b) The company in its disclosures dated 19.08.2019 have admitted that the transactions so reported are suspicious and unauthorized, the liabilities and obligations created on the company were not reported in the Financial Statements and other aspects and concluded that these are fraudulent transactions.*
- (c) The Auditors have also stated that they shall be filing a report of fraud under Section 143(12) of the Act and the SEBI in its order dated 17.09.2019 has also concluded that all these financial transactions are fraudulent and amounts to fraud on the public investors.*
- (d) SRBC Co. & LLP has given highly qualified report for the Financial Year 2018-19 and has reported fraudulent transactions as per the Annual Accounts with Audit Report submitted by the company during the course of inspection.*

- (e) *KK Mankeshwar and Company, CAs, the joint statutory auditors have also given a separate report on FY 2018-19 wherein their report too is qualified report reporting fraudulent transactions.*
- (f) *Thus, there are prima-facie, admissions of fraud in the company. SEBI has also directed BSE to appoint an Independent Auditor/ Audit Firm for conducting a detailed forensic audit of the Books of Account of the company from Financial Year 2015-16 onwards till date.*
- (g) *The sum and substance of the reported transactions is that the funds of the company under inspection have been siphoned off in a manner so crafted that the beneficiary, mainly, are companies/entities belonging to Goutam Thapar by using the pass through companies /entities floated through employees of the company under Inspection/others. There were a few persons at higher positions like present and past CFO, Director Finance, and some other directors named in the report who are found to be deeply involved in such gamut of things.*
- (h) *However, the further developments which have come to light by way of disclosures made by the company on 19.8.2019 to BSE and NSE and further on the basis of the VAISH Report and annexures thereto and the nine transactions reported therein made it amply clear that the scope of detailed examination is for wider and broader than the simple transaction of Books of Account and papers of the standalone captioned company, for which, an inspection was ordered under Section 206(5) of the Companies Act, 2013.*
- (i) *There are large number of companies as detailed above including foreign entities wherein funds have flown as detailed in the report and disclosures made by the company.*
- (j) *The allegations and issues raised cannot be brought to a logical conclusion unless, an investigation is conducted into the affairs of not only the company under inspection but also its holding and subsidiary companies and the list of companies as given above on the basis of disclosures made by the company.*
- (k) *All said and done, the forensic examination/investigation being conducted by VAISH Report is at the behest of the company. Therefore, there is a need for an investigation into the affairs of all these companies by an Independent Statutory Agency under the Companies Act also.*

- (l) *In a nutshell, it is submitted that, all of a sudden, the scope of examination has enlarged beyond the scope of inspection under Section 206(5) of the Act and multi-disciplinary, multi-faceted skills are required to bring the whole issue to a logical conclusion which are beyond the scope of present Inspecting Officers in the givens circumstances.*
- (m) *The Inspecting Officers are also of the opinion that simultaneously with order of Investigation into the affairs of the company as stated above, there is a need to insulate the assets of the company and also protect the funds which have been apparently siphoned off. Therefore, the Inspecting Officers are of the opinion that the Ministry may consider to simultaneously file a petition under section 221/222/241/242/246 read with section 339 of the Companies Act, 2013 with prayers for freezing of movable, and immovable assets and properties etc. of the company and also of the persons found involved in the VAISH Report as enumerated herein above in this Inspection Report including their Bank Accounts, Lockers and jointly held accounts, properties etc. and other usual prayers.*
- (n) *Further, the company in its disclosures dated 19.08.2019 has admitted that it shall be recasting its past Financial Statements under section 131 of the Companies Act 2013. However, in this regard, it is submitted that there is no doubt that recasting of Financial statements for at least five financial years ending 31.03.2019 i.e. from 2014-15 to 2018-19 are required not only on account of mismanagement of the affairs of the company which has casted a doubt on the reliability of Financial Statements but also on account of the fact that the said accounts are prima-facie, prepared in a fraudulent manner.*
- (o) *Therefore, the Inspecting Officers are of the opinion that it is better if, a petition under section 130 is filed by the Central Government whereby, the Central Government shall get a right to appoint firm of Chartered Accountants /Experts to recast the accounts of the said Financial Years and also for appointment of Chartered Accountant to audit the recasted Financial Statements to give their opinion thereon.*
- (p) *There are reasonable doubts as stated in the relevant paras as reported above that M/s. K.K. Mankeshwar & Co. Chartered Accountants, and its signing partner Shri Ashwin Manekeshwar have acted in an unethical manner and therefore, their role as Auditors in*

*the whole process, particularly that of Shri Ashwin Manekshwar cannot be ruled out in the whole gamut of things as reported in the VAISH Report. Hence, their continuation as auditors is not desirable. Therefore, the Inspecting Officers are of the opinion, that the Ministry may consider filing of petition under section 140(5) for their removal as auditor of the company under inspection in terms of first proviso to sub-section (5) of Section 140 of the Act at the first instance.”*

19. The Petitioner further submitted that pursuant to submission of the Inspection report dated 23.09.2019 by the RD, the Petitioner vide its order dated 06.11.2019, in exercise of powers conferred under section 212(1)(a) and (c) of the Companies Act, 2013, ordered investigation to be carried out by the Serious Fraud Investigation Office (SFIO), into the affairs of the Respondent No.1 Company - CG Power and Industrial Solutions Ltd. and its 15 related companies.
  
20. The Petitioner finally submits that, from the facts and circumstances setout in the present Petition, it is amply clear and in fact it is an admitted fact by the Board of Directors of CG Power that transactions in seemingly fraudulent manner have taken place in the company, which have led to understating of loan/advances to related and unrelated parties of CG Power and its group. The Respondent No.1 Company has admitted in its disclosure dated 19.08.2019 that transactions have been undertaken in the company that are prima facie prejudicial to the interest of the company, in breach of the rules of procedure of the company and/or without proper information or authorization of either the Risk and Audit Committee or the Board, and/or in breach of the Companies Act, 2013, applicable SEBI regulations and other applicable laws. According to the Board of Directors of the Respondent No.1 company, these transactions may have potentially resulted in mis-statement of past financial statements. Therefore, as there are various mis-statement, irregularity and suppression of relevant information/data in the financial statements of the CG Power and its subsidiary company, this merits intervention by this Tribunal under Section 130 of the Companies Act, 2013. Further, although VAISH Associates Phase-I Investigation Report and the consequent disclosure dated 19.08.2019 by the Board of CG Power has stated that the financial statement for the years 2016-17, 2017-18 and

2018-19 have been stated in a fraudulent manner so as to hide the true and fair view of the books of accounts of the CG Power and its subsidiaries, however, possibility of fraudulent mis-reporting by the VAISH Associates in their Phase-I Investigation Report of financial statements of CG Power for the previous years cannot be entirely rule out.

21. Therefore, the Petitioner submits that in the light of the submissions made above, it is made clear that the accounts of the CG Power and its subsidiaries have been prepared in a fraudulent manner mandating reopening of account for the past five financial years by the Central Government and the Petitioner has strong prima facie case in its favour on the basis of immense public interest involved. Therefore, the petitioner prays following reliefs:

- (A) That this Hon'ble Tribunal be pleased to permit reopening of the books of account and re-casting of financial statements of Respondent No.1 company – CG Power and Industrial Solutions Pvt. Ltd. and its subsidiary company for the past five financial years namely from Financial year 2014-15 to financial year 2018-19;
- (B) That this Hon'ble Tribunal be pleased to permit the Central Govt. to appoint such persons /firm of Chartered Accountant to re-open the books of account and reconcile the account/financial statement of Respondent No.1 company – CG Power and its subsidiary company for the past five financial years namely from Financial year 2014-15 to financial year 2018-19.

### **ORDER**

I. The present Petition has been filed by the Petitioner against the Respondent seeking relief under section 130 of the Companies Act, 2013 which is reproduced below:

*“130. Re-opening of accounts on court’s or Tribunal’s orders —  
(1) A company shall not reopen its books of account and not recast its financial statement, unless an application in this regard is made by the Central Govt., the Income Tax Authorities, the Securities and Exchange Board, any other statutory regularity body or anorthosite or any person concern, and an*

*order is made by a Court or competent jurisdiction or the Tribunal to the effect that —*

- i. The relevant earlier account were prepared in fraudulent manner, or;*
- ii. the affairs of the company were mis-managed during the relevant period, casting a doubt on the reliability of the financial statement:*

**Provided** *that the Court or the Tribunal, as the case may be, shall give notice to the Central Govt, the Income-tax Authorities, the Securities and Exchange Board or any other statutory regulatory body or authority sanction and shall take into consideration the representation, if any, made by that Govt. or the authorities, Security and exchange Board or the Body or Authority concerned before passing any order under this Section.*

*(2) Without prejudice to the provision contained in this Act, the accounts so revised or recast under sub-section (1) shall be final.*

*(3) No order shall be made under sub-section (1) in respect of reopening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year.*

**Provided** *that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.”*

II. As per Section 130 Companies Act, 2013 Sub section (2) of the Companies Act, 2013 there shall be a doubt that the financial statements of the company were prepared during the period when there was a mis management. The point to be remembered here is that even a doubt on the fairness of financial statements is enough for this tribunal to order for re-opening and recasting of the financial statements.

III. The allegations made against the Respondent No. 2 (Mr Gautam Thapar) in particular and other contesting respondents are very serious in nature. As it could be understood the seriousness with which the Union of India, Ministry of Corporate Affairs (UoI, MCA) i.e. the Applicant is pursuing this matter speaks volumes about

the alleged irregularities that have been reported by the company itself in their letter dated 19.08.2019 to the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE).

- IV. A detailed hearing had taken place in the above matter, the concern of the Government is that whatever irregularities have been reported, the same have to be investigated very deeply and seriously. From the beginning whenever this matter was posted before this Bench we were not very much impressed by the submissions made by the present and past management of the company. In order to bring out the truth whether any irregularities are committed or not, whether the Respondent No. 1 Company's self-declaration on the alleged irregularities are correct or not, can be ascertained only when the entire affairs of the Company are investigated by the Government or its agencies.
- V. As it could be understood from the submissions made by the parties while at the time of hearing that there is an internal fight between Respondent No. 2 & the present management which is at the helm of affairs and it is in this context, it appears that the Respondent No. 2 had been removed as the Chairman of the Board of Respondent No. 1 Company. The reason for the internal fight is yet to be established but however, the complainant in the whole episode is none other than the existing management. When there are serious differences existing between two parties, there are provisions in the Companies Act to seek a proper remedy under the law. But in a strange manner the present management had gone to the stock exchanges and declared about the so called irregularities purported to have taken place in the Respondent No. 1 Company. While this being the position, Government machinery cannot be used by either of the conflicting parties to settle their scores and instead a fair and impartial inquiry be allowed to be conducted by the government agencies to know the real facts.
- VI. Evidently the existing management had caused an inquiry into the matter through a Legal firm and also an Auditors' firm and the Vaish Report was released. Having seen the seriousness of the



matter this Bench also is conscious of the fact that the Securities and Exchange Board of India (SEBI) is conducting inquiry into the matter independently. The representatives of the Government who appeared in this matter assured this Bench that no inquiry report of any private party, be it is present or future, shall influence their investigation nor will it have any bearing on the ongoing efforts of bringing out the real facts. In this scenario the re-opening of accounts at this point of time is what the Applicant is praying for in the present application. We are of the considerate view, after hearing all the parties concerned, that the permission is hereby accorded to the Applicant for re-opening of the books of accounts and recasting of the financial statements of the Respondent No. 1 Company and its subsidiary Companies for the past 5 (five) years.

- VII. The Vaish Report as put forth by the present management of the Respondent No. 1 Company shall not be the sole basis for concluding that fraud or irregularities have been committed, unless, corroborated with the inspection / investigation report of an independent government agency on the facts and circumstances of the case.
- VIII. As per the Order No. 01/116/2016-CL-II(WR) dated 06.11.2019, Government of India has already ordered for investigation by SFIO. Accordingly, this Bench hereby orders that while conducting investigation of the affairs of the Respondent No. 1 Company and its subsidiary companies, it should not base itself solely on the Vaish Report as has been done by the RD while conducting inspection. The investigating agency should also look into the involvement of Ex-Chairman, Directors, Key Managerial Persons (KMPs) and other staff of the Respondent No. 1 Company and its subsidiary companies who were involved in committing fraud or irregularities, irrespective of the fact, whether they ceased to be involved in the affairs of the Respondent No. 1 Company or its subsidiary companies, or still continuing. The report of the investigating agency be also considered while submitting the recasted accounts for suitable orders of this Bench.

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- IX. Finally, we would like to conclude that based on the outcome of investigating Agency's Report due action be initiated against the erring/defaulting individuals found involved in fraud and irregularities committed by them while conducting the affairs of the Respondent No. 1 Company and its subsidiary companies.
- X. We hereby allow the prayer and order reopening of the books of account and re-casting of financial statements of CG Power and Industrial Solutions Limited and its subsidiary companies for 5 (Five) years ended as on 31<sup>st</sup> March 2019.
- XI. The Company Petition is allowed.

**Sd/-**

**RAJESH SHARMA**

Member (Technical)

**Sd/-**

**BHASKARA PANTULA MOHAN**

Member (Judicial)

5<sup>th</sup> March 2020